



**Unite the Union submission to
House of Lords EU Select Committee
Brexit: Deal or No Deal Inquiry**

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Executive Summary: Unite & Brexit

This submission is made by Unite, the UK's largest trade union with over 1.4 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Unite's position on Brexit is for a just final settlement in the interests of workers in both the UK and in Europe. This settlement should include:

- Barrier-free access to the Single Market and a customs arrangement with the EU
- Regulatory parity including the retention of employment rights. The retention of employment rights must be achieved through primary legislation, rather than unaccountable statutory instruments.
- Continued membership of mutually beneficial agencies and treaties, including Euratom and the European Aviation Safety Association (EASA).
- Unequivocal support from the UK Government for the right to remain for European workers in the UK and secure reciprocation for UK workers across the European Union.
- Labour market regulation which prevents employers pitting workers against each other to drive down pay and conditions.

In the immediate term, Unite opposes 'Hard Brexit' which is understood to mean leaving the commercial, judicial and political structures of the European Union before a new relationship is established. Unite supports a transitional period to follow the Article 50 negotiations if such a long-term settlement has not been reached.

Unite calls for the Government to release the sectoral 'Brexit Impact Assessments' commissioned by the Department for Exiting the European Union. While Unite has outlined the impact of a 'no deal' scenario in this submission, our 1.4 million members and the wider public must be able to judge the government's own assessments.

Unite rejects 'no deal' as an option any responsible government would ever entertain. There is no legal reason to make such an outcome inevitable. Provision is included in Article 50 of the Lisbon Treaty to prevent such a result.

Unite supports the principle that the people must be given the final say on the terms of Brexit. In this submission Unite proposes two potential scenarios to prevent a 'no deal' outcome.

In the scenario that the UK Government cannot reach a 'deal' or agree a suitable transitional arrangement to begin at 23:00 on 29 March 2019 the only viable options for preventing a 'no deal' cliff edge is to formally request an extension of the negotiating period through the European Council or else temporary halt the talks. If talks are paused a General Election may be required to secure a new government with a fresh mandate to re-start negotiations.

If a 'deal' is reached it must be democratically ratified. This must include Parliament, with the involvement of the devolved assemblies, retaining the options of rejecting a deal or instructing the government to seek a re-negotiation without accepting a 'no deal' outcome. Unite holds that if the Government is unable to secure a deal or command the confidence of the country to re-negotiate a second attempt, this is sufficient reason for a General Election.

Is the Prime Minister's Florence speech a good basis for the UK and EU to reach agreement in the Article 50 negotiations?

While different in tone, the Florence speech reaffirmed the points raised at Lancaster House in 2016; namely a rejection of Single Market or Customs Union membership. The Florence speech went further by rejecting EFTA and EEA membership. Concretely, the Prime Minister acknowledged the need for a transitional arrangement '*on current terms*,' but proposed restricting this to two years.

This speech does not acknowledge the time-limited, sequential process adopted by the European Council from the start.

The speech does not accept that the European negotiating team must make 'sufficient progress' on the issues of financial obligation, citizen's rights and the Northern Irish border before receiving a mandate to discuss the future trading relationship.

The UK Government position outlined in this speech and previous position papers is a belief that merely acknowledging these issues as important and declaring an aspiration to solve them is enough. Thus, in Florence the Prime Minister acknowledged in principle that the UK will '*honour commitments*,' but this is not sufficient to move the negotiations forward.

The UK Government must accept the sequential nature of the Article 50 negotiations. The resulting proposals for the four key areas can then be scrutinised and ratified by UK parliaments.

Unite has consistently argued that the Government's closed door approach to the negotiations would become a fatal weakness. Negotiating directly with individual member states was also ruled illegal at the start of the negotiations; however, the model of social partnership whereby trade unions and industrial federations would be directly involved in negotiations alongside governments, would have added clarity and increased the prospect of consensus.

What potential stumbling-blocks remain? Under what scenarios might the outcome of the negotiations be 'no deal'?

It is Unite's view that the main stumbling block is the unwillingness of the UK Government to seriously engage with the negotiations. The position papers published by the Government, from Northern Ireland to the Customs Union and trade are insufficient to form substantial negotiating positions. Senior ministers appear more willing to be make demands and draw 'red lines' in the column inches of national newspapers rather than at the negotiating table.

