

# Shining a Light on Alternative Brexits:

## Norway+

### No deal

### Labour's plan

**A report by the People's Vote campaign**



## Foreword

One of the many valid criticisms of Theresa May's Brexit plan is that it provided little clarity about the United Kingdom's future relationship with the European Union. The biggest questions, on everything from trade to security, were left unanswered until after we were supposed to leave. The proposed deal, however, did at least have the virtue of being a plan that was agreed and signed off with the European Commission which has made it abundantly clear how various forms of fantasy Brexit are unacceptable – that we will not be allowed to “have our cake and eat it”.

Following Parliament's decisive rejection of the Prime Minister's proposals, there has been renewed interest in whether, even at this late stage, some other form of Brexit deal could be agreed. Many of the advocates of such proposals are motivated by a genuine sense of the national interest and the need to prevent the deep damage that a 'no deal' Brexit would do to our society. It is surely right that such proposals are given serious consideration but, equally, that they are also subject to the same minimal standards of scrutiny that led so many MPs to conclude they could not support the Government's Brexit plan. The same is true of the proposal that the UK should leave the EU without a deal.

The two alternative Brexit 'deals' discussed in this paper are known as 'Norway Plus' and 'Labour's Brexit plan'. The former proposes applying to re-join the European Economic Area and negotiating a customs union. The latter appears to be a plan to stay in a customs union with some additional guarantees over employment rights and environmental protections. As such, both would involve having a closer long-term relationship with EU institutions than the Prime Minister's proposal.

But neither could be realised without parliament accepting the binding withdrawal agreement, including the Northern Ireland backstop, along with a different non-binding political declaration. It is hard to see how MPs opposed to the withdrawal agreement could vote for either plan.

Both options face many other hurdles, not least the impact on our sovereignty because they would mean the UK would have to follow EU rules over which we would have scant influence. The advocates of Norway Plus have sometimes argued that negotiating their deal would be swift and easy, would significantly reduce payments to the EU and would allow the UK government to end freedom of movement.

Labour has said it wants a deal involving a “new and strong” relationship to the single market that would maintain frictionless trade, a floor on workers' rights and environmental standards, and membership of a customs union with the EU. However, the party has also said that free movement will end, and called for an exemption from EU state aid rules, which rules out membership of the EEA. Labour also says it wants to have “a say” over future EU trade deals, something the EU says isn't possible.

Many of those advocating that the UK leaves the EU with no deal see it not just as a least-worst option but rather as a desirable one. Indeed, some have even argued the UK would “thrive” in such a scenario, despite countless dire warnings from business, trade unions, farmers, the City, the NHS, universities, the Bank of England and many others. There have been various attempts to re-brand no deal as the 'WTO option' or the 'World Trade Deal', when in reality membership of the World Trade

Organization would do very little to mitigate the wide-ranging damage. Claims that the effects of no deal could be mitigated through 'side deals' with the EU are also highly contested but have successfully allowed the proponents of no deal to muddy the waters and evade scrutiny.

All three alternative plans share many similarities with the arguments made for Brexit in 2016 when big promises were made with little regard for what could actually be delivered. Indeed, after the 2016 referendum and the political debate since, it is more important than ever that political leaders are straight with the public about the reality of any proposal to leave the EU. Decisions that are taken in the next few weeks will affect our country, our communities and our children for decades to come. If Parliament is to agree a different form of Brexit, it must not, cannot and will not do so on the basis of vague, contradictory or inaccurate claims.

This paper poses five fundamental questions for advocates of Norway Plus, five fundamental questions for advocates of Labour's Brexit plan and 50 wide-ranging questions for those pushing for no deal. It is only right that these questions are confronted over the coming days, when the principles of clarity, scrutiny and honesty will be crucial for Parliament to do its job properly.

## The Questions that advocates of ‘Norway Plus’ must answer

### 1. How long would it take to negotiate?

Some advocates of Norway Plus argue that it could be negotiated swiftly and easily. They have suggested that the 21-month transition period set out in the withdrawal agreement would provide sufficient time to negotiate the new relationship.

But EEA accession could take years to negotiate, and would require agreement by all 30 EEA member states (the 27 remaining members of the EU plus Norway, Iceland and Liechtenstein), also involving national parliaments. Furthermore, because Norway Plus would involve staying in a customs union, the UK would not simply be negotiating off-the-shelf EFTA or EEA membership. The EFTA Convention would need to be changed to exempt us from its trade deals requirement while we would then need to negotiate separately add-ons for agriculture and fisheries, which are excluded from the EEA Agreement. This would likely mean a long and complex set of negotiations.

