

POLICY PAPER

No 7

# **Brexit, Scottish Independence and Leaving a Union**

## **Lessons to Learn?**

**Kirsty Hughes**

Director · Scottish Centre on European Relations

22 February 2019

February 2019

**© 2019 Scottish Centre on European Relations. All rights reserved**

Scottish Centre on European Relations is the operating name of Centre on European Relations (Scotland), a company registered in Scotland with company number SC559785

**scer.scot**

## Introduction<sup>1</sup>

The tangled, chaotic and damaging process of Brexit will drag on for many years to come, unless the UK changes its mind and stays in the EU. The many and deep downsides of Brexit have led some to argue that Scottish independence would lead to similar downsides for Scotland – leaving a union, as Brexit shows they say, is no easy project.

This policy paper examines whether and to what extent there are similarities and differences between the Brexit process and Scottish independence. It finds, unsurprisingly, both points of comparison and points of difference. It also suggests areas where more research and analysis are still needed.

## Central Scenarios

Given the many unknowns in the Brexit process, including what the UK's final relationship with the EU may be, and given different choices an independent Scotland could make on its future EU and UK relationships, this policy paper simplifies the number of potential scenarios that could be involved in such a comparison. We assume, following the current policy positions of the UK and Scottish governments, firstly that the UK leaves the EU with some form of May's Withdrawal Agreement in place, including the backstop. And secondly, we assume that the Scottish government's current policy of independence in the EU is also adopted and implemented. We note, at various points, where other outcomes and scenarios would particularly impact on the comparison of the Brexit and independence processes.<sup>2</sup> Given the deepening UK political crisis, Brexit could well be postponed, but here we look at the comparison if both Brexit and independence happen.

These central scenarios mean that in the coming years, unless Brexit is halted, the UK would be in something equivalent to a customs union with the EU. This is the implication of the Northern Ireland backstop – it will only be superseded if a future free trade agreement can 'in part or in whole'<sup>3</sup> render it unnecessary. That is why the accompanying Political Declaration<sup>4</sup> talks of building on the customs arrangements in the backstop and it is why Theresa May in her recent 10 February letter to Jeremy Corbyn said her future trade deal would not only have no tariffs but also ensure no rules of origin checks were needed either. While May claims this could be consistent with an independent trade policy it is hard to see how. But it is consistent with being in a continuing customs union with the EU.

If an independent Scotland joined the EU as a member state, much of the future UK-Scotland relationship would be determined by the UK-EU relationship. There are certainly key questions of timing here not least, firstly, when that clarification of the UK-EU future relationship happened and, secondly, whether a second independence referendum were held while the UK was in the transition period (i.e. still in the EU's single market and customs union). There would also quite likely be a period where Scotland would have left the UK but not be in the EU. These issues are discussed further below.

The Brexit-independence comparison is considered here under nine main headings.

## (1) Sovereignty

The UK is a sovereign state and will remain so once it leaves the EU. It is a member of the UN – with a permanent seat on the Security Council. It has its own currency and its own army. It has its own independent foreign policy – which participation in the EU's Common Foreign and Security Policy did not and does not inhibit in any significant way (unlike trade policy). So despite the arguments over whether Brexit means the UK is taking back or giving up control, it is already a state and will remain a state after Brexit.

There are, certainly, many arguments about how to describe the EU – is it a confederation or only partly a confederation, is it partly a transnational, partly federal body? Arguably it is in part confederal and in part federal, leading many to conclude it is *sui generis* – of its own kind. But the EU is not recognised internationally as a state – and does not see itself as a state, even if some see it as a state in the making and have that as their political goal.

Scotland is a country but not a state. It is a sub-state. So an independent Scotland would be leaving a state – the UK – and regaining sovereignty. It would need, as other states before it, to join relevant international organisations including the UN. It would have to decide – a big issue in the 2014 and current independence debates – what to do about its currency. It would have to decide what its defence arrangements should be and its foreign policy would need to be developed. It would, according to the Scottish government, join the EU.

The UK does not need the EU's permission to leave it – as made clear in Article 50 (even though Article 50 does set out procedures for, and timing of, departure). And the UK does not have to re-establish statehood and sovereignty after Brexit, even though clearly (as discussed further below) there are very many laws and regulatory structures and international relationships it does have to re-establish or sort out due to Brexit.

In contrast, at present, the route to another independence referendum for Scotland would be for the UK parliament to grant a Section 30 order. This is what Theresa May refused to do in March 2017 – 'no, not now' – when Nicola Sturgeon announced, in the face of Brexit, that she wanted to hold another independence vote. In contrast, in the case of the 2016 EU referendum, the UK only needed to consult its own parliament; it did not have to ask the EU.

So, overall, there are clear, distinct differences between the case of the UK leaving the EU as a state, and Scotland leaving the UK to become a state.

## (2) Democracy and Taking Back Control

In rhetoric at least, despite the differences over sovereignty, there may be more similarity around the political goals of wanting self-determination and a greater democratic say in the life of the UK (for Brexiters) or Scotland (for the pro-independence side). But it is hard to disentangle such goals from the sovereignty points above.

