

The Declarations on the Withdrawal Agreement ^[1]



The Government has published a number of additional documents to sit alongside the [draft Withdrawal Agreement](#) ^[2] and [protocol on Northern Ireland](#) ^[3]. The [three new documents](#) ^[4] include a Joint Instrument relating to the Northern Ireland protocol, a Joint Statement supplementing the Political Declaration and a Unilateral Statement by the UK Government regarding the Northern Ireland protocol.

The table below focuses on what these three new documents tell us.

Document

Joint EU-UK instrument relating to the Withdrawal Agreement

Area	Future negotiations
What the agreement says	"The Union and the United Kingdom are... committed to working speedily on a subsequent agreement that establishes by 31 December 2020 alternative arrangements, so that the backstop will not need to be triggered."
What it means	Work on finding an alternative arrangement to the backstop can begin as soon as the Withdrawal Agreement has been passed. The emphasis on speed, which is referenced in other parts of the document, is highlighted by the Attorney General as something that could help the UK to ensure the EU is negotiating in good faith.

Alternative arrangements to the backstop

Area	"The Union and the United Kingdom further agree to establish, immediately following the ratification of the Withdrawal Agreement, a negotiating track for replacing the customs and regulatory alignment in goods elements of the Protocol with alternative arrangements."
What the agreement says	The backstop, if it came into force, would see the whole of the UK remain in a customs union with the EU, with Northern Ireland conforming to more EU rules than the rest of the UK. The UK and EU27 have agreed to establish a separate workstream to explore new arrangements for avoiding a hard border in Ireland – with the aim of replacing the most contentious elements of the backstop, or removing the need for it altogether. This reflects the statement made by Brexit Secretary Stephen Barclay at the beginning of March, but its inclusion in the Joint Statement is interpreted by the Attorney General as "materially new legal obligations".

Alternative arrangements to the backstop

Area	"In the event that the agreement needs to stand alone due to delays in progress on the wider negotiations, the parties will aim at establishing this agreement very rapidly after the end of the transition period in full respect of the parties' respective legal orders."
What the	An alternative arrangement to the backstop could come into force even without a full trade agreement in place. That means that even if the two sides have failed to agree the full detail of a future relationship, it could still avoid the backstop coming into force.

agreement says While this is not new, the clarification may offer some assurances about the ability to avoid the backstop in the first place.

Exiting the backstop

Area

"The Union and the United Kingdom agree that it would be inconsistent with their obligations under Article 5 of the Withdrawal Agreement [a 'good faith' provision] and Article 2(1) of the Protocol for either party to act with the objective of applying the Protocol indefinitely. Should the Union or the United Kingdom consider the other party was acting in this way after the Protocol became applicable, it could make use of the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement."

What the agreement says

If the backstop comes into force, but the EU does not, "in good faith", use its "best endeavours" to negotiate an agreement to replace the backstop, then the UK can make use of the dispute settlement mechanism outlined in the Withdrawal Agreement. What amounts to a breach of good faith is open for interpretation, but the bar is high. Refusing to negotiate at all, or ignoring UK proposals without responding to them, would be a breach of good faith. Merely rejecting the UK's proposals would not be.

This is not a new concession from the EU, but a statement of what was already contained in the Withdrawal Agreement.

Exiting the backstop

Area

"If a dispute arises in relation to Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol, the Union and the United Kingdom will immediately enter into consultations in the Joint Committee. They will endeavour to resolve the dispute in a timely manner, with the aim of reaching a mutually agreed solution."

What the agreement says

Any dispute about whether one side was failing to negotiate in good faith would first be a matter for consultation in the Joint Committee. This is a political forum, not a legal one, where disagreements are resolved through negotiation between politicians and diplomats. If the two sides failed to resolve their dispute in Joint Committee, it would then go to an arbitration panel for legal argument, in line with the dispute resolution mechanism in the Withdrawal Agreement.