*Some advocates of Norway Plus have argued:*

- **It would be quick to negotiate:** “There is more than enough time to negotiate and conclude a new Political Declaration enshrining a Norway style arrangement as the basis for the UK’s future relationship with the EU.” (*Better Brexit website*)<sup>1</sup>
- **It would be finalised and implemented during transition:** “The transition (‘Implementation Period’) would give us the time we would need to finalise and implement the agreement with the EU and the EFTA states.” (*Better Brexit website*)<sup>2</sup>

*But this is unlikely to be possible because:*

- **Accession to EFTA and the EEA is complex:** The UK would have to negotiate an accession treaty to EFTA with the four members of this organisation: Switzerland and the three EEA EFTA members. The UK would then have to negotiate an EEA accession treaty with the 31 entities which are members of the EEA: the EU, its 27 member states and the three EEA EFTA members. As former EU legal counsel Jean-Claude Piris has pointed out, “to enter into force, they would involve a ratification by all contracting parties in accordance with their own procedures (art 128(2) EEA). Experience shows that this will take time.”<sup>3</sup>
- **Adding a customs union complicates matters further:** Norway Plus is not an ‘off-the-shelf’ solution, because it envisages a bespoke model of EFTA *and* customs membership. EFTA is not a customs union but its members operate trade deals, both individually and collectively. Specifically, the EFTA Convention requires that any acceding state applies “to become a party to [its] free trade agreements”.<sup>4</sup> EFTA would therefore have to agree to waive the trade-deal requirement. We would also need a bespoke agriculture and fisheries agreement from day one, to stop both those industries going over the cliff-edge. This could be hugely time-consuming.

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<sup>1</sup><http://betterbrexit.org.uk/>

<sup>2</sup><http://betterbrexit.org.uk/>

<sup>3</sup><https://esharp.eu/debates/the-uk-and-europe/why-the-uk-will-not-become-an-eea-member-after-brexite>

<sup>4</sup>EFTA Convention, Article 56(3): <http://www.efta.int/sites/default/files/documents/legal-texts/efta-convention/Vaduz%20Convention%20Agreement.pdf>

## 2. Would the backstop still be required?

There is confusion among advocates of Norway Plus on this issue. Some have suggested the Northern Ireland backstop could be removed from the withdrawal agreement. Others have said it would remain in the text but would certainly never come into force.

The reality is that any deal will include the backstop because the UK could not negotiate – let alone ratify – accession to the EEA and EFTA before its departure from the EU. And there is no guarantee it would not come into force at the end of the transition period because there is no certainty about how long the negotiation would take or, indeed, if it would be successful.

*Some advocates of Norway Plus have argued:*

- **We could ditch the backstop:** “But we wouldn't need the backstop which is what is causing so much angst amongst my colleagues and many MPs across the House of Commons.” (*Nicky Morgan*)<sup>5</sup>
- **The backstop would never need to be used:** “Eliminate the need for the Irish backstop to be activated because we would move seamlessly from the transition period into Common Market 2.0.” (*Robert Halfon and Lucy Powell*)<sup>6</sup>

*But this is unlikely to be possible because:*

- **Any deal will include the backstop:** The EU has been clear that the withdrawal agreement text cannot be re-opened and therefore any deal will include the backstop. As the European Commission has repeatedly said: “The withdrawal agreement... is not open for renegotiation.”<sup>7</sup>
- **It is impossible to guarantee the backstop will not come into force:** The Norway Plus proposal requires detailed negotiation to work and there is no guarantee that the two sides would reach agreement. If they did not, the backstop would necessarily be activated. As Michel Barnier has said, “The backstop must remain a credible backstop.”<sup>8</sup> Even if the UK succeeded in negotiating membership of the EEA before the end of the transition period, and then triggered Article 127 of the EEA treaty to begin a process of departure from it, the EU would ensure that a trade deal could not follow without a new backstop.

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<sup>5</sup><https://www.youtube.com/watch?v=OGYxEcQE8ew>

<sup>6</sup><https://labourlist.org/wp-content/uploads/2019/01/Common-Market-2.0.pdf>

<sup>7</sup><https://uk.reuters.com/article/uk-britain-eu-barnier/eu-open-to-closer-ties-with-britain-but-no-renegotiation-of-withdrawal-deal-idUKKCN1PA0PZ>

<sup>8</sup><https://www.standard.co.uk/news/politics/eu-refuses-to-budge-following-commons-defeat-as-barnier-insists-backstop-must-remain-part-of-deal-a4040106.html>

### 3. How much would the UK end up paying?

Advocates of Norway Plus have repeatedly suggested the UK would end up paying significantly less into the EU budget than we currently do as a full member of the EU with a seat at the table where we have a voice, a vote and a veto.

