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BREXIT AND THE UNION

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CENTRE ON
CONSTITUTIONAL
CHANGE



The **UK** in a
Changing Europe

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Brexit and the Union

As of 11pm on 31 January 2020, the UK is no longer a member of the European Union. But what challenges does leaving that Union pose for the Unions of Great Britain and Northern Ireland?

The Brexit process has already created strains in the relationships between the constituent territories that make up the UK. In part, these strains emerged from the divergent preferences that were evident in the 2016 referendum, and that have remained evident since then. The UK as a whole has left the EU, but without the consent of the majority in Scotland and Northern Ireland.

Brexit also poses some big challenges for the UK's system of devolution, and relationships between the four governing administrations will be tested. Difficult questions bubbling below the surface since 2016 will demand a response.

What is to be the balance of power between the UK Government/Parliament and the devolved institutions in post-Brexit UK? What is the scope of the UK internal market? Is there a need for common frameworks in key sectors such as agriculture and the environment, and who should govern these? What will be the impact of Brexit on the Good Friday Agreement and the peace process in Northern Ireland? And can England and its regions find their own distinctive voice in the UK's governance structure?

In this report, our Fellows discuss some of the issues Brexit presents for the UK's territorial and constitutional future.

Mary Murphy explores the challenges Brexit is posing for the three strands of the Belfast/Good Friday Agreement, and the totality of relationships between the UK and Ireland.

Michael Keating explores the meaning and scope of the UK internal market, and how it might affect devolution.

David Bell considers the challenges and opportunities in Brexit-related policies, particularly fisheries and regional policy, both of which span the powers and responsibilities of the UK and devolved institutions.

Nicola McEwen explores the role of devolved governments in shaping Brexit negotiations, and considers whether one of the principles of devolution – the Sewel convention – is being eroded by Brexit.

Michael Kenny discusses the strain Brexit has placed on relationships between the governments, and evaluates the steps taken to address grievances in those ‘left behind’ regions of England.

Jac Larner and Dan Wincott examine the outcome of the 2019 General Election and its impact on representation and constitutional politics in Wales.

Finally, Kirsty Hughes provides analysis on the choices that Scotland would face were it to become an independent country seeking to negotiate a new relationship with its European neighbours.

All of these issues will be shaped by the nature of the UK-EU relationship, whether or not a deal is negotiated, and the scope of that deal. Politics and personality will also play their part. Many uncertainties remain. But decisions taken in the coming months and years are likely to have a long-lasting impact on how the UK and the countries and regions that constitute it are governed.

Centre on Constitutional Change

Brexit and Ireland/Northern Ireland's Constitutional Future

Mary C. Murphy, University College Cork

Brexit has challenged all aspects of politics, economy and society on the island of Ireland. For Northern Ireland in particular, the UK vote to leave the EU has been politically divisive and constitutionally destabilising.

The 1998 Belfast Agreement included a three-stranded formula which aimed to normalise and institutionalise contested relationships within Northern Ireland, between Northern Ireland and Ireland, and between the two islands. The institutional framework created by the Agreement to manage these relationships comprises three separate but interlocking institutions: the Northern Ireland Assembly, the North-South Ministerial Council and the British-Irish Council respectively.

The foundations of all three strands of the 1998 Belfast Agreement have been challenged by the unfolding Brexit process. So much so that for unionists, the Union is not as solid as it was pre-Brexit and, for nationalists, the prospect of Irish unity is not as remote as it was before 2016.

Brexit and Strand 1: Internal Relations in Northern Ireland

During the 2016 Brexit referendum campaign, Northern Ireland's largest unionist political party, the Democratic Unionist Party (DUP), was the only party in Northern Ireland to support the Leave position. However, following the referendum, a constitutional cleavage began to emerge as all swathes of political unionism moved to support the UK exit from the EU, while nationalists called for Special Status for Northern Ireland.

Having been little more than a footnote during the wider UK referendum campaign, Northern Ireland was front and centre during Phase 1 of the Brexit negotiations. The UK and the EU both sought to construct an exit strategy which would prevent a hard border on the island of Ireland: a position which was supported by all Northern Ireland political parties.

The cut and thrust of the negotiations, however, served to stoke the constitutional question. DUP opposition to the backstop was linked to a perception that such provisions potentially lay the groundwork for future Irish unity and serve nationalist aspirations. For all shades of unionism, Prime Minister Johnson's Brexit deal, which treats Northern Ireland differently to the rest of the UK, is guilty of the same offence.

The Prime Minister's deal prevents the erection of a hard border on the island of Ireland, but requires some checks at the Irish Sea on goods moving from Britain to Northern Ireland. In addition to the cost and economic impact, there are also concerns about the administrative burden which these new arrangements entail for Northern Ireland businesses. The notion that the deal constructs some of the economic infrastructure associated with a future united Ireland has aroused pronounced unionist and loyalist hostility against what has been labelled the Prime Minister's Betrayal Act.

Unionist ability to moderate the deal – already weakening after Boris Johnson replaced Theresa May as Prime Minister - was dealt a fatal blow by the result of the December 2019 general election. This ended the DUP's Confidence and Supply arrangement with the Conservative Party and brought some shift in Northern Ireland's political arithmetic as both the DUP and Sinn Féin suffered electoral losses, however, a renewed political push to reconvene the suspended Northern Ireland Assembly bore fruit. On 11 January 2020, as the European Union (Withdrawal Agreement) Bill was making its way through Westminster, the Assembly met for the first time in almost three years.

One of the Assembly's first substantive actions was to unanimously agree a motion withholding consent for the EU (Withdrawal Agreement) Bill. This may hint at a measure of cross-community consensus, but it hides different unionist and nationalist motivations for opposing the deal. Unionists fear the effects of the erection of a (soft) border between Northern Ireland and the rest of the UK and how it may mark a step towards Irish unity. Nationalist opposition is based on an outright rejection of Northern Ireland being forced to leave the EU despite the region's vote for Remain and they fear the potentially dire economic and political consequences that Brexit is perceived to entail.

In removing the EU as a backdrop for the accommodation of differing political aspirations, Brexit has created new dividing lines in Northern Ireland. The emergent points of contestation, atop existing divisions, have heightened constitutional tensions and widened the political gap between unionism and nationalism.

Brexit and Strand 2: North-South Relations

Brexit undermines the supporting framework which helped to sustain cross-border relations on the island of Ireland. The remit and operation of cross-border institutions created by the Belfast Agreement (most especially the Special EU Programmes Body) are challenged by Brexit. The impact is particularly unsettling for nationalists because the recognition and protection of their identity is linked to cross-border institutional innovations. There is some awareness that North-South institutions must be protected, but little detail in relation to how they might adapt to a post-Brexit environment.

The Brexit process has also sullied relations between unionists and the Irish government. Unionist insecurities have been heightened by the Irish government's approach to Brexit which is seen as privileging an open border on the island of Ireland at the expense of some hardening of the border between Northern Ireland and the rest of the UK.

