

# GETTING A BREXIT DEAL

A Summary of the  
Recommendations of the  
Alternative Arrangements  
Commission

April to September 2019

Prosperity UK was founded in 2017 as a politically independent platform bringing together leading business leaders, academics and policy makers to look constructively at the UK's future outside the EU, and how we build an open, dynamic and balanced economy which maximises prosperity for all.

By far the greatest obstacle to leaving the EU has been concerns surrounding the Irish Border and its future post-Brexit. Prosperity UK's Alternative Arrangements Commission established in April this year is a comprehensive attempt to remedy this situation, firstly by identifying potential "Alternative Arrangements" to ensure the absence of a physical frontier and to ensure that the Belfast/Good Friday Agreement is upheld, and secondly by drafting Protocols which describe how these Alternative Arrangements could be implemented in different scenarios. This work has been well received by the UK government and by parliamentarians from across the political spectrum and has been presented to Michel Barnier's team in Brussels.

In the last three months, we have dedicated considerable time to reviewing the draft Withdrawal Agreement and Political Declaration, rejected three times by the House of Commons, with the aim to identifying areas for improvement. The proposed changes have been heavily influenced by our engagement with the 48 UK parliamentarians who have contributed to the work of the Commission, as well as representatives of political parties from Northern Ireland and Ireland. The revised texts seek to ensure that the UK can develop an independent free trade policy post-Brexit and secondly address some specific concerns relating to defence and security, and the timing of the monies owed to the EU.

It is important to highlight that the Political Declaration is a non-binding document which seeks to establish the direction of future UK–EU trade talks, but does not seek to proscribe what is contained in the final UK–EU Free Trade Agreement. As such, it is likely that this document evolves both as a result of the parliamentary process and as a result of interactions with the EU. The European Commission has made clear that it views the Political Declaration "highly flexibly" and reiterated the potential for it to be modified during the Implementation Period. As such, we fully intend to continue our engagement process on this topic and recognise that the choices facing the UK regarding its future relationship with the EU, post the implementation period, remain complex and contentious for parliamentarians and voters.

I would like to take this opportunity to thank both our technical panel and parliamentary commissioners for the huge amount of input they have supplied in the last six months. Prosperity UK has benefited hugely from their enthusiasm, energy and expertise and it is with great pleasure we present this document to assist negotiators in the final stages of the Brexit negotiations.

**Anthony Clake**

Board member, Prosperity UK

We have both been delighted to chair the cross-party Alternative Arrangement Commission (“the Commission”), supported by 23 technical experts drawn from around the world. It has worked at a rapid pace in order to find a legally operable solution to the Irish border and thereby unblock the Brexit impasse.

The Commission published its interim findings in London on 24th June. A two-week consultation period followed, including roadshow events in Belfast, Berlin, Brussels, Dublin and the Hague. Our [Report & Protocols](#) was published in London on 18th July. An Executive Summary of the Report & Protocols was sent to all members of the Oireachtas, Stormont and Westminster at the beginning of September.

On 30th August, Suella led a technical delegation to meet with Michel Barnier’s team in Brussels. And on 13th-14th September Greg chaired a Roundtable discussion in Dundalk which brought together representatives of eight political parties from Ireland, Northern Ireland and the UK to discuss Alternative Arrangements in the context of avoiding a No Deal Brexit.

Since its launch in April the Commission has been guided by two constraints:

### **Protecting the Belfast/Good Friday Agreement**

The Commission has looked at solutions that are both realistic and sustainable and recognise that their formulation and implementation will require the engagement of many stakeholders in the UK, Ireland and Europe. Key to the proposals is a commitment to protecting the Belfast/Good Friday Agreement.

### **A Withdrawal Agreement**

If we are to avoid a No Deal, a Withdrawal Agreement must be able to win the support of a majority of MPs in the House of Commons.

It is important to understand that there is a majority in Parliament for a Withdrawal Agreement that finds a way of superseding the existing Northern Irish Backstop (“the Backstop”), while also providing greater clarity to the Political Declaration about the future relationship with the EU.

In January 2019 the so-called Brady Amendment which supported a Withdrawal Agreement that enabled Theresa May’s government to renegotiate the provisions relating to the Backstop and supersede it with Alternative Arrangements, passed the House of Commons with a majority of 16. This non-binding motion is the only occasion when a Withdrawal Agreement won a majority in the Commons. In March the UK and EU agreed a Joint Instrument (“the Strasbourg Declaration”) which agreed to create a workstream to develop detailed proposals to avoid physical infrastructure at the border via “consideration of comprehensive customs cooperation arrangements, facilitative arrangements and technologies.”