But Norway currently pays only a little less per capita than the UK and, given the UK's weak negotiating position once we have left the EU, there is little evidence to suggest the EU would demand significantly lower payments from us for the same level of market access.

*Some advocates of Norway Plus have argued:*

- **We would pay 'substantially less' than we do today:** "As members of the EFTA pillar of the EEA we would pay for what we access from Single Market programmes and agencies. This would be substantially less than our contribution as a member of the EU." (*Better Brexit website*)<sup>9</sup>
- **We could pay around half what we do today:** "The annual amount would equate to not much more than half the amount we currently pay." (*Robert Halfon and Lucy Powell*)<sup>10</sup>

*But this is unlikely to be accurate because:*

- **Norway makes a significant contribution:** "Although EEA members do not pay directly into the EU budget, they do contribute to and receive funding from specific EU programmes such as the Horizon 2020. They also offer direct financial assistance to less developed EU member states – for example, Norway is contributing €391m every year between 2014 and 2021. Although sometimes presented as a 'voluntary' contribution, the EEA agreement explicitly references the "need to reduce the economic and social disparities." (*Open Europe*)<sup>11</sup>
- **Norway's per capita contributions are not significantly lower than what we pay today:** According to calculations by Open Europe, once what Norway receives back from the EU is taken into account, in 2015 Norway's per capita net contribution was 88% that of the UK – £100.03 compared to £113.79.<sup>12</sup>
- **There is no evidence that the EU would allow the UK to pay less than Norway:** "The EU would certainly refuse any British request to participate less, proportionally, than the current financial participation of Norway. On the contrary, given that the EU will lose the contribution of the UK as an EU member[and] the EU's commitments to its poorer Members, the weak bargaining power of the UK, the EU would probably ask for more." (*Jean-Claude Piris*)<sup>13</sup>

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<sup>9</sup><http://betterbrexit.org.uk/>

<sup>10</sup><https://labourlist.org/wp-content/uploads/2019/01/Common-Market-2.0.pdf>

<sup>11</sup><https://openeurope.org.uk/intelligence/britain-and-the-eu/as-the-uk-searches-for-a-post-brexit-plan-is-the-eea-a-viable-option/>

<sup>12</sup><https://openeurope.org.uk/intelligence/britain-and-the-eu/as-the-uk-searches-for-a-post-brexit-plan-is-the-eea-a-viable-option/>

<sup>13</sup><https://esharp.eu/debates/the-uk-and-europe/why-the-uk-will-not-become-an-eea-member-after-brexit>

## 4. Would the UK continue to apply the EU's free movement rules?

It has been claimed that a Norway Plus arrangement would give the UK significantly greater control over immigration policy than we currently have in the EU.

But the principle of free movement of people, which has been of immense economic and social value to the UK, is not negotiable for the EU. Claims that the UK could use Article 112 of the EEA agreement to suspend free movement are highly contested. Article 114 provides that, if they did, any other EEA member could take 'proportionate rebalancing measures.'

*Some advocates of Norway Plus have argued:*

- **The UK would 'regain control' over immigration policy:** "We regain control over immigration: articles 112 and 113 of the EEA agreement enable any EEA country to suspend and reform any one of the four freedoms." (*Stephen Kinnock*)<sup>14</sup>
- **The UK could immediately pull an 'emergency brake':** "[U]nder Article 112 (1) of the EEA Agreement, we will have an 'emergency brake' which will allow us to cap migration if events give rise to "serious economic, societal or environmental difficulties of a sectorial or regional nature" (*Nick Boles*)<sup>15</sup>
- **The UK could seek an 'opt-out' from free movement:** "Under Common Market 2.0, the UK [would] have a right to seek a de-facto opt-out from freedom of movement." (*Robert Halfon and Lucy Powell*)<sup>16</sup>

*But this may not be accurate because:*

- **Joining the EEA means abiding by EU free movement rules in full:** It is clear from the past two years of negotiations that the application of free movement rules for members of the EEA is non-negotiable for the EU.
- **It is unlikely the 'emergency brake' could be used immediately:** For Article 112 to be activated, the difficulties would have to appear *after* the member state's EEA accession; in Britain's case, the bitter political controversy over free movement has been apparent for several years already. The emergency brake has only never been used by an EEA member once – Liechtenstein in 1997. The differences between the UK and Liechtenstein (which has a population of just 38,000) are obvious. As Jean-Claude Piris has noted, the emergency brake hasn't been used since, "maybe because article 114 provides that, if it would, any other EEA member could take 'proportionate rebalancing measures'".<sup>17</sup>
- **Talk of an 'opt-out' from free movement is baseless:** While it is strictly true that Article 113 of the EEA Agreement allows for a renegotiation between the UK and the other EEA countries the suggestion the UK could secure a long-term 'opt-out' from free movement is not only undesirable but also unsubstantiated. It is a non-starter for both the EU and EFTA.