The strand 2 dimension of the Belfast Agreement has been pivotal to the stabilisation of a delicate set of relationships on the island of Ireland. Brexit however, is testing this key plank of the settlement and contributing to rifts and ruptures in cross-border relationships and institutions.

Brexit and Strand 3: British-Irish Relations

Brexit has inflicted damage on the British-Irish relationship. The Northern Ireland peace process was built on a shared and agreed British-Irish approach to the process of conflict resolution. Brexit challenged this bilateral behavioural norm and exposed a variance between the two governments. The Irish government's preference for the softest of Brexits clashed with a vacillating UK position. Strains and tensions between the two governments tested what had previously been a stable and constructive bilateral relationship.

Brexit has also exposed, and perhaps even solidified, the psychological distance between Northern Ireland and the rest of the UK. Polls have revealed that a majority of British voters do not feel a deep constitutional connection to Northern Ireland and would rather Northern Ireland leave the UK in exchange for a good Brexit deal. This apparent British indifference to Northern Ireland further feeds and fuels a sense of betrayal among unionists in Northern Ireland who feel vulnerable to what they view as a duplicitous Irish government, an unsympathetic EU and an undependable UK Prime Minister.

Brexit and the Totality of Relationships

Brexit has impacted on all three strands of the 1998 Belfast Agreement and disturbed some of the foundations of that constitutional settlement. The Agreement includes a provision for the Secretary of State for Northern Ireland to call a border poll (a referendum on a united Ireland) in the event that *'it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland'* (Annex, Schedule 1).

There is currently no substantive evidence or political appetite to support an Irish unity referendum. No Irish or British political party, other than Sinn Féin, is seriously engaged with the unification agenda. However, there has been some mobilisation of civic society. In an open letter to Taoiseach Leo Varadkar in November 2019, 1,000 representatives of civic society across Ireland called for a 'new conversation' about the constitutional future of the island of Ireland. The emergence of groups like Think 32, which are explicitly focused on promoting a debate on Irish unity, have also enlivened what had been a dormant political issue.

In what would have seemed inconceivable just a few short years ago, the subject of constitutional change is now part of the broader Irish political narrative. Brexit has been a key trigger for this unexpected constitutional conversation. The future vigour of the drive towards constitutional change, however, will be either encouraged or discouraged by other events, namely the nature of the future UK-EU relationship, electoral developments on the island of Ireland and demographic shifts in Northern Ireland.

Brexit comes with many costs and consequences for the island of Ireland. Long-term however, its legacy and most notable impact may well be how the decision for the UK to leave the EU challenged the three strands of the 1998 Belfast Agreement and precipitated moves towards new British and Irish constitutional futures.

The Internal Market

Michael Keating, Universities of Aberdeen and Edinburgh

As part of the Brexit process, the UK Government has been undertaking a review of the UK 'single market' or 'internal market'. The premise is that, when the UK leaves the European Union, it will need something to replace the EU internal (or single) market, which serves to secure economic union not only across the EU but within the UK itself. There is broad consensus about the idea in principle but much less on exactly what it is and what it entails.

For some time, there have been discussions at official level between the UK and devolved governments around post-Brexit policy 'frameworks' in key sectors such as agriculture and the environment. The aim is to replace existing EU frameworks where there is a need for harmonization of regulations or financial support across the UK (or Great Britain). The intention is that those discussions should lead to agreements, which might be legislative or non-legislative. In addition, there are sectoral bills (for example in Agriculture) which the Welsh but not the Scottish Government has used to accept some common provisions. It has been agreed that, while framework discussions are underway, the devolved governments would not change regulations so as to prejudice future frameworks, and the UK Government would not use its powers under the EU Withdrawal Act to take back competences to Westminster.

The idea of the internal market, however, is broader than this and covers matters that might not be covered by these specific sectoral arrangements. What it does cover is by no means a given. Even the terminology is confusing. The EU has sequentially used 'common market', 'single market' and 'internal market' but now has aligned references in the treaties to 'internal market'. In its initial responses to Brexit, the UK Government talked about the 'UK single market' but has now settled on 'internal market'. We can treat them as synonymous.

What is the UK internal market?

Some people have been arguing that the UK single market was already secured by the Acts of Union of 1707 (and 1800). This is misleading and anachronistic. The concept of a single or internal market only makes sense in the context of a modern, interventionist, regulatory state. It represents one of the advanced stages in economic union, which starts with free trade and progresses through a customs union towards monetary union. While free trade eliminates tariff barriers, the common market addresses non-tariff barriers including regulations and subsidies. The European Single Market introduced in the 1980s goes beyond trade in goods and services to harmonize (or provide for mutual recognition of) rules on product standards, public procurement, professional qualifications and other matters that might violate its principles.

In any advanced regulatory welfare state with two orders of government, indeed, the internal market is a complex and contested concept, raising socially and politically sensitive questions. Both 'market' and 'internal' are open to interpretation.

The first question is about the very definition of the 'market' itself. Modern states based on the mixed economy and welfare state recognise that certain matters (like the production and distribution of consumer goods) should be left to the competitive market, private production and consumer choice. Others (like the police and military) should be a government monopoly. Drawing the precise line in other fields is more contentious as there is less consensus on where the market ends and social, cultural or environmental considerations should take over. Should health and education be left to the market or be a governmental responsibility? If they are offered as public services, should private operators be allowed to tender to provide them? Should islands ferries be seen as an economic sector or a vital public service?

The second question concerns the 'single' or 'internal' bit and whether the market, either in the narrow or the broader sense, could or should be regulated differently across the component parts of a union. Should the Scottish Government be able to impose more severe restrictions on the sale of alcohol or tobacco than in England on public health grounds? Should crofters in the Highlands be entitled to special support on social and cultural grounds? Can devolved governments impose stronger environmental regulations on developments? None of these issues bothered the framers of the Union treaties.

In any case, the two acts of Union did not provide for devolved legislatures which might endanger common provisions. The various Home Rule proposals for Ireland and Scotland in the late nineteenth and early twentieth centuries included free trade provisions but were equally silent on modern regulatory and welfare issues.

A European Single Market model for the UK?

The European Single Market programme, launched in the 1980s, aimed to push the EU from a free trade area to a complete internal market. At the same time, it recognises that public services should be largely exempt from market competition and that social and environmental regulations should sometimes trump the market. It is not a fixed set of regulations but a living principle and decisions can be politically contentious. Measures are brought forward by the European Commission and adopted by the Council of the European Union (representing member states) and the European Parliament. They are implemented either by laws directly applicable across the Union or transposed into national law by member states (or sub-state governments where appropriate). The whole process is governed by the principles of subsidiarity and proportionality. Subsidiarity means that action should be taken at the lowest level possible. Proportionality means that measure rules should only be as detailed as necessary, allowing for flexibility in their application. Infringement of the rules is dealt with by national courts and, ultimately, the Court of Justice of the European Union.

