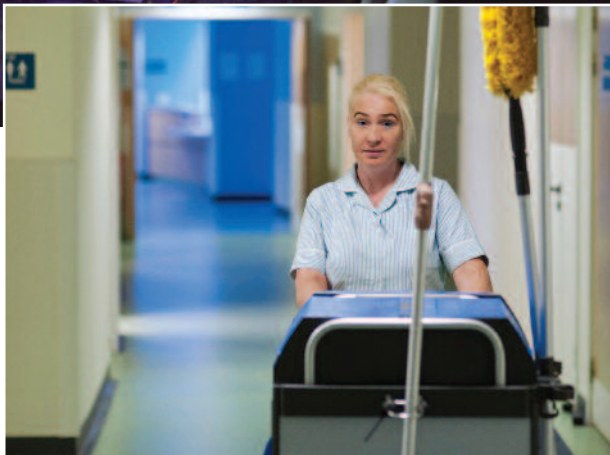
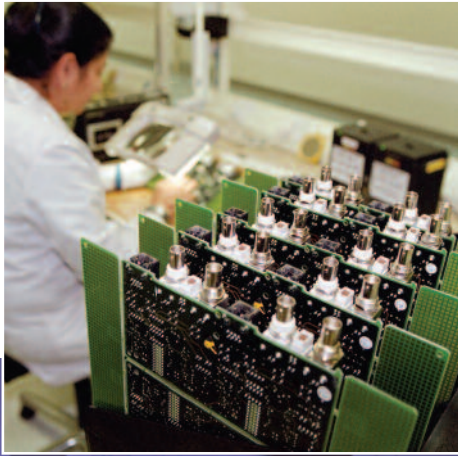


# Brexit on our Terms



## **Unite Strategy to Defend Public Services**

[www.unitetheunion.org](http://www.unitetheunion.org)



# Foreword:

**By Unite General Secretary, Len McCluskey**

Our public services are the foundation stone of our society. From hospitals and local authorities to our schools, transport and utilities, these sectors touch the lives of everyone in our country.

There is no doubt that Britain's withdrawal from the European Union is a process which can reshape our economy in ways that may affect us all. The question is in whose interests will this happen?



Len McCluskey

From the moment the Brexit process began Unite made clear that our members' interests will not be served if Brexit allows the Tories to cut jobs and services even further. In rejecting the Tory vision of a 'Hard Brexit' it falls to Unite and the trade union movement to articulate what Brexit on our terms would look like.

It is impossible to separate the impact of Brexit on our public services from the eight year austerity offensive which has cut them to the bone. Unite's defence of our services from a Tory-driven 'Hard Brexit' starts with our belief in world class services, properly funded, and publically owned.

Our union also makes no apology for standing in defence of our members who have come to the UK from Europe and beyond. Our public services, especially the NHS and social care, have been stretched to breaking point by austerity. If it wasn't for workers from across Europe many of our services would face total collapse.

It is as a point of principle and a commitment to internationalism that we support the right to remain for European workers and their families in the UK. This must be reciprocated for UK workers across the European Union.

Tied to that, Unite is demanding fair labour market regulation which prevents employers from dividing workers on national lines and replaces the 'race to the bottom' with a 'rate for the job' culture. The Tories' mishandling of the Brexit talks has taken this country to the edge of the precipice and caused no end of uncertainty. Nobody knows for certain what the final outcome will be.

One thing is certain. Unite will defend our members and campaign for policies to protect jobs, pay and conditions. We know that some employers may seek to use Brexit as a smokescreen to attack employment rights, pay and conditions and we must not hesitate in exposing this opportunism.

This document outlines the issues our members working across public services face and the policies Unite will campaign for in order to defend decent jobs and fully funded services.

Let's be clear. No matter what form Brexit may take, a workers' best defence against it is to join their union.

A handwritten signature in blue ink that reads "Len McCluskey".

Len McCluskey  
Unite General Secretary  
April 2018



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# Introduction

By Unite Assistant General Secretary, Gail Cartmail

## Brexit on Our Terms

Unite is the progressive voice of public sector workers in the UK. Our members work across the public sector, including members in the health service, social care, schools, colleges and universities, police services, refuse and recycling, libraries, road maintenance and street lighting, local authority administration, prisons, justice and defence. With over 1.4 million members, our voice must be central to any Brexit negotiations.



Gail Cartmail

Brexit has the potential to affect huge swathes of laws and regulations which impact on public sector organisations and contractors. These include employment laws, the free movement of people, data protection, Value Added Tax (VAT), environmental regulations and rules about procurement and commissioning.

The government's Brexit strategy, laid out by the Prime Minister at Lancaster House in January 2017, is committed to withdrawing from the Single Market and European Court of Justice, and negotiating new trade agreements while imposing new controls on immigration.

Unite has strong links with trade unions across Europe and is represented in all the European trade union federations and the ETUC. Numerous Unite members are elected workplace representatives sitting on over 150 European Works Councils, a level of interaction and collaboration which is without parallel in the trade union movement. This experience gives Unite a unique insight.

The UK is facing an uncertain future, with UK jobs and services recognised as being highly vulnerable to decisions made during any Brexit discussions. These include future trade agreements, tariffs and the inability to influence future decisions made in the EU.

As a response the Unite Public Services Combine, comprising of workplace leaders from across the country, came together to discuss and agree the way forward for protecting members in UK services.

Unite found a great deal of common ground across UK public services especially on the important issues we outline in this document. Paramount of these concerns is the uncertainty caused by the government's lack of direction, which threatens jobs, services and future investment. To bring this uncertainty to a swift end, the voice of working people from across the UK must be heard.

Unite has no confidence in the Conservative government's assembled 'Brexit team'. From David Davis to Liam Fox and Boris Johnson, government ministers are pursuing wildly different priorities and they are more interested in political infighting for personal gain than facing up to the enormity of the task in front of them.

The Tories' chaotic approach to Brexit should not mask the fact that the government remains committed to austerity – continuing to force through privatisation and cuts to our vital services. It is clear that the economic failure of austerity was a major reason behind the 2016 referendum result. With one voice the Unite Public Services Combine says:

**The public sector must not pay the price for Brexit.**

A handwritten signature in blue ink that reads 'Gail Cartmail'.

Gail Cartmail  
Unite Assistant General Secretary  
April 2018

# Why Brexit Doesn't Simply Mean Brexit

Despite claims by Theresa May that 'Brexit means Brexit' the UK's withdrawal from the European Union can take many forms, each with different consequences for our jobs and public services.

It is crucial to recognise that the form Brexit takes is a political choice, driven by the agenda of those negotiating it. For the Tory government this has taken two forms.

First, the Tory party's deep internal divisions have prevented the government from taking serious positions on key negotiating questions, such as the so-called 'Divorce Bill' or the status of Northern Ireland, until the negotiating timeline has forced their hand.

Secondly, senior voices within the Tory Government such as Liam Fox, the Secretary of State for International Trade, see Brexit as an opportunity for further deregulation and privatisation of public services. Fox, echoing the arguments of Thatcherite economist Patrick Minford, is an advocate of a 'Hard Brexit' whereby the UK would pivot away from trade with Europe in favour of a trade deal with the United States.

## Where are we now?

The UK's triggering of the 'Article 50' clause of the EU's constitution formally began the Brexit process in March 2017, starting a two-year countdown. This means the UK is expected to leave the European Union at midnight on 29th March 2019.

