

Open Europe submission to the UK Government's Balance of Competence Review: Free Movement of Persons

July 2013

The submission below has drawn on the following publications:

Open Europe, 'Tread carefully: The impact and management of EU free movement and immigration policy', March 2012;

http://www.openeurope.org.uk/Content/Documents/EUimmigration2012_new.pdf

All Party Parliamentary Group on European Reform, 'Inquiry into EU free movement and immigration: The lifting of transitional controls for Bulgaria and Romania', May 2013, a report prepared by Open Europe;

<http://www.openeurope.org.uk/Content/Documents/APPGfreemovement2013.pdf>

Questions in relation to the UK Experience of the Free Movement of Persons:

1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals; and b) the UK as a whole?

The free movement of workers within the EU has the potential to boost growth and competitiveness in both the UK and Europe. In addition, the ability for companies based in the UK to easily draw on a wide talent pool is seen by many firms as an advantage. However, free movement also throws up a huge number of political challenges, such as a substantial loss of national control over who can enter the country, increased competition in low-skilled sectors of the labour market, downward pressure on wages, and increased demand for public services and infrastructure. If public confidence is not to be lost, free movement needs to be managed with extreme care and tempered with other policies including the right of the UK to protect its welfare system from abuse.

Rules that were conceived for a much smaller and homogenous EU must now be reviewed and reformed in order to ensure that business and individuals can continue to benefit from the free movement of *labour*, while national governments must be given greater flexibility to safeguard and develop their own welfare systems and public services. Failure to address the concerns of host populations, not simply in the UK but in other Northern EU member states, has the potential to completely undermine public trust in the EU as a whole.

The recent influx of EU migration from the newer member states has undoubtedly stoked public anxiety about EU immigration and immigration more generally. Inward migration from the EU was mainly flat between 1991 and 2003, but following EU enlargement in 2004 there was a significant jump in EU migration inflows to the UK.¹ This change has resulted in the UK experiencing substantial and sustained net inward migration from the EU and has understandably politicised the issue. Nevertheless, EU migration only represents around a third of total net inward non-British migration to the UK.

¹ *Migration Observatory*, 'Migration flows of A8 and other EU migrants to and from the UK', 3 April 2013; <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Migration%20Flows%20of%20A8%20and%20other%20EU%20Migrants%20to%20and%20from%20the%20UK.pdf>

However, the high levels of unemployment across the EU, particularly in the eurozone, could increase the incentive to migrate to Northern member states including the UK. The English language continues to be a major incentive to come to the UK in particular.

Assessing the longer-term fiscal impact of immigration is a very difficult task. Beyond the short-term fiscal impact of immigrants, i.e. the difference between migrants' tax payments and their use of public services, a more comprehensive approach would assess the net present value of the fiscal impact of immigrants over their entire lifetime (possibly including the fiscal impact of future descendants). This latter approach requires anticipating future developments to an extent that is unlikely to be accurate.² It is also difficult to disaggregate the impact of EU free movement rights from inward migration to the UK taken as a whole.

The previous Government tended to focus on the positive impact that migration had on UK economic growth as a case for continued net immigration to the UK.³ Instead, the focus of analysis should be on the effects of immigration on income per head.

The National Institute of Economic and Social Research has estimated that, taking 2005 as a baseline, A8 immigration (from the Central and Eastern member states that joined the EU in 2004) would have a negative impact on GDP per capita in the short run (over the first four years) and a positive but small impact on GDP per capita in the longer run (0.3% higher by 2015).⁴ Others have pointed to other benefits of migration from the enlargement countries such as increased trade.⁵ However, how much this has to do with free movement of people as opposed to these countries' full entry into the EU's single market is unclear.

Meanwhile, the temptation to use immigration to remedy structural fiscal issues can only be a short-term fix. For example, immigration, particularly of younger workers, is often seen as a way of paying for ageing populations' taxpayer-funded pension entitlements. In the short run, the entry of relatively young migrants to the UK will tend to decrease the dependency ratio, that is the ratio of those not in the labour force (the dependent) and those in the labour force. However, immigrants will also grow old and require pensions.

2. What evidence is there that EU competence in this area makes it easier for UK nationals to work, access benefits and access services in another member state?