There is no equivalent single/internal market provision in the UK devolution legislation, apart from a rather vague reference in the Northern Ireland Act. Instead, reserved competences are set out clearly, with everything else devolved. It is EU law that secures the UK internal market in matters such as public procurement, agricultural support and state aid – hence the debate about frameworks. As a living, transversal principle, however, it can go beyond these matters and arise in unexpected ways. The Scottish legislation on minimum pricing of alcohol was passed as a public health matter, which might be presumed to be exempt from market competition rules. Yet it was challenged by producers as an interference in the market and restraint on competition. It took a series of appeals all the way up to the Court of Justice of the EU and back to the Court of Session to resolve that this was a justifiable restraint on market activity.

Nor is there anything in the UK devolution settlement corresponding to the elaborate, multilevel process for making single/internal market rules in the EU. There is no neutral body like the Commission to make proposals and monitor compliance. The UK courts do not have the same role and expertise as the Court of Justice of the EU in enforcing market rules. There are no principles of subsidiarity and proportionality.

Devolution and the UK internal market

The UK Government seems to accept that there is a gap in provision for the internal market because it is engaged in study and intergovernmental discussions on the matter. It is not surprising that there is a great deal of argument about what it might encompass and how it should be managed in a way that is consistent with devolution.

A narrowly-drawn internal market provision would probably add little to whatever emerges from the discussions about common policy frameworks. A broadly drawn one could impinge severely on devolved competences, leading to centralization, especially if it were entrusted to Westminster and not accompanied by strong rules about subsidiarity and proportionality. The emphasis on the internal *market* could also lead to the criteria of economic competition prevailing over those of social inclusion, equality and environmentalism. Much of the criticism of the EU single/internal market and the rulings of the Court of Justice of the EU stems from such concerns. Given that Scotland and Wales have consistently supported centre-left governments while the UK has often tilted to the right, the balance between social and market criteria could become a matter of intergovernmental conflict.

The discussions around policy frameworks have been addressed by the UK Government as technical rather than political matters. Blanket provisions in the EU Withdrawal Bill allowing them to take back all powers from Scotland, Wales and Northern Ireland in areas of 'retained EU law' were dropped after strong opposition and the UK Government has since acted with more prudence. Although powers to take back competences are still there, they have not been used and may well never be. This suggests that the UK may be wary of the political problems that could lie in store from a sweeping internal market provision and prefer instead to try and muddle through. In that case, we may never know just what the UK internal market actually means.

Post-Brexit Regional Funds and Fisheries Arrangements

David Bell, University of Stirling

Following the UK's departure from the EU, the UK Government will soon be involved in a frantic series of negotiations. In this contribution, we focus on two issues where the UK Government is committed to finding a quick resolution. One involves negotiations with the EU – the post-Brexit fishing arrangements. The other is an internal UK issue which is a consequence of Brexit – the replacement of the EU structural funds. Both of these have consequences for the Union, with significant interests outside England involved in both cases. Wales has benefitted more from the latest round of EU Structural Funds than other parts of the Union, while the Scottish fishing fleet is significantly larger than that of any of the other nations.

Fishing: The First Battleground

Fishing and Brexit go hand in hand. Removal of EU boats from UK waters was a major demand of Leave supporters. With the introduction of the new Fisheries Bill, the UK Government aspires to take back the power to act as an independent coastal state. Thus, from the end of the transition period, the UK would claim the right to control who can fish in its Exclusive Economic Zone (EEZ).

The next step is to negotiate a new agreement. Time is short. The October 2019 Political Declaration committed the UK and EU to:

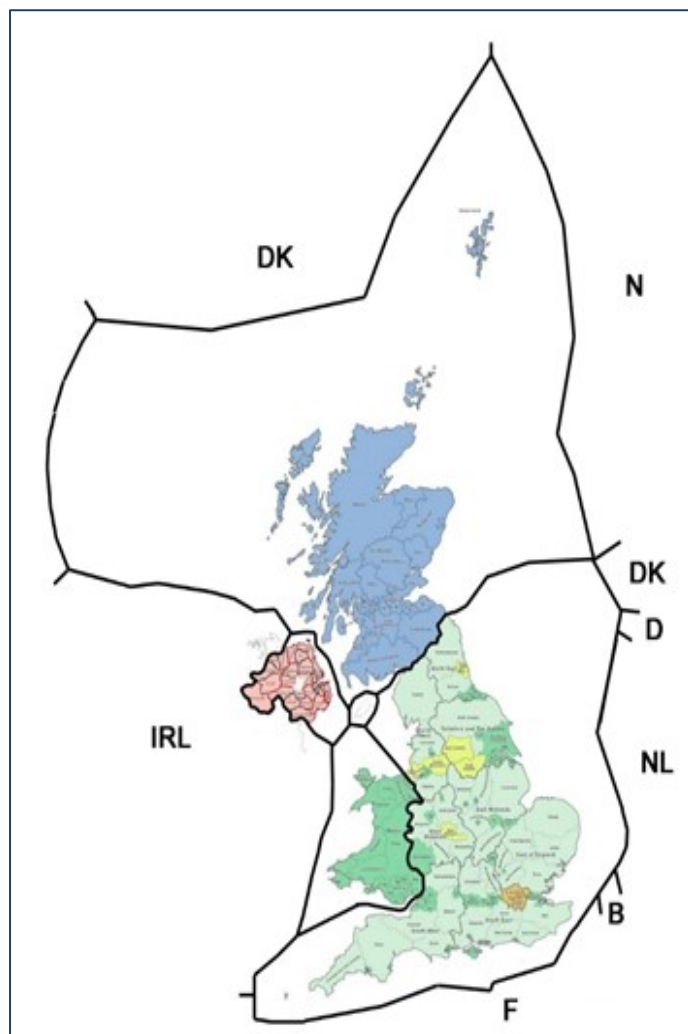
“use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period.” Political Declaration, October 2019 para 74.

The July timetable is perhaps unrealistically tight. With Ireland, Denmark, the Netherlands, France and Spain all keen to have continued access to UK waters, agreement will not be easy. Excluding boats from these countries from UK waters could seriously damage some small, but vocal, coastal communities. They will certainly press their governments to take a tough stance with the UK.

The EU controls access to continental seafood markets, the principal destination both for fish caught by UK boats and for farmed fish. This is a strong bargaining chip for the EU which continental fish interests may be keen to exploit. UK firms selling into the EU market are likely to face a mixture of tariffs and regulation that will inevitably add to their costs, making them less competitive.

The Norway-EU fishing agreement might act as a template for the UK-EU negotiations. For the UK fishing industry, it is perhaps the best that can be hoped for, given that the overall agreement between Norway and the EU includes some provisions which cross UK Governments red lines, the most important being acceptance of the free movement of people.

