

**The two Brexit 'deals' - and their
implications for workers' rights -
compared**

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The two Brexit ‘deals’ - and their implications for workers’ rights - compared IER memo

- Neither Theresa May’s deal nor Boris Johnson’s deal are good news for workers’ rights.
- The new deal agreed between PM Johnson and the EU is revealing of the type of future trade relationship envisaged by the Conservative Party: a trade deal with a substantial amount of access to the EU market (though not free or full access) without the UK committing to align its domestic regulations, including labour standards, to those prevailing in the EU. Possibly something similar to the EU’s free trade deal with Japan, or perhaps something even looser than that.
- The deal agreed by PM May in 2018 envisaged a greater degree of regulatory alignment (albeit one that could still have engendered a certain degree of regulatory competition in the social sphere) and thus a greater degree of market access (perhaps something along the lines of an EU-Canada FTA).
- The tables below indicate the main textual difference between the two deals and elaborate summarily on their possible implications for UK workers’ rights.

2019 Boris Johnson’s Deal	2018 Theresa May’s Deal	Implications
<p>Clause 77 of Revised Political Declaration</p> <p>XIV. LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION</p> <p>77. Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. <u>The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties.</u> These commitments should prevent distortions of trade and unfair competitive advantages. To that end, the Parties <u>should uphold the common high</u></p>	<p>Clause 79 of Political Declaration on Future Relationship</p> <p>XIV. LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION</p> <p>79. The future relationship must ensure open and fair competition. Provisions to ensure this should cover state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, <u>building on the level playing field arrangements provided for in the Withdrawal Agreement</u> and commensurate with the overall economic relationship. The Parties should consider the precise nature of commitments in relevant areas, having regard to the scope and depth of the future relationship. These commitments should combine appropriate and relevant</p>	<ul style="list-style-type: none"> • New Deal does not seek to build on the level playing field existing on Brexit Day. • Old Deal envisaged a desire to build, i.e. improve, on existing standards. • Both deals acknowledged that there would be a trade off between level playing field and market access. • In all likelihood this word change was negotiated in an attempt to escape any attempt to introduce ‘dynamic alignment’ clauses in the future FTA

<p><u>standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.</u> The Parties should in particular maintain a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition; commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices; and maintain environmental, social and employment standards at the current high levels provided by the existing common standards. In so doing, they should rely on appropriate and relevant Union and international standards, and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement. The future relationship should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement.</p>	<p>Union and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement as part of the future relationship.</p>	
<p>2019 Revised Protocol on Ireland and Northern Ireland</p> <p>NO EQUIVALENT PROVISION</p>	<p>2018 Withdrawal Agreement and Protocol</p> <p>ARTICLE 5 Multilateral labour and social standards and agreements</p> <p>1. Taking into account the importance of international cooperation and agreements on labour affairs and of high</p>	<p>Unlike the old deal, the new deal contains absolutely no commitment to the UK respecting:</p> <ul style="list-style-type: none"> ○ social dialogue between trade unions and employers' associations; ○ ILO Conventions (ratified and accepted) ○ European Social Charter provisions (ratified and

	<p>levels of labour and social protection coupled with their effective protection, the Union and the United Kingdom <u>shall protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and governments.</u></p> <p>2. The Union and the United Kingdom <u>reaffirm their commitment to implement effectively in their laws, regulations and practices the International Labour Organisation Conventions, and the provisions of the Council of Europe European Social Charter, as ratified and accepted by the United Kingdom and the Member States of the Union respectively.</u></p> <p>3. The Union and the United Kingdom <u>shall exchange information on the respective situations and advances of the Member States and of the United Kingdom regarding the ratification of International Labour Organisation Conventions that are classified as up to date by the International Labour Organisation and of the revised European Social Charter and related Protocols.</u></p>	<p>accepted)</p> <ul style="list-style-type: none"> ○ Exchange information on the possible acceptance and ratification of ILO Conventions and ESC provisions and Protocols <p>Normally FTAs contain (vaguely worded) non-regression clauses and clauses requiring the respect of ILO standards.</p>
<p>2019 Revised Protocol on Ireland and Northern Ireland</p> <p>NO EQUIVALENT PROVISION</p>	<p>2018 Withdrawal Agreement and Protocol</p> <p>ARTICLE 6 Single customs territory, movement of goods</p> <p>1. Until the future relationship becomes applicable, a single customs territory between the Union and the United Kingdom shall be established ("the single customs territory"). Accordingly,</p>	<ul style="list-style-type: none"> ● Article 6 of the Old Deal, made a reference to Annex 4 of the Protocol (see below) containing a plethora of (vaguely phrased and weekly supervised) references to respecting ILO and ESC standards. ● It also suggested that the (vague) commitments in Annex 4 could be bolstered through joint agreement. ● There is nothing in the New Deal referring to something