N/A

3. What evidence is there of the impact on welfare provision and access to public services in the UK?

On a basic level, the fiscal impact of migrants is measured by comparing the taxes they pay with the services and benefits they receive. For example, immigrants who are working in the UK and paying taxes but who have not have been educated in Britain or claimed welfare benefits will produce a net

² OECD, 'Migration in OECD countries: Labour market impact and integration issues', 2007, p8

³ See for example *Home Office and Department for Work and Pensions*, 'The economic and fiscal impact of immigration: A cross-departmental submission to the House of Lords Select Committee on Economic Affairs', 2007, p11, <http://www.official-documents.gov.uk/document/cm72/7237/7237.pdf>

⁴ Cited in *House of Lords, Economic Affairs Committee*, 'The economic impact of immigration', p25

⁵ IPPR, 'Floodgates or turnstiles? Post-EU enlargement migration flows to (and from) the UK', 30 April 2008, p54, <http://www.ippr.org/publications/55/1637/floodgates-or-turnstilespost-eu-enlargement-migration-flows-to-and-from-the-uk>

fiscal benefit. The evidence overwhelmingly suggests that new migrants from Eastern Europe have come to the UK in search of work and not welfare benefits.⁶

However, the UK's ability to impose temporary restrictions on A8 migrants' access to certain welfare payments is likely to have played a role in this. It would be useful to reassess the above now that this ability no longer exists.

Nevertheless, the European Commission's legal challenge to the UK's 'right to reside test' (see below) threatens to not only undermine political confidence in free movement but also threatens to increase the EU's reach into the UK's welfare system. The Commission should be resisted in the strongest terms and **the argument should be made that national governments need more not less control over their welfare systems if free movement of people in the EU is going to continue.**

Aside from welfare, the NISER has noted that "of all services potentially accessed by migrants, education is one in which rights of access are the most clear and where impacts may therefore be felt", concluding that: "There is no doubt that some local authorities in England, Scotland and Wales, were not prepared for the scale of migration from the EU8 countries from 2004 onwards and that some services were put under pressure as a result."⁷

Meanwhile, EU/EEA migrants' access to the UK's National Health Service, which unlike many other EU member states' systems is free at the point of use, also presents a challenge. As Health Secretary Jeremy Hunt recently told Parliament,

"If people come here to work, we have an obligation under EU law to allow them access to free treatment, but if they are economically inactive or if they are temporary visitors, we should be able to reclaim the cost of that treatment from their home country in the EEA. The fact is that we do that very poorly indeed at the moment and that is one of the things we need to change."⁸

He also noted that it is difficult to know the exact scale of the issue as the current system acts as a disincentive for hospitals to declare those who are not entitled to free NHS care.⁹

4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?

N/A

⁶ Based on A8 migrants who arrived after EU enlargement in 2004 and who have at least one year of residence, and are therefore legally eligible to claim benefits; Christian Dustmann, Tommaso Frattini and Caroline Halls, 'Assessing the fiscal costs and benefits of A8 migration to the UK', *Fiscal Studies*, Vol 31 No 1, 2010, p30; Madeleine Sumption and Will Somerville, 'The UK's new Europeans: Progress and challenges five years after accession', *Equality and Human Rights Commission*, January 2010

⁷ *National Institute For Social and Economic Research*, 'Potential impacts on the UK of future migration from Bulgaria and Romania' April 2013, <https://www.gov.uk/government/publications/potential-impacts-on-the-uk-of-future-migration-from-bulgaria-and-romania>

⁸ *Hansard*, 25 Mar 2013 : Column 1295; <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130325/debtext/130325-0001.htm#13032510000004>

⁹ *Hansard*, 25 Mar 2013 : Column 1292

Questions in relation to the labour market:

5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?

The overall impact of new post-EU enlargement migration on the UK economy is inconclusive. However, the impact of new EU immigration is most likely to have been felt at the low-skill end of the labour market, increasing competition for jobs amongst low-skilled and younger workers. A8 migrants are likely to have reduced the real wages of those in the low-skill sector in the short term, although this could come with overall benefits to the UK economy by improving competitiveness.

6. What is the impact of this area of EU competence on employment sectors, such as distribution, hotels and restaurants, banking and finance, agriculture, or other sectors?