In 2016, the value of fish and shellfish caught by UK boats in the UK Exclusive Economic Zone (EEZ) was around £814 million (Napier 2018), but this comprised less than half of the total value of the catch in the UK EEZ. The rest was caught by EU boats. Excluding these would make the remaining 50% available to the UK fleet. Norwegian fishing boats catch around 84 per cent of the fish and shellfish in the Norwegian EEZ. In terms of production value, the increase in the catch would likely offset the negative effects of tariffs if they were levied around those applicable to Norway (Scenario 2 in Scottish Government 2018).



To which parts of the industry will this benefit accrue? The UK fishing industry is dominated by Scottish production. This is partly because it can access a much larger share of the UK EEZ than the other nations (see map). In 2018, more whitefish and pelagic fish were landed in Shetland than in England, Wales and Northern Ireland combined. The fish most likely to become available if EU boats are given more restricted access to the UK EEZ are hake, herring, mackerel and saith. Landings of these fish in Scotland were valued at £129.7m: the comparable figure for England was £7.6m. Thus Scottish production already substantially exceeds that from England in those fish stocks likely to be freed up by EU exit. This makes it likely that the Scottish fishing industry will be the main beneficiary of increased access to fishing quota within the UK EEZ.

Further, as revealed by Greenpeace, the Scottish industry is highly concentrated with relatively few firms accounting for a large proportion of the catch in Scottish waters. These firms are also those most likely to make substantial gains from restricting the access of EU boats to the UK EEZ. Benefits to the wider fishing community, which primarily uses boats of less than 10m, are likely to be limited.

As well as having an unusual ownership structure, capture fishing is also a relatively small industry comprising only 0.12% of UK GDP. Trade negotiations will cover a wide spectrum of industries and services. Inevitably, there will be trade-offs between sectors. One possible trade-off that has been mooted for fishing is financial services. This sector contributed £132 billion to the UK economy in 2018 and 1.1 million jobs. There was a surplus in financial services trade of £44 billion and the sector contributed £29 billion in tax (£557m per week). This industry may be less popular than fishing for a variety of reasons, but its tax contribution to support public services is worth more than 30 times the entire output of fishing.

Given this background, the negotiation of the fisheries agreement with the EU will inevitably be complex. There will be losers as well as winners. At the moment, at UK level, the political momentum seems to favour significant restrictions on EU access to UK fishing grounds. The question likely to emerge between now and July is how high a price is the UK Government willing to pay to achieve this goal.

Given that Scotland's contribution to catch fishing dominates that of the other UK nations, it is difficult to see how UK-EU fishing negotiations would not include the Scottish Government as an active partner. Scotland also dominates the fish farming sector and has strong interest in fish processing, which together are more important, but less vocal, than catch fishing. Each of these sectors has a direct interest in negotiations around EU market access. The Scottish Government will no doubt argue strongly for a prominent role when the future of these sectors is discussed.

Regional Funding

The 2019 Conservative majority owed much to Brexit-supporting voters in the North of England. While austerity may have been a more salient cause than Brexit of disaffection with incumbent politicians (largely Labour), the Conservatives now believe that to retain power, they will have to deliver significant economic benefits to “left behind” communities in the North.

One immediate action has been to consider overhauling the Treasury's "Green Book" - the rule book for appraising public sector projects. Diane Coyle and Marianne Sensier argued that the application of the Green Book has reinforced regional imbalances in the UK economy and specifically favoured infrastructure investment in London over the North of England. Plans for revising the Green Book are likely to be published before the budget on March 11 2020.

Changes to the Green Book will not cause an immediate surge in infrastructure spending in the North. For some projects, the gap between appraisal and construction can be measured in decades (e.g. the third runway at Heathrow).

So what is available in the short term? One possibility is the Shared Prosperity Fund (SPF) which was first mooted in the 2017 Conservative general election manifesto. Is intended to replace EU structural funds, which are worth about £2.1 billion per year. The main components of the Structural Funds are the European Regional Development Fund (which currently focuses on innovation and research, the digital agenda, support for SMEs and the low carbon economy) and the European Social Fund (which currently focuses on promoting employment, social inclusion, investing in education and skills and enhancing institutional capacity). The SPF is therefore due to be implemented after EU funding ends, in early 2021.

As with fishing, the timescale is short. There have been ministerial statements that give some clues as to the design of the SPF. James Brokenshire, when Secretary of State for Housing, Communities and Local Government, suggested that the fund:

- *"will tackle inequalities between communities by raising productivity especially in those parts of our country whose economies are furthest behind"*
- *"will be a simplified, integrated fund"*
- *"will respect the devolution settlements"*
- will respect local priorities

The 2019 Conservative manifesto committed to ensuring that *"£500 million of the UK Shared Prosperity Fund is used to give disadvantaged people the skills they need to make a success of life"*. This looks like a replacement for the European Social Fund, but no other information was available. And with time running short, the UK government has not yet carried out its promised consultation on the SPF. So, although first mooted almost three years ago, there is still no clarity on the design of the SPF.

For those “left behind” communities in the North of England, the SPF is unlikely to be transformative. If the fund is set at the same level as the existing European Structural Funds (£2.1 billion per annum) the spending will comprise 0.2 per cent of total managed expenditure by the UK government in 2019-20. While this is only part of a series of other relatively small initiatives (such as the City Deals) directed towards the North, this level of SPF funding hardly amounts to a significant commitment to helping “left behind” communities catch up.

The Shared Prosperity Fund and Devolution

In the absence of proposals at UK level, the Scottish and Welsh governments have been consulting on the SPF, even though there is no clarity on the extent to which the devolved governments can influence its design. Both Scotland and Wales have had considerable autonomy over the direction of these structural funds in previous EU spending rounds – dealing directly with the EU over how the funds were to be applied.

The SPF is particularly important for the Welsh Government, since it has been receiving around £370 million a year from the structural funds. The Welsh Government has argued that there should be no reduction in spending in Wales after EU exit and that this should come through the Welsh baseline budget. This would mean that the Welsh Government, with the consent of the National Assembly, could direct the additional funding as it saw fit. It also advocates partnership working, flexible working within a set of core objectives and priorities and simplified appraisal, monitoring and evaluation processes. The latter are relatively uncontentious conditions. For all the devolved institutions, the key element will be the extent to which they have granted autonomy over the use of the funds.

The Scottish Government is currently consulting on the design of the SPF: it has involved a wide range of stakeholders with both geographical and thematic (skills and innovation) interests. A report from this exercise is due in March 2020. As in Wales, many of the issues raised in the Scottish consultation will be relevant to the design of the SPF in England. But, as in Wales, the Scottish Government is likely to argue that control of the fund in Scotland should reside in Scotland. On the other hand, the UK Government may see the SPF as providing a mechanism for highlighting its role in supporting regional policy across the UK.

Brexit: Exposing the Limits of Devolved Authority

Nicola McEwen, University of Edinburgh

Brexit has already created new strains in the relationships between the governments and territories of the UK. Even before the election of a majority Conservative government, the devolved governments struggled to influence Brexit outcomes. A confident government, no longer reliant on the support of other parties to win votes in the House of Commons, and apparently clear on the path ahead, seems even less likely to take heed of divergent views from the devolved institutions. Where, then, does that leave the authority of the devolved institutions?

