

Putting Brexit to the test

**How do Britain's Brexit options perform
against the TUC's tests?**

The Trades Union Congress (TUC) exists to make the working world a better place for everyone.

Working people joining together can change things. For more than 150 years, unions have fought for safer workplaces and wages you can build a life on. And today we're needed more than ever to make sure every job is a decent job and everyone at work is treated with respect.

We bring together more than 5.6 million working people who make up our 50 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

Every day, we campaign for more and better jobs, and a more equal, more prosperous country.

Our values guide us in all our work. We stand for equality, fairness and justice, and for dignity and respect for all working people. We believe in solidarity: that working people can achieve more acting together than they can do on their own. And we are internationalists, acting with trade unionists around the world to promote working people's interests.

Setting the scene

The Brexit negotiations are moving towards the next stage. If the European Council considers that sufficient progress has been made on the withdrawal negotiations currently underway, it will adopt a mandate for the next stage of negotiations. Initially, that will probably cover the transitional period that almost everybody agrees will be needed after Britain formally leaves the European Union in March 2019. But after that, serious consideration will need to be given to the shape of the eventual relationship between the UK and the EU.

This report sets out the TUC's **five tests** against which we think any future arrangements need to be judged. They are based on the approach adopted at the 2017 TUC Congress, in *Making a jobs-first, rights-first Brexit a reality*¹ and also on the statement adopted in March 2017 by the European Trade Union Confederation at its Executive Committee meeting in Malta².

Decent quality jobs on fair pay need to be protected through a frictionless, tariff-free, barrier-free trade deal covering goods and services. Rights for workers in Britain should be maintained and enhanced, and should at least not fall behind the rights which apply in workplaces across the EU. There needs to be a process for resolving disputes both about trade and workers' rights, and workers should have a say over the matters that affect them. And we must ensure that any future relationship preserves the Good Friday Agreement and provides peace and security in Northern Ireland and Ireland.

Finally, any agreement needs to ensure that migration can be managed better, and democratic decisions about the economy and public services can be implemented.

We then set out the various options that have been suggested for the UK's future relationship with the EU. Some are more likely to be seriously considered than others, but all of them have strengths and weaknesses which need to be addressed. We have assessed the options against the TUC's five tests, and come to a conclusion about the option that performs best against those tests.

Finally, this report sets out some next steps that are needed to secure the best option for workers in Britain: an option that we think will therefore be the best for the UK as a whole.

¹ *Making a jobs-first, rights-first Brexit a reality*. TUC General Council statement to Congress 2017. September 2017: <https://www.tuc.org.uk/news/making-jobs-first-rights-first-brexit-reality-general-council-statement-congress-2017>

² *ETUC statement on the notification of the UK to withdraw from the European Union*. Statement adopted by the Executive Committee, Malta 15-16 March 2017: <https://www.etuc.org/documents/etuc-statement-notification-uk-withdraw-european-union#.WgQU54-0MdU>

The TUC's five tests

The TUC believes that a number of tests should be applied to any proposed future relationship between the EU and the UK.

1. Protecting jobs through frictionless trade in goods and services

Firstly, the future relationship should at least **protect jobs and living standards** for working people by ensuring the continuation of frictionless, tariff-free and barrier-free trade in goods and services between the UK and the rest of Europe. This would ensure a business environment that at least protected investment, maintained existing quality jobs and defended living standards, although we continue to insist that Britain needs a pay rise. It would require the maintenance of existing consumer, environmental and labour standards.

Around half of UK trade is with the rest of the EU, and in some parts of the country - eg Wales with over 60% and cities throughout the UK - the proportion is even higher. The introduction of tariffs on UK exports to the EU (as well as on imports from the EU) would make British manufacturing much less competitive in the EU market, and would add to the inflation we are currently suffering as a result of the fall in the value of sterling since the 2016 referendum.

But even more problematic would be the non-tariff barriers - behind the border paperwork, as well as customs checks - which would disrupt just-in-time production systems in manufacturing (where components can often cross the UK border several times as a product is composed) and would also affect the services which account for 80% of the economy.