The academic literature and statistics suggest that new migrants from the EU accession countries tend to be young and well educated.¹⁰ A8 migrants also have higher education levels, on average, than the UK-born population.¹¹

Despite this, A8 immigrants tend to “downgrade”¹² and are more concentrated in low-skilled jobs than UK native workers. In 2008, the ONS estimated that 38% were in elementary occupations and only 13% in higher skilled occupations.¹³ The proportion of A8 workers in low skilled jobs is far higher than workers from other EU countries and migrants from the rest of the world, partly because the UK can apply skills-linked restrictions on many migrants from outside the EU.

7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?

Despite the uncertain impact on overall prosperity of the native UK population, the overwhelming evidence is that new migrants from the A8 countries are jobseekers and have a high rate of employment. In 2008, the ONS estimated that the employment rate of A8 migrants was over 80%.¹⁴

In addition, Graph 1 below, showing the number of National Insurance Numbers issued, demonstrates that immigration from the A8 accession states slowed following the UK’s economic downturn in 2008 as job opportunities decreased. The graph also shows that, following the onset of the downturn, A8 immigration reduced compared to other immigrant groups. The evidence therefore suggests that potential A8 immigrants have stayed at home whereas other immigrant groups have continued to arrive in search of jobs. It adds further weight to the evidence that A8 migrants’ primary purpose is work related and that, without the prospect of employment, A8 migrants are less likely to come to the UK.

¹⁰ Christian Dustmann, Tommaso Frattini and Caroline Halls, ‘Assessing the fiscal costs and benefits of A8 migration to the UK’, p9

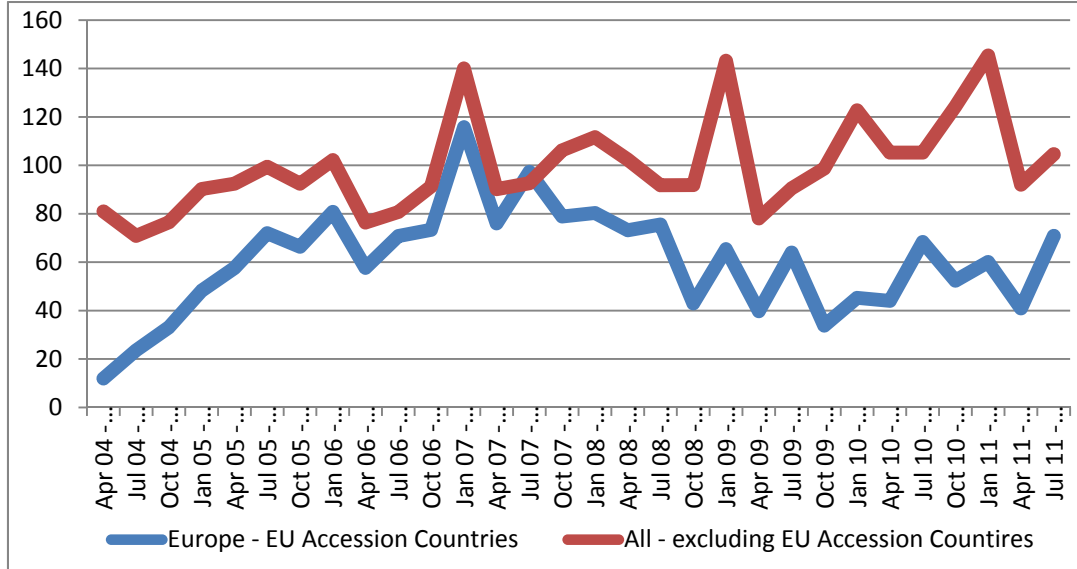
¹¹ 32% of A8 men and 40% of A8 women are educated beyond 21 years of age compared to 18% and 16% of the native population – although the ONS comes to a slightly different view using a different methodology, see Christian Dustmann, Tommaso Frattini and Caroline Halls, ‘Assessing the fiscal costs and benefits of A8 migration to the UK’

¹² Madeleine Sumption and Will Somerville, ‘The UK’s new Europeans: Progress and challenges five years after accession’

