

How trade unions are mobilising around the challenges of Brexit



Not all trade unionists wanted to stay in the EU. Nonetheless, Brexit poses a number of challenges for the labour movement. **Steve French (Keele University)** looks at the three areas on which unions plan to campaign – the regional and sectoral impacts of leaving the EU, and the risk that future free trade agreements will be negotiated with corporate rather than workers' interests in mind.

While the Trade Union Congress (TUC) and the majority of individual trade unions (including the three largest: Unison, UNITE and the GMB) officially supported the Remain campaign during the EU referendum, the sentiment was not universal. The RMT and NIPSA adopted a Leave position, and a Left Exit (Lexit) programme was supported by many trade unionists associated with the Trade Unionists Against the EU campaign. Indeed, the extensive canvassing of representatives and members by unions such as UNITE during the referendum campaign indicated a significant proportion of trade unionists supported a Leave position. (Data on how trade unionists voted appear not to have been collected as part of the post-EU referendum opinion polls.)



Female members of Unison, 2017. Photo: [Unison](#) via a [CC-BY-NC 2.0 licence](#)

In this respect, trade unions face the same dilemma as the political wing of the labour movement, the Labour Party, in trying to mediate between (or overlook) the divisions over the EU within the membership at a time when – without access to power and with Brexit negotiations ongoing – the scope for influence is limited.

Nevertheless, despite these divisions there appear to be three key areas around which trade unions and their members can organise. These are the protection of employment rights derived from the European Union; assessing and responding to the potential impact of Brexit on the sectors in which their members work; and campaigning against the *types* of trade deal that the British government is likely to pursue when (rather than if) the UK leaves the Single Market and customs union.

Protecting workers' rights based upon EU directives

In the [Lancaster House speech](#) in which she outlined her (then) objectives for Brexit, British prime minister Theresa May appeared to guarantee the current rights of workers derived from EU directives:

'A fairer Britain is a country that protects and enhances the rights that people have at work. That is why... we will ensure that workers' rights are fully protected and maintained. Indeed, under my leadership, not only will the Government protect the rights of workers set out in European legislation, we will build on them'.

Despite these assurances, many trade unionists remain sceptical of the extent to which workers' rights will be protected. The TUC has expressed concern over the EU Withdrawal Bill (whose purpose is to transpose European Union law into UK law, ending the supremacy of EU law at the point of Brexit), as it has been proposed that power to implement the transposition should be given to the executive (government) without the need for parliamentary scrutiny, providing scope for amendments or interpretations that could weaken the regulation provided by current EU directives (Labour Research Department, 2018a).

However, the unions' substantive fears must relate to the future of workers' rights post-Brexit. Michael Ford's [legal opinion](#) for the TUC on the impact of Brexit highlights that a range of rights, derived from EU directives, are 'especially vulnerable to repeal' under a Conservative administration. These include legislation on collective consultation, working time rules, health and safety legislation, protections afforded to workers during business transfers (TUPE), protection for agency workers and some elements of discrimination law. An attack on these rights post-Brexit would not be surprising, considering the approach taken by the Coalition and then Conservative governments since 2010 who have promoted deregulatory initiatives and legislation such as the 2011 Independent Review of Health and Safety Legislation; the 2013 Enterprise and Regulatory Reform Act and the 2015 Deregulation Act. If you add to that the imposition of Employment Tribunal fees to limit access to judicial processes to protect employment rights (subsequently rescinded) and the 2016 Trade Union Act (which focused upon industrial action ballots, funding of the Labour Party and reducing time off for trade union duties in the public sector), it should be apparent that EU-derived employment rights are under threat.

Indeed, there have already been calls in parts of the British media, informed by Conservative Brexiteers, for changes to the 1998 Working Time Regulations (derived from the EU Working Time Directives) to provide greater labour market freedom to employers. Such changes would put limits on the legal maximum working week and the entitlement to paid holidays, along with a wide range of health and safety protection for night and transport workers, at risk.