Jobs in exporting industries are generally higher skilled and better paid than average, and losing these would be a major blow to communities already suffering from decades of deindustrialisation.

2. A level playing field for workers' rights

Secondly, existing workers' rights must be protected and there should be a **level playing field for workers' rights** in the future, so that the rights of workers in Britain do not fall behind those in the rest of the EU. The UK is too big and too close to be treated like any other third country with which the EU negotiates trade deals, and a higher set of standards should be upheld, regardless of whether these are currently being required of other trading partners across the world (although the TUC wants to see the protection of employment standards built into all future trade agreements.)

A level playing field would ensure that British workers' rights do not fall behind those in the rest of Europe. This does not challenge Britain's sovereignty or ability to make our own laws, because there is nothing to stop future governments building on those rights and

achieving higher employment standards. At the very least, this would prevent a race to the bottom on working people's rights.

The Prime Minister has promised to protect and enhance workers' rights after Brexit, but - apart from renegeing on similar promises such as workers on boards - no steps have been taken to guarantee this. Attempts to amend the EU Withdrawal Bill to require that changes to employment legislation can only be effected by primary legislation have been rejected by the government, suggesting that the way would be clear after Brexit for the many opponents of workers' rights in the Conservative Party to reduce those rights by secondary legislation without even adequate parliamentary scrutiny.

Meanwhile, no mechanism has yet been suggested for post-Brexit domestic governments to ensure that workers in Britain do not see their rights fall behind those in the rest of Europe.

3. Dispute resolution and supervision

Thirdly, there needs to be a method of **dispute resolution and supervision** of consumer, environmental and labour standards, The UK government is currently insisting that the direct jurisdiction of the European Court of Justice (ECJ) over the UK must cease, but a body like the ECJ is needed to ensure uniform interpretation of the eventual agreement and access to justice for workers on those issues. There are dispute resolution systems in all trade agreements, but they often do not protect workers' rights or consumer and environmental standards. Some bilateral agreements give extra protections to foreign investors, through discredited Investor-State Dispute Settlement (ISDS) tribunals.

In recent years, UK workers have increasingly relied on the principles of EU law to defend and enforce their workplace rights. The government's proposals, as set out in the EU Withdrawal Bill currently before parliament, would require UK courts to interpret legislation passed before Brexit in line with EU law and ECJ judgements and where parts of retained EU law are amended after we leave the EU, then UK courts can continue to interpret this legislation in line with EU law and ECJ judgements, but only if this was what was intended at the time when the changes were made. This last provision could create significant uncertainty.

If UK courts are no longer required to take new decisions of the ECJ into account, UK workers could lose out on future advances in workplace rights. The TUC wants to ensure that UK courts have regard to existing and new ECJ decisions after the UK leaves the EU, because otherwise there is a genuine risk that UK law will not keep pace with developments in EU equality and employment law. Workers could lose out in rights enjoyed by workers in Germany, Ireland and Spain.

4. Giving workers a say

Fourthly, whatever agreement is reached needs to provide **workers with a say**, especially over decisions about their rights at work, through the unions that represent them. Generally, trade agreements do not provide workers with a voice over the elements that affect us, so it is unlikely that most of the options on the table would deliver that. Recent EU bilateral deals (eg with Korea) have included the establishment of Domestic Advisory

Groups (DAG) on which unions are represented, but they have limited influence and no formal powers.

EEA membership, however, would provide British workers with a voice on the whole range of single market measures through the ETUC as a social partner, and in bodies such as the EU Social Dialogue Committee (on which Norwegian unions for instance are represented) which generates sectoral and Europe-wide agreements between unions and employers that can be given legislative force by EU institutions.

5. Protecting the Good Friday Agreement

And fifthly, the TUC insists that any future relationship between the EU and the UK should protect **the Good Friday Agreement** and the peace process generally, as well as the jobs, rights and living standards of workers in Ireland and Northern Ireland.