¹³ Cited in *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’, p18

¹⁴ See *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’, p19

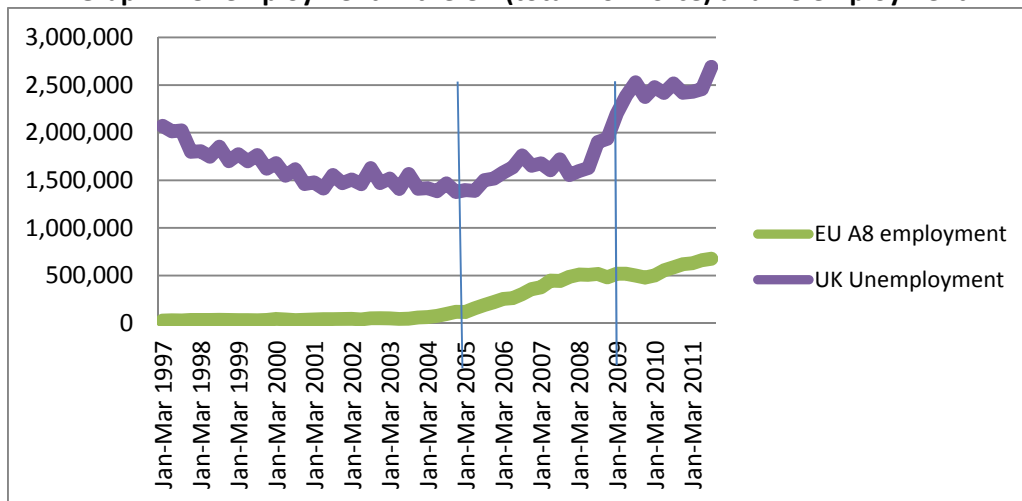
Graph 1: National Insurance Number allocations (thousands, April 2004 – September 2011)



Source: ONS

Similarly, Graph 2 below, based on the Labour Force Survey figures, shows that the number of A8 workers in the workforce increased significantly between 2004 and 2008 before stabilising at the beginning of the downturn. At this point, for the workforce at large, unemployment began to rise sharply. However, A8 migrants have responded comparatively well to the recent recession with employment levels holding up and unemployment levels remaining low - below that of native UK workers. This is partly a function of the flexibility inherent in a workforce capable of relocating to their home state. It may also be due to the relative strength of the sectors A8 migrants are employed in compared to sectors where UK natives have recently become unemployed.

Graph 2: Unemployment in the UK (total workforce) and A8 employment



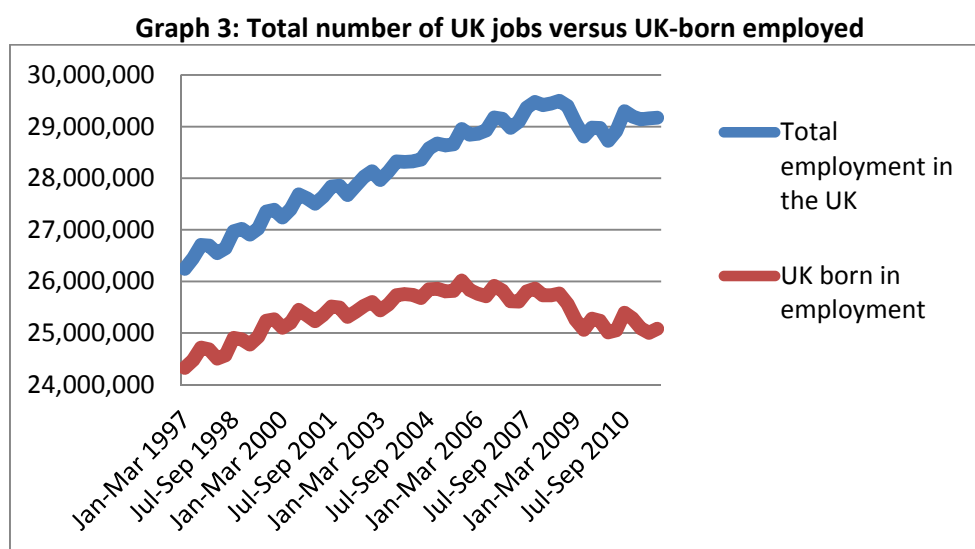
Source: ONS, Labour Force Survey

While the graph above shows that A8 migration cannot be the main cause of unemployment since 2008, when a rapid spike was registered, it does show a small increase in overall unemployment in the UK shortly after the 2004 accession. However, it is not clear whether there is any causal link to the increased employment of A8 nationals.¹⁵

