

Keep Our NHS Public Template letter to MPs on Trade Treaties in context of Brexit

Dear (MP)

The NHS and new Trade Treaties in the context of Brexit

Some important consequences of free trade treaties are not widely known, understood or publicly debated, including their potential effects on public services.

My particular concern about trade deals negotiated in the context of Brexit is their potential impact on the NHS and public health, which is why I am writing to you today.

In summary, these concerns relate to

1. the inclusion of public services, especially the NHS in new trade agreements;
2. the inclusion of an investment protection measure such as Investment Court System;
3. the potential impact of new trade agreements on rights and standards affecting public health; and
4. the lack of meaningful Parliamentary scrutiny during the passage of any trade bills and the consequent undermining of the democratic process.

More details are given below.

My requests to you are:

- to support the NHS Reinstatement Bill,¹ which will protect the NHS from inclusion in future trade bills;
- to support Caroline Lucas's amendment to the Trade Bill that calls for the scrapping of corporate courts, the exclusion of public services from trade deals, and the defence of environmental and social standards; and
- to sign Early Day Motion 128 to ensure
 - the right of Parliament to set a mandate for each trade negotiation,
 - the right of the public to be consulted in setting that mandate,
 - the right of Parliament to amend, reject and review trade deals, and
 - for full transparency in negotiations.

The details:

1. The NHS will be at considerable risk if it is included in future free trade deals. Like most public services, the NHS is only unambiguously excluded from free trade deals if the services it provides are 'supplied in the exercise of government authority', i.e. without any element of competition or commercial involvement. During previous trade negotiations, the public was assured that the NHS was protected in deals like the Comprehensive Economic and Trade Agreement (CETA) and Transatlantic Trade and Investment Partnership (TTIP). This was despite legal opinion suggesting otherwise. Currently, the Prime Minister is refusing to exclude NHS contracts from a future UK/US trade deal.²

The NHS became a competitive market following the Health and Social Care Act of 2012 (HSC Act). This means that without repeal of the Act, irrespective of any government's intentions, the NHS will be prey to multi-national corporations that have huge resources to support the development of tenders and to employ loss-leader strategies to secure contracts for health-

¹ <http://www.nhsbill2015.org/mp-support-2017/>

² <https://www.theguardian.com/politics/2018/feb/07/theresa-may-refuses-to-rule-out-nhs-contracts-from-us-trade-deals>

related goods and services. These services could include the direct provision of hospitals or care services, the purchasing of pharmaceuticals or medical devices, or the construction of health facilities. Besides allowing the gradual transfer of public services to for-profit providers, inclusion of the NHS in trade deals could also mean the transfer of thousands of staff who would be carrying out the same work for lower pay and worse conditions.³ All this could have serious consequences for the quality of health services.

2. If any future treaty includes an investment protection measure (such as Investment Court System) or ratchet and standstill mechanisms that only allow further liberalisation, any future government with a mandate to reverse privatisation of the NHS (or roll back failed privatisations) will be unable to do so. It will also be hugely difficult to introduce new regulations, even if these provide benefits for NHS patients or staff.

3. The proposed Great Repeal Bill will only transfer EU law to UK law 'where practicable'.⁴ According to the Secretary of State for Environment, Food and Rural Affairs, this could mean the exclusion of around one third of EU legislation, if not separately implemented through UK law.⁵ Where EU law *is* transferred, this may be in the form of secondary legislation, allowing rights and standards to be altered without consulting Parliament. This could facilitate a watering down of hard-won safety, environmental and labour protections that play a significant role in protecting the public health.

4. Legislation currently in force (the Constitutional Reform and Governance Act 2010) gives Parliament little to no say on the content of trade bills, including whether or not they will comprehensively exempt the NHS. Under current legislation, trade deals negotiated by the UK government are just laid before Parliament for 21 days before ratification: there is no statutory requirement for a debate or vote, and any objection to a proposed treaty can be dismissed by the Government, simply by laying plans before Parliament for another 21 days. This means that measures that could seriously damage public services could go through 'on the nod'.

Yours sincerely,

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³ Lethbridge, Jane 2012: Empty Promises: The impact of outsourcing on the delivery of NHS services, UNISON, February 2012

⁴ Legislating for Brexit: the Great Repeal Bill' House of Commons Briefing Paper 7793, May 2017

⁵ <https://www.tjm.org.uk/trade-issues/brexit>