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<sup>14</sup><https://www.theneweuropean.co.uk/top-stories/forget-second-vote-norway-avoid-brex-it-cliff-1-5799824>

<sup>15</sup><http://betterbrexit.org.uk/>

<sup>16</sup><https://labourlist.org/wp-content/uploads/2019/01/Common-Market-2.0.pdf>

<sup>17</sup><https://esharp.eu/debates/the-uk-and-europe/why-the-uk-will-not-become-an-eea-member-after-brex-it>

## 5. Would the UK become a rule-taker?

Advocates of Norway Plus have often exaggerated the degree to which the UK could influence EU policymaking. It is argued that the UK would apply only a small number of EU rules under their scenario because we would be outside of key EU legislative areas.

However, when the EU passes a new law, EEA EFTA states are required to mirror it - and the Norwegian Government has confirmed that they accept three quarters of EU rules. Officials quite openly admit that Norway and Iceland are professional lobbyists in Brussels, petitioning the institutions to consider their interests when drafting new legislation. While this may not be entirely ineffective, it clearly offers Norway significantly less influence than the UK enjoys as a full member of the EU with a seat at the table.

*Some advocates of Norway Plus have argued:*

- **The UK would have a voice, vote and veto:** “Contrary to how the EEA is often misrepresented, the UK would have a voice, vote and right of refusal over proposed new EEA law.” (*Halfon and Powell*)<sup>18</sup>
- **Most EU rules would not apply to the UK:** “In Common Market 2.0, most EU rules would not apply to us at all as we would be outside the common agriculture, fisheries, justice and home affairs policies... Only 28% [of EU rules] apply.” (*Halfon and Powell*)<sup>19</sup>

*But this requires clarification because:*

- **The UK would be legally obliged to adopt all EU rules relating to the single market:** As Jean-Claude Piris says, the UK would have to accept “as legally binding in its national law the transposition of all EU directives and regulations for the internal market, without participating in their decision ‘making’ but only on ‘shaping’ them (articles 99 and 102-104 of the EEA Agreement).”<sup>20</sup> Tellingly, the clause which enables EFTA member states to suspend implementation of new laws – Article 102 – has never been activated in the EEA’s 25 years. A country can ‘delay’ legislation but has market access blocked if it does so. This is not the same as the voice, vote and veto the UK has as a full member of the EU.
- **Norway says it adopts three quarters of EU rules:** Although Norway is outside the Common Agricultural Policy and Common Fisheries Policy, the Norwegian Government’s EEA Review Committee found that “Norway has incorporated approximately three-quarters of all EU legislative acts into Norwegian legislation.”<sup>21</sup> And, because the UK would have open borders with the EU thanks to being in the customs union, we could end up replicating or closely aligning with the CAP and CFP – meaning even more rules over which we would have no say.
- **The EU would take a firmer line on the UK than on Norway:** This is because the UK, as a significantly larger economy, would have more power to unbalance the single market.<sup>22</sup>

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<sup>18</sup><http://betterbrexit.org.uk/wp-content/uploads/2019/01/Common-Market-2.0.pdf>

<sup>19</sup><http://betterbrexit.org.uk/wp-content/uploads/2019/01/Common-Market-2.0.pdf>

<sup>20</sup><https://esharp.eu/debates/the-uk-and-europe/why-the-uk-will-not-become-an-eea-member-after-brexit>

<sup>21</sup>[https://web.archive.org/web/20120127051142/http://www.regjeringen.no/pages/36798821/PDFS/NOU201220120002000EN\\_PDFS.pdf](https://web.archive.org/web/20120127051142/http://www.regjeringen.no/pages/36798821/PDFS/NOU201220120002000EN_PDFS.pdf)

<sup>22</sup><https://www.ft.com/content/17e3993c-f32e-11e8-9623-d7f9881e729f>

## The Questions that advocates of Labour's Brexit plan must answer

### 1. Could it really be negotiated before the UK has left the EU to avoid the need for a backstop?

It is sometimes claimed that Labour could negotiate its own Brexit plan before the UK has left the EU, thereby avoiding the need for the backstop.