	<p>Northern Ireland is in the same customs territory as Great Britain.</p> <p>The single customs territory shall comprise:</p> <p>(a) the customs territory of the Union defined in Article 4 of Regulation (EU) No 952/2013; and</p> <p>(b) the customs territory of the United Kingdom.</p> <p>The rules set out in Annex 2 to this Protocol shall apply in respect of all trade in goods between the territories referred to in the second subparagraph, as well as, where so provided, between the single customs territory and third countries.</p> <p><u>With a view to ensuring the maintenance of the level playing field conditions required for the proper functioning of this paragraph, the provisions set out in Annex 4 to this Protocol shall apply. Where appropriate, the Joint Committee may modify Annex 4 in order to lay down higher standards for these level playing field conditions.</u></p> <p>The Joint Committee shall adopt before 1 July 2020 the detailed rules relating to trade in goods between the two parts of the single customs territory for the implementation of this paragraph. In the absence of such a decision adopted before 1 July 2020, Annex 3 shall apply. By derogation from the third subparagraph, fishery and aquaculture products, as set out in Annex I to Regulation (EU) 1379/2013 ("fishery and aquaculture products"), shall not be covered by the rules set out in Annexes 2 and 4, as well as the rules referred to in the fourth subparagraph, unless an agreement on access to waters and fishing opportunities is</p>	<p>equivalent and the new Annex 4 does not deal with social or employment standards (see below)</p>
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	<p>applicable between the Union and the United Kingdom. In accordance with Article 184 of the Withdrawal Agreement, the Union and the United Kingdom shall use their best endeavours to conclude and ratify such an agreement before 1 July 2020. The Joint Committee may adopt decisions amending Annex 3 to this Protocol, where such amendments are necessary for the proper functioning of this paragraph. Such decisions may not amend the essential elements of this Protocol or the Withdrawal Agreement.</p>	
<p>NO EQUIVALENT PROVISION</p>	<p>ANNEX 4 PART THREE LABOUR AND SOCIAL STANDARDS</p> <p><u>ARTICLE 4 Non-regression of labour and social standards</u></p> <p>1. With the aim of ensuring the proper functioning of the single customs territory, the Union and the United Kingdom shall ensure that the <u>level of protection provided for by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period</u> in the area of labour and social protection and as regards fundamental rights at work, occupational health and safety, fair working conditions and employment standards, information and consultation rights at company level, and restructuring.</p> <p>2. Articles 170 to 181 of the Withdrawal Agreement shall not apply in respect of disputes regarding the interpretation and application of this Article.</p>	<ul style="list-style-type: none"> • The old Annex 4 provided: <ul style="list-style-type: none"> ○ A (weakly phrased) non-regression clause (in respect of labour standards applying at the end of the transition period) ○ A (weakly phrased) commitment to respecting social dialogue and ○ Implementing ratified ILO Conventions and ESC instruments, ○ A (vague) commitment to ensuring effective enforcement of social standards and maintaining an effective system of labour inspection. • None of this appears in the new deal. The new Annex 4 refers to instruments relating to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity)

