

Scottish independence: EU membership and the Anglo–Scottish border

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About this report

This paper examines the process that an independent Scotland would need to follow if it wished to rejoin the EU, the implications of this for trade across the Anglo–Scottish border, and the alternatives to full EU membership that Scotland might wish to consider.

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Contents

Summary	4
Introduction	7
What process would an independent Scotland have to follow to join the EU?	9
What would EU membership mean for Scotland?	16
What implications would EU membership have for Scotland's relationship with the rest of the UK?	20
What other models are there for an independent Scotland's relationship with the EU?	29
Conclusion	34
References	35
About the authors	38

Summary

Brexit has taken Scotland out of the European Union against the will of a substantial majority of its citizens. This has undoubtedly contributed to a rise in support for Scottish independence. As the 2021 Scottish parliament election approaches, the SNP is making the case for Scotland to hold a second referendum on separation from the UK, which would enable it to apply to rejoin the EU as an independent member state.

But with the shape of the future UK–EU relationship having become clear only with the conclusion of the Trade and Cooperation Agreement (TCA) in December 2020, there has been little opportunity for discussion of what EU membership would now mean for Scotland and its relationship with the rest of the UK.

In this paper, we explore this issue in detail and highlight the trade-offs an independent Scotland would face in balancing its relationships with Brussels and Westminster. We show that the more integrated an independent Scotland chose to become with the EU, the greater the barriers to trade that would inevitably arise on the island of Great Britain. We also examine the process that Scotland would have to complete to rejoin the EU. We conclude:

- **Scotland’s path back to EU membership would run via Westminster.** Under EU law, Scotland would need to be an independent country before it could apply to join the EU, therefore the process for acceding to the EU could start in earnest only once Scotland had concluded negotiations with Westminster. There are indications that the EU would welcome an application from Scotland,¹ but only if Scotland had secured its independence through a process that was recognised as legal by the Supreme Court and as legitimate by the UK government.
- **Scotland’s path back to EU membership could take the best part of a decade.** Each of the two sets of negotiations – with the UK government on the terms of independence, and with the EU on the terms of accession – would be complex. The UK took nearly five years to finalise its exit from the EU. It could take easily as long, if not longer, for Scotland to complete its separation from the UK while also building the necessary institutions to become a fully sovereign state. The EU accession process could then take at least two years on top of that, based on how long the accession process has lasted for previous new joiners.
- **As an EU member, Scotland and its citizens would regain all the rights and responsibilities of EU membership that were removed by Brexit.** Scotland would rejoin the single market and customs union, meaning Scottish citizens would enjoy EU-wide freedom of movement, and Scottish businesses would benefit from frictionless trade across the EU. Scotland would also gain representation within all the EU institutions, which enable smaller member states to punch above their weight. On the other hand, as an EU member state Scotland would be obliged to rejoin the Common Fisheries Policy, and would also lose the opportunity to develop its own post-Brexit agriculture policy.

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- **As a new member state of the EU, Scotland would have to commit to adopting the euro, at least in principle.** It is unlikely that Scotland would be able to negotiate all the same opt-outs that the UK had as a member state. It would therefore probably have to commit to joining the euro – at least in principle. In practice, however, it might be possible to delay adoption of the single currency for many years, as other member states have done. More conceivable is that the EU would allow Scotland to opt out from the Schengen zone, meaning the Common Travel Area across the islands of Great Britain and Ireland could remain intact and passport controls be avoided.
 - **Scotland would probably be a net contributor to the EU budget.** Scotland would regain access to EU funding streams such as subsidies for farming and support for regional economic development and research. But access to these programmes is not free. Scotland would not benefit from the budget rebate that the UK enjoyed and, as a relatively wealthy member state, it could expect overall to be a net contributor to the EU.
 - **If Scotland joined the EU, a hard border on the island of Great Britain would be the inevitable result.** Although EU membership would reduce barriers to trade between Scotland and the EU, it would increase them on trade across the Anglo–Scottish border, which would become a new external customs and regulatory frontier for the EU. Trade between Scotland and England/Wales would be governed by the terms of the TCA, which involves substantial friction on trade between Great Britain and the EU.* After more than three centuries as part of a single market, Scotland and England would find themselves on either side of a hard economic border.
 - **Businesses operating across the Anglo–Scottish border would face new barriers to trade.** As an EU member state, Scotland would have no choice but to enforce customs processes, as well as regulatory checks on goods such as animal and plant products. There would be a need for new border infrastructure to enforce these rules. VAT processes and rules of origin requirements would create further barriers to cross-border trade and compliance costs for businesses.
 - **Scotland exports substantially more to the rest of the UK than to the EU so barriers to trade could be costly to the Scottish economy.** Scottish business trades around three times as much across the Anglo–Scottish border as it does with the EU. In terms of manufactured goods, exports to the rest of the UK were worth an average of more than £3 billion more to the Scottish economy than exports to the EU over the decade up to 2018. Scottish trade in services is even more closely integrated with the rest of the UK, although even as an EU member an independent Scotland could potentially negotiate a closer relationship with the rest of the UK on services trade, including by granting each other’s citizens favourable visa terms.

* Trade in goods with Northern Ireland would be governed by the separate Northern Ireland protocol, which we discuss further later in the paper.

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- **Scotland could seek a looser relationship with the EU than full membership – but no model would grant frictionless access to both EU and UK markets, so long as the UK–EU relationship were governed by the TCA.** There are alternatives to EU membership that Scotland might wish to consider, to reduce friction in trade between Scotland and the rest of the UK. Most obviously, it could join the European Economic Area (EEA), granting it access to the single market, while staying outside of the customs union. This option would loosen some of the constraints that come with EU membership: Scotland could keep control of its own fisheries and avoid even an in-principle requirement to join the euro. However, Scotland would have to follow many EU rules but as a non-member would have no formal say in their formulation. In addition, there would still be barriers to trade across the Anglo–Scottish border, since products would need to be checked for compliance with single market rules. Other options, such as a Turkey-style customs union or a Ukraine-style association agreement, would allow for a softer Anglo–Scottish border but would give Scotland even fewer of the advantages of EU membership.

Ultimately, there are no easy solutions to the problem of how an independent Scotland could achieve close integration into the EU without causing disruption to its trade with the rest of the UK.

The Scottish government has paused its preparations for a second independence referendum because of the pandemic. It has yet to spell out its plans for independence in the context of the new, more distant trading relationship between the EU and the UK. We argue that, as the SNP makes its electoral pitch that now is the time to vote again on independence, it must also be open about the trade-offs that Scotland would face, and the costs as well as benefits that EU membership would bring to an independent Scotland.

Introduction

As Scotland heads to the polls for the May 2021 Scottish parliament election, its relationships with the rest of the UK and the wider world hang in the balance. Opinion poll data reveals a nation almost equally divided on the question of independence.

After 14 years in power, the SNP remains the dominant force in Scottish politics. The SNP leadership has been clear that it will place independence, and Scotland's right to determine its own constitutional status, at the heart of its pitch to voters. If the nationalist party wins a majority at Holyrood – whether alone* or with the pro-independence Scottish Greens** – it has said it will immediately call on the UK government to authorise a second independence referendum. If the UK government does not agree, the Scottish government will seek to legislate for one at Holyrood, although any such legislation could be referred to and potentially blocked by the Supreme Court. The SNP's strategy if that were to happen is unclear.

Others, not least the UK government at Westminster, reject the case for another referendum. Unionists point out that even the SNP leadership at the time described the 2014 vote as a "once in a generation" opportunity.² However, the counterargument is that Scotland's decision to remain in the UK was premised on the belief that only by rejecting independence could Scotland's membership of the EU be secured. As the pro-Union Better Together campaign tweeted two weeks before polling day in September 2014: "What is [the] process for removing our EU citizenship? Voting yes."³

Brexit turned that claim on its head. It was opting to remain in the UK that caused Scotland to lose its place within the EU. Accordingly, a central pillar of the SNP argument for a second referendum is that Scotland was taken out of the EU against the will of the Scottish people. In 2016, 62% of Scots backed Remain, but the referendum was based on a single UK-wide count so Scotland's emphatic rejection of Brexit was outweighed by the pro-Leave majorities in England and Wales. The SNP has argued ever since that this "significant and material change in the circumstances that prevailed in 2014"⁴ provides the democratic justification for another vote on secession.