Formal Limits, Informal Opportunities

Across each of the devolution settlements, constitutional authority over external relations, including relations with the EU, lies with the UK Parliament and Government. There is no formal right for the devolved institutions to co-determine UK foreign policy, nor any guaranteed rights to be consulted on it, even where the issues at stake affect devolved powers and responsibilities.

However, informally, there has long been recognition by the UK Government that the devolved institutions have a legitimate interest in EU issues. The commitment to involve the devolved governments ‘as directly and fully as possible in decision making on EU matters’ that touch on devolved matters or affect the devolved territories is written into informal agreements in the form of a Memorandum of Understanding and Concordats.

While the UK was in the EU, the governments convened within the Joint Ministerial Committee (Europe). The JMC (E), unlike other formats of the Joint Ministerial Committee, met at regular intervals ahead of meetings of the European Council. This gave the devolved governments at least the opportunity to shape the UK’s EU policy. Without doubt, the Brexit process has generated more formal intergovernmental meetings. The JMC (EU Negotiations), created specifically to foster a collaborative approach to Brexit, has met 22 times since its inception in 2016. But it has been a frustrating process for the devolved governments. They had little influence over the timing, substance or outcomes of UK-EU negotiations during Phase 1 of the Brexit process – the phase leading to the Withdrawal Agreement and culminating in the UK leaving the EU on 31 January. The ‘soft Brexit’ preferences of the Scottish and Welsh governments were not factored into Theresa May’s negotiating ‘red lines’, and they seem somewhat at odds with the priorities of Prime Minister Johnson. The devolved

governments have called for enhanced engagement in future relationship negotiations, and in negotiating trade deals with non-EU countries. There is, however, no formal duty on the part of the UK Government to accede to their request.

Legislation and the Sewel Convention

The UK Parliament passed the EU (Withdrawal Agreement) Act in January 2020, ensuring that the exit deal negotiated with Brussels was written into UK law before the UK left the EU on 31st January. The law was passed despite the decision of all three devolved legislatures to withhold their consent.

This was the first time that the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly had together refused consent for a UK bill, after their consent had been sought by the UK Government for its effects on devolved competences. Most striking is the extent to which, just days after Stormont reopened for business, the normally divided parties and communities united to express their opposition. Each legislature shared concerns that the Bill gives UK ministers powers to make decisions in devolved areas without their agreement.

The withholding of consent by the devolved legislatures was never going to stop the bill from being passed. There is no devolution veto. Under each of the devolution settlements, external relations and treaty-making are responsibilities of the UK parliament. Plus, the UK parliament is sovereign. It can make or unmake any laws, including in devolved areas. But passing the law without their consent breached one of the most important principles underpinning UK devolution - the convention that the UK Parliament will not normally legislate with regard to devolved matters, or alter the competences of the devolved institutions, without their consent.

The significance of the Sewel convention, as it is commonly known, was underlined by its inclusion in the Scotland Act (2016) and Wales Act (2017). The Supreme Court confirmed in the first case brought before it by Gina Miller that the inclusion of the Sewel convention in the devolution statutes did not alter the fact that it has no legal effect. But it was a symbolic reflection of the status and authority of the devolved institutions. Moreover, it had been the recommendation of the cross-party Smith Commission, set up in the wake of the Scottish independence referendum, that Sewel be put on a statutory footing. This makes it matter politically.

It's not the first time the Sewel convention has been set aside in the Brexit process, and it's unlikely to be the last. In 2018, despite the withholding of consent by the Scottish Parliament, the UK Parliament passed the EU (Withdrawal) Act. The purpose of that Act was to prepare for EU exit, including providing for EU law to be 'retained' and translated into domestic law to ensure legal continuity. The Act also introduced a new consent procedure requiring the UK Government to secure a 'consent decision' from the devolved legislatures before introducing regulations that constrain their ability to modify 'retained EU law'. Crucially, though, this departs from the meaning of consent embodied in the Sewel convention. In the EU (Withdrawal) Act, a 'consent decision' includes the devolved institutions agreeing to a motion on the regulation, deciding not to agree such a motion, or agreeing to a motion that refuses to consent to the regulations. No such regulations have been introduced thus far.

The coming months will see a range of Brexit-related bills making their way through the UK Parliament, including on Agriculture, Fisheries and Trade. Each of these is likely to engage the Sewel convention, whereby the lead UK minister will formally request the consent of the devolved institutions for the effects the legislation will have on devolved matters or on devolved powers. None is likely to secure the consent of the Scottish Parliament. The Scottish Government is committed to withholding consent for all but the most essential Brexit laws, perceiving them as a threat to Scottish self-government that undermines the ability of the Scottish Parliament to make its own laws in devolved areas. The consent of the other devolved legislatures is also in some doubt.

In one sense, this might not matter. The UK Government doesn't require their consent to pass a law, and it has the political strength in parliament to see bills through despite objections from any opposition party or the Upper House. Yet, completely ignoring the concerns of the devolved institutions could spell trouble ahead.

The Conservatives are not the only party basking in the glory of electoral success. North of the border, the SNP is similarly buoyant and attuned to any evidence that supports its case that the Union is not working for Scotland. Across the Irish Sea, the restoration of devolved government has not extinguished the demand for a border poll on Irish reunification.

Brexit also brings new complexity to the current system of devolution. Until now, the requirement to comply with EU regulations has limited the extent to which the UK's four administrations could pursue divergent policy paths. Leaving the EU and its internal market, alongside the vow reiterated by the Chancellor, Sajid Javid, to depart from EU rules, increases the likelihood of more intra-UK policy and regulatory divergence in the future. Unless, that is, new rules prevent it. Officials from across the administrations have been exploring whether and how to develop new UK 'common frameworks' to replace EU regulatory frameworks. At a technical level, that work has been productive and cooperative. But more

difficult political questions are yet to be resolved, not least how to govern and maintain the UK's own internal market after Brexit.

In the Conservative leadership election, Boris Johnson promised to “stress test” every policy for its impact on the Union. Brexit and all that it entails presents the biggest stress test of all. The Prime Minister may be tempted to draw upon his political strength and the constitutional might of the UK parliament to defy any opposition that comes from the devolved institutions as he embarks upon his ‘new dawn’. But that approach is unlikely to ease the stresses and strains that are already evident in this family of nations.

England's Territorial Politics After Brexit

Michael Kenny, University of Cambridge

The passing into law of the Withdrawal Agreement in January marked a big step in the Brexit process. After a period of transition, EU exit could see the UK moving out of the orbit of the political and legal jurisdictions of the EU and resuming direct responsibility over a number of areas of public policy. However, 'taking back control' – that oft-stated mantra of the Leave campaign - is bound to raise hard questions about where control and sovereignty lie within the UK itself. The UK's departure from the EU and the decisive election result achieved by the Johnson government in December are powerful reflections of, and catalysts for, the re-emergence of questions about the governance of England and its regions.