## The Negotiations: Timeline to Brexit

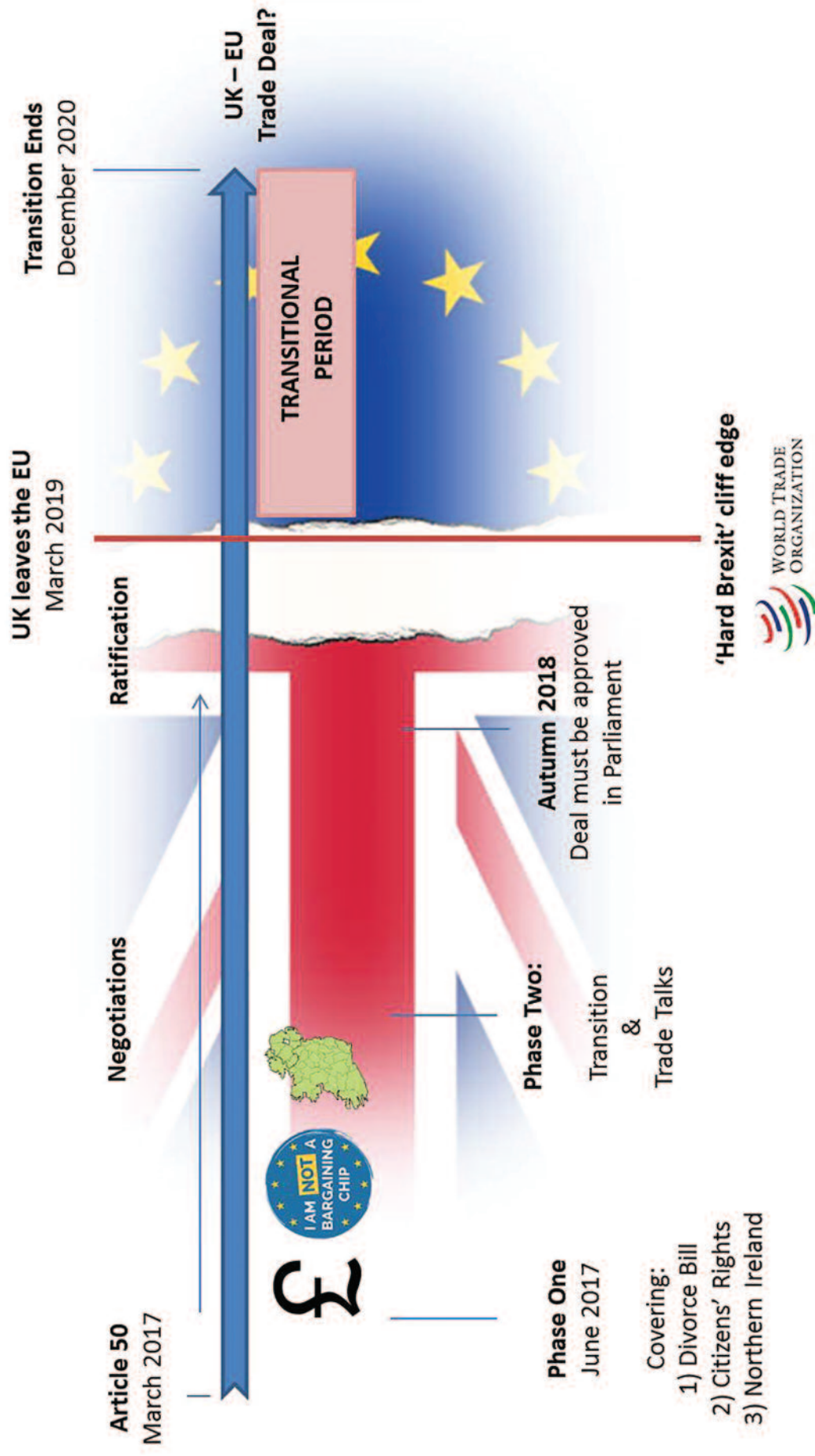
The British and European Union negotiating teams first met in the summer of 2017. The negotiations are guided by a mandate, given to the EU negotiating team by the European Council which represents the governments of the remaining 27 Member States.

This mandate divided the negotiations into four separate areas.

- 1.** The 'Divorce Bill': This is the financial contribution pledged by the UK to the EU-wide budget before the 2016 referendum took place.
- 2.** Citizens' Rights: This covers the right to remain for EU citizens and their families in the United Kingdom after Brexit and how this will be reciprocated for UK citizens in Europe.
- 3.** Northern Ireland: This covers the status of Northern Ireland, the only land border between the UK and the European Union. The Brexit deal must not compromise the Good Friday Agreement, result in a physical land border between the Republic and the North, nor compromise the integrity of the Single Market.
- 4.** Future Trading Relationship: This covers the terms by which cross-Channel trade will be handled from 2019, including the UK's access to the European Single Market and participation in a Customs Union.

The tight negotiating timeline means that there must be an agreement covering these four topics by the summer of 2018. This is because the deal must then be ratified by the European Council and approved by the parliaments of each Member State. Unite is calling for the final deal to be put to a meaningful vote in the UK Parliament.

# Timeline to Brexit



## What is 'Hard Brexit'?

A 'hard Brexit' would mean the UK leaving the European Union without any agreement. This 'cliff edge' would see a sudden end to any formal trading relationship or any legal understanding between the two areas. It would be hugely damaging for all sectors of the economy while creating large holes in the UK legal system, covering issues such as employment rights, food standards and environmental protections currently covered by EU laws.

Similarly if no agreement is reached this legal uncertainty would include the rights of European citizens in the UK, and vice versa, whose freedoms of movement, work and residence would no longer be covered by EU treaties or the European Court of Justice.

## What would happen?

The UK would find itself immediately outside the economic trade areas and customs agreements which comprise the EU. This would mean tariffs would be raised across the channel for imports and exports, with the UK falling back onto World Trade Organisation rules. It is almost unavoidable that such an outcome would worsen the UK's cost of living crisis. For example, tariffs would see a sudden spike in the cost of food imports.

It is very difficult to fully forecast the economic damage of such a cliff edge when so much of the UK economy and legal system has been integrated with the EU over forty years. City forecasters suggest the worst impact could cost the British economy £400 billion and wipe 18% off GDP growth by 2030. In comparison, the 2008 banking crash led to 18 months of recession with a 6% hit to GDP.

Unite has called for an economic programme of public investment and an industrial strategy to mitigate such a result. However, Unite fears that the Tories would repeat 2008 by using such a recession to unleash further austerity on our public services.

## A Transitional Deal: Avoiding the cliff edge

Unite is clear that working people must not pay for Tory Brexit. This means it is crucial that hard Brexit is avoided and that the UK's withdrawal is organised to mitigate any economic damage or create legal black holes.

Unite supports calls for a 'transitional deal,' a temporary agreement between the UK and the European Union to take effect in March 2019 if a final deal has not been concluded and democratically approved. This should maintain all the existing arrangements between the UK and EU which are mutually beneficial and should last however long it takes for a final agreement to be reached. A transitional period prevents the risk of a sudden 'cliff edge' even if the negotiations collapse or run out of time.

**If a deal is not reached by March 2019 then we're looking at a cliff edge Brexit, which means we leave with no arrangements to replace full EU membership. The result would be felt at work very quickly. For a start it would mean hundreds of my members wouldn't know if they have the legal right to be in this country. It could also lead to serious problems with access to drugs, organ transport and our ability to conduct X-rays and other procedures that require radioactive materials. For our patients and services no deal is not an option.**

Unite Rep, NHS



## What if talks collapse?

Unite argues that a hard Brexit is not inevitable. Walking away from talks without any agreement would be a disastrous political choice by the Tories.

Instead if talks reach deadlock or simply run out of time it is legally possible to temporarily pause the process, which the negotiators can request from the European Council which sets the timetable.

## Deal or No Deal: Rejecting 'Hobson's Choice'

The option of temporarily pausing the talks is important because the UK Parliament must be given a meaningful vote on the final Brexit deal. This must mean parliament can approve or reject the deal as a whole, or demand a re-negotiation of key areas.

Importantly, parliament must be free to reject the tabled deal without that rejection resulting in a cliff edge hard Brexit. This is the false 'Hobson's Choice' the government is attempting to use to force their deal through. They are doing this by trying to make the 29th March Brexit date legally binding.

Instead parliament must be free to reject the tabled Brexit deal as many times as is necessary before it is suitable for approval. For Unite this means it must meet several tests.

Importantly, if the Tory Brexit deal is voted down, or if parliament has no confidence in the government to renegotiate an improved deal, Unite believes a general election must be held. This would give a new government a fresh mandate to seek improved terms of exit.

### Unite's View: Brexit on our Terms

Unite is calling for:

- A final settlement of the Brexit talks, for the mutual benefit of workers in the UK and the European Union.
- For a transitional agreement if necessary to avoid a cliff edge hard Brexit.
- For the final deal to include:
  - o Access to the European Single Market and a customs agreement.
  - o The right to remain for all European workers and their dependants in the UK, and vice versa.
  - o The transition of all beneficial workers' rights, standards and protections from EU to UK law at the point of Brexit
  - o The retention or replacement of EU funding, such as those covering regional funding and research projects.
  - o Continued involvement in mutually beneficial agreements, treaties and regulatory bodies such as ERASMUS, Euratom, Open Skies and Horizon 2020
  - o Recognition of the special status of both Northern Ireland and Gibraltar, which share land borders with the European Union.
- For the ending of austerity, and a proactive strategy of investment in public services to mitigate the impact of Brexit. The principle of well-funded, publicly owned and freely accessible public services must be central to this strategy.

# Defending our Rights and Regulations: UK Withdrawal Bill

While the Brexit negotiations continue in Brussels the government has also tabled legislation to decide how EU laws will be transitioned into UK law from the moment Brexit takes effect.

Many of our rights were fought for by trade unions and later enshrined in international EU law. These include many aspects of health and safety, the Human Rights Act, TUPE, the Working Time Directive, maternity and parental leave, and equality and equal pay legislation that grant protection against discrimination and voting rights on European Works Councils. Some of these laws were only introduced in the UK because of European Court of Justice rulings.

Other regulations will also be potentially affected from rules over air quality, environmental protections, people trafficking, medicinal standards, food safety and the regulation of refuse and recycling.

Unite demands the full retention of these hard won rights as a legal minimum and a level playing field with the EU. The UK must commit to gold standard regulations and protections for workers

## Henry VIII Powers

Rather than openly debating each piece of EU legislation, law or directive which is applicable to the UK the government wants to use the Bill to give ministers sweeping powers. These so-called Henry VIII powers are known as 'statutory instruments' and would allow ministers to determine which specific rules should be kept and which should be scrapped behind closed doors.