Neither Scottish nor English voters have changed their minds much since. According to a January 2021 poll, voters in England and Wales are still split almost equally between those who would like to rejoin the EU and those against. In contrast, 57% of Scots surveyed stated that they would like to rejoin the EU, compared with just 27% who are against the idea.⁵

These levels of anti-Brexit sentiment in Scotland appear to have persuaded a significant number of 2014 No voters to switch to the Yes camp. According to analysis by polling experts Sir John Curtice and Ian Montagu, concern about the implications of Brexit has "resulted in a marked increase in support for independence".⁶ The SNP is therefore confident that it is on solid political ground when it argues for Scotland to leave the UK so as to rejoin the EU.

* As in 2011.

** As in 2016.

However, even though it has gained political traction through its pro-EU position, the SNP has said little about what becoming a full member of the EU would mean for an independent Scotland's future relationship with the rest of the United Kingdom (rUK). In particular, if Scotland were to accede to the EU, it would be inside the EU single market and customs union, unlike the rest of the UK. Consequently, the Anglo–Scottish border would become a new external frontier for the EU. For the first time in more than three centuries, barriers to trade and perhaps even to the free movement of people would spring up on the island of Great Britain.

In 2014, the SNP vision was that Scotland would simultaneously leave the UK and join the EU as a new member state. This way, both Scotland and the UK would have been within the EU's customs union and single market. There would have been no barriers to the free flow of goods, services, capital and people between England and Scotland just as there were none between England and France.

Almost any form of Brexit would have made this option impossible. The main exception was the Scottish government's proposal in its 2016 white paper, *Scotland's Place in Europe*, that "the UK as a whole should remain within the European Single Market – through the European Economic Area – and within the EU Customs Union".⁷ If the UK had pursued this option, an independent Scotland might still have been able to join the EU without customs checks and major risks of economic dislocation on the border.

This, of course, did not happen. The future relationship deal that the UK government ultimately struck with the EU – [the Trade and Cooperation Agreement \(TCA\)](#) – has created sizeable new barriers to trade between the EU and Great Britain.* That means advocates of Scottish independence, led by the SNP leadership, have more complex questions to answer about how to achieve their goal of close integration with Europe without causing costly disruption to Scotland's economic relationship with rUK.

The purpose of this paper is to explore the options for an independent Scotland's future relationship with the European Union now that the UK's relations with the EU are governed by the TCA and the separate Northern Ireland protocol that was agreed as a way to maintain an open border on the island of Ireland. We examine the process an independent Scotland would need to follow to become a full member of the EU and the implications of so doing for Scotland's relationship with rUK. We then discuss alternative options that Scotland could consider, including membership of the European Economic Area and a bespoke free trade agreement with the EU, as a way to mitigate the costs of a hard border emerging between Scotland and England.

Ultimately, we show that there will be no easy solutions. The closer an independent Scotland gets to the EU, the more difficult it will be to maintain an open border and a functioning single market on the island of Great Britain. Perhaps the only way that independence could avoid creating a hard border would be if Scotland opted to remain very closely integrated with the rest of the UK, for instance by forming a new customs union. But this would rule out the possibility of Scotland becoming an EU member.

* Northern Ireland has been given special treatment to avoid a hard border on the island of Ireland.

What process would an independent Scotland have to follow to join the EU?

Scotland's 47-year membership of the EU ended with Brexit. An independent Scotland would have to follow the same application procedure to become a member as any other potential applicant. The legal process for joining the EU is set out in Article 49 of the Treaty on European Union (TEU). In this section we explore the detail of this process, the role of the EU27 and the criteria Scotland would need to meet to be successful in its application. We also examine the sequencing of these negotiations: Scotland would need to be an independent sovereign state to apply for EU membership, therefore the Scottish government would need to resolve its separation from the UK before it could make a formal application to join the EU, although some informal talks could take place before that.

The EU would not accept Scotland as a member unless Scottish independence had been secured legally and formally recognised by the UK government

All existing member states must agree before a new country can join the EU. Each state can veto an applicant, including at the initial stage at which it is determined whether the applicant can even become a candidate for EU membership. The TCA makes it clear that the UK will be notified when the EU acquires a new member and can be consulted on how that new member will be integrated into the EU–UK agreement, but it has no veto on the accession itself.

Opponents of Scottish independence have often suggested that EU member states with secessionist movements of their own (such as Spain, Belgium or Slovakia) would potentially use their vetoes to prevent an independent Scotland from rejoining the EU.⁸ They argue that these countries would be reluctant to send the signal that breakaway states can expect a smooth path back into the EU. In particular, many have suggested that fears of a similar breakaway in Catalonia, where the nationalist administration held an unconstitutional referendum on independence in 2017, would lead Spain to block Scottish accession to the EU. For instance, before the 2014 referendum, the Scottish Liberal Democrats leader, Willie Rennie, warned: "We cannot simply wait for a Spanish veto in 2015."⁹ More recently, in 2017, Adam Tomkins, the Scottish Conservative MSP, argued: "The fact is countries like Spain would have far more reason to veto an independent Scotland's membership than accept it."¹⁰

However, leading Spanish politicians have indicated they would not oppose EU membership for Scotland if it achieved independence through a legally recognised route, with the outcome accepted by Westminster. In 2018, the Spanish foreign minister explained their position was that Spain would accept an independent Scotland's application as long as it "leaves Britain in accordance with their internal regulation".¹¹

The implication of this is that Scotland's path back to EU membership will run through Westminster, with whom it would have to reach agreement on the terms of the referendum and on the terms of separation. Even if, after a legal challenge, the Supreme Court ruled that the Scottish government could hold a consultative referendum without Westminster authorisation, the UK government might simply refuse to recognise the result, or could change the law to prevent the vote from taking place at all.* So, without agreement with the British government, the long-held SNP dream of securing 'independence in Europe' is likely to remain just that. The party appears to recognise this. In its 'roadmap to independence' published in January 2021, the party stated: "A referendum must be beyond legal challenge to ensure legitimacy and acceptance at home and abroad."¹²

There is an outside risk that France could still object to Scottish accession owing to its scepticism about EU enlargement generally. President Emmanuel Macron has argued that the EU should reform its accession process before allowing any further enlargement of the union and in 2019 he blocked the opening of membership negotiations with North Macedonia and Albania.¹³ It is quite likely, however, that even Macron would make an exception for an independent Scotland, as fellow politicians have urged him to do, since Scotland does not pose the same concerns around democratic norms as the applicant Balkan states.¹⁴

Scotland would have to conclude its divorce from the rest of the UK before formally applying to join the EU

Article 49 of the Treaty on European Union provides that "Any European State... may apply to become a member of the Union" by submitting a formal request to the council. The implication is that Scotland could not formally submit an application for membership until it had become an independent state.

The Scottish government might seek to pursue negotiations with the EU in parallel with independence negotiations with the UK. However, there would be no precedent for the EU negotiating with a non-sovereign entity in this way, so the EU would have to agree to establish a bespoke process to manage any such negotiations. This could also probably happen only with the consent of the UK government. In addition, even if those conditions were met, it would pose a big challenge to the Scottish government to negotiate two huge deals simultaneously. All in all, this approach seems unlikely to be viable, although informal discussions with the EU could take place prior to Scotland having left the UK.

Consequently, the process of joining the EU would likely involve two stages. First, Scotland would need to negotiate the terms of its separation from rUK. Second, once Scotland was officially independent from rUK, the Scottish government would be able to formally submit its application to the EU.

