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## TUC briefing on the UK government's Brexit proposals

October 2019

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### Introduction

With October 31<sup>st</sup> only weeks away, the UK government is wilfully pursuing an approach to Brexit that would be devastating for working people.

It is now clear that whether through no deal or through new proposals made to the EU, the government is aiming for the hardest Brexit possible. They have set out new proposals in bad faith, aiming to pin the blame for failure on parliament and the EU, rather than seeking to make meaningful progress. But those proposals clearly indicate the government's preferred direction of travel, and it is no doubt that workers will pay the price if they succeed.

For trade unions, any Brexit outcome must:

- maintain workers' existing rights and establish a level playing field so that British workers' rights do not fall behind those of other European workers
- Preserve tariff-free, barrier-free, frictionless trade with the rest of Europe to protect jobs
- Ensure no hard border between Northern Ireland and Ireland to preserve jobs, livelihoods, and peace.

Crashing out of the EU with no deal would fail all of these tests and be a disaster for working people. A no-deal Brexit risks years of uncertainty and wrangling over trade deals, an economic shock that will hit our public services, rising food and fuel costs, and medicine shortages. Job losses will be highly likely, and it will be harder to create new jobs. [The government's own long-term economic analysis](#) suggests that, in the event of no deal, real wages could fall by 10 per cent over 15 years. Real wages are still yet to recover to pre-financial crisis levels, so this would be another serious blow to living standards. A hard border between Ireland and Northern Ireland would be required, and the existing protections for employment standards would disappear.

The government's latest proposals to the EU also fall very far short of meeting our tests. The deal put forward by the previous prime minister Theresa May failed the TUC's tests, but the new proposals would be even more damaging. The government has proposed abandoning the Northern Ireland backstop and has set out its intention to have a free trade agreement with the EU rather than develop a relationship based on shared standards. Its approach would maintain no link between Great Britain and the single market rules, including on employment protections, and would lead to significant divergence in protections and regulations. NI would remain aligned to some single market rules on goods only, with this approach subject to confirmation by the NI Assembly every three years, and no part of the UK would be in a customs union with the EU. The proposals would also open up the UK to a damaging trade deal with the US. Donald Trump has warned that the NHS would be up for grabs in any trade negotiations between the UK and the USA. We know the US government wants a deal that allows access to the UK health market, allowing companies to make huge profits on the back of our NHS.

Both these approaches are profoundly irresponsible and would be devastating for jobs, rights, and peace

in Northern Ireland. Trade unions cannot support them.

## **Rights**

Prime Minister Johnson and members of his cabinet have been clear about their desire to deregulate the UK economy, driving down workers' rights and protections.

With no part of the UK continuing to adhere to the single market's rules on employment protections workers here would lose out significantly on the protection of their employment rights.

This government has made clear that it intends to diverge from existing employment protections. Over the summer it wrote to the EU warning that after Brexit it anticipated divergence on labour standards. At the Conservative Party Conference, the Chancellor promised a 'Brexit red-tape challenge'. In his recent letter to President Tusk, the PM advocates a Canada-style free trade agreement where the UK is free to negotiate trade deals with other countries and to diverge its laws. And press reports of the new approach proposed by the PM to Brussels suggest that the government wants to remove even the weak and non-binding commitment to maintaining a level playing field on workers' rights that was previously in the text of the political declaration on the future relationship with the EU.

Vital protections like paid holidays, rights for part time workers, time off for working mums and dads, equal pay for women and limits on working hours make life better for millions of people up and down the UK, and they are all guaranteed in EU law.

Currently, a hard-right UK government can't simply decide to take them away and all employers must adhere to them. In addition to the rights themselves, workers also benefit from being able to take cases to the Court of Justice of the European Union. Courts in the UK also apply the reasoning used in decisions of the European court, which often helps to make sure that laws are kept up to date. For example, decisions of the court have meant that women have equal access to pensions and have removed the limit on compensation for discrimination.

While we are members of the EU, trade unions can also ask the European Commission to bring action against the UK government when it isn't complying with its obligations towards working people. In the past, this has resulted in important changes, for example to the ways in which employers must treat people during a redundancy process.

Once the UK leaves the single market workers will lose all of these protections. Workers in the UK will immediately lose the ability to take challenges to the European court and its vital judgments will no longer be binding in all UK courts. This means that it will be harder for workers to enforce their employment rights.