Exiting the backstop

Area

"Under the dispute settlement mechanism, a ruling by the arbitration panel that a party acts with the objective of applying the Protocol indefinitely would be binding on the Union and the United Kingdom. Persistent failure by a party to comply with a ruling, and thus persistent failure by that party to return to compliance with its obligations under the Withdrawal Agreement, may result in temporary remedies. Ultimately, the aggrieved party would have the right to enact a unilateral, proportionate suspension of its obligations under the Withdrawal Agreement (other than Part Two), including the Protocol. Such a suspension may remain in place unless and until the offending party has taken the necessary measures to comply with the ruling of the arbitration panel."

If an arbitration panel found in the UK's favour and ruled that the EU was breaching its duty of good faith, then it would also tell the EU how to comply. If, after that ruling, the UK thought that the EU was still breaching good faith and so was in violation of the arbitration panel's ruling, then the UK could request another ruling to that effect from the arbitration panel. If, after that second ruling, the UK still believed that the EU was breaching good faith and so was failing to comply with the second ruling, then the UK would have the right to "suspend" part of the agreement. That means that the UK could, theoretically, suspend the backstop and stop applying its terms.

What the agreement says

This suspension would only apply unless and until the EU changed its position. In addition, any suspension would have to be "proportionate". If the EU thought that the UK's suspension was not proportionate to what the EU had done wrong, then it could request a further ruling to that effect from the arbitration panel. If the arbitration panel agreed with the EU, then the UK would be bound to apply the backstop.

It is unclear what role the European Court of Justice (ECJ) might have in deciding these questions. If the UK and the EU have a dispute before the end of the transition period, for instance, about whether the UK should enter the backstop in the first place, then under Article 131 of the agreement that will be dealt with by the ECJ.

If the dispute happens after the end of the transition period, then the involvement of the ECJ would depend on the substance of the dispute. If the dispute turns on questions of EU

law – for instance, whether the UK's proposals for alternative arrangements would be compatible with the law of the Single Market – then the EU would argue that those questions had to be determined by the ECJ.

Joint Statement supplementing the Political Declaration

Area

Structure and timelines for the future negotiations

What the agreement says

"the Union and the United Kingdom have confirmed that immediately following the UK's withdrawal, they will take the necessary steps to begin formal negotiations. The Union and the UK have agreed that negotiations on the various strands of the future relationship will then proceed in parallel"

"the Union and the UK will expeditiously:

- identify those areas which are likely to require the greatest consideration... in order that the necessary technical preparations can be made on both sides; and
- draw up a full schedule for the negotiations, taking into account various internal processes including the European Parliament elections and appoint of a new Commission"

What it means

The two sides have confirmed they will look to immediately move on to the future relationship negotiations, where the different strands will proceed in parallel.

The two sides recognise that European Parliament elections in May 2019 and the subsequent appointment of a new Commission will limit the amount of formal negotiation before the autumn. They also commit to beginning technical preparations quickly for the most complex areas of negotiation.

Ratification of future relationship

Area

"Should national ratifications be pending at the end of the transition period, the European Commission has already made clear that it is ready to propose applying on a provisional basis the relevant aspects of the future relationship"

What the agreement says

The EU confirms that the UK-EU agreement would not need to be ratified in full by the end of the transition. If it is still being ratified by each member state, the bits of the agreement for which the EU has law-making powers could come into force on a provisional basis.

This is not a new development, but is helpful for the UK Government to have it confirmed in the Joint Statement.

Social and employment standards

Area

"the Union notes the UK's intention to ensure that its social and employment standards and its environmental standards do not regress from those in place at the end of the transition"

What the agreement says

The EU notes the UK Government's commitments about workers' rights ^[5] being upheld. The inclusion of this commitment is not legally significant, but it is potentially politically significant for the UK Government in persuading some Labour MPs to back the deal.