At the time of writing the fifth round of negotiations appear ready to conclude without reaching sufficient progress on citizens' rights, the UK's obligations to the EU budget or Northern Ireland in order to progress to the 'future trading relationship'. This raises serious concerns over the potential for concluding a potential deal and ratifying it in the parliaments of the UK and the 27 Member States. The role of the Belgian regional parliament in Wallonia in blocking ratification of CETA in 2016 shows how unexpected stumbling blocks can emerge.

Unite believes that the main stumbling block to the negotiations is the lack of political coherence from the Government, which has failed to outline in any detail what the 'unique' new relationship between the UK and the EU should look like.

What would be the implications, good and bad, of ‘no deal’?

Unite reiterates the view that a good deal should retain the existing benefits of EU membership. Any opportunities to surpass these benefits following Brexit would be campaigned for and welcomed on a case-by-case, but the immediate priority is mitigating economic and legal damage while retaining existing benefits. 1.4 million Unite members did not vote to be poorer or have their jobs put at risk.

Unite has outlined below the potential impact of a ‘bad deal’ or no deal on industrial relations and economic sectors in which our union organises.

Unite defines a ‘bad deal’ as one which restricts access to the Single Market through the creation of tariff and non-tariff barriers to trade; fails to ensure regulatory consistency as a minimum; fails to resolve the border issues of Northern Ireland and Gibraltar and fails to secure the right to remain for European workers in the UK or UK workers across the European Union. For Unite failure on any one of these points would represent a ‘bad deal’ even if agreement in other areas was reached.

Unite utterly rejects the suggestion, championed by many in the Conservative Party, that the UK could become a tax haven, slashing corporation tax and pushing a ‘race to the bottom’ for working rights and living standards in the name of remaining competitive. Ministers such as Liam Fox, clearly see a trade deal with the United States in the mould of TTIP to augment such a vision.

Just as this ideological vision of Brexit is politically driven, so is the possible outcome of ‘no deal’. While deadlock, the spectre of the UK team walking away from the negotiating table, or the ever diminishing time frame all make it possible that a deal may not be reached by the end of the Article 50 negotiations, this does not make a ‘no deal’ scenario final or inevitable.

There is no legal basis for ‘no deal’

While a ‘no deal’ scenario is possible, Unite is clear that there is nothing in the Treaty of Lisbon which makes it a legal inevitability if the Article 50 negotiations fail. Instead the UK’s withdrawal from the EU without a deal, the so-called ‘cliff edge’, would be a politically driven choice the Government has made.

The Lisbon Treaty, the constitutional basis of the European Union, is clear on this point. Article 50 of the treaty includes a clear provision for extending the negotiating period if a settlement is not reached.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

This is also the interpretation of Lord Brian Kerr, the former Ambassador and UK Permanent Representative to the European Communities and European Union who authored the Article 50 clause.

It is clear that the UK government has options, including seeking an extension or a temporary pause to the timetable, which can prevent the Article 50 negotiations ending without a deal being reached.

Unite proposes that if a ‘deal’, be that a final settlement or a transitional arrangement, cannot be reached in time to be ratified by the UK Parliament and the parliaments of the 27 member states

for implementation on 23:00 on 29 March 2019, then the UK Government must formally request an extension to the European Council.

The UK Government must not rule out unilaterally pausing the negotiations on a temporary basis. In the event of either an extension or a pause to avert a 'no deal' outcome, the expectation must be that existing arrangements between the UK and EU would continue.

If a deal of any form is reached, the UK Parliament must be able to scrutinise it, reject it or instruct the Government to renegotiate it without facing the Hobson's Choice of 'no deal.'

In the event that Parliament rejects or demands a renegotiation, the Government must request an extension of the Article 50 timetable or else seek to pause negotiations on a temporary basis in order to develop new negotiating positions.

If the Government cannot command the confidence of Parliament to renegotiate a better deal, Unite would see this as sufficient reason to call a General Election in order that a new government can restart and conclude negotiations.

In the event a deal is reached, Unite supports the principle that the final settlement must receive full democratic ratification.

Impact of a bad deal or 'no deal'

Impact on industrial relations:

A 'no deal' scenario and the abrupt end of EU-based employment rights would throw industrial relations back to the 1970's, with a sudden free for all which some employers have already attempted to exploit.