But the backstop *would* still be required. Even if the UK agreed to re-open discussions over the non-binding political declaration, this would be merely aspirational. The EU have made clear that the legally binding withdrawal agreement – including the backstop – cannot now be renegotiated.

*Some have argued a Labour Brexit deal:*

- **Could be negotiated before the UK leaves the EU:** “It’s a plan that can be negotiated with the EU, even at this late stage....” (*Jeremy Corbyn*)<sup>23</sup>
- **Would mean ditching or re-negotiating the backstop:** “[Labour] wouldn’t have all this problem with the backstop etc because we want the whole of the United Kingdom to be in a permanent customs union with the EU.” (*Shami Chakrabarti*)<sup>24</sup>... “There certainly wouldn’t be a ‘backstop’ from which you can’t escape.” (*Jeremy Corbyn*)<sup>25</sup>
- **Would have to avoid having the backstop:** The Shadow Business Secretary, Rebecca Long-Bailey, has said it is “not acceptable”.<sup>26</sup>

*But this is unlikely to be accurate because:*

- **Labour’s plan would be merely aspirational:** Even if a majority of MPs voted for a different kind of Brexit plan, a customs union with the EU would take a long time to negotiate with the EU. A new political declaration would be the diplomatic version of an IOU, neither binding nor anything more than a statement of intention.
- **Any deal will involve the backstop:** Keir Starmer has acknowledged that Labour’s plan would involve the backstop, saying: “At this stage any deal probably does require a backstop and we’ve got to recognise that... There are problems with this backstop and we have got to recognise that but because we are in this stage of the exercise, nearly two years in, the chances now of a deal that doesn’t have a backstop are very, very slim.”<sup>27</sup>
- **A customs union alone wouldn’t negate the backstop:** Critically, being in the customs union alone wouldn’t resolve the backstop. The backstop also includes a single market in goods for Northern Ireland, which necessitates a sea border – this is the main reason for the DUP’s opposition. To get rid of the backstop altogether the UK would also need to have full single market membership including alignment on agriculture.

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<sup>23</sup><https://www.theguardian.com/commentisfree/2018/dec/06/jeremy-corbyn-general-election-brexit-labour-theresa-may>

<sup>24</sup><https://www.bbc.co.uk/iplayer/episode/b0bv1yln/question-time-2018-06122018#t=00h13m18s>

<sup>25</sup><https://www.euronews.com/2018/12/07/corbyn-interview>

<sup>26</sup><http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/09121803.pdf>

<sup>27</sup><https://www.theguardian.com/politics/2019/jan/20/keir-starmer-northern-ireland-backstop-likely-in-any-brexit-scenario>

## 2. Would it make the UK poorer?

Labour has advocated a 'jobs-first' Brexit which would prioritise jobs and the economy. One of the party's six tests for any Brexit deal is that it must "deliver the exact same benefits as we currently have" and, even if there is some flexibility on that, clearly it would be impossible to go for a Brexit deal that made people poorer.

But the EU has consistently made clear that non-member states cannot enjoy the same level of market access as full members of the EU. And a wide range of economic forecasts, including the Government's own, suggest every form of Brexit will harm the economy. A report by the National Institute for Economic and Social Research found that staying only in the customs union, as Labour proposes, would result in a 2% hit to GDP.

*Some have argued that Labour's Brexit plan:*

- **Wouldn't make the UK poorer than if we stayed in the EU:** "I wouldn't be interested in a deal that would make the country poorer." (*Jeremy Corbyn*)<sup>28</sup>
- **Could retain the 'exact same benefits' as EU membership:** "Labour will not support a deal that fails to reflect core British values and the six tests I have set out today... [including] does it deliver the 'exact same benefits' as we currently have as members of the Single Market and Customs Union?"<sup>29</sup> (*Keir Starmer*)

*But this is unrealistic because:*

- **The EU will not agree a deal that gives the UK the same benefits:** The European Council's negotiating guidelines are clear that "A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member."<sup>30</sup>
- **Every form of Brexit will damage the UK economy:** Forecasts and analysis by the Treasury and a number of think tanks have found that every form of Brexit will leave the UK poorer. A report by the National Institute for Economic and Social Research found the impact of staying in the customs union but not the EEA (as Labour proposes) would be a hit to GDP per capita of 2 per cent.<sup>31</sup>

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<sup>28</sup><https://www.euronews.com/2018/12/07/corbyn-interview>