Unite utterly rejects this undemocratic power grab by the Tories. Instead all working, environmental and social protections should be retained openly, through primary legislation. This would ensure MPs are held to proper public account and that the Tories cannot simply use Brexit to further push their anti-worker, anti-trade union agenda. Public sector workers are no stranger to the abuse of such powers. During the 2011 national pensions dispute the government threatened to use statutory instruments to impose a settlement.

## Singapore-Style: Race to the Bottom

Prominent Tory MPs, such as Michael Gove, Liam Fox and Priti Patel see Brexit as an opportunity to take the axe to workers' rights and push for further de-regulation. They propose that the UK can be competitive after Brexit if the country diverges from the EU, weakens regulation, lowers corporate tax and further cuts public spending.

In contrast the EU negotiators, led by Michel Barnier, have said preventing such 'regulatory divergence' from the rules of the Single Market and the European economic model is a red line for the 27 member states. This is because such a move would trigger a race to bottom for wages, rights and standards.

Unite is working closely with sister trade unions and confederations in Europe, such as the European Federation of Public Service Unions (EPSU), the IF Metall in Sweden, the CGT in France and IG Metall in Germany to maximize pressure on governments on both sides of the Channel to prevent this.

Unite is committed to a mutually beneficial settlement for workers in the UK and in Europe and will not support any Brexit deal which seeks to divide our movement on national lines.

European laws protect workplace rights that trade unions fought hard to win. It's vital that those are carried into UK law when Brexit happens. We must not accept the government granting itself Henry VIII powers to axe our rights as and when they please. As an added insurance, where we can we need to protect these rights and protections in our collective agreements.

Unite Rep, voluntary sector

## Labour's Withdrawal Bill six tests

Unite supports the 'Six Tests' for the Withdrawal Bill laid out by Labour's Shadow Secretary for Exiting the EU Keir Starmer. The Bill must not be supported until these concerns are met.

1. It proposes sweeping delegated powers but lacks effective oversight or accountability.
2. It lacks clear enforcement mechanisms.
3. It does not include the EU Charter of Fundamental Rights.
4. It takes the wrong approach on devolution and does not ensure effective involvement of devolved administrations.
5. It does not include any provision to ensure that UK rights keep pace with EU rights after Brexit.
6. There can be no qualifications, limitations or sunset clauses attached to this Bill.



## What are the Alternatives to EU Membership?

Britain is set to formally leave the European Union in March 2019, however geographic reality means the UK will always need a relationship with the continent. The question is what form should that relationship take?

Many alternatives to full EU membership have been suggested, from the 'Norway Option' whereby the UK remains within the European Economic Area (EEA) and has access to the Single Market, to the 'Canada Option' where the UK and the EU negotiate a new Free Trade Agreement.

For Unite, and our sister trade unions in Europe, we must judge these options against our shared fundamental principles. Do they defend jobs, do they guarantee the legal rights of EU citizens in the UK; do they prevent us from reversing the privatisation of services and ending austerity?

### **An economy that works for all**

Unite believes that Brexit, in any form, can only be a success if it is part of a wider agenda for change across our economy and society.

This means the UK government must have an ambitious economic and industrial plan, centred on investment, which not only mitigates any economic fallout from Brexit but provides solutions to the problems which led to it.

Unite has outlined these ideas in an industrial strategy for post-Brexit Britain. This strategy includes ending the Tories' austerity offensive, launching an ambitious programme of house building; using positive procurement to support both public services and UK manufacturing; taking a public stake in utilities and foundation industries, and the renationalisation of the UK's railways. This strategy should be built on an economy-wide commitment to secure, well paid jobs, and a dedication to properly funded and publicly run services.

For Unite, any future relationship between the UK and the European Union or trade deal must be judged against these ambitions. It must support, rather than restrict, the changes we need.

### **Access to the Single Market**

Much of the debate on the different models available to the UK focuses on the European Single Market, a unified trading area across the 28 EU member states. The EU has evolved through a series of treaties since 1952 and some countries, such as Norway and Switzerland, are inside the Single Market despite not being members of the EU because they are part of these earlier agreements. Other countries, such as Turkey, the Ukraine or Canada, have partial access to the Single Market through specially negotiated agreements. After 40 years of integration much of the UK economy is reliant on links to the Single Market. This is especially true for UK manufacturing, which has built vast, frictionless supply chains across the continent and is reliant on cross-Channel imports and exports.

The same is true for higher education and scientific research, which rely on cross-border collaboration. Ensuring the UK continues to have barrier-free access to the Single Market, which means avoiding tariffs and new customs barriers, is of fundamental importance on both sides of the channel.

The Single Market is governed by a series of rules, overseen by the European Commission and upheld by the European Courts of Justice (ECJ). Most famous of these rules are the 'Four Freedoms', the ability of free movement across national borders for goods, services, capital and people.



The EU is clear that any country which wishes to be a full member of the Single Market must sign up to the 'Four Freedoms' in their entirety. This contrasts with the Tory government's Brexit aims, outlined by Theresa May at Lancaster House in January 2017.

The Tories, especially those in favour of hard Brexit, want to end freedom of movement and any role for the ECJ in shaping UK laws. These aims are incompatible with remaining a full member of the Single Market, even as an alternative to full membership of the EU itself.

In contrast, some looking for a progressive Brexit agenda are concerned about Single Market rules which restrict direct state intervention in the economy (called 'state aid'), targeted public procurement of local services or the ability to take services back into public ownership. These are invaluable tools for a government seeking to reverse nearly a decade of Tory austerity.

It is true that since the Treaty of Maastricht in 1992 the Single Market became a unified economic bloc which seeks to harmonise rules and regulations in the name of promoting competition and liberalisation. This European model is fundamentally a free market economy buttressed by continent-wide regulations. Some of these regulations form the 'social pillar', aimed at guaranteeing agreed legal minimums for working rights, environmental and social standards.

The political reality of the EU is that it is shaped by the national governments of the member states. This has meant a systematic weakening of the 'social pillar' throughout recent decades with a drive towards privatisation and austerity across the Eurozone.

As the EU's lead Brexit negotiator Michel Barnier has made clear, the EU's priority is to retain the integrity of the Single Market and prevent Brexit from undermining the European Model.

*"There will be no ambitious partnership without common ground in fair competition, state aid, tax dumping, food safety, social and environmental standards."*

**Michel Barnier, November 2017**

## **Tory austerity, procurement and state aid**

It is important to note that both state aid and positive procurement are far more widespread across the EU than in the UK. This is because while the Single Market does restrict both, successive UK governments have been ideologically wedded to privatisation and austerity, very rarely being troubled by any limits placed by the EU.

For example, EU regulations covering public sector procurement do require public bodies to advertise contracts across the EU; however, they can set 'social value' to the local community as a criteria rather than lowest cost when awarding contracts.

This has allowed some local and national authorities, such as the Welsh government and city councils to use procurement to award and drive up higher, union-recognised working standards in construction. Due to the Tory austerity agenda however, local councils and other public bodies have been forced to award contracts on the cost of lowest price.

## Current UK Procurement Rules, a Missed Opportunity

As it stands the UK government has weakly implemented EU legislation that regulates public procurement (Public Contracts Directive (2014/24/EU)) and provide protections to workers transferred between contracts or out of the public sector.

Specifically UK law fails to exercise our right under the Directive to exempt some services from enforced privatisation and marketisation. In fact the government has actively introduced laws such as the Health and Social Care Act 2012 and the Localism Act that introduce EU procurement legislation into public services that could easily be exempted.

Government has weakly implemented other parts of the Directive too, including watering down requirements on minimum standards in contracts, monitoring or enforcement of compliance, exempting sub-contractors, and unclear language on reserve contracts. They have also introduced very limited rules on the conditions that can be used to choose a contract.

This means that procurement in the UK is still often based on lowest price rather than best quality or progressive concerns such as promoting UK employment, service quality, or environmental or social clauses to support our communities.

### **The following are key elements of the EU Directive that the UK has failed to adequately take advantage of:**

- **Article 1** formally confirms that there is no obligation on member states to marketise and privatise public services or their social security system.
- **Article 18(2)** places new obligations on member states to ensure that contractors comply fully with applicable environmental law and with social and labour standards set out in EU and national law and in collective agreements, as well as those safeguarded by international treaties and conventions set out in Annexe X.
- **Annexe X** includes ILO conventions 87 and 98 which promote the freedom of association, trade union organising and collective bargaining places positive obligations on governments to promote these key freedoms through public contracts and exclude contractors who engage in anti-union activities, including blacklisting.
- The Directive introduces the **Most Economically Advantageous Tender (MEAT)** that has a much broader and more nuanced definition than simple price competition.
- **Articles 42** enables contracting authorities to include quality, environmental and accessibility elements into the technical specification of contracts.
- **Articles 43** enables contracting authorities to require a specific label as proof that works, services or supplies comply with specific environmental, social or other characteristics that may be a requirement of the specification, award criteria or contract conditions.
- **Articles 70** enables contracting authorities to lay down conditions of contract performance related to economic, innovation-related, environmental, social or employment-related considerations.
- **Article 77** allows for reserved contracts for co-operatives, mutuals or social enterprises.