The trade union movement was centrally involved, along with others in civil society, in the peace process that led to the Good Friday Agreement, and we know well that there are tensions in both communities in Northern Ireland that would be exacerbated by a Brexit which re-established a border between north and south, on top of any economic impact.

But that economic impact would be potentially catastrophic if a hard border was re-established. So much of Ireland's exports to the rest of the EU pass through the UK, and the trade between Ireland and the UK, including and especially Northern Ireland, accounts for a large proportion of the Irish economy. Jobs and investment - especially in agriculture and food products - would be severely affected if tariffs and non-tariff barriers between the EU and the UK were reinstated.

Similar protections are needed for workers in Gibraltar.

Managing migration better for Britain

Whatever arrangement is eventually negotiated between the UK and the EU, we need to manage migration better, in a way that protects all working people fairly and equally from exploitation, unfair treatment and undercutting.

It is not racist to be concerned about the effects of immigration in a deregulated labour market and in communities suffering the effects of deindustrialisation and cuts in public spending. But we reject the scapegoating of migrants by unscrupulous politicians and media owners. Migrant workers are not responsible for low pay and lousy treatment, bad employers are. Migrant workers heal the sick, teach children, drive buses, produce food and sweep the streets, and we are proud of the role they have and continue to play in a diverse modern Britain.

The government must tackle the exploitation of vulnerable migrant workers and the undercutting of local labour markets through measures to strengthen and enforce labour regulation and extending collective agreements between unions and employers to workplaces especially those with significant employment of migrants. The government should strengthen union rights to organise, extend collective bargaining and establish modern wages councils, with stronger enforcement. Further, government must address the

genuine concerns of working people about the impacts of migration on public services, transport and housing which government cuts are placing under severe strain.

As the TUC has consistently argued³ there are many steps that could be taken to give effect to these principles, regardless of our future relationship with the EU, because they depend solely on the government's political will. And there are also many steps that other single market members take⁴ such as: restricting public sector jobs to nationals; requiring migrants planning to stay longer than a few months to register upon entry with the relevant local authority; requiring vacancies in sectors with high unemployment to be published with the government's own employment service, with applications allowed only from those unemployed people already registered with the service; and negotiating arrangements to limit the number of European Economic Area nationals entering the country. The TUC would not necessarily support all of these options, but they demonstrate that different approaches to the issue are available.

We also reiterate our demand that EU citizens living and working in the UK – as well as UK citizens in the rest of the EU – should have the right to remain guaranteed, on the basis of their existing and acquired rights being maintained.

Democratic control of the economy

Another issue which frequently comes up in discussions of the future relationship between the UK and the EU is the extent to which such models would allow the UK government to determine what activities fall within the public and private sector - essentially, how far the rules of each arrangement would constrain the ability to deploy state aid either through subsidies or nationalisation, and how far they would force the privatisation or liberalisation of public services.

A future deal must ensure that state aid, control and ownership are appropriate ways of achieving social objectives, as well as promoting quality public services and the use of progressive public procurement policies while protecting both parties against unfair competition. The EU's promotion of liberalisation has done huge damage to the services working people rely on, widened inequality by enriching private corporations, and brought greater insecurity and lower pay to working people. We reject the forced privatisation or liberalisation of public services.

Whatever arrangement we eventually secure, there will be rules to prohibit unfair competition by discriminating against foreign providers, but that will not stop governments from intervening appropriately in the economy and delivering the public services that their voters support.

³ *Managing migration better for Britain: what the government should be doing now*. TUC report, August 2016: <https://www.tuc.org.uk/sites/default/files/ManagingmigrationbetterforBritain.pdf>

⁴ *Staying in the single market doesn't mean complete freedom of movement*. Owen Tudor, Labour List, 25 July 2017: <https://labourlist.org/2017/07/staying-in-the-single-market-doesnt-mean-accepting-complete-freedom-of-movement/>

Options for a future UK-EU relationship

Based on these five tests, the TUC has looked at a variety of different models that have been suggested for the future relationship between the UK and the EU. It may not be an exhaustive list, but these are the main suggestions.