Alternative arrangements

Area

"A specific negotiating track will be established at the outset and as part of the negotiations to lead the analysis and development of these alternative arrangements... [it] will consider the use of all existing and emerging facilitative arrangements and technologies."

"the negotiating track on alternative arrangements will be able to take account of progress made in the wider negotiations on the future relationship, in particular on goods and customs"

What the agreement says

The two sides will have a dedicated workstream in the future relationship negotiations that will look at ways at removing the backstop or the need for it.

This workstream will look at how new technology could solve the border issue. It will also relate to the workstreams on customs and regulations, in case the two sides reach an agreement in the wider relationship that obviates the need for unique arrangement on the island of Ireland.

Unilateral Declaration by the UK Government concerning the Northern Ireland Protocol

Area

Exiting the backstop

What the agreement says

"if, contrary to the intentions of the parties, it is not possible for them to conclude an agreement which supersedes the Protocol in whole or in part due to a breach of Article 5 of the Withdrawal Agreement (the 'good faith' provisions)... the UK would not consider [the backstop's] application to be temporary"

"If under these circumstances it proves not to be possible to negotiate a subsequent agreement [...] the United Kingdom records its understanding that nothing in the Withdrawal Agreement would prevent it from instigating measures that could ultimately lead to the disapplication of obligations under the Protocol, ... under the proviso that the UK will uphold its obligations under the 1998 Agreement in all its dimensions and under all circumstances and to avoid a hard border on the island of Ireland."

What it means

The UK Government says that if the two sides fail to reach an agreement because the EU is acting in bad faith, then as far as the UK was concerned, the backstop would no longer be temporary. In those circumstances, the UK would begin proceedings under the dispute settlement provisions of the agreement as set out above. The UK reiterates that this could ultimately lead to the "disapplication" of the backstop, but the agreement itself refers only to a "suspension" which must be "temporary".

The UK confirms that even if it disappplied parts of the agreement, it would still look to avoid a hard border on the island of Ireland.

Document	Area	What the agreement says	What it means
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	Future negotiations	"The Union and the United Kingdom are... committed to working speedily on a subsequent agreement that establishes by 31 December 2020 alternative arrangements, so that the backstop will not need to be triggered."	Work on finding an alternative arrangement to the backstop can begin as soon as the Withdrawal Agreement has been passed. The empahsis on speed, which is referenced in other parts of the document, is highlighted by the Attorney General as something that could help the UK to ensure the EU is negotiating in good faith.
	Alternative arrangements to the backstop	"The Union and the United Kingdom further agree to establish, immediately following the ratification of the Withdrawal Agreement, a negotiating track for replacing the customs and regulatory alignment in goods	The backstop, if it came into force, would see the whole of the UK remain in a customs union with the EU, with Northern Ireland conforming to more EU rules than the rest of the UK. The UK and EU27 have agreed to establish a separate workstream to explore new arrangements for avoiding a hard border in Ireland - with the aim of replacing the most contentious elements of the backstop, or removing the need