## The importance of state aid

State aid is the ability of a national or local government to directly intervene in support of industries or services, including returning an outsourced service into public ownership.

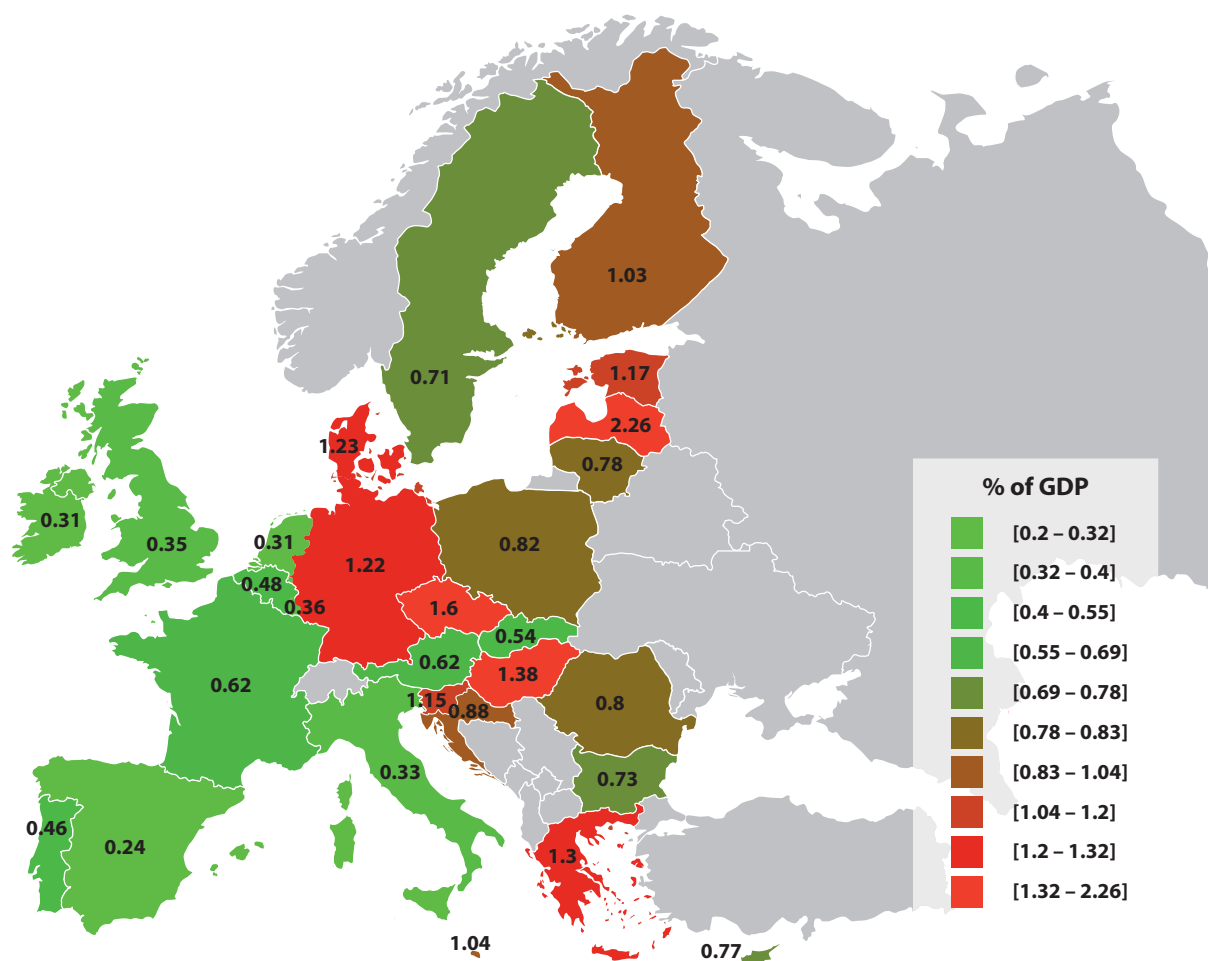
The rules of the EU's Single Market generally seek to prohibit state aid outside of very exceptional circumstances to prevent 'distorting' the market.

For the EU this is to prevent states giving businesses an unfair competitive advantage across a continent-wide market economy, the reality is a chilling effect for governments seeking public ownership as a point of principle rather than as a temporary solution to a market problem.

In the UK the sheer extent of government privatisation since the Thatcherite period means that a government would have to commit to a substantial renationalisation programme, covering rail, utilities and parts of the health and social care system, simply to reach parity with what is common today across Europe.

Tellingly the UK spends far less on state aid than most other EU countries. In 2015, the UK spent 0.35% of GDP on state aid schemes (excluding railways), while France spent 0.62% and Germany 1.22%.

## Total state aid expenditure as a % of GDP in 2015, less railways



Source: European Commission, State Aid Scoreboard 2016

## **What happens if a policy involves state aid?**

Currently if a government of a member state wishes to carry out state aid it must be in keeping with EU laws and be approved by the European Commission. Across Europe governments have sought to get around these rules by demonstrating individual cases of direct funding or even nationalisation fit within one of three exemptions.

The exemptions are 1) pre-existing exemptions already approved by the Commission 2) state assistance worth less than €200,000 over a period of three years; or 3) if the intervention corrects a market error or imposes an environmental protection.

These rules cover specific and temporary interventions. It is worth noting that countries like Germany have far more interventionist economic strategies by providing more general measures which benefit economic sectors, rather than specific companies. For example, state investment in skills, investment in energy and infrastructure, enhanced protections for workers facing redundancy, sectoral collective bargaining and the Mittelstand model of supporting small and medium sized businesses.

Europe's steel industry provides two high profile examples of state aid regulation in the Single Market. In 2015 the Italian government nationalised Ilva steel plant in Taranto, employing 16,000 workers, because of the company's failure to contain toxic emissions. The European Commission approved the action temporarily – later ruling the site must be sold-off again – as it sought to enforce agreed environmental standards.

In contrast in 2016 the Commission ruled against the Walloon authorities in Belgium, ordering them to recover €211 million of funding used to support the Duferco steel group.

On the continent these restrictions and loop holes to temporary nationalisation are regular political issues. In contrast the Tory government refused to carry out even the limited actions which were allowed under Commission rules to support the UK steel industry when the SSI steel mill at Redcar, Teeside closed, or bring all public sector Carillion contracts back in house.

## **EU rules after Brexit: regulations without representation**

Until Brexit occurs the UK remains a member of the European Union and a government with the political will could challenge the Commission and seek to reform Single Market rules covering both state aid and procurement.

This will change after Brexit which as a minimum is understood to mean that the UK will leave the political structures of the EU – that is the European Commission, the European Council and the European Parliament.

This means the UK will have no political platform inside the EU to seek reform of the rules or challenge Commission decisions. This presents a danger if the final Brexit settlement means the UK remains a member of the Single Market without being a full member of the EU. This would result in the UK being subjected to all future EU rules, directives and legal decisions, without political or legal representation. This is the scenario Norway currently finds itself in and is why Unite is calling for barrier-free access to the Single Market, rather than full membership.

For example, the EU is currently negotiating the 'Fourth Rail Package' which seeks to break up the state-run railways across Europe and enshrine the privatisation of rail services in law. The 'Third Docks Package' seeks to achieve the same for port infrastructure.



**What does 'Take Back Control' mean? I can't see how it means passing power from the EU to people like Jacob Rees-Mogg or Boris Johnson. If we want to take back control we need to have a real, democratic say at work, to be treated with respect and to be well paid and secure. The only way to achieve that is to get active in a trade union.**

**Unite Rep, Prisons**

Unite is committed to a publicly run transport system and supports the pledge in the 2017 Labour Party manifesto to re-nationalise our railways. While this pledge is achievable under current EU rules, the new Rail and Docks packages would present a legal challenge to public ownership if the UK was forced to implement future EU legal decisions as part of the final deal.

### **The ideal outcome**

In summary, the ideal outcome of the Brexit negotiations is a deal whereby the UK retains close enough 'regulatory parity' in order to achieve barrier-free access to the Single Market, but without being subject to future regulations and laws undemocratically.

This would mean retaining EU levels of working rights as a legal minimum; however, the UK must not be subject to any future EU rules which could restrict an ambitious economic programme or prevent taking services back under public ownership.

It would also be possible to implement state aid while retaining regulatory parity, provided it could be demonstrated that the aid did not distort the Single Market. For example, state support for the steel industry would not distort the market if it were used domestically for infrastructure projects, rather than being exported to Europe.

### **Unite proposes the following tests for any alternative to full EU membership**

Does it:

1. Protect public services and defend jobs.
2. Ensure barrier-free access to the Single Market for economic sectors reliant on it.
3. Allow for positive procurement policies.
4. Allow for state aid to restore privatised services back into public ownership.
5. Prevent the UK from being subject to future EU rules, regulations and directives without an ability to influence them.
6. Support workers' rights, including strengthening of collective bargaining.
7. Guarantee the right to remain for EU workers and their families in the UK.
8. Allow the UK to be part of EU-wide programmes such as ERASMUS, Euratom, pharmaceutical regulation, or environmental standards.