Starting with **the WTO model**, often described as the 'no deal' option (although that is a misnomer, as many different deals would in fact be needed should the UK and EU fail to reach a deal). There is no requirement for WTO member states to comply with international labour standards as set by the ILO (see annex), and certainly not EU employment standards. This model would also be costlier, as tariffs and non-tariff barriers would immediately disrupt trade, and trade in services in particular. Services, which are 80% of the British economy and a substantial part of existing trade volumes, are not well covered in WTO agreements. As explained above, it would be reckless to go down this path.

The **customs union model**, such as the one with Turkey, is also less preferable as a model. Customs unions with third countries do not include any clauses for the respect of ILO standards, let alone EU employment standards. Also, tariffs would remain on agriculture which would add significantly to the price of food and would not only affect UK consumers but also disrupt the Irish economy as the agri-food sector represents an important part of the local economy⁵. In addition, barriers would remain for trade in services.

The UK government has in the past pointed at the **EU-Canada Comprehensive Economic and Trade Agreement (CETA)** as a model free trade agreement. The TUC has campaigned against the ratification of CETA, because of the lack of adequate protection for workers' rights, and the threat to public services. Only ILO core conventions are mentioned and the agreement also does not provide an effective enforcement system for these standards, while it provides special protections for foreign investors through an Investment Court System which is a variant of ISDS. Moreover, tariffs would remain on agriculture, and not all services are covered.

The UK government is seeking a **bespoke free trade agreement**. The EU has repeatedly said that it would not be possible for the UK to enjoy the same exact benefits of EU membership when it becomes a third country. In particular, the EU would not agree to the UK cherry-picking parts of the internal market without abiding by all of the rules including the jurisdiction of the ECJ. Recent EU trade agreements also include variants of the discredited ISDS system which offers special protection to foreign investors and creates risks for public services, environmental protection and workplace rights.

⁵ An EFFAT internal report on Brexit shows that the food and drink industry in Ireland relies on a strongly linked supply chain across the border. The whole agriculture and food sector in the Republic of Ireland employs around 170,000 people (8% of total employment) and has a share of 7-10% in the overall economy.

The EU has indicated that it would not want to replicate the experience of **bilateral agreements as it has with Switzerland**: these are too complicated, and a new agreement would need to be negotiated on any new issue that might arise since the accord with Switzerland is a static one. Switzerland is not required to comply with, or incorporate, EU employment law. There are however elements in the Swiss agreement that would allow for wider protections of the local labour market that are in line with the principle of freedom of movement.

A little overlooked is the **deep and comprehensive free trade area (DCFTA)** with Ukraine. It has the advantage of setting out in legally precise terms the entire scope of the relationship with the EU, sector by sector. The agreement entails legally binding provisions and compliance with the EU acquis, the accumulated legislation, legal acts, and court decisions which constitute the body of EU law. The agreement foresees regulatory alignment in competition, public procurement and customs. However, the monitoring mechanism rests on an advisory group and a dispute settlement system similar to that in the WTO – both elements would need to be strengthened if applied to the UK-EU partnership. The DCFTA can assure a very high degree of access to the EU single market for goods, but not for the free movement of people or services (the latter being limited to financial, telecom, postal, courier and maritime sectors), which in either case would not be satisfactory. The OECD has estimated that a DCFTA of this kind would result in a loss of 5.1% of GDP for the UK compared to 0.05% for the EU27.⁶

Lastly, **membership of the EEA**, often described as the Norway option, allows countries⁷ to participate in the single market (but not in the customs union, potentially leaving the UK free to negotiate its own trade deals, as the UK government wants) while being outside the European Union. This model allows tariff and barrier free trade except for agriculture and fisheries, on the basis that members of the EEA uphold the same technical, safety and labour standards as the EU. This would be important for the Irish economy as it would avoid the reinstatement of border controls and would allow people to move freely as is currently the case.