Unite is surveying our network of 22,000 front line workplace representatives and shop stewards to monitor the industrial impact of Brexit. Thus far economic issues, such as the holding of new planned investments, are the result of uncertainty which could be addressed by a transitional arrangement.

Some employers are clearly attempting to use Brexit and the uncertainty surrounding the future relationship as a smokescreen to undermine industrial relations. This has included attempts to exclude trade union reps from European Works Council meetings, ignore EU rulings on holiday pay and overtime or artificially impose pay freezes.

Where Unite is a recognised trade union with organisation in the workplace these opportunistic attacks have been repelled. Clearly an abrupt end to the panoply of workers' rights, regulations and standards underpinned by EU law would be the signal for the UK's worst employers to step up this offensive. Unite has pledged that working people will not be allowed to pay the price for Hard Brexit and an industrial offensive by employers would be met in kind.

Unite General Secretary Len McCluskey has been clear on this point, stating: "*Unite is putting employers on notice, they need to realise that if they use Brexit as an excuse for attacking workers' pay and conditions, we will challenge and expose them.*"¹

Clearly, to avoid this scenario an orderly transition is required for when the European Communities Act 1972 is rescinded, UK membership ends and EU-derived employment legislation will automatically end with it.

¹ <https://labourlist.org/2017/08/mccluskeys-fury-over-bosses-trying-to-use-brexit-to-cut-workers-pay/>

Unite has proposed that all existing workers' rights should be 'grandfathered' into UK law at the point of Brexit. This is a view shared by major employer federations, including the EEF and the Chemical Industries Association.

Unite is clear that the retention of employment laws should be achieved through primary legislation, not undemocratic statutory instruments.

Such rights include the Working Time Directive, the Acquired Rights Directive, the Agency Workers Directive, the Employer Insolvency Directive, the European Works Council Directive, the Information and Consultation Directive and the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

EU legislation also underpins a series of equality rights, which must not be undermined or lost. A full list of the workers' rights underpinned by EU law has been produced by Thompsons Solicitors.²

Unite is also calling for 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.

European Works Councils:

EU law also underpins some basic trade union rights, such as the right to consultation ahead of major changes in the workplace. Similarly Unite is involved in more European Works Councils and Social Dialogue initiatives than any other trade union, both of which are protected in EU law.

Economic impact: losing market access

It is Unite's view that reverting to World Trade Organisation terms of trade (GATS) would be a disastrous option.

This is because the UK would be expected to face the European Union's common external tariffs. The rate of tariff will differ between sectors and products.³

Taking the automotive industry to be indicative of manufacturing, this could be as much as 10% for exports and 4% on imports. This would see manufacturers of vehicles and parts incur an annual cost of £1.3 billion on EU bound goods.⁴

The loss of access to the Single Market would be felt far beyond manufacturing. It would impact the finance sector, which would lose 'passporting' rights into the EU.⁵

The agricultural sector would also be impacted, with an average tariff of 22.3% on agricultural products and 2% on non-agricultural products.

If the UK leaves the EU without a trade deal UK exporters could face the potential impact of £5.2 billion in tariffs on goods being sold to the EU. However, EU exporters will also face £12.9 billion in tariffs on goods coming to the UK.⁶

The impact of tariffs on Unite members would be two-fold. First, the cost of tariffs incurred by employers would invariably be handed down to the workforce. Secondly, the rising cost of imports would trigger a cost of living crisis.

² *The impact of Brexit on UK employment law rights and health and safety legislation*, Thompson Solicitors, October 2016, [URL](#)

³ World Tariff Profiles 2015, World Trade Organisation, P.75, [URL](#)

⁴ Potential post-Brexit tariff costs for EU-UK trade, Civitas, [URL](#)

⁵ Passporting, Bank of England, [URL](#)

⁶ Potential post-Brexit tariff costs for EU-UK trade, Civitas, [URL](#)

It is worth noting that the threat of tariffs, caused by a government which has failed to address mounting uncertainty, has already allowed opportunistic producers and retailers to raise prices on everyday household items.⁷

It is clear that following forty years of integration tariff-free access to the Single Market is of vital importance to the employment of many thousands of our members. This is especially true of the manufacturing, agriculture and financial sectors, which have benefited from the lack of cross-border tariffs.

Many of our members' largest employers, from HSBC to Airbus, BMW, Astra-Zeneca or Unilever, see their presence in the UK as 'European Hubs.' Similarly, pending investment decisions for major manufacturers such as Vauxhall, Nissan, Siemens and Honda, are reliant on the UK retaining tariff-free access to the Single Market and the 500 million consumers therein.