Document	Area	elements of the Protocol with What the agreement says	for it altogether. What it means
	Alternative arrangements to the backstop	<p>"In the event that the agreement needs to stand alone due to delays in progress on the wider negotiations, the parties will aim at establishing this agreement very rapidly after the end of the transition period in full respect of the parties' respective legal orders."</p>	<p>This reflects the statement made by Brexit Secretary Stephen Barclay at the beginning of March, but its inclusion in the Joint Statement is interpreted by the Attorney General as "materially new legal obligations".</p> <p>An alternative arrangement to the backstop could come into force even without a full trade agreement in place. That means that even if the two sides have failed to agree the full detail of a future relationship, it could still avoid the backstop coming into force.</p> <p>While this is not new, the clarification may offer some assurances about the ability to avoid the backstop in the first place.</p>
Joint EU-UK instrument relating to the Withdrawal Agreement	Exiting the backstop	<p>"The Union and the United Kingdom agree that it would be inconsistent with their obligations under Article 5 of the Withdrawal Agreement [a 'good faith' provision] and Article 2(1) of the Protocol for either party to act with the objective of applying the Protocol indefinitely. Should the Union or the United Kingdom consider the other party was acting in this way after the Protocol became applicable, it could make use of the dispute settlement mechanism enshrined in Articles 167 to 181 of the Withdrawal Agreement."</p>	<p>If the backstop comes into force, but the EU does not, "in good faith", use its "best endeavours" to negotiate an agreement to replace the backstop, then the UK can make use of the dispute settlement mechanism outlined in the Withdrawal Agreement. What amounts to a breach of good faith is open for interpretation, but the bar is high. Refusing to negotiate at all, or ignoring UK proposals without responding to them, would be a breach of good faith. Merely rejecting the UK's proposals would not be.</p> <p>This is not a new concession from the EU, but a statement of what was already contained in the Withdrawal Agreement.</p>
	Exiting the backstop	<p>"If a dispute arises in relation to Article 5 of the Withdrawal Agreement and Article 2(1) of the Protocol, the Union and the United Kingdom will immediately enter into consultations in the Joint Committee. They will endeavour to resolve the dispute in a timely manner, with the aim of reaching a mutually agreed solution."</p>	<p>Any dispute about whether one side was failing to negotiate in good faith would first be a matter for consultation in the Joint Committee. This is a political forum, not a legal one, where disagreements are resolved through negotiation between politicians and diplomats. If the two sides failed to resolve their dispute in Joint Committee, it would then go to an arbitration panel for legal argument, in line with the dispute resolution mechanism in the Withdrawal Agreement.</p>
			<p>If an arbitration panel found in the</p>

Document	Area	What the agreement says	What it means
	Exiting the backstop	<p>"Under the dispute settlement mechanism, a ruling by the arbitration panel that a party acts with the objective of applying the Protocol indefinitely would be binding on the Union and the United Kingdom. Persistent failure by a party to comply with a ruling, and thus persistent failure by that party to return to compliance with its obligations under the Withdrawal Agreement, may result in temporary remedies. Ultimately, the aggrieved party would have the right to enact a unilateral, proportionate suspension of its obligations under the Withdrawal Agreement (other than Part Two), including the Protocol. Such a suspension may remain in place unless and until the offending party has taken the necessary measures to comply with the ruling of the arbitration panel."</p> <p>"the Union and the United Kingdom have confirmed that immediately following the UK's withdrawal, they will take the necessary steps to begin formal negotiations. The Union and the UK have agreed that negotiations on the various strands of the future relationship will then proceed in</p>	<p>UK's favour and ruled that the EU has a duty of good faith, then it would also tell the EU how to comply. If, after that ruling, the UK thought that the EU was still breaching good faith and so was in violation of the arbitration panel's ruling, then the UK could request another ruling to that effect from the arbitration panel. If, after that second ruling, the UK still believed that the EU was breaching good faith and so was failing to comply with the second ruling, then the UK would have the right to "suspend" part of the agreement. That means that the UK could, theoretically, suspend the backstop and stop applying its terms.</p> <p>This suspension would only apply unless and until the EU changed its position. In addition, any suspension would have to be "proportionate". If the EU thought that the UK's suspension was not proportionate to what the EU had done wrong, then it could request a further ruling to that effect from the arbitration panel. If the arbitration panel agreed with the EU, then the UK would be bound to apply the backstop.</p> <p>It is unclear what role the European Court of Justice (ECJ) might have in deciding these questions. If the UK and the EU have a dispute before the end of the transition period, for instance, about whether the UK should enter the backstop in the first place, then under Article 131 of the agreement that will be dealt with by the ECJ.</p> <p>If the dispute happens after the end of the transition period, then the involvement of the ECJ would depend on the substance of the dispute. If the dispute turns on questions of EU law – for instance, whether the UK's proposals for alternative arrangements would be compatible with the law of the Single Market – then the EU would argue that those questions had to be determined by the ECJ.</p> <p>The two sides have confirmed they will look to immediately move on to the future relationship negotiations, where the different</p>

