

"Alternative arrangements" to the Northern Ireland backstop^[1]



In a vote on 29 January, a majority of MPs said that they would back the Prime Minister's [Withdrawal Agreement](#)^[2] if only the [Irish backstop](#)^[3], designed to avoid a "hard border" on the island of Ireland, was replaced with "alternative arrangements".

The backstop is only intended to be temporary until other solutions to keep the border open can be agreed. But it has proved very problematic for the Prime Minister. Her backbenchers and DUP partners don't like it – they say the backstop increases the separation between Northern Ireland and Great Britain, or risks the UK being trapped in a permanent customs union with the EU.

The Prime Minister has set up a working group to look at "alternative arrangements". In this explainer, we look at options that might be available and how the EU is likely to respond.

The starting point: the current backstop

The backstop is a [protocol](#)^[4] in the Withdrawal Agreement that requires checks at the border between the Republic of Ireland and Northern Ireland. Under the protocol, Northern Ireland would stay aligned to a set of EU Single Market rules on goods and stay inside the Customs Union. The EU agreed to a UK proposal that the rest of the UK could also form a new customs territory with the EU, removing the costly customs checks between Northern Ireland and Great Britain.

Approach one: An exit clause^[5]

One set of options looks at routes for the UK (or EU) to leave the backstop unilaterally, rather than relying on the joint mechanism in the current version of the Withdrawal Agreement.

a. "Freedom clause"

Proposed by [Boris Johnson](#)^[6], this would give the UK the right to terminate the backstop at whatever point it chose. This may have the support of other Conservative MPs who have also proposed unilateral exits to the backstop.

b. Expiry date

This would set a date on which the backstop would cease to operate. The idea gained traction in the EU when the [Polish Foreign Minister](#)^[7] suggested a termination date after five years. This solution is supported by Conservative MPs such as [Andrew Murrison](#)^[8], who tabled such an amendment.

c. Revert to the original backstop proposal and allow Northern Ireland to decide

This would change the non-binding political declaration to [offer the Northern Irish a referendum](#)^[9] on whether to remain in the backstop, once it has been in place for more than five years. It would give the UK and EU time to work on potential technological solutions, citizens would get to experience life under the backstop and it would give Northern Irish voters a decisive role in shaping their future.

The UK Government could also be given an option to end the single customs territory and leave Northern Ireland in the EU Customs Union – allowing Great Britain to diverge and, as a result, putting a customs border down the Irish Sea.

Negotiability:

The EU and the Irish Government have thus far maintained their view that a backstop with an end-date or a unilateral exit clause is not the "all-weather" insurance policy against a hard border both sides have agreed to deliver. No MPs have yet proposed holding referendums in Northern Ireland and any poll would be potentially divisive, as would handing the decision to a reestablished Northern Ireland Executive.

Approach two: Remove the need for the backstop by agreeing more detail on the future relationship

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A second set of options would remove the need for the backstop by giving more clarity on the future relationship between the UK and the EU.

d. "Max fac" revisited

In summer 2017, the Government proposed to manage the Irish border through "maximum facilitation" for customs, using trusted trader schemes, pre-declaration and large scale exemptions from customs obligations for small traders. This idea has now resurfaced in a proposal promoted by the European Research Group in December 2018, and is now a feature of Plan A of the so-called [Malthouse compromise](#)^[11] which commanded support from differing elements of the Conservative Party before the vote on 29 January. Its proponents argue that if this solution is agreed now, the backstop is not needed.

e. Chequers

The [Government's proposal for the future relationship](#)^[12] launched after the Chequers summit removed the need for a hard border by providing for a Facilitated Customs Agreement, where the UK would effectively operate part of the EU border for customs and a "common rulebook" on goods that would remove the need for border checks.

f. **The “Jersey option”** ^[13]

This would be a variation on the Chequers proposal, with the UK staying in the Single Market for goods and a Customs Union. Neither Chequers or the Jersey option are currently supported by MPs opposed to the backstop.

g. **Common Market 2.0** ^[14] (or Norway Plus) option

This would see full participation in the Single Market and UK membership of a customs union with the EU. This has attracted cross-party support.

h. **A permanent customs union**

Labour policy since February 2018 has been to propose that the UK negotiates a permanent customs union, but where the UK would have a say on EU trade policy – unlike Turkey. A similar idea of a [European Customs Association](#) ^[15] has also been proposed by economists based in the EU.