The Commission has sought to build on the Brady Amendment and Strasbourg Instruments, and to demonstrate very clearly to the EU and to others that there is an on-going parliamentary majority for a Withdrawal Agreement provided that a template for Alternative Arrangements can be agreed.

We are pleased that, thus far, 48 MPs and peers, from most of the main political parties, have signalled their support to our approach by publicly supporting our work. In addition, many individual politicians and business leaders have contributed to our work and thinking on an anonymous basis.

We are confident that the technical approaches and text we have recommended provide a detailed basis for a legally operative Withdrawal Agreement between the EU and the UK. Our technical panel also advise that Alternative Arrangements could be up and running within two to three years, and in some areas sooner.

Our proposed changes to the Political Declaration are designed to create clarity around the UK's direction after it leaves the EU. The UK government's objective is to agree a deep and mutually beneficial Free Trade Agreement in both goods and services, allowing the UK capacity to diverge regulations if required, but with as much regulatory co-operation and deemed equivalence as possible. Trade freedom, legal sovereignty, control over migration and economic partnership are our objectives.

We believe that the work we have done has created a landing zone for a deal which would be in the best interests of the UK and EU.

We have submitted our work to the governments of the UK and European Commission and urge them to come together to develop creative and imaginative solutions for the sake of the people of the United Kingdom and the people of the EU.

Yours sincerely,



**Suella Braverman MP**

Co-Chairs, Prosperity UK Alternative Arrangements Commission



**Rt Hon Greg Hands MP**

We believe we have crafted a set of proposals which has the potential to create agreement between the UK and the EU which can also pass through the Westminster and European Parliaments. These proposals include:

- 1) **CHANGES TO THE WITHDRAWAL AGREEMENT AND POLITICAL DECLARATION**
- 2) **ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER TO SUPERSEDE THE BACKSTOP**

While these targeted changes take the existing Withdrawal Agreement as a starting point, they are of sufficient scope and strength to transform the existing agreement into a New Withdrawal Agreement, creating a legally operable landing zone acceptable to all sides.

## 1. CHANGES TO THE WITHDRAWAL AGREEMENT AND POLITICAL DECLARATION

### **The new Political Declaration and Withdrawal Agreement work together to deliver a better deal for both sides**

The current Political Declaration and Withdrawal Agreement work together to deliver a Customs Union for goods and a Free Trade Agreement for services. This is a necessary result of Theresa May's government demand for "frictionless trade". Prosperity UK regards this as an unrealistic standard because there is an inherent inconsistency in seeking frictionless trade with the EU (which entails being in the Customs Union for goods) and simultaneously seeking to have a true and genuine independent trade and regulatory policy.

Prime Minister Boris Johnson's government's revised goal seeking "as frictionless trade as possible" may sound like a small change, but it allows a different approach. The UK Government's objective is now that the end state for the UK and EU is a comprehensive free trade agreement in both goods and services, allowing the UK capacity to diverge regulations if required, but with as much regulatory co-operation and deemed equivalence as possible. We believe that this creates the opportunity to create a pathway towards a successful deal in the House of Commons.

We have drafted new versions of the [Political Declaration](#) and [Withdrawal Agreement](#) accordingly.

## **The Importance of the Political Declaration and Withdrawal Agreement in enabling a Free Trade Agreement negotiation**

Taken together our revised Political Declaration and Withdrawal Agreement will facilitate the negotiation of a Free Trade Agreement; this means that the single customs territory language in the current Withdrawal Agreement is unnecessary. Our text allows the fast-tracked negotiations of Free Trade Agreements with the United States, Japan, Australia and New Zealand, and potential accession to the Comprehensive and Progressive Trans Pacific Partnership (CPTPP). We have recommended that the Political Declaration be amended so the Free Trade Agreement negotiations are not restricted by the Irish arrangements, but rather involve negotiations between two different customs territories. This enables negotiations between the UK-EU towards a Free Trade Agreement to move forwards, while also allowing the UK's trade policy towards the Rest of the World to develop.

A different ultimate relationship in the end state is not precluded by the amendments we have made to the Political Declaration. For example, it is possible to start negotiating a Free Trade Agreement and to conclude that a different mechanism is necessary in some sectors (an auto pact, for example) during the course of the negotiation. Similarly, it is possible that the UK and EU might agree different provisions on regulatory cooperation than those found typically in Free Trade Agreements. The amendments we have proposed for the Political Declaration allow for a range of different end states.