Document	Area	What the agreement says	What it means
	Signature and timelines for the future negotiations	<p>parallel"</p> <p>"the Union and the UK will expeditiously:</p> <ul style="list-style-type: none"> • identify those areas which are likely to require the greatest consideration... in order that the necessary technical preparations can be made on both sides; and • draw up a full schedule for the negotiations, taking into account various internal processes including the European Parliament elections and appoint of a new Commission" 	<p>strands will proceed in parrallel.</p> <p>The two sides recognise that European Parliament elections in May 2019 and the subsequent appointment of a new Commission will limit the amount of formal negotiation before the autumn. They also commit to beginning technical preparations quickly for the most complex areas of negotiation.</p>
Joint Statement supplementing the Political Declaration	Ratification of future relationship	<p>"Should national ratifications be pending at the end of the transition period, the European Commission has already made clear that it is ready to propose applying on a provisional basis the relevant aspects of the future relationship"</p>	<p>The EU confirms that the UK-EU agreement would not need to be ratified in full by the end of the transition. If it is still being ratified by each member state, the bits of the agreement for which the EU has law-making powers could come into force on a provisional basis.</p> <p>This is not a new development, but is helpful for the UK Government to have it confirmed in the Joint Statement.</p>
	Social and employment standards	<p>"the Union notes the UK's intention to ensure that its social and employment standards and its enviornmental standards do not regress from those in place at the end of the transition"</p>	<p>The EU notes the UK Government's commitments about workers' rights ^[5] being upheld. The inclusion of this commitment is not legally significant, but it is potentially politically significant for the UK Government in persuading some Labour MPs to back the deal.</p>
	Alternative arrangements	<p>"A specific negotiating track will be established at the outset and as part of the negotiations to lead the analysis and development of these alternative arrangements... [it] will consider the use of all existing and emerging facilitiative arrangements and technologies."</p> <p>"the negotiating track on alternative arrangements will be able to take account of progress made in the wider negotiations on the future relationship, in particular on goods and customs"</p>	<p>The two sides will have a dedicated workstream in the future relationship negotiations that will look at ways at removing the backstop or the need for it.</p> <p>This workstream will look at how new technology could solve the border issue. It will also relate to the workstreams on customs and regulations, in case the two sides reach an agreement in the wider relationship that obviates the need for unique arrangement on the island of Ireland.</p>
		<p>"if, contrary to the intentions of the parties, it is not possible for them to conclude an agreement which supersedes the Protocol in whole or in part due to a breach of Article 5 of the Withdrawal Agreement (the 'good faith' provisions)... the UK would not consider [the backstop's] application</p>	<p>The UK Government says that if the two sides fail to reach an agreement because the EU is acting in bad faith, then as far as the UK was concerned, the backstop would no longer be temporary. In those</p>

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Unilateral Government concerning the Northern Ireland Protocol	Exiting the backstop	to be temporary" "If under these circumstances it proves not to be possible to negotiate a subsequent agreement [...] the United Kingdom records its understanding that nothing in the Withdrawal Agreement would prevent it from instigating measures that could ultimately lead to the disapplication of obligations under the Protocol, ... under the proviso that the UK will uphold its obligations under the 1998 Agreement in all its dimensions and under all circumstances and to avoid a hard border on the island of Ireland."	circumstances, the UK would "disapply" parts of the agreement under the dispute settlement provisions of the agreement as set out above. The UK reiterates that this could ultimately lead to the "disapplication" of the backstop, but the agreement itself refers only to a "suspension" which must be "temporary". The UK confirms that even if it disappplied parts of the agreement, it would still look to avoid a hard border on the island of Ireland.

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