Taking Back Control

Difficult issues have arisen already in the protracted process of trying to secure an initial agreement with the EU. In particular, as the UK has passed laws to prepare for life outside the EU, tensions have arisen about whether the UK Parliament or the devolved institutions should take control over the powers returning from Brussels in areas of devolved competence. In the last few weeks, the legislatures in Scotland, Wales and Northern Ireland were united in withholding their consent for the EU (Withdrawal Agreement) Act – the UK law that implements the Prime Minister's exit deal.

Sharp disagreements are likely to arise during the course of the next phase of negotiations with the EU. Efforts to secure deals with other countries are also likely to generate tensions as the devolved administrations seek to ensure that their interests are reflected in the UK's negotiating mandates. Tensions have also ratcheted up significantly over the constitutional futures of Scotland and Northern Ireland. Nicola Sturgeon's government formally submitted its request for a section 30 order to the UK Government (which rejected it), setting the scene for an on-going dispute that may well take legal, as well as political, forms. And, there is an increasingly intense focus upon the prospect of a border poll on the constitutional status of Northern Ireland.

All of these issues present acute challenges for a newly elected UK Government and Prime Minister who have talked in bold and upbeat terms about their commitment to keeping the UK together. But in truth they may now be required to develop a more supple and strategic statecraft in response to the challenges required to preserve the Union. The forthcoming report of the Dunlop review into how central government deals with devolution should make an important contribution to this agenda.

English Questions

The new government has a clear political interest in devising a policy programme that delivers tangible benefit to those parts of the country where it breached Labour's 'Red Wall'. Most of the Conservative's 48 net gains in the 2019 election were in the North East, North West or Yorkshire & the Humber. Much of the substance of its policy agenda for these areas is still to be determined, but its outlines are discernible. It will very likely give priority to some significant infrastructure and transport investments. However, these are unlikely to yield palpable benefits within the course of the current electoral cycle. Heady talk about increases in capital expenditure masks the key question of whether the government will be able and willing to tailor new investments to people and services in so-called left-behind areas or poorer regions. Finding a balance between these imperatives is going to be a major challenge for the Johnson government.

Just as importantly, it cannot afford – for political and policy reasons – to focus all its energy on these regions to the detriment of others. Many of its core supporters live in other, more rural, parts of the country, and despite losing some seats in London and the South East, the Tory party performed strongly in Essex, Kent and the South West. And, in policy terms, it is hard to overlook the need for investment and improvements in transport, infrastructure and housing of significant parts of the East and South-West of England, as well as Northern areas. One particular potential flashpoint for inter-regional rivalry will concern allocation decisions in the UK's Shared Prosperity Fund, which will soon replace the EU's structural and regional development funds.

Equally, a greater focus on England's poorer regions will necessarily raise questions about the new government's commitment to Wales, parts of which face very similar challenges, and which sits in an ambiguous position in relation to the new government's agenda. The latter has still to clarify, for instance, when it will extend its recently launched (£3.6billion) Towns Fund to Wales.

England's regions are therefore going to be more prominent in political and policy terms, and their governance may well become an issue as well. Regional government in England has turned into a low-level political football between the two main parties from the late 1990s. Successive administrations failed to devise a coherent model for devolved governance which would align functional efficacy, coherent economic geography and a jurisdiction which maps broadly onto a shared place identity. The new government inherits a half-built tier of city-regional and combined authority devolution. Parts of it – for instance Greater Manchester – are becoming increasingly established, while several other authorities are struggling to establish their reputation and effectiveness.

What to do about devolution within England is bound to preoccupy the new administration. The central state has limited capacity of its own to deliver and oversee the kinds of tailored, contextually specific, interventions which the regional productivity challenge requires. The UK Government will have to decide if it needs a larger number of functional authorities sitting between it and local government. These would be able to co-ordinate and manage some of the key policy levers, including local industrial strategies, the new shared prosperity funds, and the planning of transport and infrastructure. Extending the half-developed current model will not be easy, and will require difficult bilateral negotiations with relevant local stakeholders. This includes areas where such efforts have so far delivered little, sometimes because of the government's own intransigence, as in the case of the fraught negotiations over the 'one Yorkshire' devolution deal.

More generally, some of the different institutional and constitutional reform ideas which the new administration appears to be contemplating are also likely to push questions about the representation of the nations and regions to the political surface. Bullish noises about moving government departments outside London, and perhaps even relocating the House of Lords, are intended to signal a new-found commitment to the English regions.

More substantively, the on-going review of the UK's creaking machinery of inter-governmental relations, conducted within the Joint Ministerial Committee review process, is potentially very important. Without more effective processes of intergovernmental relations, it may be difficult to agree shared frameworks between all governments in the UK, to offset the risk that internal regulatory divergence may have a detrimental impact when the UK leaves the EU Single Market. This, too, is likely to render more salient the question of who represents England's interests. Can a new system of inter-governmental decision making be deemed legitimate while the UK Government acts as both the referee of this bargaining game and the protector of England's farmers, fishermen or manufacturers?

As has been widely observed, Brexit has the potential to place even greater strain on the UK's territorial constitution. And, while pressures upon the domestic union have been growing for some considerable while, the dissatisfaction and dissent emanating from all parts of the Kingdom make this a uniquely challenging moment for the Union. Whether the incoming government can navigate its way through the territorially-rooted storms that lie ahead, while delivering a coherent programme of reforms and policies for some of the 'forgotten about' parts of England, is now one of the most important questions in British politics.

Wales: where next?

Jac Larner & Daniel Wincott, Cardiff University

As the UK leaves the EU, Wales sits in a distinctive and uncomfortable position. The Welsh Government - led by Labour continuously since the start of devolution - has always pledged strong support for the UK Union while simultaneously in favour of further devolution. First Minister Mark Drakeford, like his predecessor Carwyn Jones, has expressed concern about weaknesses in the UK's overall territorial constitution.

For Mark Drakeford, like Jones even before Brexit, the unsettled position of Wales' constantly changing devolution dispensation within this wider territorial framework seems fragile. Seeking to refound the UK territorial constitution while navigating Brexit is like trying to rebuild a boat while at sea. Doing so may be impossible while the Union's other nations and jurisdictions are preoccupied with their own particular concerns. Whether or not to leave the UK plays a significant part in the politics of Scotland and Northern Ireland. England is convulsed by dramatic changes in electoral geography and the prospect of a new territorial approach to economic and infrastructural development.