While EEA countries have in practice not ceded sovereignty to the EU, their access to the single market depends on the degree of adherence with EU law. The advantage of this agreement is that it is a dynamic one, unlike Switzerland's, so any new development in EU law is automatically received in EEA countries. This would ensure that in the future workers in the UK do not fall behind those in the rest of the EU, thereby reducing the risk of a race to the bottom. Importantly for the UK, it is the EFTA court that is responsible for enforcement. Direct jurisdiction of the ECJ would cease, while workers could continue to benefit from ECJ case law as it influences the EFTA court opinions.

⁶ *The economic consequences of Brexit: a taxing decision*, OECD economic policy paper, April 2016: www.oecd.org/economy/The-Economic-consequences-of-Brexit-27-april-2016.pdf

⁷ EEA countries are Norway, Iceland and Lichtenstein

Testing the Brexit options

	1. Protecting jobs through frictionless trade in goods and services	2. A level playing field for workers' rights	3. Dispute resolution and supervision for labour, consumer and environmental standards	4. Giving workers a say	5. Protecting the Good Friday Agreement
<i>WTO</i>	No	No	No, only state-state trade disputes	No	No
<i>Customs Union</i>	No, tariffs on agriculture and barriers to services remain	No	No	No	No
<i>CETA-style</i>	No, tariffs on agriculture and barriers to services remain	No, only the power to report if a breach of ILO core labour standards occurred	No, only state-state trade disputes and investor protection through special tribunals	Very limited Domestic Advisory Group (DAG) only	No
<i>Swiss-style</i>	Yes	No	No	A DAG would be possible	Partly, because at the moment Switzerland is in Schengen
<i>Bespoke deal</i>	No	No	No	A DAG would be likely	No
<i>DCFTA</i>	No, barriers to services remain	No, but there is a clause to prevent undercutting	Weak, but faster than WTO and with binding rulings and sanctions	No	No, as custom clearance is required (even if not at EU border)
<i>EEA</i>	Yes, if provisions are applied to extend cover to agriculture and fisheries	Yes	Yes, indirectly via the EFTA court	Yes, through the ETUC and the European Union Social Dialogue Committee, as well as the European Works Council Directive	Yes, with 'behind the borders' customs, and extension to agriculture and fisheries, the Common Travel Area would be compatible.

Conclusions and next steps

In leaving the EU, the TUC believes that the government should not rule out options for the eventual deal too early. We believe that the government is profoundly wrong to rule out continuing membership of the single market and customs union. The government should, instead, keep all options on the table.

But assessing the options put forward so far against the TUC's five tests strongly suggests that we must seriously consider membership of the EEA for our relationship with Europe from outside of the European Union. To address the issue of the Northern Ireland border might also require taking advantage of the provision under the EEA agreement to cover agriculture and food. That's the best option to protect workers' jobs, rights and livelihoods.

To improve the progress of negotiations, and to ensure that the whole of the UK is represented rather than the narrow interests of a faction of the Conservative party, the Prime Minister should bring together a much broader negotiating team.

A 'Team UK' is needed that includes representation from the main UK political parties, the UK's national governments, trade unions and business. It would improve the focus on the realities of the negotiation, and the necessary trade-offs and compromises. And it would allow fair and sensible prioritisation of the needs of working people: protecting jobs, protecting investment and protecting rights at work.

The former Conservative leader, and former Foreign Secretary, Lord Hague has suggested just such an approach. We encourage the Prime Minister to follow his recommendation.

Annex: International Labour Standards

ILO standards have been mentioned by the UK government as the reference framework they are willing to continue to respect after Brexit should the UK revert to trading with the EU on WTO terms, and the EU chief negotiator has indicated that he is not convinced it would be possible to go further on this issue than the EU has already gone in bilateral trade agreements.

There are major concerns around this position: firstly, it ignores the fact that WTO membership does not per se require respect for ILO standards; secondly, the ILO supervisory bodies have been repeatedly ignored by governments when it comes to undue restrictions on freedom of association and collective bargaining, so they are in themselves not enforceable in the same way as trade provisions usually are; and thirdly, compared to EU social acquis, ILO standards fall short of what would be expected of the UK in order to maintain a level playing field and prevent the risk of unfair competition.

For reference, the eight fundamental Conventions of the ILO are:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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