¹⁵ One of the first studies on the impact of A8 migration on UK unemployment concluded that there was “no discernible statistical evidence to suggest that A8 migration has been a contributor to the rise in claimant

Nevertheless, as A8 migrants are overwhelmingly concentrated in low-skilled sectors, their impact on the native UK population is likely to be concentrated in this section of the labour market. It could be argued that UK natives might have filled these lower skilled jobs following unemployment, had they not already been taken up by A8 employees, or that younger workers have faced greater barriers to entering the labour market. There has been little research into the impact on youth employment. However, a report examined by the House of Lords in 2008 thought it possible that “native” youngsters may have been losing out in the battle for entry level jobs.¹⁶ The Lords also found that “although the evidence is limited, there is a clear danger that immigration has some adverse impact on training opportunities and apprenticeships offered to British workers.”¹⁷

It is also clear that even if A8 migration did create unemployment it was not due to a lack of job creation per se, as over a long time frame total UK employment has increased. The UK economy has a good record in creating jobs but they have tended to be filled by EU and non-EU migrants, even as the number of UK natives employed decreased. UK-born unemployment has remained stubbornly over one and a half million for most of the last decade, despite at least three million jobs being created.



Source: ONS

This trend could lead to an employment trap, whereby the UK economy fails to remedy the underlying causes of UK natives’ unemployment.

This highlights the fundamental need for the Government to promote greater participation in the labour force amongst UK citizens through its education and welfare policies, improving both the incentives to work and workers’ skill-levels.

unemployment in the UK,” see Nicola Gilpin et al, ‘The impact of free movement of workers from Central and Eastern Europe on the UK labour market’, *Department for Work and Pensions*, Working Paper No 29, <http://research.dwp.gov.uk/asd/asd5/WP29.pdf>. However, the results have been questioned by Professor Rathbone of Cambridge University, who points out that, if the statistical relationship between migration and unemployment was deemed significant, it would mean that “60 or more local workers will become unemployed for each 100 A8 immigrants”, see <http://www.regional-studies-assoc.ac.uk/events/2008/dec-cambridge/presentations/Rowthorn.pdf>

¹⁶ *Ernst and Young Item Club*, ‘Special report on migration’, 18 December 2007, as recited in evidence to the House of Lords, <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/82/8011514.htm>

¹⁷ *House of Lords, Economic Affairs Committee*, ‘The economic impact of immigration’

8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?

N/A

Questions in relation to social security coordination:

9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?

The rules governing access to welfare for EU citizens are complex. The EU's distinction of 'social security' benefits and 'social assistance' benefits does not sit well with the UK's 'universalist' welfare system. This issue has been exacerbated by the extension of free movement rights from solely workers to the economically inactive, jobseekers, students and family members.

The EU's Rights of Residence Directive establishes that EU member states are not obliged to provide 'social assistance' (e.g. Housing Benefit and Council Tax Benefit) to nationals of other EU countries during their first three months of residence, or if their only grounds for remaining in the UK for longer than three months are that they are actively looking and have "a genuine chance" of finding work. The premise of the Directive being that after three months, foreign EU nationals must be either in work, self-sufficient or they lose their right to stay in the host member state.

'Social security' benefits (e.g. sickness, unemployment, family, and other benefits) are covered by a separate EU Regulation¹⁸, which, unlike a Directive, has direct legal effect in the UK. It establishes that these benefits must be made available to all nationals of EU member states without discrimination but can only be claimed by people who are 'habitually resident' in the member state.

While there has been a degree of convergence of European welfare models in recent years, there remain two distinct philosophies – the Beveridgean and Bismarckian – that tend to characterise EU member states' welfare systems. The Bismarckian system is based on a social insurance system funded by contributions by employees and their employers during employment. Benefits are based on these contributions and therefore are linked to previous earnings. This system contrasts sharply with the Beveridgean system developed in the UK, where general taxation plays a far greater role in financing benefits and where those in need receive a similar amount, regardless of their contributions. The Social Democratic model of welfare adopted in Scandinavia follows a similar 'universalist' tradition to the Beveridgean system. Enlargement to include a new group of EU member states has introduced yet another type of system.

