

Protecting workers' rights using the UK- EU trade and cooperation agreement

SUMMARY

January 2022

Introduction

The TUC exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions.

In December 2020 the UK and EU governments signed the Trade and Cooperation Agreement (TCA). Due to campaigning by trade unions in the UK and across Europe over the four years of Brexit negotiations, a key principle of the agreement was that neither the UK or EU countries should lower standards on workers' rights.

These were called 'Level Playing Field' commitments.

The TCA contains a mechanism not found in any previous UK or EU trade agreement which allows penalties to be applied against the UK or EU if standards on workers' rights are lowered.

The TUC commissioned an academic study from Professor Federico Ortino (King's College London) to better understand the Level Playing Field provisions and how trade unions can use them to prevent attacks on workers' rights.

This briefing summarises the key findings of this study.

The Level Playing Field commitments are vital, as UK government ministers have repeatedly suggested that lowering workers' rights following Brexit could be a potential 'dividend' to leaving the European Union.

On 9 December Lord Frost, at that point the minister responsible for the TCA, announced that the government was planning a review of EU retained law¹ shortly after having commented in a speech 'if after Brexit all we do is import the European social model we will not succeed.'² In the last year the UK government has also consulted on proposals to weaken protections on personal data³ and set out a comprehensive new approach to regulation and enforcement which would reduce existing rights and effective enforcement measures.⁴ Several members of the current UK Cabinet, including the business secretary Kwasi Kwarteng, were authors of the notorious Britannia Unchained pamphlet, published in 2012, which advocated slashing social and employment regulation derived from the EU including paid holidays and working time rules in the name of competitiveness.⁵

It is vital trade unions are able to use the TCA to protect our hard won rights.

¹ Hansard (December 2021). 'Brexit opportunities: review of EU retained law', online at: <https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hlws445>

² Lord Frost (November 2021). 'If we can't persuade people that freedom is the best way forward, we lose', online at: <https://capx.co/if-we-cant-persuade-people-that-freedom-is-the-best-way-forward-we-lose/>

³ UK government (2021). 'DCMS Data reform consultation', online at: <https://www.gov.uk/government/news/dcms-data-reform-consultation>

⁴ UK government (2021). 'Reforming the framework for better regulation', online at: <https://www.gov.uk/government/consultations/reforming-the-framework-for-better-regulation>

⁵ O'Grady, F. (2021). 'Post-Brexit review of workers' rights must not rip up hard won protections in a race to the bottom', *PoliticsHome*, online at: <https://www.politicshome.com/thehouse/article/postbrexit-review-of-workers-rights-must-not-ripup-hardwon-protections-in-a-race-to-bottom>

Key protections in the TCA

The TCA commits UK and EU governments to not roll back on the standards of rights in place when the UK-EU agreement was signed in December 2020 (this is termed 'non regression').

More specifically, the UK and EU must not weaken existing 'fundamental rights at work' as defined by International Labour Organisation (ILO) core conventions as well as various labour standards including occupational health and safety standards; fair working conditions and employment standards; information and consultation rights at company level; and restructuring of undertakings protections.

If the UK government were to break this commitment and the EU can demonstrate that this has even a potential effect on trade or investment then the EU has the right to impose 'temporary remedies' on the UK. These could include the imposition of trade sanctions on UK goods until the UK government addresses the breach.

The study shows that even one instance of workers' rights being lowered would be ground for a case against the UK government.

There can also be penalties applied if the UK does not have adequate domestic enforcement of fundamental workers' rights.

The TCA additionally contains commitments for UK and EU governments to implement international labour standards including fundamental ILO Conventions, and key conventions that form the International Labour Organisation Decent Work agenda including promoting social dialogue and the provisions of the European Social Charter.

How trade unions can use the protections in the TCA

Trade unions have informal and formal ways of using the TCA to protect workers' rights.

Formally, the UK and EU governments are required to involve trade unions (along with employer and other civil society groups) in the bodies that monitor the agreement that are termed 'Domestic Advisory Groups'. The EU Domestic Advisory Group involves the European Trade Union Confederation – of which the TUC continues to be a member – as well as trade unions from EU countries. The TUC has applied for places on the UK Domestic Advisory Group but membership of this group is not yet confirmed.

The TCA requires the EU and UK to 'consider' the views of the Domestic Advisory Groups. Furthermore, the Domestic Advisory Groups can also submit views to the committee (known as the Trade Specialised Committee) where UK and EU government officials discuss the Level Playing Field commitments.

Trade unions could therefore raise a complaint if the UK government was not upholding commitments on workers' rights through the EU Domestic Advisory Group. This would then prompt the European Commission to consider whether to take action against the UK.

The European Trade Union Confederation would also be able to raise a complaint directly to the European Commission through the Single Entry Point set up in 2020 alleging non-compliance by the UK government.

Informally, trade unions can make contact with the European Commission, the UK and EU governments and Members of the European Parliament if the UK violates Level Playing Field commitments. This could build pressure on the European Commission to take action to impose penalties on the UK government.

How the TCA can be strengthened

The TCA requires the UK and EU to review the agreement in 2026.

The study proposes a number of options for using the review to make the provisions in the TCA more effective, these include:

- eliminating the requirement that violations of Level Playing Field commitments affect trade or investment
- requiring the UK government and EU to continue to keep pace with each other's legislation to protect workers' rights
- strengthening the ability of trade unions to launch a case against governments directly if workers' rights are being abused; and
- creating a 'rapid response mechanism' as in the US-Mexico-Canada agreement which would allow sanctions to be imposed in the case individual companies are found to be violating workers' rights

Conclusion

The study is clear that the TCA commits the government to protecting workers' rights and contains the means to hold the government to these commitments. Trade unions will use the TCA to ensure our rights are respected.

The protections the TCA provides could be stronger though, which is why in the 2026 review trade unions will be campaigning for the agreement to be improved – in particular to commit the UK government to ensure workers in the UK do not fall behind workers in the EU. Workers in the UK must have the protections that are being introduced in the EU, including new rights for platform workers and predictable working conditions.

Trade unions will be campaigning to ensure the government finally fulfils its promise to 'protect and enhance' workers' rights and deliver a new deal for working people.