The UK has, as a member of the EU, pooled or shared sovereignty in a number of areas, not least in agreeing to qualified majority voting in several EU policy areas, especially around the EU's single market. But the UK had a democratic choice and a veto whenever there was EU treaty change and a move from unanimity to majority decision-

making. The UK also has a seat at the table for all key discussions in the European Council and Council of Ministers and elected MEPs in the European Parliament.

The Scottish parliament, in contrast, only has powers in a number of devolved areas, not across the board – and, as the Brexit process has shown, can be ignored or overruled, notably in Holyrood's refusal of legislative consent to the EU Withdrawal Act. There are Scottish MPs at Westminster and Scottish ministers in the UK government but they do not get a veto over what powers are devolved and what are not.

Overall, the democratic process by which the UK has agreed to pool sovereignty in the EU is one that has given it much more and broader control, than the processes by which Scotland has a say in the UK. This reflects the major differences between being a member state of the EU, as a sovereign state, and being a devolved area and sub-state within the UK.

Brexit may well leave the UK as more of a rule-taker; it may end up giving up control more than taking it back. This is especially the case if the UK is either in a customs union with the EU – implementing EU trade agreements with no say or vote – and/or in the EU's single market (for instance via the European Economic Area). But even with a free trade agreement between the UK and EU, there will be strong pressure for a variety of reasons for the UK to align with EU regulations (and all exports to the EU would, of course, have to do so and demonstrate conformity).

In the case of Scottish independence, Scotland would clearly take democratic control over a much larger number of policy issues than under the devolution settlement. As an EU member state, it would have to implement the EU's rules and regulations. But it would, once it had joined, have a seat at the table, a veto in some areas and a vote. And as an independent state it would decide as a government and parliament to pool sovereignty in the EU – quite likely with a referendum to ratify that decision, as accession states have in the main chosen to do. An independent Scotland would surely too need to agree, democratically, a written constitution – not something the UK has faced with Brexit.

The future UK-Scotland relationship (discussed further below), where not predetermined by Scotland being in the EU, would also impact on whether Scotland could end up a rule-taker in some part of that relationship. But this would be in different areas to those affected by Brexit – for instance, if Scotland adopted the pound sterling for some time, as proposed in the report of the Sustainable Growth Commission<sup>5</sup> (a key choice, but not one facing the UK with Brexit). Still, the more Scotland chose 'independence-lite', the more it might face democratic questions around rule-taking.

Overall, despite commonality in the urge to take back control, the outcomes of Brexit and independence look, in democratic terms, rather different. Becoming an independent state – and one in the EU – brings with it a range of new democratic processes and choices that are different to those faced by the UK on Brexit, though issues of rule-taking are likely to come up in both.

### (3) The Divorce Process and Divorce Deal

The UK's Brexit negotiations have been chaotic. The Withdrawal Agreement focuses in particular on three main areas – EU citizens' rights, money, and the Northern Ireland backstop – as well as transition, governance of the agreement, dispute settlement and other issues.

The big stumbling block, for the UK government and Conservative backbenchers, of the backstop has been so controversial both because it potentially creates an indefinite differentiated relationship for Northern Ireland and because it sets limits on the nature of the future UK-EU relationship, even though that future relationship will only be negotiated once the UK has left the EU.

And, while the Political Declaration sets out a broad framework for the future relationship, it remains vague. This vagueness is deliberate on the part of Theresa May as neither her government nor her party can overcome their internal divisions over how close or distant the UK should be to the EU in future. And so future relationship issues have intruded into the Withdrawal Agreement and hence the divorce settlement.

Any future divorce talks between the UK and a to-be-independent Scotland would focus on a partly similar and partly very different set of issues. Money would certainly be there and arguments over dividing up assets. There would, though, be no equivalent to the Northern Irish backstop issue – there is not one part of Scotland that would need differentiated treatment vis-à-vis the UK compared to the rest of Scotland.

And on citizens, while some on the pro-UK side in 2014 argued there would need to be passport checks between Scotland and England, the continuation of the Common Travel Area (CTA) with Ireland, under the Brexit deal, suggests that would or could continue too in the case of an independent Scotland (though the CTA is a mixture of precedents, conventions, exceptions and laws, so not entirely straightforward to deal with). However, as discussed further below, the Brexit controversy over the Irish border shows that maintaining open borders outside the EU is challenging.

The Common Travel Area may give Scottish and UK citizens greater rights to work and live in each other's countries, more easily than for EU citizens claiming settled status in the UK under Brexit. But independence will create a new and different citizenship of a state for those living in Scotland – one that will also include Scottish citizens being EU citizens. So there are differences and similarities here. UK citizens retain their citizenship pre- and post-Brexit but lose their EU citizenship. On independence, Scottish citizens lose their UK citizenship but gain a new citizenship and regain their EU citizenship – as would EU citizens resident in Scotland.