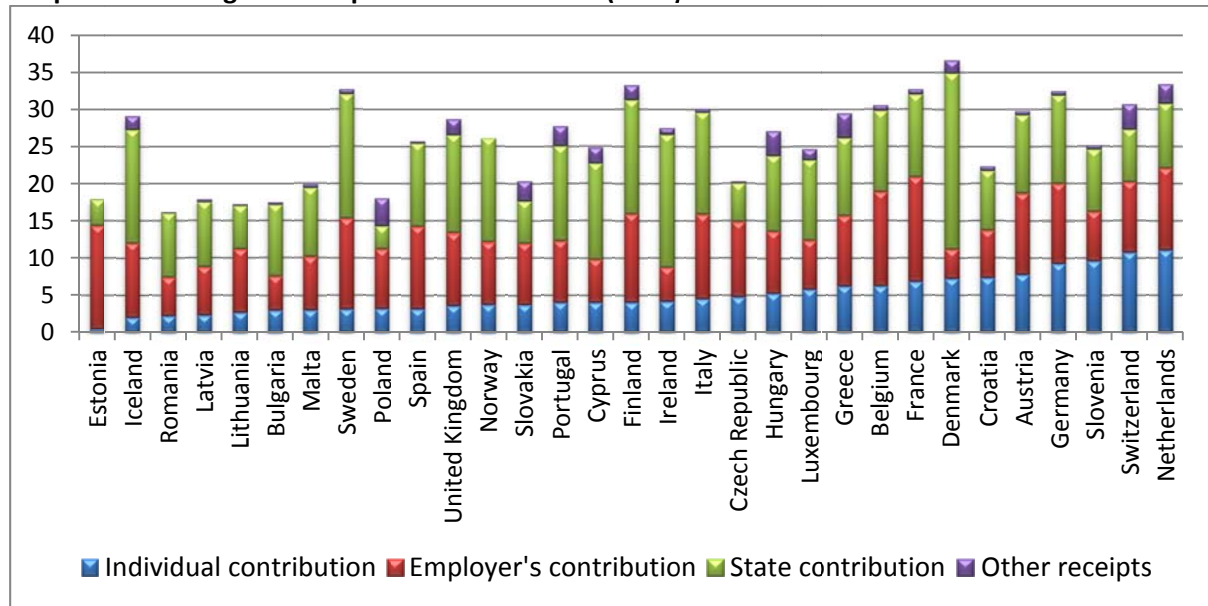
¹⁸ See Regulation (EC) No 883/2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:200:0001:0049:EN:PDF> – Article 4 of the Regulation states, "Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any member state as the nationals thereof"

Table 1: Types of social protection system¹⁹

	Social Democrat / Beveridgean	Continental / Bismarckian	Liberal / Eastern Europe
Objective	Poverty elevation	Income maintenance	Safety net
Benefits	Flat-rate	Earning replacement	Mixed
Eligibility	Need	Contribution	Mixed
Coverage	Everyone	Employees	Mixed
Financing	Taxation	Contributions	Mixed

Graph 4 below shows that compared with other established EU welfare systems, the UK is heavily reliant on the Government and therefore general taxation to fund its welfare system, while other member states systems' rely more on employee and employers' contributions.

Graph 4: Financing of social protection % of GDP (2010)