Even at the best of times, Wales is easily forgotten in UK territorial politics. In a speech on 27 January, Plaid Cymru leader Adam Price foresaw Wales being seen from Westminster as nothing more than an adjunct to a 'Great Western' region. Northern Ireland, he said, will have its special status. The possibility of independence means Scotland is never forgotten. And the north of England now has leverage with the UK Government to 'level up' its position with the south. Plaid's relatively new leader - installed in 2018 - is calling for a new, ambitious and wide-ranging strategy - and a change of mind-set. Setting aside a disposition of resignation, Price argues that to overturn Wales' weak economic performance (relative to the UK average), to address high levels of child poverty and improve the performance of the education system, Welsh politicians needed to act as if they were leading an independent country, an apparent call to be more 'bold' in their policymaking.

The General Election in Wales

Both Labour and Plaid have sought to find a new position on Brexit since the 2019 UK General Election. Although a majority of electors in Wales chose 'Leave' in the 2016 referendum, each adopted a 'remain' position in the 2019 election. Plaid formed part of the most clearly organised electoral 'remain alliance' in Britain, with the Liberal Democrats and the Greens to campaign for a second referendum. Drakeford distinguished Welsh Labour's position from that of UK Labour, articulating distinctive support for a second referendum, in which he promised to campaign for 'remain'. Since the election, both have accepted Brexit, while guarding against Westminster on devolved powers as the UK leaves and prepares for life outside the EU. Together, Labour and Plaid withheld the Senedd's support for Westminster's EU (Withdrawal Agreement) Bill - but on grounds of its implications for devolution not to 'derail Brexit'.

Welsh politicians face a further challenge as they seek to guide the nation through Brexit. Elsewhere in the UK, the 2019 election seemed to signal a new direction, or consolidate ongoing changes. The SNP reaffirmed an already dominant position in Westminster elections. Northern Irish electors punished Sinn Féin and the DUP, which contributed to the re-establishment of Stormont. The crumbling of Labour support in English (and north east Wales) 'Red Wall' constituencies was key to consolidating the Conservative government's Brexit strategy. In contrast, in Wales, the election proved unsettlingly inconclusive.

Welsh Labour's distinctive Brexit message failed to cut through. By default the party's campaign was directed from England and there were numerous instances of Labour MPs revealing their confusion about the scope of Welsh devolution. In contrast, the 2017 campaign established a distinct 'Welsh Labour' feel. Then First Minister Carwyn Jones was highly visible and, initially at least, considerably more popular than Jeremy Corbyn. The message was that a Labour vote was a vote for Welsh Labour. The same trick could not be repeated in 2019 by his successor. The Welsh Election Study shows that roughly half of voters in Wales cannot give an opinion on Mark Drakeford.

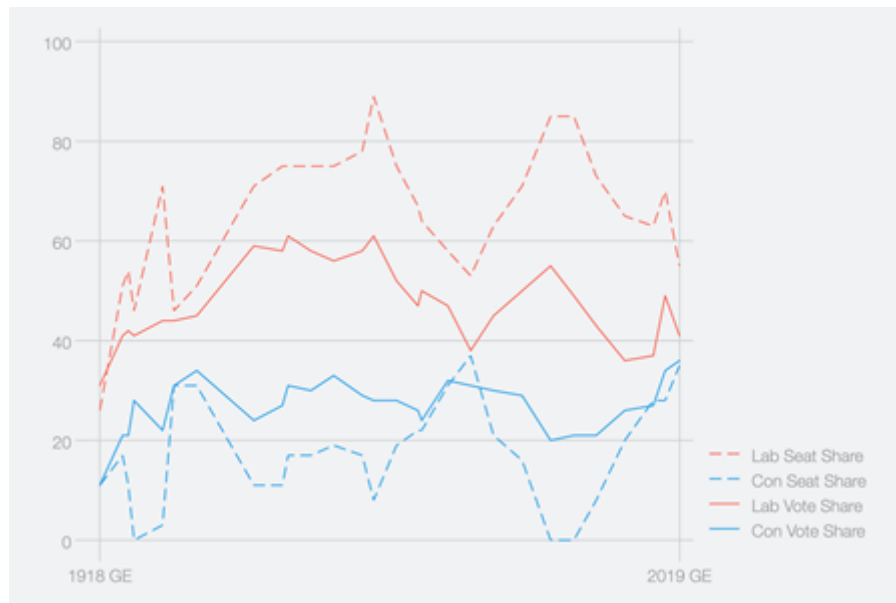


Figure 1: Conservative and Labour Seat and Vote Share in General Elections in Wales (1918 - 2019)

Even so, Welsh Labour sustained its near century-long dominance at the ballot box. The Party gained a larger vote share than in 2010 or 2015 – and comfortably outperformed Labour in England. However, Labour lost most votes in Leave majority areas – especially its southern ‘Valleys’ heartlands. Its vote share declined sharply in Torfaen, Merthyr Tydfil & Rhymney, Aberavon and Islwyn.

The Conservatives won their highest vote share in Wales for over a century. They gained 6 of the 28 seats Labour had taken in 2017, and crucially, the Labour-Conservative difference in vote share was smaller than at any point since the First World War (see Figure 1). Conservative gains came mostly at the western end of Labour’s ‘red wall’. At the same time, they lost votes in seven of eleven Welsh Remain constituencies and, notably, their vote did not rise much in the Valleys where some Liberal Democrat and Brexit Party gains accompanied large Labour losses. Plaid Cymru defended their four seats. In a three-way contest, they lost Ynys Mon – a majority Welsh-speaking constituency they hold in the National Assembly – to the Conservatives. Overall, it is hard to identify a clear victor in Wales from the election.

The constitutional future of Wales

Ultimately, the election result raises sharp questions about Wales' identity, the nation's future role in the Union and how Wales' leaders can steer a path through Brexit. Wales remains electorally distinctive: Labour continues to do better in Wales than in Scotland or England. Yet Labour entered 2020 in a much weaker position than it had enjoyed in 2019. There may also be a new constitutional dilemma to the party's Brexit conundrum as there appears to be a growing 'indy-curiosity' among its Welsh-speaking and Wales-born university graduate supporters. Plaid Cymru is still a significant (if small) player in Westminster politics. In 161 years, the Conservatives have never had a general election win in Wales.

Equally, today, Wales looks less electorally distinctive from England than either Scotland or Northern Ireland. Labour's electoral dominance is now very fragile, weakening Wales' leverage within the Union. But no alternative party or coalition yet seems set to replace it. The question now is whether Welsh Labour pursue a change in approach to constitutional questions. Until now it has taken a 'good unionist' approach and shown a general unwillingness to rock the boat in its dealings with Westminster. However, the experience of the last few years raises a question: has this approach reaped significant rewards?

Brexit, Scotland and Europe

Kirsty Hughes, Scottish Centre on European Relations

The Brexit process and the General Election have reignited debates over Scottish independence. The First Minister has argued that Brexit represents a material change in circumstances from that which prevailed in 2014, when the issue of Scotland's constitutional future was put to the test in the independence referendum. The current debate is concentrated on process issues, and on who has the right to decide whether and when a new referendum should be held. But the fact of Brexit also affects the prospects of independence. This contribution focuses, in particular, on the options that would face an independent Scotland seeking to renew its relationship with its European partners.