Shared assets and liabilities and how to split them up would probably be a much tougher negotiation issue in the case of independence than for Brexit – not least the question of North Sea oil and gas, debt, defence assets, the siting of Trident on the Clyde, pensions, reciprocal rights to access public services and so on. Some might, eventually, be resolved on a per capita split basis, but the talks would be difficult. And the still-debated issue of whether an independent Scotland would continue to use the pound – for which there is no comparison in the Brexit talks – would potentially intrude

on both the divorce talks and the future relationship talks, as could other issues such as public services.

In negotiating Brexit, the UK has been at a clear disadvantage both by being the smaller party and by not setting out detailed plans or text for the agreement – negotiating instead on EU-drafted text and testing that against the UK's (impossible to square) red lines. How the imbalances of power might impact on divorce terms between the UK and a departing Scotland is an open question. But there are certainly lessons to be learned in not letting the other – and more powerful – side hold the pen in drafting all sections of the agreement.

Transition is a vital component of the Withdrawal Agreement, since the EU cannot negotiate a new trade and security relationship with the UK until it has left the EU. In principle, the UK and Scotland could negotiate much of their future relationship ahead of independence. But they could equally agree a transition on some issues if both chose to continue negotiations after independence. There would though be more flexibility on that – the UK's lack of a written constitution potentially being of help on these choices. The rule-taking nature of the UK's transition out of the EU might give Scotland pause for thought – again currency looks to be one pertinent issue here if Scotland wanted to keep the pound for a period or indefinitely.

But, in terms of the general comparison here, it would seem the substance of the divorce issues are rather different between Brexit and independence, so there may be less to learn from the one for the other than might be imagined at first sight. The big stumbling block of the Northern Ireland backstop is Brexit-specific. Scotland-UK divorce issues would be tough to negotiate but, while there is overlap, there are more differences than similarities. And there would be much more clarity, as discussed below, over the future relationship if Scotland was aiming to be an EU member state.

#### (4) Political Divisions

Politically, however, there might be more lessons for the independence process – despite the specificities of Brexit.

The Brexit political turmoil has been driven by a mixture of issues – a divided UK population, a divided Conservative party, a Labour opposition that is divided and not reflecting the majority of its voters 'Remain' preferences, and a UK government that is a minority government dependent on DUP votes, and facing the need to respect the Good Friday Agreement. Vote Leave was also found to have broken electoral law during the campaign.

An independent Scotland could face a range of political scenarios depending on how large or small the majority vote for independence was and depending on the composition of the Scottish parliament and government negotiating the terms of the divorce. The deep and persistent public divisions over Brexit in the UK may hold some warnings for Scotland. A very narrow win for the independence side might create persistent divisions and debate. And a finely balanced and deeply divided Scottish parliament could make agreeing divorce terms difficult – and/or a divided UK parliament could make agreeing a deal tricky too. There could be calls for a vote on the final divorce deal – as there have been (so far unsuccessfully) in the case of Brexit. Yet

the more pertinent comparison may be that the losers of the Brexit vote in 2016 and of the independence vote in 2014 both want another referendum.

But the extraordinary political turmoil in the UK, and the drivers of that turmoil, are highly unusual for a western democracy, so the perfect storm that is UK Brexit politics is rather unlikely to find a direct equivalent in the future Scottish politics of independence. In the UK, a Conservative prime minister (David Cameron) backed Remain then was replaced by a Remain-supporting prime minister (Theresa May) determined, now, to push through Brexit. It's hard to imagine an analogy to Scotland there.

In terms of identity and divisions, however, there are more parallels. Some saw the independence referendum in 2014 as a flowering of grassroots democratic debate; others saw it as divisive. The losers of that vote – the pro-independence side – were in many ways more energised by it than the pro-UK side. The aftermath of the Brexit vote has created arguably a more bitter standoff where the Brexiters cry foul despite winning, Remainers are fighting back and where UK politics is in crisis. In contrast, post-2014, Scottish politics is in a reasonable state, and the losers of the referendum are in government. In the UK, both the losers and winners of the Brexit vote are in government – which in part drives the current Brexit stalemate.

In the UK, both main parties now support Brexit (despite the start of splits in both, with 8 MPs leaving Labour and 3 the Tories as of 20 February) while the Remain-supporting public, that lost in 2016, is ahead in the polls. Labour voters and members support Remain while their leadership does not. In Scotland, the Scottish government supports independence (with the support at Holyrood of the Greens) – while the 'No' side retains a majority in opinion polls (though not necessarily if the question is posed assuming Brexit happens). In another contrast, in the wake of the 2014 referendum, the Smith Commission rapidly proposed new powers for Scotland, where post-Brexit, the Conservative government set out red lines that precluded a 'soft' Brexit (that some saw as a possible compromise). What is similar is that neither remaining in the EU nor independence have gone away as issues – those who lost want another vote.

So there are some similarities and some lessons perhaps to draw across Brexit and independence in terms of political divisions but plenty of political and constitutional (and economic) differences too. Overall, democracy thrives on diversity of view and so division and difference of view are welcome in many ways. But systemic change of the order of Brexit or independence also needs a clear majority, buy-in to, and respect for, the actual democratic process (no cheating, fake news, etc) as well as respect for facts and evidence, and clarity of aims (preferably realistic aims).