For both manufacturing and transport, the Single Market's 'frictionless supply chain' is a crucial part of modern industry. The automotive industry is indicative of the wider manufacturing base, with the percentage of UK parts in British-built cars standing at 41 per cent. Firms such as Bentley and BMW, for example, will transfer a single component across national borders multiple times in its journey from creation to inspection and assembly.

This relationship within the UK-Europe components supply chain is two-way. Two-thirds of the £4 billion of motor components that are exported from the UK goes to the EU, while the vast majority of materials that go into British-built cars are imported.⁸

Importantly, these supply chains are 'frictionless' allowing the development of so-called 'Just in Time' supply chains which operate in a window measured in hours. For example, Jaguar Land Rover and Nissan, the UK's two largest car makers, hold only two hours' of stock of some items at their sites in order to minimise inventories and save on costs.

This has an inevitable impact on transport workers for whom the logistical impact of exiting the Single Market and the EU Customs Union would be equally damaging.

For international road haulage, the Single Market is fully integrated for all EU operators. With an International Operators Licence there are no border checks, permits required or quota limitations. Any operator with an international licence from any EU State can undertake international road transport between any two EU States without limitations.

EU rules underpin much of the regulatory regime for the operation of the commercial road haulage sector. This includes rules relating to market access, operator licensing, transport manager qualifications, driver licensing and qualifications, drivers hours and tachograph standards, vehicle standards and road-worthiness. There is a mixture of EU Regulation and EU Directives that have been woven into UK legal frameworks. There is significant cooperation between EU enforcement agencies that is underpinned by EU regulations and directives.⁹

It should also be noted that on the UK side of the channel many of the gateway ports, such as Felixstowe, Tilbury and Dover simply do not have the road or rail infrastructure required for the prolonged border checks and inspections which would result from the UK leaving the Customs Union.

⁷ Morrisons puts Marmite price up 12.5%, The Guardian, [URL](#)

⁸ UK car industry fears effects of Brexit tariffs on supply chain, Financial Times, October 2016, URL

⁹ House of Lords EU Internal Market Sub-Committee Request for Evidence from the Road Haulage Association on trade in non-financial services, Road Haulage Association

In the food and agricultural sectors, more than \$66 billion of food – including foodstuffs, animals and vegetables – are imported each year, with half of those imports coming from the European Union. The UK also exports the majority of food, especially meat, to the EU. Like ‘just in time’ supply chains in manufacturing, the transportation of food is highly time sensitive. There is no doubt that without sufficient infrastructure in both UK and European channel ports, the lengthy inspection processes required in the event of a ‘no deal’ outcome would result in millions of pounds worth of foodstuffs rotting in transporters.

Is a transition arrangement a necessary component of any lasting agreement, and if so, why?

The one aim of a transitional arrangement is to avoid any negative economic and legal impact from the UK’s withdrawal from the EU.

While the transitional arrangement may not be identical to the final settlement, it should set the foundation for a new UK-EU relationship. This must include the right to remain for EU workers in the UK and vice versa, access to the Single Market, regulatory parity that avoids a ‘race to the bottom,’ and the avoidance of non-tariff barriers.

The history of the European Union is littered with precedents for negotiating unique and privileged access to the Single Market for the EU’s geographic neighbours. This includes allowing the UK and Denmark to opt out of the monetary union, and the unique trading relationships with Norway, Iceland, Liechtenstein, Greenland, Switzerland, Turkey and, temporarily, Croatia.¹⁰

Unite notes that three most commonly cited ‘alternative models’ to full EU membership, known colloquially as the ‘Norwegian,’ ‘Swiss’ and ‘Turkish’ options,¹¹ all began as transitional arrangements between the EU and those countries.

While each was envisaged to be a transitional arrangement pending ascendancy to full membership, their existence disproves the claim made by Xavier Bettel, Luxembourg’s Prime Minister, that: “*either you’re a member or you’re not a member of the European Union.*”¹²

Evidently, ‘hybrid’ membership on a temporary basis as envisaged in a transitional arrangement is entirely possible.

What will be the key components of a transition arrangement?