<sup>29</sup><https://labourlist.org/2017/03/keir-starmer-labour-has-six-tests-for-brexit-if-theyre-not-met-we-wont-back-the-final-deal-in-parliament/>

<sup>30</sup><https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/>

<sup>31</sup><https://www.niesr.ac.uk/publications/economic-effects-government%E2%80%99s-proposed-brexit-deal>

### 3. What would be the UK's relationship to the single market?

There is a striking lack of clarity over what relationship Labour is proposing the UK should have with the EEA. It is said that Labour's plan would herald a "new and strong relationship" with the single market which keeps the same economic benefits while maintaining and extending protections for workers, consumers and the environment. But it is also argued that the plan would allow the UK to end free movement of people or that it would not turn the UK into a rule-taker.

*Some have argued that Labour's Brexit plan:*

- **Would keep the UK aligned with the EU in some areas:** "Labour wants a close future relationship with the EU based on our values of internationalism, solidarity and equality – maintaining and extending rights, standards and protections." (*Labour's website*)<sup>32</sup>
- **Would allow the UK to end free movement of people:** "Freedom of movement of people will end when we leave the European Union." (*2017 Labour Manifesto*)<sup>33</sup>
- **Would not turn the UK into a rule-taker like Norway:** "Unlike the Norway-plus option now being canvassed among MPs, our plan would not leave Britain as an across-the-board rule-taker of EU regulations without a say." (*Jeremy Corbyn*)<sup>34</sup>
- **At the same time, it would ensure the same trade benefits as EU membership:** "We believe we could get the same benefits on trade, on customs union with the European Union." (*Jeremy Corbyn*)<sup>35</sup>

*But this requires clarification because:*

- **It is unclear how workers' rights and environmental standards could be guaranteed outside the jurisdiction of the ECJ:** As the Social Market Foundation have said: "The European Communities Act guarantees that a worker's 'floor of rights' can be enforced locally across the European Union in national courts. This platform of enforcing rights is not guaranteed in any trade agreement."<sup>36</sup> So if the UK ended up in a free trade agreement with the EU, outside of the jurisdiction of the ECJ, there would be little to block a future government lowering standards in these areas.
- **Any effort to avoid following rules made by the EU would have severe economic consequences:** If Labour is committed to ending free movement and avoiding becoming an "across-the-board rule-taker", the UK will by default not have the "same benefits" as it currently does as an EU member. Being outside the single market would mean a border in the Irish Sea and a new border in the Channel, and a hollowing-out of the UK's services sector owing to an end to an end to financial services passporting and an end to automatic recognition of qualifications.

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<sup>32</sup><https://labour.org.uk/issues/labours-plan-brexit/>

<sup>33</sup><https://labour.org.uk/wp-content/uploads/2017/10/labour-manifesto-2017.pdf>

<sup>34</sup><https://www.theguardian.com/commentisfree/2018/dec/06/jeremy-corbyn-general-election-brexit-labour-theresa-may>

<sup>35</sup><https://twitter.com/jamin2g/status/1064088901445459970?lang=en>

<sup>36</sup><http://www.smf.co.uk/ask-expert-brexit-workers-rights/>

## 4. Would the UK still follow EU state aid rules?

It has been suggested that Labour's Brexit plan would allow the UK to avoid EU state aid rules. The reasons for this are not clear because EU state aid rules help ensure multinationals pay their taxes and would not prevent Labour from implementing the policies in its manifesto.

But if a UK government - Labour or Conservative - tried to seek an unfair advantage, it would be given short shrift by the EU that has long made clear that *any* Brexit deal must prevent "unfair competition" on state aid. And the EU would have to insist on restrictions on state aid in a Customs Union agreement, as it has done with Turkey, because by allowing the UK to stay in a customs union the EU would be giving up its only possible weapon – the imposition of tariffs – against UK subsidies.

*Some have argued that Labour's plan:*

- **Would allow exemptions on state aid:** "We would also seek to negotiate protections, clarifications or exemptions, where necessary, in relation to privatization and public service competition directives, state aid and procurement rules and the posted workers directive." (*Jeremy Corbyn*)<sup>37</sup>... When asked by Andrew Marr in May 2018 "If the EU say you have to stick with our state aid rules and that's that, what do you do then?" John McDonnell replied: "I don't think they will."<sup>38</sup>

*But this is unrealistic because:*

- **The EU's negotiating guidelines prohibit undercutting on state aid:** "The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of levels of protection with respect to, inter alia, competition and state aid, tax, social, environment and regulatory measures and practices."<sup>39</sup>
- **By asking to stay in a customs union, state aid rules are unavoidable:** As George Peretz, co-chair of the UK State Aid Law Association, has said: "in a customs union, we are asking the EU to give up the weapon WTO rules (countervailing measures) give it against U.K. subsidies. There was always going to have to be cast iron state aid rules in consequence."<sup>40</sup> The EU has already imposed a state-aid clause in the withdrawal agreement for this very reason.