One of the key issues that unions will need to campaign around post-Brexit, therefore, will be protecting workers' rights transposed into UK law, as these can no longer be guaranteed by EU membership. They will also need to consider how to regain workplace influence in an increasingly hostile environment, where recourse to individual employment law will become harder.

Sectoral impact assessments

While it would be simple for unions to concentrate their efforts around campaigns over employment law, a more serious challenge to unions relates to the economic and labour market changes arising from Brexit. In the [absence of any meaningful research](#) conducted by the current government on the sectoral impact of Brexit, unions will need to assess and influence how employers respond to the post-Brexit economy. These are multiple and complex challenges which include the impact of limitations to the free movement of labour, and access to markets derived from changing trading arrangements.

As [Stephen Clarke has argued](#), employers' responses to losing access to EU migrants could vary significantly. One approach would be to invest in capital, skills and training to reduce their demand for labour for a given output (a high wage-high productivity trajectory) but an alternative approach of maintaining a low-wage, low productivity approach could also be maintained – for example, by pressuring government to pursue more stringent 'welfare to work' policies. More dramatically, supply of labour issues might be addressed through greater automation or even organisational closures or relocation. All these scenarios would have a significant impact upon employment levels and job quality, as well as contractual status, and need to be addressed by unions.

A recent example is the [position adopted by the union federation IndustriAll](#) (Unite, the GMB and Community unions) in the aerospace field. As well as taking positions on the Single Market, customs union and freedom of movement, it identifies the need to maintain UK membership of the European Aviation Safety Agency (EASA) and the European Space Agency (ESA) and participation in joint R&D programmes, European Works Councils and Social Dialogue Committees to protect contracts, jobs and terms and conditions in the sector *across* Europe.

Free trade agreements – the elephant in the room

Finally, while debate around membership of the Single Market and customs union persists, trade unions need to maintain their campaigns around opposition to the new generation trade deals that will be negotiated post-Brexit (either on the UK's behalf by the EU within a customs union or bilaterally by the UK and other nations). While the chief focus has been on the issue of tariff levels in relation to post-Brexit trade deals, [unions have argued](#) that new generation free trade agreements are more about protecting and promoting the investment rights of transnational corporations rather than tariff levels *per se*.

Two particularly problematic issues surround the negotiating and sign-off of trade deals. Firstly, most trade negotiations are held in secret, with governments subject to intense and expensive lobbying from transnational corporations, with little, if any access for unions, citizens or even politicians to the negotiators. The TUC is already expressing its concerns about the Trade Bill currently going through Parliament, where the government is again seeking to introduce changes through delegated legislation without proper parliamentary scrutiny (LRD, 2018b). The [ultimate threat to democracy](#) arises from the so-called Investor-State Dispute Settlement (ISDS) arrangements enshrined in new generation trade deals, which permit transnational corporations to take governments to court if their profits, or even potential profits, are threatened by legislative action. Secondly, most new generation trade deals now focus on opening up public services to competition – allowing overseas transnational corporations the opportunity to win contracts, usually based upon reducing labour costs through reduced employment and cuts to terms and conditions.

Current UK trade union policy, [agreed at the 2014 TUC](#) and based around mobilisation against the proposed Transatlantic Trade and Investment Partnership (TTIP) negotiations between the US and EU, is to oppose ISDS mechanisms and call for the exclusion of all public services, including education and health, public procurement, public utilities and public transport (whether in public or private ownership) from negotiations. This policy seems to have retained its salience in the post-referendum period, and should help to mobilise unions to lobby against the negative aspects of any new generation trade deals.

References

LRD (2018a) 'Democracy and the EU Withdrawal Bill', *Labour Research*, 107(1) January 2018, London: Labour Research Department, pp.16-18.

LRD (2018b) 'Alarm over Tories' Trade Bill', *Labour Research*, 107(2) February 2018, London: Labour Research Department, pp.16-18.

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