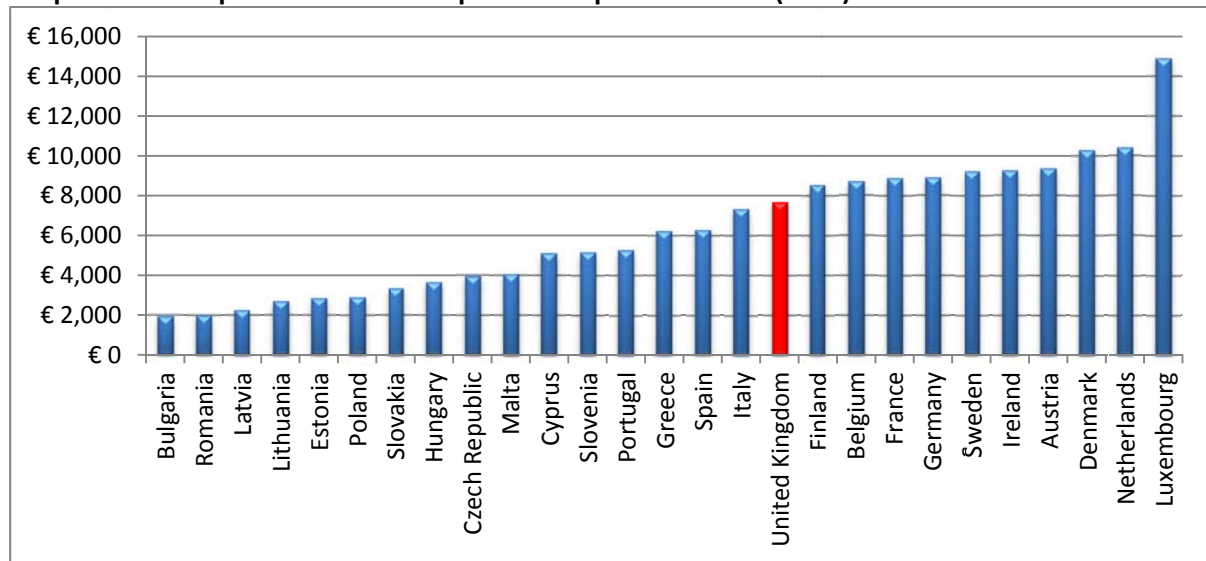
Source Eurostat²⁰

Graph 5 below illustrates that the level of welfare spending also differs across the member states.

¹⁹ Adapted from Esping-Andersen, Gosta. 1990. *Three Worlds of Welfare Capitalism*, Princeton, NJ: Princeton University Press, and Bernhard Ebbinghaus, *Comparing Welfare State Regimes*, University of Mannheim 2012 and Wilhelmus Antonius Arts and John Gelissen, 'Three worlds of welfare capitalism or more? A state-of-the-art report', *Journal of European Social Policy* 2002; 12; 137, <http://esp.sagepub.com/cgi/content/abstract/12/2/137>

²⁰ Eurostat, http://epp.eurostat.ec.europa.eu/portal/page/portal/social_protection/data/database (this does not take into account spending based on borrowing)

Graph 5: Total expenditure on social protection per inhabitant (2010)



Source: Eurostat 2010²¹

In many other member states income-related (or safety-net) benefits tend to stand outside the main social security scheme as ‘social assistance’, and therefore such benefits are not generally covered by EU Social Security Regulations. The EU rules give member states greater flexibility when granting access to ‘social assistance’ benefits, which means that member states with this different welfare model may have more flexibility than the UK has in granting access to benefits that do not depend on contributions.

10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?

It is important that the freedom to move within the EU is not abused and non-UK nationals’ access to welfare must be tightly regulated if any public and political confidence in free movement is to be sustained.

However, in 2011, the European Commission launched ‘infraction’ proceedings against the UK, claiming that the ‘right to reside’ element of the UK’s Habitual Residence Test violates EU law. This is because it “indirectly discriminates non-UK nationals coming from other EU Member States” as UK citizens automatically pass the test.²² Details of the Commission’s complaint are not public, as it has not yet reached the Court of Justice but from the information available it would appear it also objects to the UK’s application of the ‘right to reside’ test to benefits the Commission deems to be in the ‘social security’ category.

The dispute between the UK Government and the European Commission is largely the result of a clash between the UK’s particular welfare model (described above), which includes many non-contributory, means-tested benefits, and the EU Regulation, which prevents any discrimination and

²¹ Eurostat, http://epp.eurostat.ec.europa.eu/portal/page/portal/social_protection/data/main_tables

²² European Commission press release, ‘Social security coordination: Commission requests United Kingdom to end discrimination of EU nationals residing in the UK regarding their rights to specific social benefits’, 29 September 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1118&format=HTML&aged=0&language=EN>

applies the same logic to every EU member state, despite the heterogeneity of individual welfare systems.