The possibility of an independent Scotland being in the European Union remains a key issue in the independence debate. Brexit doesn't much change the choices available to an independent Scotland – being in the EU, or in the European Economic Area or neither – but it certainly changes the impact and implications of these choices.

The EU debate was already central to the 2014 independence referendum. Many on the pro-UK side argued that Scotland would struggle, and take time, to re-join the EU. The pro-independence side argued it would be rapid and seamless given Scotland had been in the EU for over 40 years, and so already met its membership requirements. Today, the EU is an even higher profile issue in the independence debate. Despite Scotland's remain vote, it is no longer part of a member-state of the EU. If Scotland did seek to re-join as an independent country,, the rest of the UK would be a third country outside the EU.

Independence in the EU?

The SNP has a clear goal of independence in the European Union. This option is certainly feasible for any independent, internationally recognised, European state. An independent Scotland could apply for membership, go through the various stages of accession and eventually join, subject to a unanimous decision of the European Council, made up of the leaders of each of the member states of the EU.

There are many much-debated issues around the likely speed and ease or difficulty with which an independent Scotland might join the EU: what currency would it use, how big a fiscal deficit might it face, might its application be vetoed and so forth. The fact of Brexit – of the UK leaving the EU – also changes how some of these issues and challenges might look, also raising new questions not least on the border with the rest of the UK.

First, the issue of how rapidly an independent Scotland could reduce any initial fiscal deficit to EU target levels – and how close it would need to be ahead of accession – essentially stays the same, Brexit or not. But the question of currency, if an independent Scotland initially uses the pound sterling (possibly without the agreement of the rest of the UK), does change. Perhaps Scotland might have been able to join the UK's opt-out from the euro, if the UK was still in the EU and if Scotland was using the pound. But, after Brexit, Scotland would be expected like any other accession candidate to aim to join the euro once it met the criteria.

Moreover, the possibility that Scotland as an EU member state might be temporarily using the currency of a non-EU member state is quite unique. How that would be tackled politically by the EU is not entirely clear. How quickly would Scotland introduce its own currency and would the EU agree to that transition taking place after accession or insist it must be complete first? Certainly, it would be hard for Scotland to argue it was in control of its own monetary policy without its own currency.

An independent Scotland would, presumably, aim to be like Ireland – benefiting from free movement of people alongside all the other freedoms of the EU's single market, while also remaining part of the Common Travel Area (which allows British and Irish citizens to travel freely between, and reside in, both countries), and with an opt-out from Schengen to enable that. But the Common Travel Area would become a much more key issue in UK-Scotland divorce talks than if both were in the EU since it would underpin continuing free movement between Scotland and the rest of the UK.

Scotland would also be expected to be a full participant in the EU's justice and home affairs policies, without any type of 'opt-in' such as the UK had. Given its separate legal system, this would not appear problematic but again it's a change to when the UK was in the EU.

The time needed for accession talks would also be likely to increase the longer Scotland had been outside the EU. The UK Government currently says it will insist on the right to diverge from EU regulations, while not yet clarifying whether it will in fact do so. The Scottish Government, in contrast, hopes to remain aligned in as many areas within its devolved competence as possible. The further Scotland has diverged before accession talks, the longer those talks may take.

What sort of transitional relationship Scotland might have with the EU once it had left the UK and before accession would also need addressing. Normally, a candidate country would agree an association agreement with the EU ahead of accession, but this takes time. What transitional arrangements would apply in the meantime? Perhaps, Scotland, the UK and EU would agree for Scotland to, de facto, remain part of whatever UK-EU deal was in place. Perhaps, there could be informal talks with the EU in parallel to Scotland's divorce talks with the UK but – as we've seen with Brexit – actual talks on a future relationship, whether an association agreement or full membership, would likely need to wait until Scotland actually was an independent third country.

The biggest change compared to the debates in 2014 surround the border questions. If an independent Scotland were in the EU, then Scotland's border with the rest of the UK would be an external border of the European Union. If the UK negotiates some form of 'Canada-dry' or 'Canada minus' trade deal, as seems, at best, most likely at the moment, the Anglo-Scottish border would be both a regulatory and a customs border. And while the Brexit debate has seen much time spent discussing how to minimise such checks or move them away from the border, it is clear there will indeed be a range of checks needed at the Scotland-UK borders. There will be the Scotland-England land border that may require regulatory and customs checks. Then there would be a different sea and air border between Scotland and Northern Ireland – softer than the one with England and Wales perhaps – since Northern Ireland would be de facto in the EU's customs union and in its single market for goods.

There will also be considerable challenges around services. If a UK-EU free trade deal can be negotiated by the end of 2020, it is not expected to include services. The shape of any future deals on services, transport and various security issues may take considerably longer. So, again, there would potentially be barriers between the rest of the UK and Scotland in the services sector as a result.

Depending on the timing of any independence referendum, there is political uncertainty too. What if a Labour government took power in five years' time and decided to negotiate to re-join the EU's customs union (or even the EU)? This would ease potential border issues but it would change the context of the debate once again.

Politically, at EU level, there has also been a shift. There is now more openness to the possibility that Scotland could become independent and apply to re-join the EU. Certainly, member states with concerns around secession – including, but not only, Spain – would want to be re-assured that any independence referendum was constitutionally and legally valid. But, with the UK no longer a member state, and with the ill-will generated by the whole Brexit process, Scotland as a pro-European, remain-voting country is now seen by EU member states (and indeed by EU officials) in a much more positive light.

The EEA and Third Country Options

In the face of the likely border challenges, some argue an independent Scotland should consider negotiating a close relationship with the European Union without seeking full membership, much as Norway has done. If Scotland were in the European Economic Area (EEA), alongside Norway, Iceland, Liechtenstein and the EU member countries, it would be in the EU's single market but not in its customs union. It would therefore be free to strike its own trade deal with the rest of the UK. The upsides would mean less, but potentially still substantial, friction in Scotland-rUK trade. The downsides are clear – there would then be borders and barriers in both directions: regulatory borders with the rest of the UK (not being in the EU single market) and customs borders, as Norway faces, with the EU. Any serious discussion would need in-depth economic analysis of the static and dynamic benefits of these different options.

Some argue an independent Scotland should be in neither the EU nor the EEA. The costs of being a third country outside the EU have been extensively analysed and debated during the Brexit debate in terms of border frictions and knock-on effects to lower trade volumes, lower growth and lower investment (including by both UK and Scottish governments). So, it would seem an unlikely option for Scotland. But if an independent Scotland went down that route perhaps it would form a customs union with the UK and so remain part of whatever UK-EU trade deal emerges – a new form of 'independence light'.

If, in the end, an independent Scotland negotiated its way back into the EU, it would find itself part, with the other EU member states, of whatever UK-EU trade and security relationship had already been negotiated. It's clear that, compared to the debate in 2014, Brexit radically changes, in many ways, the implications of independence in the EU.

Brexit and the Union



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