## World Trade Organisation: hard Brexit

Even if Britain pursues the hardest version of Brexit that does not mean the UK will not be subject to other international rules. The UK is a signatory to the World Trade Organisation and in the event of hard Brexit WTO rules become the default rules by which the UK will trade with Europe. These rules also cover state aid and procurement and the government has announced it intends to remain committed to these agreements, which promote privatisation in the name of market competition.

Under WTO agreements many state interventions, such as subsidies, are prohibited outright while the rest are 'actionable' – meaning that other countries can take actions if they believe the action harms their interests. WTO rules predominantly cover trade and are triggered if a member country lodges a complaint.

## Norway, Switzerland or Canada +++?

When setting its post-Brexit ambition the UK government has two broad options. It can aim to leave full EU membership, but retain membership of associated trading blocs such as the European Economic Area (EEA) or the European Free Trade Area (EFTA) which existed prior to, and now complement, the wider Single Market.

Alternatively, the UK can formally end the trading relationship on March 2019 and replace it in its entirety with a comprehensive new trade deal between the UK and the European Single Market.

Since negotiations began in June 2017 the Tory government has moved towards the latter option, with Brexit Secretary David Davis describing the government's aim as 'Canada Plus, Plus, Plus.' This suggests the Government is pursuing a final deal based on the recently concluded CETA trade deal between Canada and the European Union.

## What is the Norwegian Option? Membership of the EEA

- **Membership:** Norway has been a member of the European Economic Area (EEA), alongside Iceland and Liechtenstein since 1994
- **Access to the Single Market?** Yes, but in return the country must accept Freedom of Movement and abide by EU regulations and agreements
- **Regulations:** Norwegian Parliament has endorsed 265 of 287 EU Agreements and over 1,000 regulations since 1994.

If the UK were to adopt the 'Norwegian Model' and join the EEA it is estimated that 93 of the 100 most important EU-based regulations would remain in place, costing £31.4 billion per year. Britain would have no ability to influence those regulations.

- **State Aid:** Under the terms of the EEA the Norwegian state is unable to provide direct support for Norwegian industries or services, which have been badly hit by the post-2008 recession. The EEA has blocked Norway from subsidising the ailing ship building industry, and prompted the part privatisation of the country's state run oil company.

Unlike full EU member states who may be able to influence or seek exceptions, Norway must fully abide by these regulations while having no say over them. Were the UK to enter the EEA it would face the same barriers as Norway, giving the Tories further excuses to block subsidisation, procurement or nationalisation for strategic industries such as steel.

## What is the Swiss Option? Membership of the EFTA

- **Membership:** Member of European Free Trade Area (EFTA)
- **Access to the Single Market?** Partial access through dozens of bilateral agreements. The UK must also accept Freedom of Movement.
- **Regulations:** Has to accept 'technical barriers' to the trade of goods, public procurement, agriculture, research, civil aviation and ground transportation.

Like Norway, Switzerland pays into the EU budget and gets access to the Single Market, but it must follow EU rules even though it has no influence over them. Switzerland pays about 40% as much as the UK to be part of the single market in goods. But the Swiss have no agreement with the EU on free trade in services.

- **State Aid:** Unlike the rest of the EU, rulings on state aid are made by the EFTA Surveillance Authority, rather than the European Commission. In reality, EFTA mirrors the decisions of the Commission while the EFTA court mirrors judgements made by the European Court of Justice (ECJ)

## New Free Trade deals: 'Canada Plus'

Senior figures in the Government, such as Liam Fox and Boris Johnson, believe Brexit should herald a return to Britain's role as an international champion of 'free trade.' Britain's trade policy has been handled by Brussels since the UK joined the European Community in 1973.

Yet, in contrast to Tory nostalgia for Empire, the newly formed Department for International Trade must recognise that modern trade agreements differ very greatly from deals prior to the 1970's, which largely focused on tariffs, rather than investment and standards.

In light of Brexit it falls on the trade union movement to consider if and how trade deals can fit with our ambition for radical social change in the UK and abroad, including the need to defend services, advance the principle of democratic public ownership and end austerity.

A government's approach to international trade is inseparable from its larger foreign policy, with the European Union, the United States and China each using recent trade deals to advance broader geo-political objectives. The UK must consider trade deals in terms of its own place in the world.

For trade unions this means only supporting deals which actively promote workers' interests across borders and are consistent with our principles of internationalism and equality.

As a starting point, Unite rejects the Tory Trade Bill as it does not include provision for trade policy to be democratically answerable to parliament or civil society.

## No ISDS Secret Courts in Trade Agreements

It is an important principle that trade deals must not be vehicles for handing further control to multinational corporations over democratic governments. This is especially true for our public services, access to which is seen as an invaluable prize by multinational companies.

For example, future trade deals must not include an 'investor state dispute settlement', which prioritises the rights of investors and corporations over democratic governments.

Such a body was included in the Transatlantic Trade and Investment Partnership, the planned but failed trade deal between the EU and the United States. If an American multinational had acquired an NHS

service following the deal Investor State Dispute Settlement (ISDS) would have allowed them to sue in the event that the service was ever taken back into public ownership.

Unless specific public services are clearly exempted from trade negotiations the result would be a 'ratchet effect' preventing a government reversing privatisations and sell-offs, no matter how disastrous they have been for service users. This is why Unite supported the campaign to exempt the NHS from the trade deal and why we join trade unions across the United States and Europe in opposing this deal.

The example of the North America Free Trade Area (NAFTA), a trade deal between Canada, Mexico and the US, shows the danger that these tribunals pose. After signing the deal Canada became the most sued developed nation on Earth. The constant threat of legal challenges seriously undermines a government's right to govern, resulting in a chilling effect. NAFTA forced the Canadian government to adopt such a cautious approach to legislation that all new laws and any changes to existing laws are now vetted by trade experts to ensure they are not challengeable under ISDS rules.

Any legitimate grievances between investors and national governments must be held in open court, with right to due process and appeal. Trade deals must not become a vehicle for corporations to hold power over democratic governments.

In contrast 'good' trade deals should defend the option of public ownership, reverse the push for 'liberalisation' at any cost, and seek to actively extend workers' rights in third countries.

Going further, Unite has outlined that a 'good' trade deal must include a robust chapter on labour rights, including International Labour Organisation conventions as a minimum legal standard.

Similarly any new free trade deal with either the EU or other trading blocs must contain tough trade defence mechanisms to prevent the 'dumping' of goods where products such as tyres and steel are exported at artificially low prices, or the levelling down of workers' rights, environmental protections or safety standards.

## **Transitional Period**

Comprehensive trade deals covering multiple economic sectors are notoriously difficult to negotiate and take many years. In the case of CETA the negotiation and ratification process took over eight years.

This means it is impossible that negotiations on this scale can be conducted within the timetable of Article 50, which ends in March 2019. Instead a transitional period will have to be agreed which includes continued membership of the Single Market and an agreed customs arrangement which prevents the raising of non-tariff barriers.

For the duration of the transition the Department for International Trade must work to develop a new trade regime, including defence remedies. This should be done in consultation with trade unions and civil society.

## **Canada: Comprehensive Economic and Trade Agreement (CETA)**

The Tory government's preferred option is being described as 'Canada Plus Plus' – effectively replicating and extending a trade deal recently negotiated between Canada and the European Union.

CETA also contains the ISDS tribunals, and as firms with operations in Canada will be covered by this deal, American corporations now have a 'back door' from which to sue European governments. While, in contrast to NAFTA, CETA commits both the EU and Canada to upholding workers' rights, there are no sanctions if these rights are violated, making this provision worthless.



## Unite View: Bilateral Trade Deal Must Include Protections

It is clear that any bilateral trade deal the UK government enters into with the US, Canada or any other trading bloc must come with clear protections and exemptions:

- Trade policy must be democratically overseen and answerable to parliament
- No 'ISDS' secret courts that gift power to corporations over elected governments
- Enshrined workers' rights, to International Labour Organisation standards, with enforceable sanctions
- Tough Trade Defence Mechanisms to prevent 'dumping' of substandard goods (e.g, Chinese steel)
- Trade deals should defend and seek to extend trade union recognised standards for free collective bargaining, workplace rights, health & safety regulations, environment and food standards.
- Trade deals must not threaten the principle of democratically owned public services. Public services must be exempt from comprehensive trade deals.



## Post-Brexit Strategy for Public Services

The government's strategy is creating a huge amount of economic uncertainty and this in turn is having a detrimental impact on our public services. Unite is clear that the public sector must not pay the price for Brexit.

That means ending the austerity offensive against services; campaigning for properly funded local authorities, health, social care and education systems; protecting community services, employment rights, environmental standards; and guaranteeing the right to remain for EU workers across the public sector.