* Chris McCorkindale and Aileen McHarg have argued that the legal challenge over a Scottish referendum bill might "provoke retaliatory legislation from Westminster to make clear that such legislation is not within Holyrood's competence, similar to the fate of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill": https://strathprints.strath.ac.uk/73066/3/McCorkindale_McHarg_2020_Constitutional_Pathways_to_a_Second_Scottish_Independence_Referendum.html

This would create a period of time after independence in which Scotland would no longer be part of the UK internal market but would not yet be part of the EU, and so would not trade with the UK under the terms of the UK–EU TCA. To minimise economic disruption during this period, Scotland could look to negotiate an interim trading arrangement with the UK – and possibly the EU as well – which could apply until Scotland joined the EU as a full member state. Scotland might, for instance, seek to negotiate a transitional period during which it would remain part of the UK internal market and customs territory, just as the UK remained bound by EU law during the Brexit transition period that ended in January 2021.

During its transition to independence, an independent Scotland would also need to focus on the development of institutions in many areas that are currently governed by Westminster. This includes new capacity to carry out functions such as foreign affairs, defence, monetary policy, a comprehensive system of taxation, and immigration and customs controls. Scotland would need to have these institutions in place to fulfil the requirements of EU membership, set out further below.

The EU accession process typically takes several years to conclude

Under Article 49 an application would need to be approved unanimously by the Council of the EU and be supported by a majority in the European Parliament. The terms of admission would also need to be ratified by all member states according to their respective constitutional requirements (which could include a referendum in the case of France^{*}).

Article 49 requires the applicant to respect and commit to promoting the values set out in Article 2 of the TEU. These include human dignity, freedom, democracy, equality, the rule of law and respect for human rights, pluralism, non-discrimination, tolerance, justice, solidarity and equality.

Scotland would also have to demonstrate that it complies with the additional prerequisites for accession – the ‘Copenhagen criteria’, agreed at the European Council meeting in Copenhagen in 1993. These are grouped into three strands:

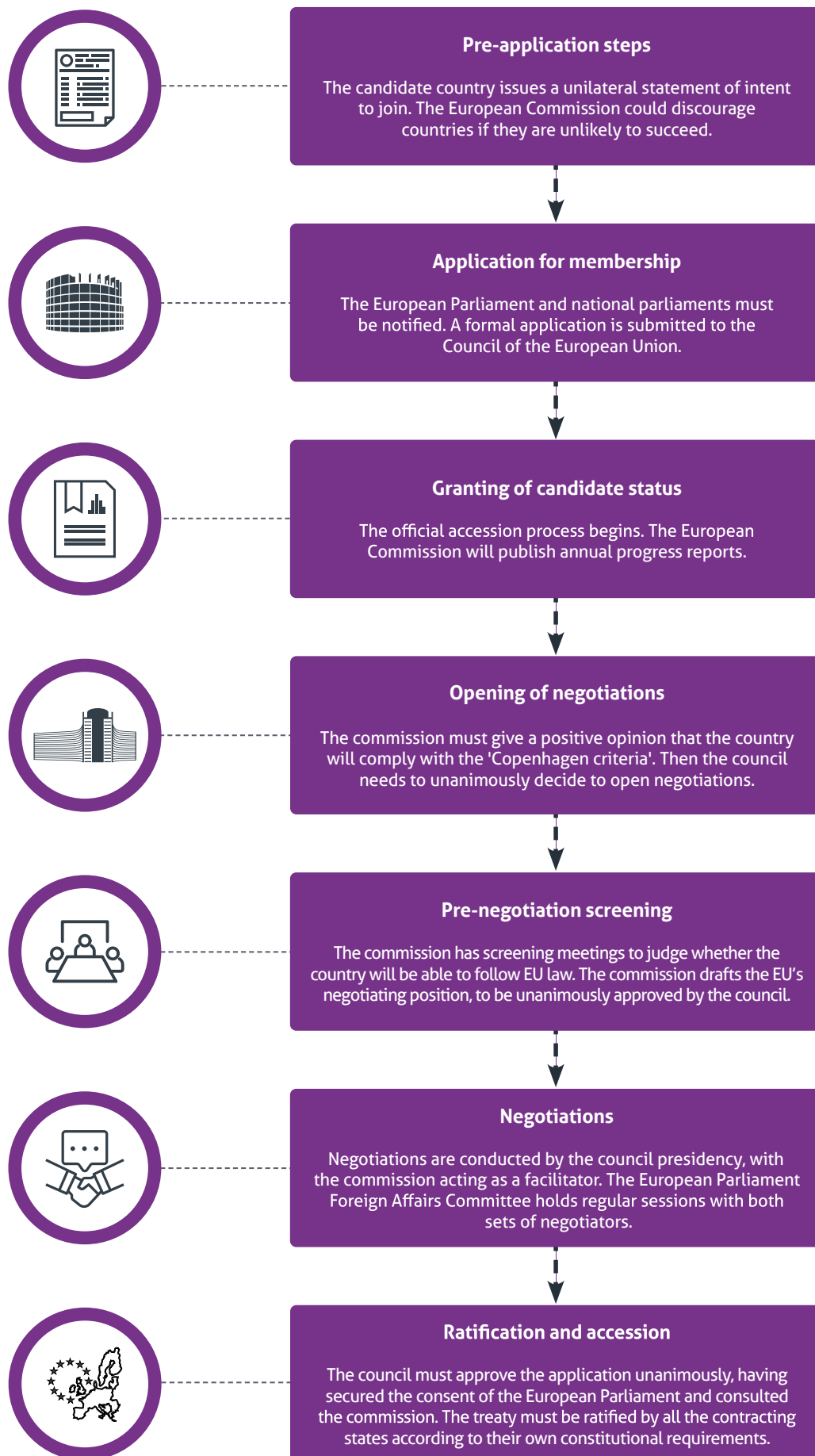
- **Political** – stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- **Economic** – a functioning market economy and the capacity to cope with competition and market forces
- **Administrative and institutional capacity to effectively implement the *acquis*** – the accumulated body of EU treaties, laws, decisions, international agreements (including FTAs) and judgments of the European Court of Justice (ECJ) – and ability to take on the obligations of membership.

* Article 88-5 of the French constitution: the alternative is approval by three-fifths of both chambers of parliament assembled in joint session.

The first two sets of criteria are not likely to cause problems for an independent Scotland. The country already has stable political institutions, respect for human rights and the rule of law, and a functioning market economy. It is unlikely that Scotland would lose these attributes as a result of independence. The third set of criteria might be more challenging to meet. Even though much of the *acquis* will still be part of Scots law, the capacity of Scotland's institutions would need to be increased during its transition to independence. This would be both to carry out functions currently performed by the UK government, and also so Scotland would be able to take on the full obligations of EU membership, such as the requirement to enforce customs controls.