Any transitional arrangement must include continued membership of the Single Market and an agreed customs arrangement which prevents the raising of non-tariff barriers. Unite believes it is entirely realistic to negotiate both of these outcomes under the ‘future trading relationship’ provision enshrined under Article 50. Barriers preventing this phase of the negotiations from being reached are purely political.

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

¹⁰ Croatia joins the EEA, EFTA, [URL](#)

¹¹ Membership of the EEA, EFTA and the Customs Union, respectively.

¹² EU leaders harden tone on Brexit deal for expats, Financial Times, [URL](#)

The UK should be able to begin negotiating new Free Trade Agreements with third country nations during the transitional arrangement; however, these must not be signed until the aforementioned trade regime has been democratically ratified by Parliament.

Unite has outlined that a 'good' trade deal must include a robust chapter on Labour Rights, including ILO conventions as a minimum. Similarly there should be no 'ISDS' style dispute mechanisms which prioritise the rights of investors and corporations over democratic governments. 'Good' trade deals should defend the option of public ownership, reverse the trend to 'liberalisation' at any cost, and seek to actively extend workers' rights in third countries.

In addition, there are a range of agreements, treaties and regulatory bodies which the UK is a member of via the European Union. The UK should remain a member of mutually beneficial bodies during the transition and this should remain the case in following the final settlement if such institutions have not been replicated in the UK.

The UK must give consideration to EU structural funds and other mutually beneficial forms of funding, such as Horizon 2020, which will need to be retained during a transitional arrangement or else replicated.

For example, Unite calls for permanent membership of Euratom and the European Aviation Safety Association (EASA), but would support replicating the role of the European Banking Authority and the European Medicines Agency when these two bodies relocate from London. A full list of such institutions is attached as an appendix to this submission.

How will the UK-EU relationship be conducted during the transition period? How long should the transition period last?

Unite endorses the position of Sir Keir Starmer that the transitional period should be "as short as possible but as long as necessary".¹³

The Government's failure to formulate negotiating positions which are sufficient to progress each stage of the negotiations within the two year timetable has made the threat of 'no deal' more likely.

Unite therefore rejects the set period of two years proposed by the Prime Minister in the Florence speech or the deadline of 2022 proposed by Chancellor Philip Hammond.

Instead the UK Government should allow for a transitional period of four years, but commit to negotiating a proposed final settlement as soon as possible which must be democratically ratified by Parliament with the involvement of devolved assemblies. Throughout the transitional period there must be a democratic option for Parliament to reject a proposed deal or instruct the Government to seek a renegotiation without facing a 'Hobson's choice' of no deal.

¹³ <https://www.theguardian.com/commentisfree/2017/aug/26/keir-starmer-no-constructive-ambiguity-brex-it-cliff-edge-labour-will-avoid-transitional-deal>

Appendix: EU-UK Agreements, Agencies and Regulatory Bodies

Agency	Unite Sector	Unite Proposal*
Euratom	Energy	Retain membership
Open Skies Agreement	Civil Aviation	Retain membership
European Medicines Agency	Chemical Processing, Pharmaceutical and Textiles / Health	Retain membership
Horizon 2020	Education / Manufacturing	Retain or replicate
Erasmus	Education	Retain membership
European Aviation Safety Agency (EASA)	Civil Aviation	Retain membership
EuroControl	Civil Aviation	Retain membership
REACH Regulations	Chemical Processing, Pharmaceutical and Textiles	Retain or replicate
European Centre for Disease Prevention and Control	Health	Retain membership
European Environmental Agency	Food, Drink and Agriculture	Retain or replicate
European Common Aviation Area	Civil Aviation	Retain access
European Banking Authority	Finance Sector	Replicate.
European Maritime Safety Agency (EMSA)	Docks, Rail, Ferries & Waterways	Retain or replicate
European Agency for Safety and Health at Work	All sectors	Retain or replicate
European Voluntary Services	Community Youth Work and Not for Profit	Retain or replicate
European Common Aviation Area	Civil Aviation	Retain membership
International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978. (MARPOL 73/78)	Docks, Rail, Ferries & Waterways	Retain membership
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)	Docks, Rail, Ferries & Waterways	Retain membership
International Convention for the Safety of Life at Sea (SOLAS)	Docks, Rail, Ferries & Waterways	Retain membership

*Key:

Retain: If possible the UK should seek to retain full membership of the existing body, despite no longer being a full member of the European Union.

Replicate: The UK should seek to develop a comparable domestic body to the same, or higher standard.