## (5) The Future Relationship

Overall, if an independent Scotland was going to rapidly become an EU member state, then substantial parts of the future UK-Scotland relationship would be determined by that, but major areas would be specific to the UK-Scotland deal. If there is consensus on the EU goal, then there would probably be fewer deep splits in the Scottish government or parliament over the aims of the future relationship that have driven the crisis in UK Brexit politics. And there would be much less uncertainty and vagueness about what that future relationship would look like.

But differences within and between Scottish political parties would also surely exist over major aspects of the future UK-Scotland relationship – as evidenced in debates within the independence movement. And differences could emerge more strongly over whether to join the EU, the European Economic Area or neither (though the Brexit experience so far would suggest joining neither would be a damaging route to go down indeed). But whether differences of political view would lead to the sort of stalemate and political crisis the UK now faces seems unlikely.

If the future UK-EU relationship is one that builds on the Northern Ireland backstop, the UK-EU relationship would be (very similar to) a customs union and likely to involve reasonably close alignment to EU rules and regulations – at least in goods and quite possibly agriculture. So with the UK effectively in a customs union with the EU, and Scotland joining the EU, then the UK and Scotland would both be in the same customs union. The difference to the current situation would be that the UK would be a rule-taker on EU trade policy and deals where Scotland would be a rule-maker with the other EU member states – meaning Scotland would have more power than the UK over trade policy – quite a reversal compared to the status quo.

The main aspects of the future UK-Scotland relationship that would need to be agreed would be in those areas not covered by the fact that Scotland would join the EU. That would include, in particular, some aspects of services – since the EU’s single market for services is not complete. With Scotland in the EU, most of the relevant goods, agriculture, fisheries and environmental issues would be covered by the UK-EU relationship – but these and other questions would certainly impact on the key question of border controls and other barriers (discussed more below in section 8).

The future UK-Scotland relationship would cover a fundamental and wide range of issues, all debated in 2014 and subsequently (and with the Scottish government’s then views set out in its 2013 white paper). This includes issues ranging from the currency and pension rights to defence to the NHS and other public services (reciprocal rights) to the royal family. These future relationship issues would need clarity and agreement, and there would be some overlap between divorce and future relationship issues. The pros and cons and the nature of the future relationship would be hotly contested and would be at the heart of the debate and in the UK-Scotland negotiations.

There would also be debate over Scotland’s future policies – its foreign policy, its public services, its industrial strategy and much more. There is no direct comparison to Brexit here – the UK already has policies across domestic and international issues. And while there has been some debate about where the UK might go post-Brexit – down a ‘Singapore’ deregulated route or staying close to a high-standards, high-regulated EU model – this has been partly subsumed in the debate on the future relationship, and partly left to one side as the Brexit process has consumed all.

And whether Brexit holds many lessons for the negotiation of the future UK-Scotland relationship is not so obvious. The EU has had a clear view all along of the range of options it can offer the UK. The UK in contrast has had red lines, but no clear or even realistic view of its desired future relationship with the EU. It is perhaps likely, and to be hoped given the lessons from the Brexit chaos, that both the UK and Scotland will have clear negotiating positions and ones that bear contact with reality. But the issues for

negotiation are, in the main, different to the key Brexit issues as long as an independent Scotland does join the EU.

## (6) Relationship to the EU

Once the UK leaves the EU, it will become a third country vis-à-vis the EU. At present, it does not appear that the UK will go down the route of a 'Norway-Plus' Brexit, which would mean it would be essentially a member of the EU's single market and customs union, albeit with little voice and no vote. May's declared aim, in the Political Declaration (and in her many Brexit speeches) is for the UK to have a deep and special free trade relationship with the EU – even if, as argued above, this is likely to look very like a customs union.<sup>6</sup>

In contrast, the Scottish government's policy of independence in the EU, if achieved, would mean that Scotland would be a full EU member state. Scotland would not become a third country vis-à-vis the EU.

But, because of Brexit, the UK would be a third country vis-à-vis Scotland as an EU member state, and the UK-Scotland relationship would be determined, as discussed above, by the EU-UK relationship for all those areas that the latter covers (unless any special opt-outs or arrangements were negotiated, such as Ireland has (as does the UK) from Schengen). As a result, much more would be known about the future UK-Scotland relationship than is yet known about the future UK-EU relationship – and this would not have to be negotiated by Scotland and the UK. It would depend on Scotland being in the EU (or in an accession process towards the EU), and on the UK and EU having an established relationship. What would cause uncertainty here is clearly the timing both of Scotland joining the EU and of the UK finally agreeing a future relationship with the EU.

What is similar here, comparing Brexit and independence, is that, on becoming independent, Scotland would have to negotiate accession to the EU (i.e. its future relationship). Just as the UK has to negotiate its future relationship with the EU, so would Scotland. But if an independent Scotland sticks to the declared goal of joining the EU, that would be clear, and the EU has a very clear set of well-used rules and processes for accession. In contrast, Brexit is the first time Article 50 has been used. For now, the UK's future relationship with the EU, even if the Withdrawal Agreement passes, is unclear even if the fact that it would need to encompass a customs union – to supersede the backstop – gives partial clarity.