## **How will the UK protect itself in the Implementation Period?**

The current Withdrawal Agreement sets up a one-to-three year implementation period, when the UK effectively remains a non-voting member of the EU. The risk is that during the implementation period the EU passes legislation that is damaging to the UK. In order to prevent this we recommend a joint commitment to collaborative Good Regulatory Practice during the implementation period, with the possibility of dispute settlement.

We discuss this idea in greater detail in the Political Declaration but include a provision in the Withdrawal Agreement that requires the EU to consult the UK in the event that it passes regulation that could damage the UK. We also allow the UK to have the right to be consulted on any regulatory changes in the EU that would implicate the UK. The provisions on Good Regulatory Practice in the Political Declaration are drawn from internationally recognised standards as follows:

- a) The key element of Good Regulatory Practice is that there would be an obligation on the EU to regulate in a way which is least damaging to trade and market competition with the UK, consistent with a clearly stated and legitimate public policy goal, in order for the UK to be bound by the dynamic alignment provisions. These provisions are drawn from existing international agreements, such as the World Trade Organisation rules.

- b) These provisions would be subject to dispute resolution so the UK could seek redress if new regulations were damaging to the UK.
- c) These provisions are not controversial and have already been implemented by other developed countries.
- d) As long as the UK can rely on these provisions and dispute settlement in the event that the EU violates these obligations, there should be no risk during the Implementation Period.

### **Will the UK have the ability to negotiate its own World Trade Organisation Modifications?**

Under our plan, the UK will be completely free to negotiate its WTO Modifications as it chooses while being transparent with the EU. This is important as the UK will need to negotiate with some trade partners separately from the EU.

### **Geographical Indications**

Geographical Indications are names attached to a particular product originating from an area (for example, Cheddar cheese). Which Geographical Indicators the UK will seek to protect is a matter for the UK and EU to negotiate in a Free Trade Agreement. Our changes are intended to ensure that the UK will have full flexibility and freedom to negotiate these as part of a comprehensive Free Trade Agreement. The UK can seek protection of Geographical Indication that are important to it, while the EU will seek protection for its own Geographical Indications.

### **Level Playing Field Obligations**

Our objective is that the Backstop is superseded and hence the Level Playing Field obligations in the Backstop are not relevant. However, it is legitimate for the EU to suggest that some form of obligation should apply to the UK in the event of a tariff-free, quota-free, best in class Free Trade Agreement.

We detail in the Political Declaration what these Level Playing Field obligations would look like in a gold-standard Free Trade Agreement. These are the kinds of provisions relating to workers' rights, the environment, competition policy and state aid which would generally be found in an advanced Free Trade Agreement involving developed nations. They provide that both sides will not derogate from their existing employment and environmental protections, and that they will apply competition policy in accordance with international best practice and not to protect their incumbent interests.

The UK is expected to have a set of state aid disciplines to ensure that government does not damage market competition through unwarranted restrictions (much as the EU's state aids law now operates). Both sides will undertake to properly enforce their state aids laws, again in compliance with internationally recognised standards, such as expressed in international agreements and through global bodies such as the OECD and International Competition Network ("ICN").

### **Sovereignty in Defence & Security**

We have amended the Political Declaration to provide reassurance that the UK can maintain sovereign control over its security and defence decision-making. We have done this in order to protect the UK's Five Eyes relationships, and defence arrangements with the US.

### **Strengthening of the Strasbourg Declaration**

We recommend strengthening of the Strasbourg Declaration to impose deeper obligations on both parties to find alternative arrangements in line with Alternative Arrangements Commission Protocol C.

### **The role of the European Court of Justice (CJEU)**

The Free Trade Agreement itself will have its own arbitration mechanism and the CJEU should only have a limited role adjudicating on matters of purely European law, as the High Court in London should on UK law. During the Implementation Period, any EU matters would be determined by the CJEU, but any matters of dispute between the UK and EU would be resolved by reference to the arbitration-based dispute settlement process that applies to the Withdrawal Agreement as a whole.

### **Money**

We recommend phasing of the monetary payments between the UK and the EU based on benchmarks and milestones. Payments should not be open-ended, and should be made as progress is made by both sides towards the comprehensive and advanced Free Trade Agreement both sides seek.

## **2. ALTERNATIVE ARRANGEMENTS**

Identifying practical, workable and timely alternatives to the Northern Ireland Backstop border has been the main focus of Prosperity UK's Alternative Arrangements Commission since its launch in April 2019.