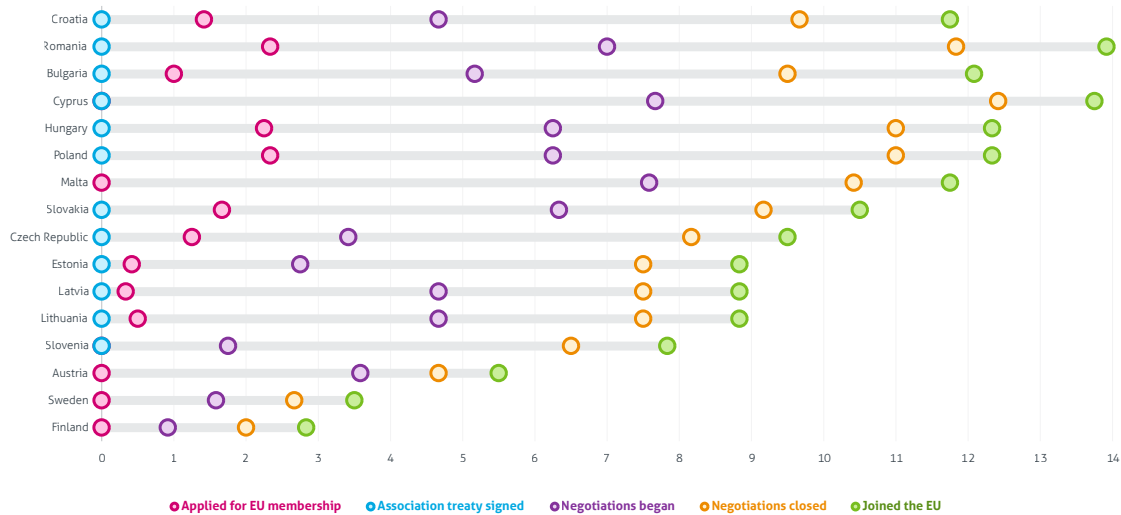
If a country does meet the criteria, then negotiations can begin. There are 35 chapters of EU law to be negotiated, covering six thematic groups: fundamentals; internal market; competitiveness and inclusive growth; green agenda and sustainable connectivity; resources, agriculture and cohesion; and external relations.¹⁵ Scotland would also have to reach agreement with the EU about whether it would join the euro and the Schengen area. Over the course of the negotiations, the candidate country must demonstrate that it can translate each chapter into its national law, policy and practices and the commission monitors progress throughout the negotiations. Each cluster of chapters requires separate unanimous approval by the member states. The stages of the accession process are set out in Figure 1.

Figure 1 **The stages of the EU accession process**



Accession has typically been a lengthy process (see Figure 2). Accession negotiations with the 22 countries that joined the EU and EEC since 1972 have taken nearly five years on average.¹⁶ This average is raised by post-communist countries that had a lot of catching up to do in terms of building the necessary legal and democratic institutions. However, the negotiations took nearly two years even for Finland and Sweden, which had already adopted much of the necessary EU law through their membership of the European Economic Area.

Figure 2 **Length of EU accession process for member states joining since 1995**



Source: Institute for Government analysis of European Commission, *Enlargement of the European Union: An historic opportunity*, 2001; and various other European Parliament and national government documentation. Full sources available on request. Countries are ordered first by date of accession, in reverse chronological order, then by length of application process. Note: Malta suspended its application from 1996–98.

The number of chapters of EU law has grown since then (from 29 to 35), increasing the complexity of the accession process. Iceland – the most recent comparable country to apply for membership, in 2009 – took a year simply to secure the opening of negotiations and had completed negotiations on only 11 chapters when it suspended its application in 2013 despite already being part of the EEA.

Post-Brexit divergence between the UK and the EU could complicate Scotland’s path back to EU membership

The EU accession process could be made simpler if a large amount of EU law remains in place in Scotland. The EU Withdrawal Act 2018 copied over all EU law into domestic law across the UK, creating a new category of ‘retained EU law’. But the deal with the EU contained no commitment to follow EU rules in the future (except for specific areas in Northern Ireland). So over time, the law in Scotland may begin to diverge from EU law, and the further this process goes, the more complicated the accession process could become.

In policy areas reserved to Westminster, such as competition and market regulation, the UK government is able to amend retained EU law in line with its own policy priorities. There may also be movement in how regulation is enforced and applied, even if the substance remains similar. On top of this, divergence may be introduced by changes to the law by the EU that will not apply in the UK.

In policy areas that are devolved to Scotland, the Scottish government intends to keep pace with EU law and has recently passed legislation to facilitate this.¹⁷ Scottish ministers can now make use of a fast-track procedure to give effect to new EU regulations, decisions and directives. This procedure is time-limited, available for six years with an option to extend it to a maximum of ten years,¹⁸ with the clear intention that Scotland will have rejoined the EU by then.

For this procedure to be effective, the Scottish government must continue monitoring EU legislation. Previously, it was UK government departments who would lead on this and would notify the Scottish government of any new EU obligations concerning devolved matters. In 2019, more than 2,000 regulations, directives and decisions were passed by the EU.¹⁹ While only some of this will fall within Scotland's legislative competence, identifying what does will be a big task.

Even where former EU policy areas are devolved, for instance in relation to agriculture and food standards, Scotland might decide to align with the rest of the UK rather than the EU for domestic political reasons and to avoid divergence within the UK market. The UK Internal Market Act, which guarantees that goods acceptable for sale in one part of the UK are automatically acceptable in another regardless of local regulation, could also create incentives for Scotland to follow England in diverging from EU standards, or risk putting its producers at a competitive disadvantage.²⁰

What would EU membership mean for Scotland?

If Scotland were able to successfully navigate the accession process, it would regain access to the political institutions and economic and security arrangements of the European Union. In this section we explore the benefits of joining the EU for an independent Scotland: it would remove trade barriers with the EU27, give Scotland a seat at the decision making table, as well as full access to the EU's security measures. But it would also come with costs, which could pose difficult trade-offs for the Scottish government.

As a member state, Scotland would gain a formal status within all the EU institutions

As a full member state of the EU, Scotland would gain a formal standing within all the institutions of the EU. This would give Scotland a direct say in all aspects of the EU policy making and legislative process, arguably giving the Scottish government greater ability to influence EU decisions than it had before Brexit as part of the UK. With a population of 5.4 million, Scotland would be ranked as the 18th or 19th largest member state out of 28 – a population that would make up just over 1% of the EU. However, in several respects, the EU institutions are designed to allow smaller members to punch above their weight, so Scotland might expect to exercise more influence than this ranking might suggest.

First, the Scottish government would be directly represented in the Council of the European Union, where deals between member states are reached and EU legislation and other decisions are formally approved. In areas where decisions require unanimity – including EU enlargement and the EU budget – an independent Scotland would hold a veto power like other member states. Decisions in many other areas are taken by qualified majority voting (QMV), meaning decisions must have the support of 55% of member states comprising 65% of the EU population. This applies in principle to an estimated 80% of EU legislation,²¹ though in practice most decisions are taken without a vote.

Second, like all member states, an independent Scotland would have the right to appoint one member of the European Commission, which is the sole body with the power to propose new European legislation and is the executive authority for overseeing and implementing EU policy and programmes. The portfolio of the Scottish commissioner would be subject to negotiation and horse-trading, but small member states can and do secure major portfolios.* Scottish officials would also be able to work in EU institutions.

* For instance, Latvia has a population of fewer than 2 million, but its commissioner, Valdis Dombrovskis, is executive vice president of the commission and holds important economic and trade portfolios.

Third, Scottish voters would be entitled to elect members of the European Parliament (MEPs), which scrutinises the commission and has the power of co-decision over much EU legislation. Here again, as a small member state, Scotland could expect to have a disproportionate influence, since smaller countries generally gain a greater number of seats per head of population in the European Parliament than larger ones.*

Fourth, an independent Scotland would be entitled to nominate one judge on the European Court of Justice (ECJ), the highest court of the EU legal system. Again, this is an aspect of EU membership where all member states have the same right to nominate a single judge, irrespective of their population size, although Scotland would be unlikely to be able to have a permanent advocate general at the court, as the UK did as a larger member state.**

Like other recent joiners, such as Croatia, even before it formally joined the EU, an independent Scotland might gain active observer status in the European institutions to allow its officials to become familiar with their working methods and to start to be involved in the decision making processes.

Scotland would gain full membership of the EU single market and customs union as well as access to measures for justice and security cooperation

As an EU member state, Scotland would rejoin the single market and customs union. The EU single market is based on four freedoms – over movement of goods, people, services and capital – with the aim of removing barriers to trade between member states as well as other countries that sign up to the EU body of law. The customs union removes tariffs between member states and sets a common external tariff for all goods entering the EU from a third country.

The single market is underpinned by a common rulebook, where rules relevant to trade are harmonised across the EU (so the same rules apply), or where member states have agreed to recognise one another's rules. The price for free trade across the bloc, therefore, is that Scotland would have to follow EU rules. The application of EU law is overseen by the European Commission and the other institutions of the EU. If a member state breaches these rules, the commission can launch infringement proceedings – which can end in a referral to the ECJ. The commission, other member states or private actors can bring cases against governments.