### A strong economy to protect UK public services

**Our vital public services are not separate from the wider economy. Any economic downturn resulting from Brexit on the Tories' terms would lead to more crippling austerity and cuts.**

Unite rep, Community, Youth Work

The full economic impact of leaving the European Union is beginning to unfold. Growth forecasts are low and the government's own estimates suggest that the Treasury will be many billions of pounds poorer by 2020 than was forecast during the referendum debates. Any decline in the economy and government's tax base is likely to hit the public sector hard through:

- Further cuts to public sector funding and services.
- Increased demand for services through greater unemployment, poverty and insecurity.
- Rising inflation reducing living standards and the value of social security benefits.

Unite will continue to campaign for an end to the failed policy of austerity cuts, attacks on social security benefits and pay caps on our public and community services. Our public services have seen billions stripped from their budgets since 2010. This has meant that many services are now struggling to stay afloat.

All our public services have made substantial cuts and most are predicting funding gaps of many billions by 2020. This has meant less money to care for the sick and elderly, educate our children and young people, investigate crimes, fix potholes and street-lighting, collect our refuse, support our armed forces, or provide vital community services like libraries, children centres to youth services, social housing and social care.

Hanging heavy over the vote to leave the EU were spurious claims and counter claims about the benefits or dangers of leaving the EU, none more notorious than the false claims about NHS funding that were emblazoned on the side of a campaign bus.

Unite has consistently argued that these cuts are a false economy that have simultaneously withdrawn our social safety net while sucking demand out of the economy. Now in the face of Brexit, the UK economy urgently needs investment in our infrastructure and services to stimulate a growing and thriving economy.

**The reality is that post Brexit, as now, investing in our public services is a political choice. Unite is therefore calling for the government to protect and increase funding for the whole public sector as part of a strong industrial strategy to mitigate the economic effects of Brexit.**

## Protection and replacement of EU funding

**A hard Brexit would have an immediate impact on higher education, leading to a fall in international students, an inability to secure world leading academics and an impact on UK participation in collaborative research projects. We need long term certainty now to secure funding and to make sure employers don't have an excuse to cut jobs.**

**Unite Rep, Higher Education**

The end to austerity is doubly important given that many of our public services receive substantial amounts of funding associated with our membership of the European Union.

EU budgets are set over seven year periods, referred to as Multi-Annual Financial Frameworks (MFFs). In the recent agreements in principle the UK government accepted that it would continue to pay its liabilities under the current Multi-Annual Financial Framework 2013-2020 but crucially has not said anything about our contribution post 2020.

Under the current MFF the UK benefits from €10.9 billion (£8.4 billion) of EU structural funding primarily through the European Social Fund (ESF) and the European Regional Development Fund (ERDF). Both of these funds support public services, social cohesion, employment and development in deprived or depressed areas which significantly impact on public sector organisations and contractors. These are vital funds across many areas of the UK, including in support of the Northern Ireland peace process.

For example EU structural funds supported Cornwall Council through a £132 million grant towards a superfast broadband project. Similarly Hampshire received £7.2 million of European Social funding for a 'Job Deal' project to support ex-offenders back into work.

The UK also benefits from substantial funding for research, development and innovation through membership of the EU including for health-related research and medicines. Between 2007 and 2013 the UK contributed €5.4 billion to EU research and development but also received €8.8 billion for these activities. Some examples include Horizon 2020, the Innovative Medicines Initiative, the Active and Assisted Living programme for older people and European Co-operation in Science and Technology (COST) that make millions available to Higher Education, NHS organisations and industry.





**“The procurement budget for local and central government covers everything from car fleets to toilet paper and it runs into the billions of pounds and there’s no reason why that couldn’t be used to benefit local communities by bringing services in house, tendering contracts with firms which recognise trade unions and supporting UK manufacturing.”**

**Unite Rep, Local Authorities**

The European Investment Bank provides significant funding for UK housing associations and house builders. While some UK charities receive funding through programmes like Horizon 2020 for research and innovation and the Daphne Programme to fight domestic violence. Youth services and education charities are also funded by projects like the Youth Empowerment Initiative, Erasmus and International Exchange.

The National Council of Voluntary Organisations (NVCO) conservatively estimates that around 3,000 UK charities receive over £300 million of funding directly from the EU, particularly those working in international development. This is of a comparative scale to income from the National Lottery (£488 million).

While the government agreed to continue contributing to the EU up until 2020 it has asserted that after this it will only honour/replace EU funding for projects that are judged to be “good value for money” and “in line with domestic strategic priorities” – which leaves plenty of wiggle room to recant on the guarantees and leaves our services vulnerable to changing political priorities in Westminster. Such an approach also excludes areas of funding where the government has no involvement in the process of distributing EU funds and funding is paid directly to UK organisations by the European Commission.

**Unite is demanding that the government continues to underwrite EU-funded projects and guarantee similar funding levels in any post Brexit settlement through new UK social and regional development funds.**





## Public procurement and privatisation

According to the government the public sector spends approximately £268 billion per year procuring goods and services. Local authorities account for at least £60 billion of this spend. As discussed earlier UK procurement regulations are currently governed by the EU Procurement Directive, while workers transferred between contracts or out of the public sector have their terms and conditions protected by TUPE law which is based on the EU Acquired Rights Directive.

The UK government has often used the EU as an excuse for its own political decisions, arguing that the Procurement Directive imposes strict rules in relation to how services should be organised, tendered and financed. Unite and other trade unions have always argued that this was passing the buck, as opportunities exist within the Directive which would allow the government to go beyond minimum requirements set down by the EU to use procurement to drive broader social, environmental and political aims. Either way, now we are leaving the government can no longer hide behind the EU.

Unite is therefore demanding that UK procurement is used for the following:

- **Keeping services in house**, recognising that there is no automatic obligation on the public sector to outsource or put services out for tender and that the public sector can and should be the provider for many public services.
- **Raising employment standards** including requiring trade union recognition and adherence to collective agreements, banning from procurement contracts companies that exploit workers through blacklisting; banning zero hours contracts and umbrella companies, promoting direct employment as well as introducing a statutory living wage which would be applied to all workers employed on public sector contracts not just those employed directly by the public sector.
- **Promote equality** including processes to monitor and address gender pay gaps and reduce pay ratios between the highest earners and those on average wages.
- **Regional development and supporting employment** including supporting British manufacturing jobs by procuring goods within the UK.
- **Ensuring suitable skills, training and career opportunities** are in place to facilitate the delivery of sustainable procurement.
- **Driving industry standards and impose minimum standards on contractors**, that spell out the high standards expected from those assigned public contracts and be consistent with social, economic and environmental policies, aims and benefits. The process itself must allow for a review of a company's performance on a number of key indicators including health and safety, employment practices, skills and training, equality, ethical and human rights and environmental and social responsibility.
- **Ethical and responsible trading standards** such as by the procurement of food and drink, staff uniforms and other goods used within the public sector to consider the local and global ethical supply chain. Public bodies should use fairly traded products wherever possible, especially where no locally sourced alternatives exist. Procurement contracts and guidance must allow for greater scrutiny and transparency to ensure that they fulfil ethical and sustainable commitments both in the UK and internationally.

Unite is calling for the government to guarantee the same or better regulations as we currently operate under the European Union and use public procurement to deliver the best value for our communities.

## Defending workers' rights

Many of our core employment and human rights are protected by EU legislation and could now be under threat should the government refuse to guarantee them.

Unite has identified the following workers' rights, currently underpinned or supported by EU legislation, which must be upheld in any new trade deal or trading arrangement:

- The Working Time Directive, which ends the 'long hours culture' by limiting the working week and guaranteeing 11 hours of rest in a 24-hour period
- 20 days paid holiday at average pay as a minimum (excluding Bank Holidays)
- Equal pay
- Anti-discrimination rights
- Health and safety protection
- Maternity and parental leave, time off work for urgent family reasons
- Information and consultation rights
- Equal treatment for part-time, fixed-term and agency workers
- Transfer of Undertakings Protection of Employment (TUPE)
- Right to written terms and conditions.

This is not an exhaustive list. Faced with the most restrictive anti-union rights in Western Europe, the retention of the protections listed above must be a red line in any negotiation.

Withdrawing from the EU will also likely mean we will lose access to the European Court of Justice (ECJ) as a court of appeal. Leaving the EU will therefore reduce organisations' capacity to bring about change through appealing to the ECJ, making it harder to challenge bad decisions from the government of the day.

Of particular concern to members delivering public services will be any potential weakening of TUPE law that protects workers during transfer between employers and the impact of weakened procurement rules that could undermine service quality in any contract bids. This has worrying implications for union recognition and collective bargaining rights.

Rights like the Working Time Directive (WTD) have a particular impact on UK health and wellbeing. The WTD is designed to protect us from the stress and ill health that arise from working excessive hours. Withdrawal of Working Time Regulations could have serious implications for NHS staff.

Given the high percentages of female workers working in public services, EU-derived regulations that particularly benefit women, such as the equal pay and maternity rights, while conditions to safeguards against sharp instrument and needlestick injuries are also very relevant.