So the huge uncertainty that haunts the UK over its future relationship with the EU would not hang over accession talks for Scotland. And, importantly for our comparison here, there would be less uncertainty too about the future UK-Scotland relationship. How long accession talks would take would depend on when Scotland went independent and applied to join the EU – and whether that happened within the Brexit transition period, which could run to the end of 2022 if extended (as allowed for in the Withdrawal Agreement).

For an independent Scotland, accession to the EU could take 3-4 years in terms of applying to join, negotiating and ratifying an accession agreement (drawing on the experience of Sweden, Finland and Austria when they joined).<sup>7</sup> In the meantime, it

would be likely the EU would establish an interim association agreement with Scotland as a candidate country – so again giving it a different relationship to the EU than a third country and one that would also impact on Scotland’s relationship with the UK.

Since EU accession has to be agreed unanimously, there would be uncertainty as to whether any member state would veto Scotland’s application. But, with Scotland being a small country that had already been inside the EU, meeting its rules, a veto is unlikely – unless, as has often been suggested, Spain might do so, in order not to give any encouragement to Catalan independence. But if Scotland achieved independence through a legal and constitutional process agreed with the UK, there is unlikely to be an EU veto for that reason (as some Spanish politicians have also said).

The UK could face a veto on its future relationship with the EU from various sources (as the Canada-EU trade deal did when the Walloon parliament refused its consent). So there is a similarity in that, beyond the divorce deal (where the Withdrawal Agreement needs a super-qualified majority in the European Council plus European Parliament consent), both the UK and Scotland could face vetoes over their future relationships with the EU.

Overall, there would be some uncertainty around Scotland’s accession to the EU, but not of the order that is driving growth and investment down in the UK and plaguing its politics. Indeed, if Scottish accession looked straightforward, there would potentially be positive effects from that anticipated accession. And there would, relatedly, in many ways be more clarity around the Scottish-UK relationship.

If an independent Scotland decided not to join the EU but instead to join the European Economic Area, this would also have the merit of clarity. But if the UK were in a customs union with the EU, it would make little sense (not least in terms of borders and economic relations) for Scotland to not also be in that customs union. Yet if Scotland joined EFTA (which is the only route, if a state is not in the EU, to joining the EEA), it would have to sign up to EFTA trade deals,<sup>8</sup> which would conflict with being in a customs union with the EU and UK (and so following EU trade deals). If the UK finally chose to go down a Norway-Plus route, the EU might find some ways round this EFTA problem for the UK, most likely by setting up a separate set of institutions for the UK – similar to the EEA on the single market side, but adding to them for the customs union part. But it is not obvious that the EU would do the same for Scotland. So both the EU’s position and the UK’s Brexit choices will impact on future choices of an independent Scotland – their feasibility, and their pros and cons.<sup>9</sup>

Overall, there is more difference than similarity here. An independent Scotland in the EU or applying to join the EU would be on a different path to that of the UK which is establishing a third country relationship with the EU. And, in choosing that path, it would face much less uncertainty than the Brexit process is creating for the UK. But both the UK and Scotland would have to negotiate with the EU, as the weaker party in both cases, and both could face vetoes on their future relationships with the EU.

## (7) New Laws, New Regulatory Bodies

With Brexit day set for 29 March unless Article 50 is extended, the UK is struggling to establish all the new laws, policies and regulatory structures it will need despite initially

bringing into UK law most of existing EU laws through the EU Withdrawal Act. Exactly what new regulatory structures the UK will need will also depend on the future UK-EU relationship and the extent to which the UK continues to participate in EU regulatory agencies (and under what terms).

There clearly are relevant lessons for Scotland here. If Scotland becomes independent while the UK is still in transition out of the EU (i.e. still in its customs union and single market), then Scotland will be able to continue to apply EU law even before its accession as an EU member state. But it will need to bring relevant UK laws into Scottish law. The EU Withdrawal Act, and Holyrood's own Continuity Bill, have shown both how this can be done and some of the many potential pitfalls.

As a new state, Scotland would also need to set up many new regulatory agencies. But it would be doing this in the context of joining the EU which would determine where it needed agencies, with what scope – and whether these were temporary or permanent depending how member state agencies interact with EU-level ones.

So there are many similarities but some differences here. If the UK starts to diverge from EU laws after transition, then some firms and organisations may need to apply two sets of rules and regulations: UK law in domestic goods and services and EU law for goods and services supplied to the EU. If Scotland is independent before the end of transition, it will not need to move away from EU rules and regulations with the rest of the UK. However, that timing looks fairly unlikely. If Scotland held an independence referendum in 2020 and the UK's Brexit transition was extended to the end of 2022, it might just be possible. Or, if Brexit was postponed by a year or more and then there was a transition, this might too allow an independent Scotland to make a relatively smooth transition to EU membership. But if the UK leaves with no deal or at the end of 2020 (and not in a 'soft' Brexit) then Scotland will risk facing a move away then a move back to EU regulations.