### **Constraints**

Our recommendations seek to protect the Belfast/Good Friday Agreement and the peace process, and ensure no physical infrastructure on the border and no checks and controls on the border.



Our recommendations also seek to protect the integrity of the EU's Single Market and Customs Union, and enable the UK to execute independent trade and regulatory policies after it leaves the EU.

### **A changing the status quo**

It is important to note that our approach is not a status quo solution. The UK is leaving the EU and this will result in changes in Northern Ireland and Ireland.

Furthermore, it is not true to say that there are no checks and controls in Northern Ireland now. Any trader who is selling products from Northern Ireland to the Republic of Ireland currently has to satisfy checks and controls of various kinds. [Click here](#) to read our analysis of some of the checks and control currently in use in Northern Ireland

### **Common Sanitary and Phyto-Sanitary (SPS) area**

The types of trade most difficult to manage away from the border are agricultural and food trade. We discuss a range of common regulatory areas and propose a common area for both the Island of Britain and the Island of Ireland. The UK would be able to diverge from EU SPS rules at any time and in the event of that divergence, a mechanism would be triggered which would allow the Northern Ireland Assembly and Executive to determine whether to follow the UK in its divergence or to stick with the EU and Irish SPS rules. These decisions would be taken on an "as needed" basis for relevant areas, building on the existing common areas (such as the livestock area which exists now). During the period of time that the common zone applied in its entirety to the two islands, checks on products from outside the zone would be done in the harbours and ports of both islands where new technology can be better placed to make checks progressively less and less disruptive.

### **Trusted trader**

Alternative Arrangements to the backstop include enhanced use of a multi-tiered trusted trader programme, creating ladders of trust which apply to both large and small companies.

### **Use of WTO Exemptions**

We draw on relevant WTO exemptions such as the Frontier Traffic Exemption, and the WTO National Security Exemption to provide a legal basis for an area running within 20 miles on either side of the border where no checks have to take place.

### **Use of Special Economic Zones**

We supplement the WTO and Union Customs Code Exemptions with enhanced economic zones in the Derry/Donnegal and Newry/Dundalk areas. These could include elements of "enterprise zones" as well as special economic zones, free trade zones and free ports. We note that a number of entities in Northern Ireland, including Lough Foyle port have indicated interest in taking advantage of the UK's free port agenda.

## **Transit**

Customs Transit procedure is an established international process which allows for the temporary suspension of duties, taxes and commercial policy measures that are applicable at import. As such, it allows customs clearance formalities to take place at the point of destination rather than at the point of entry into the customs territory. It is already widely used by the EU.

For those companies that would not be able to benefit from trusted trader programmes (for example because they are too small) we have advocated that Transit be used in the general case.

Trusted Trader programmes can also be used to make the transit requirements easier, such as the requirements to be an authorised consignor or consignee and the requirement to post a bond. We do seek a derogation from the Common Transit Convention to allow for alternatives to the bar code which would ordinarily be read by an Office of Transit on the border (not possible in the Irish border context). In the event of no common SPS area, we have suggested checks away from the border using mobile veterinary units outside of the traditional infrastructure of a border inspection post, a direction of travel the EU's own regulations are following. However, we fully acknowledge that these will be difficult and depend on a level of regulatory alignment which may not be in the UK's overall interest. It should also be noted that in our view, even an all-Island SPS area does not damage the UK's independent trade and regulatory policy at all. Other simplifications include Entry Into Declarants' Records, and other versions of self-assessment.

## **"In market" checks**

We advocate an increased use of "in market" checks in Ireland and Northern Ireland to ensure goods conform to regulations. These can be done by third parties, duly accredited, and we have found that these requirements have not proved controversial even in Ireland, as this will be necessary for the Irish to demonstrate to the EU that it has a workable system to protect the integrity of the EU Single Market and Customs Union. Following the recommendations of the Northern Ireland Executive and supported by a number of groups, we recommend draconian penalties for non-conformance, with both parties agreeing to enforce each other's laws in these areas as part of their regulatory cooperation arrangements in the Free Trade Agreement. Strict penalties would form part of a suite of tools to combat smuggling after Brexit

## **Small traders**

Another area of difficulty is small traders. We advocate an exemption for small traders who are below the VAT threshold of £85,000 because this group does not represent a threat to the EU Single Market and Customs Union as they are unlikely be trading beyond a limited area in the island of Ireland, and the level of that trade is de minimis. Larger traders will already be used to completing VAT registration forms (and depending

on the product they trade, other forms such as TRACES registrations for food, and APHIS registrations for live animal exports). After Brexit the additional requirement for customs declarations can be satisfied electronically, this is not unduly burdensome. It is important to recognise the difference between customs formalities (i.e. declarations, for which electronic filing and simplifications exist) and physical customs checks which are rare and intelligence-led. However, we recognise that for small traders any additional form filling is unwelcome and carries a cost. We therefore suggest a Transitional Adjustment Fund for small traders of around £100m which the UK government would make available to registered traders from Northern Ireland and Ireland. We also suggest a Capacity Building Fund for HMRC and the Irish Revenue Commission to upgrade customs capability at the government level.