**Unite demands the retention of hard won EU wide employment rights, a level playing field with the EU and the 'grandfathering' of all existing EU laws and regulations following the UK's withdrawal. This would guarantee the retention of protections wholly or partially underpinned by European legislation. Unite demands further rights to protect and enhance the position of UK workers. These must include:**

- **Scrapping the 2016 Trade Union Act**
- **Guarantees that protect the right of workers to organise into trade unions and the right to collective bargaining, including sectoral and national bargaining, and the right to strike.**

## European Works Councils and social dialogue

**My European Works Council has helped me build stronger relationships with trade unions across Europe, making it easier for us to hold the employer to account. We must make sure UK reps continue to have full voting rights on EWCs.**

**Unite Rep, Refuse and Recycling**

EWC's bring together workers from different European countries in which a multinational company has operations. They bring workers' representatives together to be informed and consulted by employers. Unite workplace reps sit on more European Works Councils (EWCs) than any other UK trade union. The result is an unparalleled level of co-operation across the globalised workforce.

Current EU regulations underpin the right of the workforce to organise a European Works Council if the company operates across two EU member states. It is vital the government safeguards regulation which underpins our members' right to be elected to and participate fully on EWCs.

Similarly Unite intends to continue to fully participate in structures where Unite members are able to participate in Social Dialogue between employers and unions, principally through the European Trade Union Congress (ETUC) and EPSU. The regulations underpinning these initiatives must be retained and UK industries, companies and unions must continue to represent UK workers on these bodies.

**Unite demands the retention of hard won EU-wide human and employment rights and a level playing field with the EU.**

### No regulatory and skills cliff edges

The Brexit negotiations will potentially affect huge swathes of law and regulation that have an impact on our public services. These include data protection, VAT, rules about procurement and commissioning, substantial EU regulations on professional standards, transportation of controlled substances and medical supplies (e.g. radioactive materials, blood and organ transportation), medicine licencing, environmental regulations, refuse disposal, transport, food standards and health and safety.

For example local authorities play a key role in enforcing health and safety legislation locally while EU regulations on human trafficking, child protection, migrant and human rights are also likely to significantly impact on the local authorities' work due to their involvement in delivering child protection, support for vulnerable adults, refugees, the elderly and people with disabilities as well as schools, housing and community services.



**We know that 'Freedom of Movement' is going to end when Brexit happens, but doesn't mean we have to suddenly accept barbed wire at the borders and, frankly, racist immigration policies from the Tories. We demand that EU workers across the public sector are granted the immediate right to remain, for themselves and their families. We also want to make sure that Britain remains a welcoming place. That shouldn't stop us from fighting for proper safeguards which prevent bosses from using migrant workers to drive down wages or make jobs less secure."**

**Unite Rep, Social Care**

One of the services most affected by European regulations is refuse, waste and recycling. These key services are currently covered by EU legislation and directives on the environment including targets for recycling and treatment of waste.

Other standards such as air quality, and beach cleanliness also fit under local authorities remit. It is not just regulation, however, as the UK recycling and refuse sector is dependent on access to the Single Market as it imports much of its equipment such as biomass generators, recycling units and bin lorries, and also exports the waste and recycling materials itself to and from other EU states.

The NHS relies on smooth supply EU chains and harmonised regulations too. Medicines are currently regulated by EU legislation meaning companies only need to submit a single application to obtain authorisation that is valid throughout the EU, EEA and European Free Trade Association (EFTA) countries.

Similar regulations are planned for clinical trials in 2018. Leaving this system is likely to add bureaucracy and cost while slowing down the availability of drugs, medicines and research in the UK that might otherwise benefit patients. Membership of Euratom is also vital for the transport of radioactive isotopes used in many health procedures such as X-rays and cancer treatment, is also crucial for research in universities as well as in the energy, construction and defence sectors.

EU membership also provides regulatory safeguards that promote public health, thereby helping tackle long term demands on the NHS. These include binding regulations on the quality and safety of human blood, tissues and cells, and organs and public health requirements such as the management of communicable diseases. Regulations on the environment, water and air quality, refuse and recycling, food and other consumables all impact on our health.

**Unite is calling for the government to guarantee the same or better regulations as we currently operate under the European Union.**

### **Fair migration policies**

It is a guiding principle of our movement that an injury to one is an injury to all. This means that Unite is committed to opposing any instance of racism, prejudice or sectarian division in our workplaces and across wider society.

Throughout the Brexit referendum right-wing politicians in the Tory party and UKIP, allied with their friends in the media, did all they could to sow division and distrust.

Opinions were strongly held, debate was heated and deep divisions in our society were exposed. This was especially true of the issue of immigration.

As trade unionists we must not allow Britain's withdrawal from the European Union to usher in a 'carnival of reaction.' We cannot allow fear and division to take root.

It is a priority of our union not only to defend our members' jobs, but to defend their safety. Unite will continue to defend EU nationals and other migrant workers who live and work in the UK. We support their right to remain.

From the undercutting of wages to shortages of council houses, the problems blamed on immigration are the responsibility of predatory employers and a government taking the axe to our public services. That is where we must focus our energies. As a trade union, Unite's response is that a rising tide lifts all boats. Working to end the extreme exploitation of migrant workers benefits all of our members.

As Britain prepares to withdraw from the European Union, the resulting uncertainty will once again give way to fear. It is our role, as workplace representatives and shop stewards, to take a lead and make sure that solidarity triumphs over division.

UK public services have always been heavily reliant on the work and sacrifice of migrant workers. It is no coincidence that the NHS was founded the same year that Windrush arrived on UK shores. It is a deeply unpleasant irony that the abuse suffered by members of the Windrush generation has exposed the human cost of the Home Office's 'hostile environment' policy, and demonstrates why government assurances to European citizens living in the UK ring hollow. The NHS and Social Care providers are already struggling to recruit and retain permanent staff and social care providers report similar problems as well as high turnover rates and that Brexit uncertainty is clearly having an impact. New Nursing and Midwifery Council (NMC) figures show there are 3,000 less European Economic Area nurses and midwives working in the NHS in 2018 than there were a year ago.

The EU's policy of freedom of movement and mutual recognition of professional qualifications and standards means that many current NHS and social care professionals have come from other EU countries. For example, NHS England figures show that just over 53,000 of the total NHS workforce came from other EU countries including nearly 10% of NHS England's hospital doctors. Skills for Care figures also show that 80,000 workers in the adult social care sector come from other EU countries.

The debate about free movement therefore has a major impact both on current and potential skilled workers from across the continent that work in UK public services or come to study and work in UK universities. While a sustainable approach to workforce planning should not rely on migration as a substitute for training more UK-based workers, such as in the NHS, it is not the migrant workers' fault that our government has failed to invest in training and recruiting the staff our services and communities need.

Roughly 3 million people from other EU countries live and work in the UK and those people must continue to have equal rights and protections from UK public services.

All EU citizens, including British people, are entitled to hold a European Health Insurance Card (EHIC), which gives access to medically necessary, state provided health care during a temporary stay in another EEA country and the costs of treatment under these schemes can be subsequently reclaimed from the visitor's country of residence via reciprocal health care agreements. UK citizens therefore currently have reciprocal rights to access health services when visiting or living in other EU countries. It is estimated that around 1.2 million British migrants live in other EU countries, many of whom are UK pensioners with high net health and care costs.

**Unite demands protection for EU workers; the continuation of reciprocal rights for UK and EU citizens to continue to access health care and other public services in future; an end to pay austerity; and an urgent long-term workforce strategy that trains the workforce that our public services needs.**



## Political powers and citizens' rights

When the UK leaves the EU, political decision-making powers will be transferred back to government in the UK.

Leaving the EU should not, however, automatically mean all powers must go back to Westminster. Many voices in local authorities are arguing that these powers should be devolved back to local government as well as devolved administrations and metropolitan mayors.

Unite believes that Brexit can open an opportunity to build a new democratic political settlement that rebuilds local democracy, public accountability and genuinely puts control back in the hands of local communities.

Democracy must not however simply be a case of different institutions doing the same things, but should also include a deepening of democratic cultures, from transparent government, freedom of information to support and development for independent political activity, advocacy, social action and greater tolerance.

As it stands Tory Brexit is having the opposite result. The impact of the referendum campaign has left marked divisions across UK society. The campaign exposed large political fissures across ages, social classes and UK geographies and countries. There has been a surge in hostility and hate crime against migrants, ethnic minorities, people with disabilities, women and LGBT+ people and this has not returned to pre-referendum levels. Negotiations have opened significant political issues across the four UK countries, including the prospect of a second independence referendum in Scotland and the collapse of peace in Northern Ireland with the reintroduction of a hard border with the Irish Republic.

This is having far reaching consequences for social cohesion, affecting the day to day work of many who work in public services and leading to staff being at increased risk from abuse, violence and increased stress, especially those who are non-UK nationals including in areas heavily dependent on EU nationals such as social care.

At the same time the Conservative government is undermining protections from abuse through plans to withdraw from the European Convention on Human Rights (not an EU convention) and continued attacks on the Equality and Human Rights Commission. They have introduced gagging clauses, new anti-union laws, losses of legal aid, the Lobbying Act and reductions on civil and human rights in a naked attempt to weaken rather than strengthen UK democracy. The cuts in independent EU funding and leaving the European Court of Justice will only make this worse.