So before independence, as part of the UK, Scotland would diverge from the EU with the rest of the UK (depending how much the UK chose to diverge from EU rules). On independence, Scotland would then converge back to the EU and away from the rest of the UK. The difference here between Brexit and independence is driven by the fact that Scotland would ultimately rejoin the EU, and so in diverging from the UK, it would be re-establishing or retaining continuity with EU regulations and structures. This could be costly – divergence then convergence. But it will differ from the one-way, partial divergence that May's Brexit plans appear to have in store for the UK.

Overall, Brexit means some divergence from the EU, independence means convergence or continuity with the EU – and so the degree of divergence between Scotland and the UK will depend on the future UK-EU relationship. Inevitably, as discussed below, any UK-EU or UK-Scotland differences in regulation will create some barriers between the UK and Scottish/EU markets.

## **(8) Relationships with the Rest of the World**

The Brexit/independence comparison is not particularly relevant when considering how the UK will relate to the rest of the world after Brexit vis-à-vis an independent Scotland's global relationships. The reasons why it is not a very fruitful comparison have mostly

been set out above, in particular the fact that the UK is already a sovereign state and Scotland is not.

As a sovereign state, the UK already has its own foreign policy and embassies around the world. As a new state, Scotland would need to establish its foreign and security policy, defence resources, and its foreign policy networks. The UK, with Brexit, is facing major challenges to roll over or renegotiate existing trade (and other) relationships that it is currently in due to its EU membership. In contrast, on joining the EU, Scotland would be part of all those EU trade and other international agreements.

Perhaps one point of similarity here is the UK attempting to establish a new trade policy outside the EU compared to Scotland needing to establish a new foreign policy. But this is clouded by the likelihood of the UK being in a customs union and so its supposed new trade policy would have little to do (beyond attempt services-only trade deals).

The UK is discussing with the EU how to consult and cooperate on foreign and security policy issues after Brexit. An independent Scotland in the EU would then both cooperate with the UK as part of EU foreign policy and also have the opportunity to discuss bilateral foreign policy cooperation with the UK.

Overall, there seem to be more differences than similarities to be drawn here. If it was independent, Scotland would no longer be part of UK foreign policy and would need to establish its own external strategy and participate in EU foreign policy decision-making. With Brexit, the UK maintains its own foreign policy, stops participating in the EU's while looking, nonetheless, to cooperate with the EU. The UK will lose influence but maintain its foreign policy. Scotland will create its foreign policy and gain, within the EU, some more influence than at present, albeit small.

## (9) Border Issues and Economic Impacts

If the UK and Scotland were both in the EU then there would be no serious border issues – any more than there are today while the UK remains in the EU in terms of the border with Ireland, France and other EU member states.

So, the fact of Brexit drives the border issues as much as independence. But, assuming Brexit goes ahead, the border issues facing an independent Scotland would clearly change and become more challenging compared to both countries being inside the EU.

The intense Brexit debates over the Irish backstop, how to keep the Irish border open while not creating a border in the Irish Sea, and over how and whether frictionless trade can be retained between the UK and the rest of the EU tell us that border issues are difficult and likely to have substantial economic effects.

But the proposed backstop for Northern Ireland does not, in fact, cast much light over future UK-Scotland border issues.<sup>10</sup> If Scotland is an independent EU member state and the UK a third country vis-à-vis the EU – but probably in a customs union arrangement with the EU – then the relevant comparison for Scotland-UK on borders is how the Ireland-UK (Irish Sea) or France-UK border will operate post-Brexit (i.e. how do EU member states control their borders with the UK and vice versa). There is another difference here since those EU-UK borders are all sea borders, where the main Scotland-UK border is a land one.

And while the Northern Ireland-Ireland land border would come under backstop provisions (if not superseded by the future UK-EU relationship), the Scotland-UK border would be an EU-UK border like all the other member states (apart from the likely Common Travel Area provisions).

The fact of the land border is likely to impact in particular on sanitary and phytosanitary checks. But in general, the future UK-EU relationship will determine how much friction there is at UK-EU borders. If the UK is in a customs union and has major alignment with EU rules and regulations there will be less friction – but it will not be frictionless, since the UK will not be fully in the EU's single market nor following the four freedoms, and so there will be more regulatory checks and other barriers, some but not all of them at borders.

So Brexit tells us that borders – outside the EU's single market and customs union – are problematic. While an independent Scotland, like Ireland, may remain part of the Common Travel Area, it will face – like other EU member states – a harder border with the UK than if Brexit did not happen. There may or may not also be additional barriers for instance on services provision in areas outside the EU's single market, depending on that part of the negotiations on the future UK-Scotland relationship.

## Economic Impacts

The existence of a UK-Scotland border – and a land border between England and Scotland – will surely be a significant issue in any independence referendum. Apart from the actual fact of such a border, there are tough questions about the likely economic impacts. There has been a large number of studies done in the case of Brexit looking at how different forms of Brexit – no-deal Brexit, a Canada-style Brexit, a Turkey-Plus deal, a Norway-Plus deal and so on – would impact on the UK's growth and trade. Overall, the impact is negative – putting barriers up reduces trade and growth but much more so the further the UK diverges from the EU.

