

The NHS and Trade and Investment Agreements post Brexit: Why campaigning for a new NHS Bill is so important

Uncertainty about whether or how the UK will leave the EU means we are currently in the dark about the kind of trade policy the UK will have in future.

What we do know is that the UK is part of around 40 trade agreements negotiated by the EU and that, since the Referendum on Brexit, the government has been trying to replicate these deals for a post-Brexit UK. So far, it has achieved this with half a dozen countries (Switzerland, Faroe Islands, Israel, Palestinian Authority, Eastern and Southern Africa).

We also know that trade deals, particularly those known as ‘new generation’ deals, award extensive powers to multinational corporations to the detriment of citizens’ rights and protections as well as governmental control over regulations and standards that are seen as barriers to trade.

The risk to the NHS

New generation deals push countries to open up markets in public services such as the NHS. In the past, the NHS was safeguarded from inclusion in trade agreements as long as its services were “supplied neither on a commercial basis, nor in competition” (GATS Article 1:3c). However, this safeguard was removed in 2012 when Section 75 of the Health and Social Care Act ensured competition between service providers.

We know from the negotiations on TTIP (currently stalled) and the deal between the EU and Canada (the Comprehensive Economic and Trade Agreement) that the government does not want to protect the NHS from multinational companies. We also know that Trump wants access to NHS services, no matter what he might lead us to believe. (See previous KONP statements on trade deals.)

The threat from investor protection measures

Trade deals invariably contain some kind of investor protection measure, the most well known of these being the Investor State Dispute Settlement (ISDS), made famous by TTIP. This gives multinational corporations excessive powers to sue any public sector organisation or government (and ultimately the tax payer) that threaten their corporate interests, and to seek reparation for any potential loss of future earnings from new regulations, even when these are necessary for the public good. Investor protection measures also promote a ‘chill effect’, deterring governments from attempting to legislate for fear of being sued. *The inclusion of a measure like ISDS in any trade deal will deter any future government from repealing the HSCA, however disastrous this is proving to be for our health services.*

Lack of veto for Parliament

Currently, Parliament does not have the power to veto any deal that is negotiated. While the Parliaments of other EU member states have had the power to veto trade deals negotiated by the European Commission, the Constitutional Reform and

Governance Act (CRG Act) of 2010 has meant that UK MPs have only been able to delay a treaty's ratification, not definitively reject it. As part of the preparations for Brexit, the government's current Trade Bill, if passed, will give the power of ratification to the trade secretary, so ensuring no effective role for Parliament. The House of Lords has passed an amendment to the Bill that includes a meaningful vote for MPs. Amendments will be considered on the floor of the House on a date still to be announced.

What we want (see also previous KONP statements on trade deals)

- A stepping up of the campaign for the NHS Bill. The NHS can only be unambiguously protected from inclusion in future trade deals by passing legislation that calls for the restoration of the NHS as a publicly funded, *publicly provided*, comprehensive and universal health service;
- Parliament to set the mandate for each trade treaty, following public consultation;
- The use of domestic courts for dispute resolution, not ISDS or similar measures;
- Amendment of the CRG Act so that Parliament can debate and definitively decide whether to ratify any UK trade deal.