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<sup>37</sup><https://www.theguardian.com/politics/2018/feb/26/jeremy-corbyn-to-confirm-labour-wants-a-customs-union-with-eu>

<sup>38</sup><http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/06051802.pdf>

<sup>39</sup><https://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf>

<sup>40</sup><https://twitter.com/GeorgePeretzQC/status/1063872509043503105>

## 5. Would the UK have any say over its trade policy?

It has been claimed that under Labour's Brexit plan the UK could be in the customs union but have some decision-making power over the trade agreements that the EU negotiates. It is argued that the UK could have "a say" over EU trade deals. There is currently little clarity about what this would mean in practice or why the EU would agree to it.

What is clear is that the EU treaties grant the EU sole competence over its common commercial policy. For example, Turkey has no say over EU trade policy even though it is in a partial customs union. The default position is that the EU would continue to sign trade deals with third countries and, after each new deal, the UK would be forced to liberalise its markets for the new partner. The UK would have no formal say or voting rights in any negotiations and it would gain no automatic reciprocal benefit from such a deal which would only apply to the EU.

*Some have argued that Labour's Brexit plan:*

- **Would allow the UK to have "a say" over EU trade policy:** Shadow Trade Secretary Barry Gardiner has said: "we on the Labour Benches have been calling for a new permanent customs union with the EU in which we would have a say over future trade agreements."<sup>41</sup> ... Shadow Business Secretary Rebecca Long-Bailey has said Labour's deal "would provide a permanent customs union with the right for Britain to have a say in future trade deals."<sup>42</sup>

*But this is unrealistic because:*

- **It is almost inconceivable that the EU would agree:** Treaty of Lisbon, Article 207, says: "The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action... The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it."<sup>43</sup> Turkey, which is the customs union but not the EU, has no say over EU trade deals.
- **Being in a customs union without a say would be very damaging:** The EU would continue to sign trade deals with third countries, and after each new deal the UK would be forced to liberalise its markets for the new partner – despite a lack of participation or voting rights in any negotiations. Worse still, the trade deals would only apply to the EU. If the EU signed a deal with Australia, Australian goods would enjoy full access to the UK (with its shared EU tariff), but UK goods would enjoy no automatic reciprocal rights in Australia. Indeed, Australia – having already secured its advantage – would not be compelled to sign any reciprocal trade deal with the UK. If it did choose to do so, it would likely offer far inferior terms to the UK than to the EU. The UK would, after all, have little additional to offer, and consequently little leverage.

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<sup>41</sup><https://www.theyworkforyou.com/debates/?id=2019-01-14b.861.0#g883.5>

<sup>42</sup><http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/09121803.pdf>

<sup>43</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228848/7310.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228848/7310.pdf)

## The Questions that advocates of ‘No Deal’ must answer

Those advocating no deal have for far too long dodged scrutiny. Many of the claims made for no deal are inconsistent, contradictory or misleading, and it is clear that there is little agreement among proponents of no deal about precisely what it would entail or how ‘managed’ it would be. Some recent examples include:

- A group called the Economists for Free Trade have argued that “No Deal increases our negotiating flexibility... particularly with regard to negotiating a future trade agreement with the EU”, ignoring the reality that the UK would be hit far worse than the EU by no deal, and that defaulting on our financial commitments would likely lead to a further erosion of trust and goodwill.<sup>44</sup>
- A recent report by Global Britain and Labour Leave makes a series of claims including that: no deal would “boost our GDP by up to 2%” because the UK wouldn’t pay the £39billion divorce bill; no deal would bring an “end [to] the political and economic uncertainty”; and “the Irish border issue will be solved by administrative measures”.<sup>45</sup> There is little evidence for any of these claims.
- Former government minister Esther McVey said recently there should be “an implementation period for a no deal” despite the fact no deal would mean rejecting the Withdrawal Agreement.
- The Transport Secretary has claimed there would be no new checks on lorries coming into the UK after a no deal exit, despite the fact the Freight Transport Association (FTA) has said this would “open up the UK’s borders to potential abuse and breaches”.<sup>46</sup>

No deal therefore poses endless questions, and it is time the advocates of this destructive form of Brexit come clean about the Brexit they wish to inflict on the country. Below are just 50 questions advocates of no deal must answer. There are many, many more.