So there is a need for estimates of how much a border between the UK and Scotland might impact negatively on the Scottish economy in the case of independence. But it is already clear from the Brexit studies that, if the UK is in a customs union and closely aligned with EU rules and regulations, the negative impact of Brexit will be less than if the UK were to adopt a Canada-style deal or even a no-deal Brexit. That UK choice would then affect estimates of the economic costs and benefits of independence.

One recent study by John McLaren<sup>11</sup> argues that Scotland leaving the UK's own customs union and internal market would inevitably be negative, while acknowledging that whether the impact would be larger or smaller is open to debate. But at present, there is no separate UK customs union – rather the UK including Scotland is in the EU's customs union and the EU's single market. And there are many political and economic choices to be made in creating a pan-UK internal market post-Brexit – also contingent on the UK's future external policy choices (as cogently argued by Michael Dougan<sup>12</sup>). So the future choices Scotland would face between being seamlessly part of the UK or seamlessly part of the EU – and the economic impact of those choices – will depend also on choices the UK is currently struggling to make in particular over its future EU relationship but also in terms of common UK frameworks and devolved powers post-Brexit.

Some argue that, since Scotland's trade with the rest of the UK is three to four times higher than its trade with the EU, the economic effects of independence are self-evidently negative due to border effects. This picture has changed even in the last few years, with Scottish exports to the EU in 2017 now 30% of those to the rest of the UK (these statistics come with cautionary advice from the Scottish government on their robustness<sup>13</sup>). So there is a shift from Scotland's exports to the rest of the UK being almost four times those to the EU to three times. Scotland's international exports as a whole (EU and non-EU) are two-thirds of its exports to the rest of the UK.

Any assessment of the economic costs and benefits of independence would need to consider likely barriers to trade between the rest of the UK and Scotland and their impacts (as has been done for Brexit) and a range of broader and dynamic effects.

The costs of the border and other barriers would need to be assessed depending on the nature of the future UK-EU relationship. There would also need to be consideration of whether Scotland could avoid any of the damage to growth from Brexit that it will sustain as part of the UK.<sup>14</sup> Looking at estimates for Ireland, it is highly unlikely it could avoid much of the damage but perhaps some. An independent Scotland in the EU would be likely to attract more foreign direct investment than within the UK – given that the bulk of FDI into the UK has been driven by companies wishing to access the UK and EU markets together. But its likely scale would need to be estimated.

And there are then questions of which sectors would benefit most, in terms of growth and productivity, from having unimpeded access to the EU's market – as well as ones of how quickly and whether Scottish trade might reorient towards other markets after independence or increase (or not) as a proportion of GDP (given that Scotland exports less compared to most other small EU countries, even including its exports to the rest of the UK, according to the Fraser of Allander Institute<sup>15</sup>). There may be some lessons here from Ireland's changing patterns of trade both since independence and since joining the EU alongside the UK.

How oil and gas resources are split on independence (not included in the UK-Scotland export statistics) would also be relevant here. As too, the likely benefits to the Scottish economy of retaining free movement of people as an EU member state, of frictionless trade with the EU and retaining the benefits of being part of the EU's international trade deals. How these benefits compare to the costs of new barriers to Scottish trade with the rest of the UK needs in-depth analysis.

The big macroeconomic issues of the budget deficit, debt and currency are obviously central too to the debate over the economics of independence. But they play less into our particular Brexit/independence comparison here. As considered above, the UK, as a sovereign state, has retained its currency while being in the EU and will do so on leaving. An independent Scotland faces different choices – to create a currency, keep the pound, adopt the euro. The UK's fiscal stance, including austerity policies, outside the eurozone, has been driven more by UK government choices than any EU budget rules. But an independent Scotland in the EU may have to commit, eventually, to join the euro and to abide by eurozone macroeconomic rules on budget deficits and debt.

So where there are few lessons from Brexit for UK fiscal policy, there are many fiscal issues for an independent Scotland both in leaving the UK and in joining the EU (though outside the euro, as it would be to begin with, budgetary discipline from the EU would

be somewhat lighter as it has been for the UK). And, while the UK had to agree to meet its financial commitments to the EU (which also then cover the costs of a transition in the single market and customs union to the end of 2020), the UK and EU did not have to negotiate splitting national debt as the UK and Scotland will need to.

As McLaren points out,<sup>16</sup> the UK gains in Brexit from no longer paying its EU membership dues while Scotland would lose a significant net fiscal transfer from the UK on independence. But the costs of Brexit – impacting on the UK even before it leaves the EU – are, according to most studies, many times bigger than this. And the UK would still have to pay some amount to the EU to participate in the various programmes and agencies that Theresa May has indicated it may wish to. But McLaren is correct that the simple salience of figures around budget transfers or payments often cuts through more to the public debate (however dishonest the £350 million figure on the side of the Brexit bus) than more holistic economic arguments and analysis.

So there is more research and analysis needed of the economics of Scottish independence both in the face of Brexit and in comparison to Brexit. But it is clear that the lessons around borders, on which Brexit has cast a strong light, will be relevant too for an independent Scotland. Whatever the overall economic costs and benefits of independence, barriers between the UK and Scotland will create some economic costs compared to both countries being in the EU. More detailed and dynamic analysis to quantify those border costs is needed rather than simple assertions about today's greater level of trade between Scotland and the UK than between Scotland and the EU/rest of the world.