Negotiability:

Some of these ideas could form part of the “alternative arrangements” the UK and the EU are committed to exploring for the future relationship. But those cannot be negotiated by 29 March 2019 and therefore cannot remove the need for the backstop. The EU has said that it is possible to renegotiate the Political Declaration to provide more clarity on the future relationship, but that could only ever help reassure MPs that the backstop is unlikely to be used.

The EU is unlikely to be persuaded that technology-based solutions would be ready to go in January 2021 if necessary. Options like Max-Fac simply move checks away from the border, whereas the Irish Government (and thus EU’s) [interpretation of the commitment](#) ^[16] is for the future arrangement to remove the need for any additional checks at all.

Approach three: procedural fixes ^[17]

The current Withdrawal Agreement commits both sides to make their “best endeavours” to agree a future relationship which removes the need for the backstop. But “unless and until” that relationship is agreed and in place, the backstop would remain in place. Either side can initiate a process to terminate the backstop but the final decision would be one for the Joint Committee, which is only ever obliged to ‘consider’ a request.

i. **Parliamentary/Northern Ireland Executive role**

The Prime Minister offered a series of assurances on GB alignment with EU regulations for no regulatory divergence within the UK and a formal say for the Northern Ireland Executive in the future relationship negotiations.

j. **A more detailed exit procedure**

Another [procedural solution](#) ^[18] would see the EU and UK agree a process and criteria for deciding whether a technical solution had been reached and attach it as an annex to the Northern Ireland protocol. The annex could set out the criteria for future alternative arrangements and provide for independent experts to assess whether proposals met the set criteria. The Prime Minister could seek to ensure that this has as much legal status as the Withdrawal Agreement itself.

Negotiability:

The unilateral approaches and assurances outlined above failed to convince the DUP or government backbenchers.

The detailed exit procedure simply fleshes out a process that is already implied in the Withdrawal Agreement – and does not require reopening the existing text. So, this looks more readily negotiable with the EU; the question is whether it would be enough to satisfy the Prime Minister’s backbenchers.

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- [1] <https://www.instituteforgovernment.org.uk/explainers/alternative-arrangements-northern-ireland-backstop>
- [2] <https://www.instituteforgovernment.org.uk/explainers/draft-brexite-withdrawal-agreement-november>
- [3] <https://www.instituteforgovernment.org.uk/explainers/northern-ireland-backstop>
- [4] <https://www.instituteforgovernment.org.uk/explainers/northern-ireland-ireland-protocol-brexite>
- [5] <http://twitter.com/intent/tweet?text=One%20approach%20to%20the%20Irish%20border%20looks%20at%20routes%20for%20the%20UK%20to%20leave%20the%20backstop%20unilaterally>
- [6] <https://www.politicshome.com/news/uk/foreign-affairs/brexit/news/101405/boris-johnson-vows-full-throated-support-theresa-may-if>
- [7] <https://www.reuters.com/article/us-britain-eu-poland/polish-foreign-minister-proposes-limiting-brexit-deals-irish-backstop-bbc-idUSKCN1PF171?feedType=RSS&feedName=worldNews>
- [8] <https://www.theguardian.com/politics/2019/jan/29/amendments-to-may-statement-brexit-bill>
- [9] <http://karlwhelan.com/blog/?p=1897>
- [10] <http://twitter.com/intent/tweet?text=Could%20the%20need%20for%20the%20backstop%20be%20removed%20by%20giving%20more%20clarity%20on%20the%20future%20relationship%3F%0A%0A>
- [11] <https://www.instituteforgovernment.org.uk/blog/malthouse-compromise-prizes-conservative-unity-over-brexit-negotiability>
- [12] <https://www.instituteforgovernment.org.uk/explainers/what-did-we-learn-prime-ministers-chequers-statement-brexit>
- [13] <https://www.cer.eu/publications/archive/bulletin-article/2018/holding-out-hope-half-way-brexit-house>
- [14] <http://betterbrexit.org.uk/wp-content/uploads/2019/01/Common-Market-2.0.pdf>
- [15] http://www.econpol.eu/publications/policy_brief_12
- [16] <https://www.instituteforgovernment.org.uk/publications/irish-border-after-brexit>
- [17] <http://twitter.com/intent/tweet?text=Are%20there%20any%20procedural%20fixes%20to%20the%20current%20backstop%20exit%20procedure%3F%20>
- [18] <http://ukandeu.ac.uk/the-way-forward-can-a-protocol-to-the-withdrawal-agreement-save-the-prime-ministers-deal/>