Beyond trade, Scottish citizens would regain rights to freedom of movement across the EU (and the associated EEA states) and would be entitled to participate in programmes such as Erasmus. Scotland would also participate in the EU's 'area of freedom, security and justice'. This would give it access to a suite of EU tools to support criminal justice

* As part of the UK, in the 2019 European election, Scotland elected six out of a total of 751 MEPs. As an independent member state, Scotland's number of MEPs would be subject to negotiation, as part of its accession treaty, but it could expect at least double that number. Slovakia and Finland, with almost exactly the same number of people as Scotland, each now has 14 MEPs.

** Advocates-general are a feature of the EU court system derived from the practice of French administrative courts. They draft opinions on pending cases; while their opinions are not binding on the court, the judges tend to follow them more often than not.

and law enforcement co-operation. Unlike the UK, however – which negotiated an opt-out from the full set of justice measures back in 2008, only to opt back in to 35 of them in 2014 – Scotland would in principle be subject to all of them.

Scotland would have to commit to joining the euro in principle – but it might be able to avoid doing so in practice

The UK and Denmark negotiated opt-outs from the requirement to join the single currency in the Maastricht treaty. However, there is little precedent for new member states to be granted opt-outs – rather, opt-outs have tended to be granted as concessions to existing members to gain their agreement for treaty changes. It is therefore probable that Scotland would need to commit to joining the euro.* New members are obliged to adopt the euro in principle once they meet certain economic and fiscal 'convergence criteria'.

Among these criteria is a requirement that the annual government deficit should not exceed 3% of GDP. Scotland's current notional deficit is substantially higher than that:** in 2019-20, it was estimated to stand at nearly 9% of GDP.²² The size of the Scottish deficit would be looked at during the accession process by the EU as part of its assessment of whether Scotland was ready to take on the full obligations of EU membership, including eventual adoption of the euro. However, as the Centre on Constitutional Change recently pointed out, the EU may take the same position that it did with Croatia – that "if the deficit is on a clear downward path, with appropriate economic policies, Scotland could join with a short transition period inside the EU to bring it fully down to 3%".²³

The SNP, however, does not intend for an independent Scotland to adopt the euro, and is not clear whether the EU could or would actually compel any member state to enter the eurozone. At the 2014 referendum, the Scottish government position was that the EU could not do so, since a member state could simply refuse to join the exchange rate mechanism – membership of which is a necessary precursor to joining the eurozone.²⁴ Certainly, there are other EU members that have remained outside the eurozone without any legal opt-out. Sweden has managed this through more than 25 years of EU membership. More recent joiners such as Poland,²⁵ Czech Republic²⁶ and Hungary,²⁷ all of which acceded in 2004, have also shown themselves to be in no hurry to adopt the single currency. Eight EU member states retain their own currencies outside the eurozone.

It seems more probable that Scotland might be able to avoid any commitment, even in principle, to joining the Schengen area, within which there are no border checks.^{***} Along with the UK, the Republic of Ireland opted out of the Schengen area, instead maintaining the existing Common Travel Area (CTA) that allows for the free movement between the UK, Ireland, the Channel Islands and the Isle of Man. The Scottish

* The Institute for Government will shortly be publishing a paper on the currency choices that would face an independent Scotland, so we do not explore this issue in greater depth here.

** The Institute for Government will shortly be publishing a paper on the fiscal challenges that would face an independent Scotland, so we do not explore this issue in greater depth here.

*** The Schengen area abolished internal border checks on the movement of people between 26 European countries: 22 EU member states and the countries of the European Free Trade Association (EFTA): Iceland, Liechtenstein, Norway and Switzerland.

government intends that post-independence Scotland would remain within the CTA rather than Schengen. This would have to be agreed with the EU, which respected the importance of the CTA for Northern Ireland during the Brexit process, in negotiations over the Northern Ireland protocol, so might be expected to show flexibility on this issue in the case of Scotland as well.

Scotland would likely be a net contributor to the EU budget

In joining the EU Scotland would also regain access to the EU budget, including funding for agriculture, regional development and research. However, access to these programmes does not come for free. Like all member states, Scotland would be obliged to make a contribution to the EU budget, the size of which would be broadly proportional to the size of its economy. Based on its per capita income, Scotland would be a relatively well-off member state, meaning it would not qualify for certain dedicated funding streams for poorer member states, such as the Cohesion Fund. Overall, it is probable that Scotland could expect to be a net financial contributor to the EU budget. Certainly, this was the stated expectation of the Scottish government at the time of the 2014 referendum.²⁸

There is little chance that Scotland would be granted a budget rebate along the lines of the special deal that Margaret Thatcher managed to secure for the UK in the 1980s. Even if Scotland ended up receiving more from the EU than it contributed, the receipts from EU funding would not make up for the loss of the large fiscal transfers that currently flow from England to Scotland, and which support public spending in Scotland that is about £15bn higher than Scottish tax receipts.²⁹

Scotland would have to join the common agriculture and fisheries policy

What is more certain is that Scotland would need to sign up to the Common Fisheries Policy (CFP) and Common Agricultural Policy (CAP). Joining the CAP would make Scottish farmers eligible for direct funding from the EU once more – which might be more generous than UK Treasury funding. On the other hand, Scotland would lose the ability that Brexit has offered to design its own agriculture policy, which the Scottish farmers' union previously welcomed as offering an opportunity to "replace elements of EU agricultural regulation that are bureaucratic, ineffective or ill-tailored to farming conditions in the UK and Scotland".³⁰

Rejoining the CFP might also be politically unpopular in Scotland. It is perceived as rigid and the historical agreement on access to waters when the UK first joined the European Economic Community was weighted heavily in the original six member states' favour. The degree of access to Scottish waters would be up for negotiation, but the limited gains the UK was able to make during its own negotiations with the EU³¹ raises questions about whether or not the Scottish government could do much better – and at what cost.

What implications would EU membership have for Scotland's relationship with the rest of the UK?

As the above section has shown, EU membership for an independent Scotland would make it easier for Scottish businesses to trade and operate across the EU market. However, if it did join the EU, then Scotland's trade relationship with the rest of the UK would be governed by the TCA signed by the UK and EU in December 2020.

The TCA is a basic trade deal that eliminated tariffs on goods that meet the relevant rules of origin but did little to reduce non-tariff barriers. If Scotland were to join the EU it would trade with England and Wales on the same terms as other EU member states do now, so new checks and processes would be required on trade across the Anglo–Scottish border. It would also mean that border infrastructure would need to be erected on the Anglo–Scottish border, across which there are 21 road and railway crossings.³²

Under the Ireland/Northern Ireland protocol, Northern Ireland continues to apply EU law in single market areas, so goods would still be able to move freely between Scotland and Northern Ireland – although trade in services would be governed by the UK–EU deal.

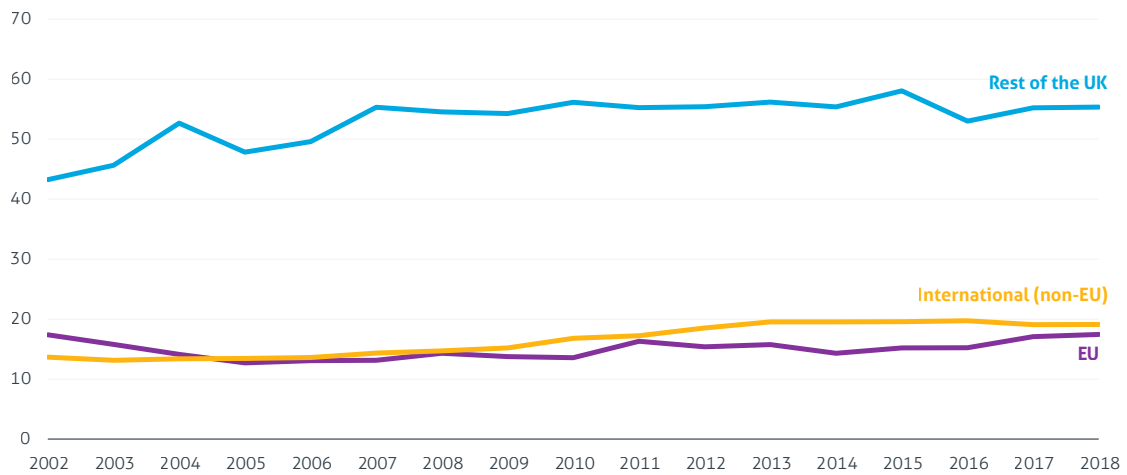
This section explores the implications of EU membership for trade in goods, services and movement of people between an independent Scotland and the rest of the UK. While the UK–EU relationship will no doubt change over time, potentially meaning that some of the current barriers to trade will be removed, our analysis assumes the UK will continue to trade with the EU on the same terms as today.