## Conclusion

This paper has looked at some of the likely potential differences and similarities between the UK leaving the EU and an independent Scotland separating from the UK. While there are many differences, not least that the UK will remain a sovereign state while Scotland would become one again, there are also similarities. The politics of divorce talks will depend on the nature of domestic politics on both sides – but there is no automatic reason to presume that independence divorce talks would face the perfect and chaotic storm that UK politics is in over Brexit. The divorce issues might overlap, but they would differ too.

The expectation that an independent Scotland would join the EU as a member state is another point of contrast. The UK is choosing to become a third country vis-à-vis the EU – and so, with Scottish independence, the UK would be a third country vis-à-vis Scotland in the EU, rather than vice versa. Scotland would not face the challenges the UK faces to replicate or replace all the EU's international trade agreements and other treaties. Rather it would join those agreements once it acceded to the EU. Yet both the UK and Scotland could face vetoes on their future relationship with the EU – the UK on its future trade deal (as Canada temporarily did) and Scotland on accession.

The economic challenges of independence are also different in many ways to those of Brexit. But the impact of new borders and barriers where previously there were none is clearly a directly relevant point of comparison. But there is no independence equivalent to the challenge posed by the Northern Ireland backstop to Brexit politics.

Compared to Brexit, it is likely there would be less uncertainty along a number of key dimensions if Scotland were aiming to rapidly join the EU. Much of Scotland's future relationship with the UK would then be determined by the UK-EU relationship (which might hopefully be clearer in the next 2-4 years as the UK transitions out of the EU).

In those major areas that are not covered by the UK-EU relationship and that would be at the heart of much of the independence debate – such as oil and gas assets, defence assets, currency, debt and more – Brexit provides fewer pointers to how the UK and Scotland might negotiate an independence settlement. What Brexit does, more than providing a cautionary tale or a close comparison, is complicate the process of independence, compared to both the UK and Scotland being in the EU as independent states.

Leaving a union like the EU or the UK is a big systemic change and challenge. But not all unions are the same. The UK is a state, the EU is not and Scotland is not. Overall, differences and similarities abound, but this paper's analysis suggests that in many ways the differences stand out more.

## Dr Kirsty Hughes is Director of the Scottish Centre on European Relations

---

<sup>1</sup> I am grateful to David Gow, Michael Keating and Tobias Lock for comments on this paper. All views expressed and any errors are the responsibility of the author alone.

<sup>2</sup> A wider range of options for Scotland from the status quo to federalism to bespoke relationships with the EU are considered in McLaren, John (2019) '[Potential impact of Brexit analysis and negotiations on any second Scottish independence referendum](#)' Scottish Trends, Analysis Paper – Feb 2019

<sup>3</sup> '[Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018](#)', European Commission, Brussels, 14 Nov 2018

<sup>4</sup> '[Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)', European Council, Brussels, 22 Nov 2018

<sup>5</sup> '[Scotland – the new case for optimism: A strategy for inter-generational economic renaissance](#)', Report of the Sustainable Growth Commission, May 2018

<sup>6</sup> Hughes, K (2018) '[Political Declaration: "Canada Dry" or "Turkey Plus"?](#)', Scottish Centre on European Relations, Comment, 22 Nov 2018

<sup>7</sup> Hughes, K and Lock, T (2017) '[An Independent Scotland and the EU: What Route to Membership?](#)', *European Futures*, University of Edinburgh, 20 Feb 2017

<sup>8</sup> Hughes, K (2017) '[Scotland's EU Single Market Options: Some Challenges from the Trade Side](#)', Centre on Constitutional Change, 15 Jan 2017

<sup>9</sup> The Scottish government set out a range of options for Scotland, in the Brexit context, in its 2016 paper (and subsequent papers), '[Scotland's Place in Europe](#)', 20 Dec 2016

<sup>10</sup> A broader comparison of the impact of Brexit on Northern Ireland and Scotland is undertaken in Hughes, K and Hayward, K (2018) '[Brexit, Northern Ireland and Scotland: Comparing Political Dynamics and Prospects in the Two "Remain" Areas](#)', Scottish Centre on European Relations, Policy Paper No 6, 24 Apr 2018

<sup>11</sup> McLaren, J (2019) *op cit*

<sup>12</sup> Dougan, M (2018) '[How the UK's "internal market" depends on EU rules – and jeopardizes relations within the UK](#)', Foundation for Law, Justice and Society, 23 Mar 2018

<sup>13</sup> '[Export Statistics Scotland 2017](#)', Scottish government, 30 Jan 2019

<sup>14</sup> Gow, D (2019) '[The Costs of Brexit for Scotland](#)', Scottish Centre on European Relations, Comment, 11 Feb 2019

<sup>15</sup> '[Scotland in 2050: Realising Our Global Potential](#)', Fraser of Allander Institute, University of Strathclyde, Sept 2018

<sup>16</sup> McLaren, J (2019) *op cit*



Design by Anthony Salamone