**Unite believes that social action is a fundamental pillar of our democratic society. Unite stands with the sector to defend their independence and our freedoms to speak out. Unite will stand in solidarity with all organisations that play a role in promoting inclusivity and social unity. We will not allow the referendum to divide us.**



## Cross border cooperation

**It is unthinkable that we should walk away from collaboration and cooperation with our nearest neighbours at this time of far greater global instability.**

**Unite Rep, Central Government and Defence**

The issue of cross border collaboration affects a broad range of UK public services and organisations from universities, the military and policing to, our legal system, health service and refuse supply chains. The same is true for foreign aid and development organisations, environmental campaigns, faith bodies and trade unions. For example data from the Charity Commission in England and Wales shows that around 4,000 charities operate in one or more of the EU27 countries.

Not only are many of these dependent on the work of EU nationals, but many work directly across borders, and on research and development through the same EU wide pool of funding.

EU membership also provides access to research and collaboration networks across Europe with institutions working together on issues such as cross border co-operation on public health, HIV/AIDS, hepatitis and tuberculosis control and prevention. The EU operates systems for the surveillance and early warning of communicable diseases, managed by the European Centre for Disease Prevention and Control that strengthen our Public Health system. These facilitate the rapid sharing of information and technical expertise in response to potential pandemics, communicable diseases and other cross-border health threats.

These EU networks also create economies of scale that support work on rare diseases. Members of the academic and medical communities are expressing serious concerns about the impact of leaving the EU on the future of science and research in the UK including Nobel Prize winner Professor Sir Paul Nurse, chief executive of the Francis Crick Institute.

**Unite is clear that Brexit might mean that we are leaving the European Union but it must not mean an end to international cooperation, international collaboration, peace and solidarity.**



## Conclusions: Unite's Strategy for Brexit

Unite is calling for a strategy that puts jobs first. For Brexit to meet the tests Unite has adopted the final deal must:

**Prevent Hard Brexit:** The UK must secure barrier-free access to the Single Market and a customs agreement to keep the trade in goods flowing, while protecting the integrity of the economies of Northern Ireland and Gibraltar.

**Put Jobs and Protections First:** All workers' rights, social protections and standard underpinned by EU law must be retained.

**Guarantee the Right to Remain:** EU citizens and their families must be able to remain in the UK, and this must be reciprocated for UK citizens across Europe.

**Support a Radical Economic Programme:** From taking rail and utilities back into public ownership to investing in our economy, the final Brexit settlement must not contain barriers to a transformative domestic programme.

**Make Our Voice Heard:** 'Taking back control' must mean having a genuine say in how our workplaces are run. The voice of working people must be listened to.

Our public services must not be the casualty of a Tory Brexit. Brexit on our terms means building a new consensus for an active state that invests in and develops the public services that we need and require.

Unite is calling for:

1. An end to austerity and increased funding for the whole public sector as part of a strong industrial strategy to mitigate the economic effects of Brexit.
2. The underwriting of EU-funded projects and guarantee of similar funding levels and cooperation in any post Brexit settlement.
3. Guaranteeing the same or better regulations as we currently operate under the European Union.
4. The use of public procurement to drive social, environmental and economic aims that deliver best value for our communities.
5. 'Grandfather' all existing EU laws and regulations following the UK's withdrawal and retain hard won EU wide human and employment rights and a level playing field with the EU.
6. An urgent long-term workforce strategy for our public services that trains the workforce that our public services need.
7. Protection for EU workers and the continuation of reciprocal rights for UK and EU citizens to continue to access health care and other public services in future.
8. Comprehensive labour market regulation to address the abuses of migrant labour by bad employers and the downward pressure on wages and conditions it has generated in some sectors. We need a binding legal position that employers seeking to bring in labour from elsewhere abide by trade union recognition and collective bargaining agreements.
9. The public sector, and the principle of public ownership of our services, to be protected from any new free trade deals.
10. Solidarity and support for all organisations that play a role in promoting inclusivity and social unity. We will not allow Brexit to divide us.

**Unite is clear that Brexit might mean that we are leaving the European Union but it must not mean an end to international cooperation, international collaboration, peace and solidarity.**

## Appendix: Executive Council Statement: The European Union

Unite campaigned strongly for Britain to stay in the EU as being in the best interests overall of the union's membership, particularly in terms of job security and workers' rights. The union places on record its thanks to all activists and employees who worked hard for a 'remain' vote in the referendum.

We recognise the concerns felt by many Unite members and millions of other working people expressed in the referendum – over austerity, over their sense of powerlessness and over the abuse of the free movement of labour, amongst other issues. The referendum result was as much a rebuke to an out-of-touch political and economic elite as it was about the EU itself. However, those who led the "Leave" campaign clearly have no idea as to how to give effect to its result or cope with the economic consequences of the decision.

The people of Scotland, Northern Ireland and Gibraltar voted clearly to remain in the European Union, and we support efforts to address the specific issues arising from "Brexit" in those countries.

We believe that it is vital that there is no rush to trigger Article 50, and that the terms of "Brexit" reflect trade union input and trade union values. Working people must not pay the price for "Brexit". We would oppose a "Brexit" that reduces trade union rights, excludes Britain from the EU Single Market and fails to deal fairly with the difficult issue of the free movement of labour, which requires further debate in the trade union movement. We further need to ensure that the British and Irish governments do not launch a race-to-the-bottom in terms of social protection, workers' rights, and corporate tax – and do not allow multi-national capital to play one government off against the other.

Unite will focus on three over-riding priorities in the immediate situation:

1. The defence of Unite members' jobs, which might be threatened by the UK's exit from the European Union and its single market. This represents a particular threat in our manufacturing and finance sectors and across the public services. We must be ready to work constructively with employers and government to confront any job losses arising.
2. The protection of those employment rights which depended on legislation or initiatives at the European Union level. It would be a betrayal of working people, however they voted, for any rights to be stripped from them by the Conservative government. We will work alongside the TUC and others to ensure that Brexit is not carried through at the expense of workers' rights.
3. Opposing the racist backlash unleashed by the 'leave' vote and standing in solidarity with all peoples and communities threatened by abuse and violence from the far right. The upsurge in such racism is the responsibility of those Tory and UKIP politicians who conducted the Leave campaign in such disgraceful terms. We must highlight that the real responsibility for poor housing and a lack of decent jobs rests with the government, and not with migrant workers. We support the right of all EU nationals living and working in the UK to remain here.

Unite will also work to strengthen its links with trade unions across Europe and with the ETUC in the fight against austerity and for social rights. We will never turn our back on our brothers and sisters abroad and remain fully committed to the international trade union movement. As a first step towards uniting working people of all nationalities, Unite will campaign for the Labour party to organise a Europe-wide conference of trade union supported workers' political parties, trade unions and left social movements with the aim of constructing a programme for a Europe fit for working people.

Working people must be given the chance to choose their path out of the crisis. This will demand new policy responses, not least to the deprivation and alienation caused by six years of austerity and thirty years of deindustrialisation, and we look to Labour to give a lead on meeting those challenges in the interests of working people.

# Brexit At Work: What You Can Do

Brexit will be an industrial issue first and foremost for our Unite members working in public services. From pay, to changes to terms and conditions, and support for colleagues unsure about their status post Brexit, it is in the workplace that we must proactively organise to shape how Brexit is experienced.

As a workplace representative these are the steps you can take today.



## **Employer Brexit Planning: Your Right to Consultation**

Many employers are proactively working on contingency plans to understand and forecast the impact of Brexit. We must use our sectors' national agreements as well as any local collective agreements and Consultation and Information Agreements to make sure our members are properly consulted on these plans and that the potential risks or costs of Brexit are not simply handed down to the workforce.



## **Brexit at the Bargaining Table**

From pay to terms and conditions, Brexit is a bargaining issue. We must use pay and other negotiations with the employer to push for guarantees that working rights will be protected within our collective agreements following Brexit. We must also expose any attempt by opportunistic employers seeking to use Brexit as a smokescreen to hold down pay or undermine conditions. In our sectors employers must not be allowed to use uncertainty around European funding opportunistically, the Government must be lobbied to match any lost funds.



## **Know Your Rights at Work**

Employers cannot opt out of EU legal rulings, such as the ruling protecting holiday pay entitlement, which remain in effect. Similarly, employers cannot claim that EU legislation such as the Working Time Directive no longer applies in the UK.



## **Employer Advice: Right to Remain**

From paid time off to assistance in completing paperwork, employers must support workers from the European Union who are concerned about their status or are looking to apply for UK citizenship.



## **European Works Councils**

There is currently no guarantee that European Works Councils will be protected in UK law after Brexit; however, we can be proactive by pushing for our EWC constitutions to be amended to protect participation, consultation and voting rights for UK reps. A draft amendment is available from our EWC experts in the Unite International Department.

**You can find more information and resources about  
Brexit as a workplace issue on the Brexit Check website:**

**Visit: [www.unitebrexitcheck.org](http://www.unitebrexitcheck.org)**





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