Scottish exports to the rest of the UK are worth three times as much as exports to the EU

Exports to the rest of the UK (rUK) currently bring substantially more revenue to the Scottish economy than exports to the EU. So, if independence led to new barriers to trade across the Anglo–Scottish border, this could easily outweigh the gains for Scotland from becoming an EU member.

The data on Scottish exports is imperfect, but based on Scottish government trade statistics, which are available up to 2018, exports from Scotland to rUK before Brexit were worth almost three times as much as exports to the EU (the export of oil and gas is excluded from their calculations).³³ In revenue terms, as shown in Figure 3, Scottish exports to the EU were worth £16bn in 2018, compared to £51bn to rUK, and £18bn to the rest of the world. The data attempts to differentiate between exports from Scotland that, for example, move through English ports on their way to the EU or the rest of the world and those that are specifically destined for rUK.

Figure 3 **Scottish exports by destination, 2002–2018 (in £bn, 2020 prices)**

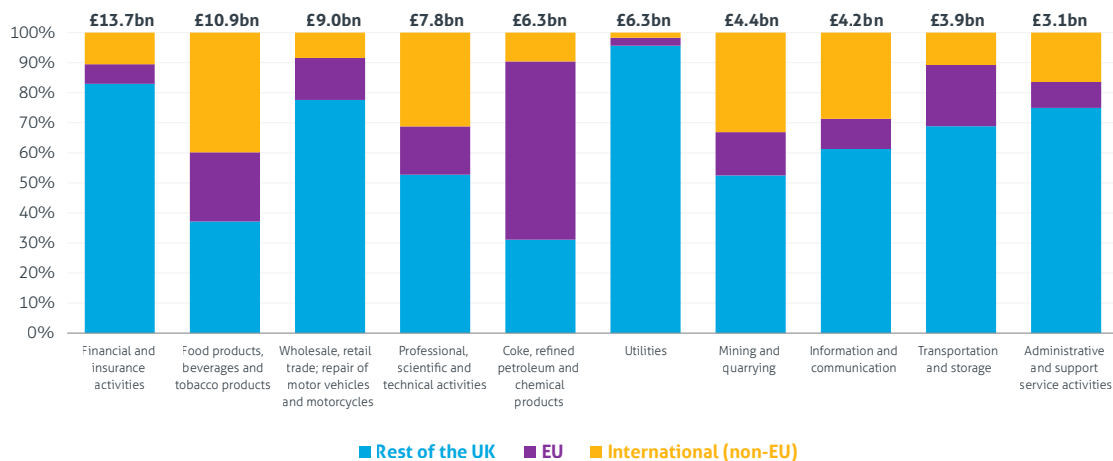


Source: Institute for Government analysis of Scottish government, 'Export statistics Scotland: 2018', numbers adjusted for inflation using the GDP deflator.

The data also shows which sectors export most to the EU and rUK. In terms of trade with the EU, around 60% of Scottish exports are in manufactured goods, compared to about 30% for services exports. The largest single sector for exports to the EU was refined petroleum and chemical products (accounting for around 20% of all exports in 2018), followed by food and drink, which represented around 15%.

By comparison, exports to the UK were dominated by services, which accounted for nearly 60% of all exports, compared to just over 20% for exports of manufactured goods (one third of which was in food and drink). In terms of revenue, however, exports of manufactured goods to rUK were worth some £1.5bn more than exports to the EU in 2018. Over the entire previous decade, moreover, Scotland exported an average of more than £3bn more manufactured goods to rUK than it did to the EU. As Figure 4 shows, of the ten largest Scottish export sectors, only one (refined petroleum and chemical products) exports more to the EU than to rUK.

Figure 4 **Ten largest Scottish export sectors, by destination of exports (2018, in 2020 prices)**



Source: Institute for Government analysis of Scottish government, 'Export statistics Scotland: 2018', numbers adjusted for inflation using the GDP deflator.

The UK's departure from the European single market and customs union has created additional hurdles for those companies looking to continue to trade with the EU, which the Trade and Cooperation Agreement has only partly mitigated. Already, some sectors have been quite vocal about the new obstacles to trade: for instance, the head of Seafood Scotland has warned that they could lead to the demise of smaller fishing companies.³⁴ These obstacles will have an impact on Scottish businesses, which might therefore begin to trade less with the EU than they did before Brexit. It is therefore possible that by the time an independent Scotland looked to join the EU, Scottish exports to the EU could have fallen further in terms of their importance to the Scottish economy.

An independent Scotland within the EU would be obliged to impose customs processes for trade with England and Wales

As an EU member, Scotland would be obliged to apply EU customs rules, known as the Union Customs Code. This would remove the need for customs formalities between Scotland and the EU but would introduce them between Scotland and England/Wales. Customs rules would apply to individual travellers as well as traders, creating new complications for cross-border shopping. Any businesses trading goods at present across the Anglo–Scottish border would face new paperwork, including:

- **customs declarations** – which would provide information on the goods and their value
- **safety and security declarations** – which are used to assess any risks associated with these goods and customs checks.

This would introduce new costs for businesses trading across Great Britain. In 2019, HMRC estimated that the introduction of customs formalities between the UK and EU would create new costs of £15–£56 per customs declaration.³⁵ It also stated that small or micro businesses might face proportionately higher costs as they are more likely to use customs agents to help them comply with new requirements, so may face particular challenges continuing to trade across the border.³⁶ Bigger companies may have in-house customs capacity but may also face additional costs scaling up operations to deal with an increased volume of declarations. Businesses that currently trade only within Great Britain and have little experience of customs procedures would face the biggest challenges to adjust.

Goods moving from Scotland to the EU through England would be able to do so in 'transit' under the Common Transit Convention. This would allow goods to bypass full customs and regulatory controls, as EU-bound goods from the Republic of Ireland using the 'UK land bridge' currently do.³⁷ However, some challenges would remain. Goods moved under transit are required to be sealed, making it more difficult to pick up loads on the way, which may increase costs or require hauliers to adjust their routes. Transit arrangements for agri-food goods are also more complex.³⁸

Most trade across the Anglo–Scottish border would be tariff-free – but subject to rules of origin requirements

Tariffs are taxes on goods imported into one customs territory from another, also known as customs duties. If Scotland joined the EU, it would become part of the EU customs territory. That would mean that no tariffs would be payable on any goods going from Scotland to the rest of the EU or vice versa. In addition, there would be no tariffs on goods moving between Scotland and Northern Ireland.

Under the TCA, there would be no tariffs on goods crossing the Anglo–Scottish border provided they ‘originated’ in either the EU (including Scotland) or rUK. But rules of origin would apply to determine whether they did so. These specify the amount of local content goods must contain, or the amount of local processing they must be subject to and vary depending on the type of good.

Inevitably, some goods moving between England and Scotland would not meet the rules of origin threshold and would therefore be subject to tariffs. Rules of origin requirements might also pose problems for integrated supply chains that involve goods moving back and forth between Scotland and England/Wales. If any stage of the production or distribution processes were not considered significant enough to confer ‘origin’ on that good, it would be subject to tariffs when re-exported (see Box 1).