Over the longer term, a no deal Brexit would mean that the UK government cannot be stopped from removing from UK law the hard fought for employment protections that working people benefit from. In addition, there will be no way to make sure that the rights of working people in the UK keep pace with the development of rights of working people across Europe.

Trade unions would continue to oppose a future EU-UK trade agreement based on CETA or other current FTAs as lacking the fundamental guarantees and enforcement mechanisms required to ensure that employment protections in the UK would continue to keep pace with EU standards.

## **Northern Ireland backstop – protecting peace and jobs**

The existing Withdrawal Agreement (WA) on the UK's exit from the EU, negotiated by previous Prime Minister Theresa May, contains a protocol on Northern Ireland that seeks to prevent a hard border, preserve North-South cooperation and the all-island economy, and protect the EU's Single Market and Ireland's place in it. Under the WA protocol, these so called 'backstop provisions' would remain in place until an alternative arrangement for securing an invisible border, including a technical or other solution, was permanently settled. The backstop provisions would only kick in if, at the end of the transition period (December 2020 or later if agreed), the EU and the UK had not succeeded in negotiating a trade agreement. The then UK government proposed that the whole of the UK (and not just NI) would be part of the same EU custom territory. This was to avoid NI alone staying in the backstop mechanism and effectively creating a border in the Irish Sea.

Countries within a custom union have an external border of tariffs levied on imports and a shared set of rules of origin. This makes free trade between these countries easier. But it is not only customs provisions which provide an obstacle to free trade. Other regulatory requirements (also known as non-tariff barriers) which shape production, marketing and sale of goods, services and capital also impact on trade flows. The EU Single Market creates a uniform 'internal' territory within which such requirements are consistent. Border checks are needed where countries trade outside the Single Market, to prevent goods and services which do not comply with the rules or where the relevant import duties have not been paid from entering the 'internal' space. The UK's membership of the single market and customs union helped to make trade easier, supporting jobs, and protected against a hard border in Northern Ireland.

#### New proposals to replace the 'backstop provisions'

The new PM's letter to EU Council president Tusk in August stated the UK's intention to diverge in time from this uniform regulatory regime. In turn, the new UK government proposals reiterate the government's position that the UK should leave the EU custom union. On this basis checks at the Irish border would become unavoidable as a consequence of the UK's choice to leave both custom union and single market.

Under the new proposals, Northern Ireland would stay in an all-island regulatory zone for goods, meaning a regulatory border down the Irish Sea that would necessitate checks but not ostensibly on the island. Northern Ireland would stay in the UK customs territory, meaning a customs border with Ireland that would necessitate custom clearance. The arrangement would take effect from January 2021, at the end of the Withdrawal Agreement transition period.

The proposals also say that the NI Assembly would have to agree to the regulatory border with GB before it took effect, and every four years thereafter – meaning that in the first instance NI would remain aligned to EU rules until 2025.

This would grant the NI Assembly a veto power on any new EU rules that apply to the area. In rules pertaining to the internal market not even EU member states have such veto power, as those rules are adopted by qualified majority voting. Also, the proposal puts an end date or rather a review clause every four years – whereas the EU 'backstop' provisions sought to be a potentially open-ended guarantee against a hard border, until such time where alternative arrangements would be put in place.

There is also the issue that Stormont has not been sitting for over two and a half years, which rests the procedure on rather unreliable ground. The government asserts that its proposals are based on a commitment to respect the GFA. But inevitably without consent from Stormont the arrangements would lapse and there would have to be a hard border – thereby undermining the GFA.

In terms of the practical arrangements, given that under these proposals NI would remain part of the UK

custom territory and not the EU's, all necessary customs processes would need to take place on a decentralised basis e.g. at the traders' premises or other points in the supply chain and/or electronically.

These new arrangements would require a simplification of both the UK and EU custom procedures. The proposals also explicitly provide for infrastructure, controls and checks but are unclear as to exactly where and how these would be carried out. Any form of controls and checks in and around the border would signify the end of frictionless trade, would harm the all-island economy, damage jobs, and represent a serious risk to the peace process.

The proposals would maintain regulatory alignment for goods only. The agri-food sector is very important for the local economy and these proposals would guarantee that trade in foodstuff remains frictionless north-south but subject to inspections east-west. However, the proposals do nothing for other sectors of the economy such as services. And there is nothing on people: Irish and UK nationals will continue to benefit from Common Travel Area rights, but EU nationals would presumably be deprived of free movement rights and be subject to checks – which in turn may mean that everyone has to be checked at the border.