### Smuggling

We recognise that post-Brexit smuggling on the Island of Ireland is a widespread concern. However we note that smuggling takes place at the Irish border now, as it does at the EU's external borders and even at some internal borders. We suggest an aggressive suite of anti-smuggling measures including draconian penalties for non-conforming goods, a national targeting centre with a special focus on the Irish border, and the use of Belfast/Good Friday Agreement bodies such as the Special EU Programmes Body to monitor trade flows.

[Click here](#) to read our paper on how to mitigate smuggling after the UK has left the EU.

### Protocols

A successful Brexit deal solution must consist of some form of Alternative Arrangements along the lines of that suggested in [Our Report & Protocols](#). The Protocols are intended as drafts to assist negotiators in coming to an agreement in any foreseeable Brexit scenario.

We have suggested two **Protocols, AB and C**.

**Protocol AB** grants the UK government sole power to avoid the Northern Ireland Backstop from being triggered by satisfying a set of obligations based on Alternative Arrangements. Under Protocol AB, the current Backstop remains in place, but is superseded as long as the UK government satisfies its obligations. This would clarify the Backstop's function as an insurance policy, something all stakeholders have supported.

**Protocol C** applies obligations on both the EU and UK based on Alternative Arrangements, but removes the Backstop Protocol from the Withdrawal Agreement.

While Protocol C will be easier to get through the House of Commons, Protocol AB would be easier for the EU and Ireland to agree. We could combine elements of both Protocol AB and Protocol C; together they provide a possible landing zone for both sides to come to an agreement.

## ACKNOWLEDGEMENTS

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Steve Baker MP	Stephen Kinnock MP
Lord Bew	Rt Hon Norman Lamb MP
Sir Graham Brady MP	Lord Lamont of Lerwick
Suella Braverman MP (co-Chair)	Lord Lilley
Sir Geoffrey Clifton-Brown MP	Emma Little Pengelly MP
Rt Hon Stephen Crabb MP	Alan Mak MP
Rt Hon David Davis MP	Kit Malthouse MP
Rt Hon Nigel Dodds MP	Lord Marland
Rt Hon Iain Duncan Smith MP	Rt Hon Esther McVey MP
Rt Hon Philip Dunne MP	Rt Hon Penny Mordaunt MP
George Eustice MP	Rt Hon Nicky Morgan MP
Rt Hon Sir Michael Fallon MP	Neil O'Brien MP
Baroness Finn	Rt Hon Owen Paterson MP
Rt Hon Caroline Flint MP	Chris Philp MP
Rt Hon Arlene Foster MLA	Rt Hon Dominic Raab MP
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British – Irish Chamber of Commerce	Manifests Ireland
British Retail Consortium	Manufacturing NI
Confederation of British Industry	Members of the Irish Parliament
City Centre Initiative Derry – Londonderry	Members of the UK Parliament
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Coca-Cola HBC	National Farmers Union
Dairy UK	Newry and Mourne Enterprise Agency
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Derry City and Strabane District Council	Newry Chamber of Commerce
Diageo	NI Food and Drink Federation
Duddy Group	NI Grain Trade Association
Fleming Agri	NI Mineral Products Association
Foremost Freight	NI Retail Consortium
Foyle Port	Norbrook
Freight Transport Association NI	NSF International
Federation of Small Business	NuPrint
Federation of Small Business NI	O’Neills International Sportswear
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Irish International Freight Association	Wisetech Global

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## ABOUT PROSPERITY UK

Prosperity UK is a politically independent platform co-chaired by Sir Paul Marshall and Lord Hill of Oareford, bringing together business leaders, academics and policymakers to seek solutions to Brexit issues and to look constructively at a future outside the EU and at how the UK can build an open, dynamic and balanced economy which maximises prosperity for all. More information is available at [www.prosperity-uk.com](http://www.prosperity-uk.com)

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