As a result, importers might incur additional costs that could be passed on to consumers, or companies might need to adjust their supply chains. For example, Scottish businesses might send goods to Northern Ireland or elsewhere in the EU for processing, rather than England or Wales.

Box 1 Rules of origin and the Percy Pig problem

The challenges created by the introduction of rules of origin requirements into previously integrated supply chains have been illustrated by a problem around Marks and Spencer Percy Pigs sold in the Republic of Ireland.³⁹

Percy Pigs are manufactured in Germany and imported into the UK tariff-free. Once in the UK, they are repackaged and distributed to M&S stores across the UK and the Republic of Ireland. Repackaging the sweets in the UK is enough to deprive them of their EU originating status (so they cannot be reimported into the EU as ‘returned goods’) but not enough to give them UK originating status (so they cannot qualify for tariff-free access under the TCA). M&S warned that these goods might therefore be subject to customs duties.

Checks on products of plant or animal origin would be onerous

The EU has stringent rules on animal and plant health known as sanitary and phytosanitary (SPS) requirements. These require specialist paperwork and extensive checks on animals, plants and products of animal origin. Some products from outside the EU are restricted or cannot enter at all. The TCA does little to remove this friction. It sets out an ambition to keep border controls to a minimum but provides for no actual reduction in the frequency or intensity of these controls.

Joining the EU would address some (although not all) of the SPS challenges created by Brexit for certain sectors of the Scottish economy: for example, the seafood industry.⁴⁰ However, it would also create the need for controls on products moving between Scotland and England/Wales. Exports from the Scottish food and drink sector to rUK bring in around 60% more revenue (£1.4bn in 2018) than exports to the EU.

Products of animal origin would need to be accompanied by an export health certificate (EHC) that must be signed by a vet, currently costing from £50 to £175 per certificate.⁴¹ Products moving from England or Wales would need to enter Scotland through a border control post (and vice versa), requiring new border infrastructure, and would also be subject to document checks and physical inspections.*

Under EU law, 100% of live animals, 30% of minced meat, poultry meat, dairy products and eggs, and 15% of other meat products might need to be physically inspected as they cross into Scotland from England and Wales.⁴² The TCA allows either the UK or EU to unilaterally reduce the frequency of these checks after discussions through a specialised trade committee, so the check rates for goods moving from England to an independent Scotland might vary depending on the arrangements at the time.

However, the changes to the trading relationship between Scotland and rUK would likely have substantial time and cost implications for those moving agri-food across the border. Given the high volume of trade between Scotland and rUK, the integration of production chains and the existence of farms that straddle the border, this would be a big shift. In particular, the introduction of new controls is likely to pose challenges for UK-wide supermarket supply chains; the sector has repeatedly raised concerns about the introduction of similar checks under the Northern Ireland protocol.**

The EU also restricts or prohibits certain products, including chilled meats, sausages and seed potatoes and certain plant species, from being imported from third countries. These restrictions and prohibitions would apply to goods from England and Wales, which might no longer be able to be imported into Scotland.

* The UK government is phasing in customs and regulatory controls on EU goods entering GB from October 2021; Chancellor of the Duchy of Lancaster, written ministerial statement, 11 March 2021, retrieved 15 March 2021, <https://questions-statements.parliament.uk/written-statements/detail/2021-03-11/hcws841>

** Kelso P, 'Brexit: Supermarkets warn of "cliff-edge" for Northern Ireland supplies', Sky News, 13 January 2021, retrieved 25 March 2021, <https://news.sky.com/story/brexit-supermarkets-warn-of-cliff-edge-for-northern-ireland-supplies-12186740>. In recognition of these challenges, the UK and the EU agreed a three-month grace period from SPS paperwork for supermarkets and their suppliers. Discussions in the UK–EU Joint Committee about extending this period, or replacing it with long-term sector specific arrangements, remain ongoing at the time of writing.

Many Scottish manufacturing businesses might need to comply with both EU and rest-of-UK rules

All other goods imported into Scotland from England or Wales, for instance in the heavily regulated medicines and chemicals sectors, would also need to comply with EU law. Likewise, goods imported into England or Wales from Scotland would need to meet local standards and would no longer benefit from mutual recognition under the UK Internal Market Act.

Checks on these types of goods usually take place away from the border, through on-site authorisations and market surveillance activities, and so these are unlikely to be a major source of border friction. However, the possibility that producers serving both the Scottish and English/Welsh markets might need to meet the requirements of two different regulatory regimes could introduce additional production and compliance costs, although many UK-based businesses exporting to the EU are already facing this challenge as a consequence of Brexit. This would be a new issue only for those businesses who currently sell only within the UK.

Compliance with VAT rules would add additional costs for businesses operating across the Anglo–Scottish border

In a normal domestic transaction, the seller charges the buyer VAT as part of the price of a good and then pays it on to the relevant tax authority (minus the VAT the seller has paid to its own suppliers). In international sales, however, it is usually the buyer who has to account for VAT.

As goods moving into an independent Scotland from England and Wales, or vice versa, would be considered imports, VAT would need to be collected on import.⁴³ An independent Scotland would be responsible for determining the practical arrangements for collecting this, within the parameters of EU law. To avoid cashflow problems for businesses, HMRC has introduced 'postponed accounting', allowing companies to pay VAT quarterly rather than immediately upon import – which could be replicated in Scotland.⁴⁴

Current UK arrangements allow VAT on low-value consignments* sold directly to consumers to be collected at the point of sale, provided sellers register with the relevant tax authority. So, for example, a Scottish business selling goods online to people in England would be able to do so much as before. However, for more valuable consignments, VAT must be paid at the point of import. Sellers would not be required to pay UK VAT so customers might be faced with a bill when their order arrived.⁴⁵

An independent Scotland could not mirror the arrangements under the Northern Ireland protocol, which guarantees unfettered access to both the EU and UK markets

The negotiation of the Ireland/Northern Ireland protocol during the Brexit process demonstrated the extent to which the EU prioritises the integrity of its single market in negotiations. It has been unwilling to grant any special dispensations or derogations from the full regulatory checks and controls on goods moving from Great Britain to

* As of March 2021, this applied to consignments under £135.

Northern Ireland. In the absence of a legally binding agreement that the UK will apply EU standards or equivalent, all goods are required to demonstrate compliance with EU law. The same principle would be applied in the case of Scotland if it joined the single market, so full regulatory checks and controls would apply to goods moving across the Anglo–Scottish border.

The special arrangements on tariffs that recognise Northern Ireland as formally part of the UK’s customs territory could not be replicated for Scotland. Under the protocol, goods moving from Great Britain to Northern Ireland, and which do not meet the ‘rules of origin’ requirements discussed above, are not subject to tariffs unless they are ‘at risk’ of moving into the EU. As a full EU member state, however, Scotland could not benefit from such an exception.

Further, the asymmetry of the Irish Sea border, where customs formalities and regulatory checks apply only GB–NI and not NI–GB, could not be replicated at the Anglo–Scottish border. This is because, unlike Northern Ireland, which remains part of the UK’s customs territory, Scotland would be part of a separate customs territory (the EU’s) to rUK. Under the rules of the World Trade Organization, rUK could not give preferential customs treatment to Scotland except under a free trade agreement or customs union. Since Scotland would be part of the EU customs union, it could not sign such a bilateral treaty with rUK. Consequently, the Northern Ireland protocol does not appear to offer any useful precedent for an independent Scotland.

EU membership would not prevent a close Scotland–rUK relationship on services – with some important exceptions

If Scotland were to join the EU, Scottish services providers would have improved access to the EU market, but cross-border trade in services between Scotland and rUK could become more difficult.