	<p>ARTICLE 5 Multilateral labour and social standards and agreements</p> <p>1. Taking into account the importance of international cooperation and agreements on labour affairs and of high levels of labour and social protection coupled with their effective protection, the Union and the United Kingdom <u>shall protect and promote social dialogue</u> on labour matters among workers and employers, and their respective organisations, and governments.</p> <p>2. The Union and the United Kingdom reaffirm their commitment to implement effectively in their laws, <u>regulations and practices the International Labour Organisation Conventions, and the provisions of the Council of Europe European Social Charter</u>, as ratified and accepted by the United Kingdom and the Member States of the Union respectively.</p> <p>3. The Union and the United Kingdom shall exchange information on the respective situations and advances of the Member States and of the United <u>Kingdom regarding the ratification of International Labour Organisation Conventions that are classified as up to date by the International Labour Organisation and of the revised European Social Charter and related Protocols.</u></p> <p>4. Articles 170 to 181 of the Withdrawal Agreement shall not apply in respect of disputes regarding the interpretation and application of this Article.</p> <p>ARTICLE 6 Monitoring and enforcement of labour and</p>	
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	<p>social standards</p> <p>Noting that within the Union the effective application of Union law reflecting the common standards referred to in Article 4(1) is ensured by the Commission and the Court of Justice of the European Union acting under the Treaties, the United Kingdom <u>shall ensure effective enforcement of Article 4 and of its laws, regulations and practices reflecting those common standards in its whole territory</u>, without prejudice to Article 4(2). The United Kingdom shall <u>maintain an effective system of labour inspections</u>, ensure that administrative and judicial proceedings are available in order to permit effective action against violations of its laws, regulations and practices, and provide for effective remedies, ensuring that any sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.</p>	
<p>2019 Revised Protocol on Ireland and Northern Ireland</p> <p>Article 2 Rights of individuals</p> <p>1. The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, <u>including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol</u>, and shall implement this paragraph through dedicated mechanisms.</p>	<p>2018 Withdrawal Agreement and Protocol</p> <p>ARTICLE 4 Rights of individuals</p> <p>1. The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, <u>including in the area of protection against discrimination as enshrined in the provisions of Union law listed in Annex 1 to this Protocol</u>, and shall implement</p>	<p>References to respecting Equality Law, including EU Equality Law</p>

<p>2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.</p>	<p>this paragraph through dedicated mechanisms.</p> <p>2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.</p>	
<p>ANNEX 1</p> <p>PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)</p> <ul style="list-style-type: none"> – Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services – Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation – Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between 	<p>ANNEX 1</p> <p>PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 4(1)</p> <ul style="list-style-type: none"> – Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services – Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation – Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between 	<p>NO CHANGE – Both deals contemplate the same level of protection</p> <ul style="list-style-type: none"> • But note that in both texts some important EU equality instruments are not mentioned (e.g. the Parental Leave Directive 2010/18, currently being updated and improved), and neither is the jurisprudence of the CJEU, of paramount importance in this area (e.g. Case C-271/91, <i>Marshall v Southampton and South-West Hampshire Area Health Authority (No.2)</i> (1993), prohibiting caps on discrimination awards)

men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC – Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security	men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC – Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security	

- The most visible difference between the text agreed by PM Johnson and the one agreed last year by Theresa May can be found in the new wording of what is now clause 77 of the Revised Political Declaration. Whilst the previous wording of what was clause 79 made a reference to a future relationship ‘building on the level playing field arrangements provided for in the Withdrawal Agreement’, the new paragraph 77 is extremely non-committal in terms of what will happen to UK labour standards after the expiry of the transition period. ‘The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties’.
- In plain English that means that future UK governments reserve their right to lower labour law standards and the EU reserves its power to limit access to the EU internal market if that risks giving an unfair competitive advantage to UK goods and services. They already reserved such powers under the deal agreed by Theresa May, but it is clear that the new wording of clause 77 suggests no interest whatsoever in building on the (already very shaky) level playing field envisaged by Annex 4 of the Withdrawal Agreement (no longer in force and replaced by a completely different Annex 4, dealing with the level playing field in electricity).
- The other visible difference is that the now scrapped 2018 version of the Ireland/Norther Ireland Protocol (included in the 2018 Withdrawal Agreement) made a passing reference to ‘ensuring the maintenance of the level playing field conditions’, whereas the new version does not. Also, all provision referring to non-regression and ILO/ESC instruments have been purged (Article 5, 6, Annex 4).
- Neither deal contained any references to: a full retention of the European social acquis; strong or adequate enforcement mechanisms (all provisions in of Annex 4 were effectively gutted by escape clauses such as ‘Articles 170 to 181 of the Withdrawal Agreement shall not apply in respect of disputes regarding the interpretation and application of this Article’); the retention of CJEU case law; dynamic alignment with future EU law and CJEU developments in the area of social law. These should be red lines for any Labour MP/MEP, and they would effectively place the UK future trade relationship on a par with the EEA/Norway relationship.
- The Boris Johnson Deal presents a clear and present danger for UK workers’ rights.
- For a more comprehensive analysis of the effects of Brexit on UK Workers’ rights see the [FREE 90 pages long booklet by Prof. Keith Ewing and Nicola Countouris](#), published by IER.