In order to maintain any public confidence in EU free movement it is essential that EU rules respect differing national welfare systems that have developed through national democratic choices. Open Europe believes the UK should work with like-minded member states to secure changes to the EU's rules on free movement to address this issue:

- Firstly, the right of residence in another member state should be more closely linked to being in work or self-sufficient. This could be achieved by strengthening and clarifying the definition of habitual residence in EU legislation to ensure that rights of residence (after the initial three month period in the Rights of Residence Directive) are dependent on a genuine economic link to the host country such as being in work, being self-sufficient and removing the right of residence as a job seeker unless someone has been in employment in the host country for a certain period. When determining whether an EU citizen is a "burden" on the welfare system, the host member state should be allowed to apply general thresholds for the income/resources that person is required to have.
- Secondly, the EU's Social Security Regulation should be amended to ensure there is no access to a host member state's benefits without the person having the right of residence in that country under the Rights of Residence Directive. Where the Rights of Residence Directive currently speaks about the host country's "social assistance system", the Directive could explicitly include all state welfare.
- Thirdly, the rules on family benefits should be tightened so that people cannot claim for non-contributory benefits such as Child Benefit if their child is not living with them in the host country.
- Fourthly, the requirement for equal treatment with nationals of the host member state should be removed for EU citizens without a permanent right of residence in the host member state when it comes to the provision of state welfare that is in particularly scarce supply, such as social housing.

Questions in relation to Immigration:

11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?

N/A

12. What evidence do you have of the impact on local communities and their economies, including rural areas?

The social impacts of EU/EEA free movement are very difficult to measure because it is difficult to disaggregate EU migration from other forms of migration and much of the evidence is therefore anecdotal. However, local communities can indeed suffer when the pace of change puts pressures on local infrastructure. For example, local authorities can face difficulties planning for demographic changes and sometimes mobility is associated with inefficient use of public services.²³

²³ *Migration Policy Institute*, 'How free is free movement? Dynamics and drivers of mobility within the European Union', March 2013; <http://www.migrationpolicy.org/pubs/MPIEurope-FreeMovement-Drivers.pdf>

As we set out above, the evidence on the overall economic impact of new EU migration is inconclusive. However, the likelihood is that it has had an impact on specific groups, the low-skilled and young, by increasing competition and downward pressure on wages. This is certainly the public perception.

Furthermore, big migration inflows – especially when they are concentrated in a specific geographic area – can drive housing prices up. This can have a double effect on low-skilled workers already experiencing a downward pressure on wages and a fear of unemployment that now see their disposable income consumed by higher rents and property prices.

The concentration of immigration in some areas, combined with a lack of accurate data, has also led to complaints from local authorities that funding is not been allocated correctly to take into account new spending pressures.²⁴ The difficulty poor data creates with planning is a real problem. The Audit Commission cites one example of schools in Peterborough, scheduled for closure, which had to be retained at the last minute due to a sudden surge in pupils linked to migration.²⁵

A more effective system of statistics and planning should be put in place in order to avoid sudden strains on public services and improve public debate on immigration. With better and more timely data, the central Government could respond quicker to the problems created by sudden flows and allow local services to respond quicker.

13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?

See answer to question 10.

Questions relating to future options and challenges:

14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact might these have on the UK national interest?

Several other EU countries have stressed the need to make sure EU migrants move around to work, rather than to claim benefits. For example, Germany, Austria and the Netherlands signed a letter along with the UK calling for tighter restrictions to migrants' access to welfare handouts and other state-funded services.

The UK must work with like-minded countries to reform the system to better link rights of residence, including access to welfare, to economic contributions to the host member state.

15. What impact would any future enlargement of the EU have on the operation of free movement?

Arguably the issue that has most damaged the UK public's perception of EU migration is the underestimate of A8 migration following the UK's decision not to introduce transitional controls in 2004. In 2013, Romania and Bulgaria will also gain access to the UK's labour market followed by

²⁴ *House of Lords, Economic Affairs Committee, 'The economic impact of immigration'*

²⁵ *House of Commons, Communities and Local Government Committee, 'Community cohesion and migration', Tenth Report of Session 2007-2008, 30 June 2008, <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/369/369i.pdf>*

Croatia in 2018. In the future, there remain a number of candidate states, including Turkey, and potential candidates which if given access to the EU's labour market could, due to their size and relative wealth, have a substantial impact.

For future EU enlargements, tighter transitional controls should be employed, based on more objective criteria such as relative GDP per capita rather than the arbitrary time-limited controls used up to now.