1. What would be the cost to the UK economy of a no deal Brexit?
2. Do you anticipate there being a transition period as part of your plan?
3. How much would you be prepared to pay for access to the EU single market?
4. Do you anticipate any consequences for refusing to pay the “divorce bill”?
5. How long do you expect Britain’s accession to the WTO as an individual member to take, and what do you make of news reports that this may get blocked by current members?
6. How long would it take for us to reach a free trade agreement with the EU?
7. How long would it take to renegotiate our free trade agreements with over 70 countries?

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<sup>44</sup> <https://www.economistsforfreetrade.com/wp-content/uploads/2019/01/No-Deal-is-the-Best-Deal-for-Britain-Upload.pdf>

<sup>45</sup> <https://globalbritain.co.uk/wp-content/uploads/2019/01/GBLL-paper-30-Truths-Final-05.01.19.pdf>

<sup>46</sup> <https://www.theguardian.com/politics/2018/mar/16/mps-call-for-pm-to-clarify-chris-graylings-post-brexite-border-pledge>

8. What would happen to UK research projects currently in receipt of EU funding?
9. How will you ensure Parliamentary approval for no deal?
10. How will you ensure UK insurance contracts remain valid and recognised in the EU?
11. How will the UK meet its reporting obligations under current EU CO2 emissions targets?
12. Can you guarantee that there would be no shortages of medicines under no deal?
13. How will you honour the Good Friday Agreement under no deal?
14. How would you avoid a hard border in Ireland after no deal?
15. Does your plan guarantee the residency rights of EU citizens currently living in the UK?
16. How would the UK retain an economic sanctions policy as powerful as our current one as part of the EU single market?
17. How would students continue to be able to participate in Erasmus+ student exchange programmes?
18. What would keep UK phone providers from reintroducing roaming charges for holidaymakers in the EU?
19. What would happen to the validity of UK driving licenses in the EU?
20. Would you countenance a lorry park on the M20 or elsewhere in Kent?
21. Can you guarantee that there would be no reduction whatsoever to UK workers' rights?
22. Can you guarantee that there would be no reduction whatsoever to UK environmental legislation?
23. How can you guarantee the safe handling, transport, and storage of radioactive materials outside Euratom without a deal?
24. How will the electricity import and export via the UK-EU interconnectors in the North Sea be controlled and regulated?
25. What would happen to the Single Energy Market, covering the island of Ireland?
26. How would UK police retain access to EU information sharing systems that help catch criminals?
27. Would the UK keep access to EU medical trials databases like EudraVigilance and EudraCT?
28. How would UK companies be able to defend themselves against unfair trading practices in European markets?
29. Can you guarantee funding at current levels for farming and fishing?
30. Can you guarantee ESF and ERDF funding at current levels for UK social initiatives and regional development?
31. How would you ensure no skills shortages would occur in UK industries as a result of losing free movement?

32. How long would negotiations for Britain to join the WTO's Government Procurement Agreement take?
33. What impact would paying the EU's common external tariff have on British exporters?
34. What goods would the UK impose zero tariffs on, given that under WTO rules such tariffs would have to be applied to all WTO countries?
35. Would the UK's new tariff schedule be subject to approval by Parliament?
36. Are British customs facilities prepared for a large increase in imports from non EU countries?
37. Can you guarantee British citizens living in the EU will not lose their current rights?
38. How prepared are our government services for the return of large numbers of retired British expats?
39. Can you guarantee that the Le Touquet agreement, which allows British border officials to operate in France, will be unaffected?
40. Would British organisations still have access to the European Investment Bank?
41. Would there be enough ECMT permits available for British hauliers who need to go to the EU?
42. Can you guarantee visa free travel to the EU after no deal?
43. Will British citizens be able to benefit from the European Health Insurance card?
44. How would no deal affect Civil Judicial Cooperation between the UK and EU countries?
45. What would keep European competitors from copying British products such as Stilton that are currently protected in the EU under its geographical indicator scheme?
46. What would happen to the value of Sterling under a no deal Brexit?
47. Do you agree with Economists for Brexit's Professor Patrick Minford when he says a no deal Brexit would "mostly eliminate manufacturing"?
48. How many new civil servants and how much additional public expenditure would be needed if the UK were to leave the EU with no deal?
49. Would British food exports to the EU be subject to sanitary checks on entry, and how would this affect these exports?
50. Do you anticipate UK participation in the Galileo scheme under no deal?