EU rules on services are much less prescriptive than on goods, so there would be more scope for bilateral arrangements – formal or informal – between Scotland and rUK. The TCA provides a baseline for services trade; as part of the deal, the UK and EU agreed to grant access to each other’s services markets, although member states can opt out of specific services areas, meaning that there is a long list of exclusions. However, the deal also excludes large parts of financial services – which is Scotland’s largest sector by export revenue (valued at £12.7bn in 2018, over 80% of which is from trade with rUK) – although the UK and EU have agreed to establish a separate framework for regulatory co-operation.⁴⁶

There are some services sectors where EU membership would present additional barriers to rUK providers operating in Scotland. For example, the aviation sector, where the European Common Aviation Area would prevent non-EU airlines from operating internal routes.⁴⁷ However, many other barriers to trade in services relate to areas like work permit requirements and immigration restrictions, which would be within the discretion of the Scottish government.

Assuming Scotland would maintain its existing statute book on becoming independent, Scots law would continue to grant rUK citizens and businesses the same rights as they currently enjoy in Scotland, unless amended to move away from this position. An independent Scotland and rUK could maintain similar access to each other's services markets as they enjoy at present, at least if there were sufficient political will on both sides to reach such a deal.

The TCA also provides a framework for agreeing the mutual recognition of qualifications, although again, bilateral or sector specific agreements and reciprocal unilateral action would be possible in this area.

Immigration controls would depend on the terms of Scotland's EU membership

As EU citizens, Scottish citizens would gain the right to live, work, travel and study in the rest of the EU. Citizens of other member states would enjoy reciprocal access.⁴⁸ The implications of Scotland's EU membership for the movement of people between Scotland and rUK would depend on the terms of its membership.

If Scotland joined the Schengen area, it would be required to apply the EU borders code. This would mean entry and exit checks on people entering Scotland from rUK. Non-EU nationals entering Scotland would be required to provide travel documents and a valid visa if required – and citizens from rUK would need their passport stamped.⁴⁹ An independent Scotland would retain autonomy over its immigration policy from non-EU states and therefore would be able to offer citizens from rUK favourable residence or long-term visa terms, but rUK citizens without such visas would not be permitted to stay in Scotland, or the rest of the Schengen area, for more than 90 days in any 180-day period.

The extent and nature of immigration controls on the English side of the Anglo–Scottish border would remain in the gift of the UK government; it could choose to have minimal border controls or none at all. However, this would limit the UK government's ability to monitor the entry of people into rUK, as anyone able to enter the Schengen area – whether legally or illegally – would be able to move into Scotland, and then into rUK, without being subject to any controls at either point of entry. Some controls would therefore be likely, although the UK government could also decide to offer Scottish citizens favourable visa terms.

If Scotland were able to secure a Schengen opt-out, whether de jure or de facto, this would allow the Scottish government more freedom over its own border processes. It would also allow an independent Scotland to remain within the Common Travel Area (CTA), which guarantees UK and Irish citizens reciprocal rights to reside, work, study and travel in either jurisdiction. This would remove the need for any immigration controls and visa requirements on travel on the islands of Great Britain and Ireland, as well as the crown dependencies (the Channel Islands and the Isle of Man), and Scots would automatically retain their right to live and work across the CTA. The CTA also guarantees reciprocal access of health care, social protection, social housing, education and voting rights.

The terms of the CTA are set out in a memorandum of understanding and given effect through domestic law, therefore there are unlikely to be any legal impediments to an independent Scotland participating.

Table 1 **Barriers to movement of goods, services and people for an independent Scotland within the EU**

	Scotland to EU	Scotland to England & Wales		Scotland to Northern Ireland	
Goods					
Customs duties	No	No, subject to rules of origin requirements		No	
Customs formalities	No	Yes		No	
Regulatory controls	No	Yes		No	
VAT payable at border	No	Yes		No	
Services					
Market access	Yes	Subject to agreement		Subject to agreement	
Mutual recognition of qualifications?	Yes	Subject to agreement		Subject to agreement	
People					
Immigration controls	No	Schengen – yes	CTA – no	Schengen – yes	CTA – no
Right to reside/work	Yes	Subject to agreement	CTA – yes	Subject to agreement	CTA – yes

Less friction  More friction

What other models are there for an independent Scotland's relationship with the EU?

In the previous sections, we looked at how an independent Scotland could join the EU and what implications that might have for its relationship with the rest of the UK (rUK). We have shown that EU membership would make it harder for Scotland to maintain a close relationship with rUK and to keep an open border with England. In this section, we consider whether there are alternative models that would allow an independent Scotland to move closer to the EU but with less disruption to its relations with the rest of the UK.

There are at present 27 member states of the European Union. Almost all non-member European countries have some form of preferential trading relationship with the bloc. Some, like Turkey, are in a partial or total customs union with the EU. Others, like Norway and Iceland, are members of the European Economic Area. Other EU neighbours such as Serbia and Ukraine have association agreements with the EU. Only a handful of states on the European continent (like Russia and Azerbaijan) choose to trade with the EU on WTO terms, which give them no preferential access to the EU market.

Joining the European Economic Area would avoid some of the obligations of EU membership – but would not eliminate border checks with England

Joining the European Economic Area (EEA) – especially if combined with an EU–Scotland customs union – would be the closest relationship Scotland could have with the EU short of full membership. Scottish businesses would be able to access EU services markets on the same terms as their EU counterparts. Scottish citizens would benefit from the same free movement rights as European citizens, who would in turn enjoy the right to move to Scotland freely (as the Scottish government – in contrast to its UK counterpart – strongly supports). Scottish goods exports to the EU would not be subject to checks to ensure they complied with EU regulations, because the same regulations would be in force in Scotland. However, goods would still be subject to customs checks if Scotland did not also enter a customs union with the EU, just as Norwegian exports to Sweden are exempt from regulatory checks but still have to submit customs declarations and present evidence of compliance with rules of origin.

Scotland would not, however, participate in some core EU policies. There would be no obligation even in theory to adopt the euro or to join the Schengen area.* Scotland would not be obliged to participate in the EU's common agricultural and fisheries policies and its contributions to the EU budget (assuming Scotland would be a net contributor) would in all likelihood be smaller than they would be as a full member state. For a Scottish government keen to prove itself better able to protect Scotland's fishing communities than the UK was either inside or outside the EU, this

* In fact all the EEA countries are in the Schengen area, but this is by their own choice and was separately negotiated.

could be a considerable advantage. The desire to remain outside the CFP has been the single largest factor preventing Icelandic accession to the EU and one factor in Norway's choice to remain outside.⁵⁰ An independent Scotland would enjoy rights over comparable volumes of fish to its Nordic neighbours, although fishing would be likely to account for a substantially smaller share of its GDP.

EEA membership would not, however, prevent a hardening of the Anglo–Scottish border. If Scotland did form a customs union with the EU, the EU would surely require it to impose customs checks on its border with England so as to prevent the entry of goods that did not comply with the rules of origin established by the TCA. And even if Scotland did not join the EU customs union, EU law on border checks to ensure compliance with regulatory standards would apply to Scotland as an EEA member. Therefore, Scotland would be required to apply many of the same regulatory border controls as it would as a member state, including extensive checks and paperwork on agri-food products, to goods entering from England/Wales.

The politics of EEA membership might also be unattractive. EEA members are obliged to accept large swathes of EU law without having any representation in the European commission, parliament or council. This would sit uneasily with the argument that Scotland's voice would be stronger as an independent European state than as a component part of the UK.

A customs union with the EU would bring even fewer benefits for an independent Scotland

A customs union without EEA membership would carry many of the disadvantages of EU/EEA membership with few of their advantages. Scottish goods exports to the EU would be able to enter without submitting customs declarations or proof of compliance with rules of origin. But this reduction in paperwork would come at a hefty price: Scotland would be obliged to impose full customs checks, to the EU's satisfaction, on its border with England.

Scottish goods exports would, however, still be subject to full-scale regulatory checks on entry into the EU – so Scottish shellfish exporters might find themselves in just as much trouble as they do now. Scottish businesses would still have only limited access to EU services markets and Scots would not enjoy freedom of movement in Europe. On the other hand, there might be scope to reduce or remove the need for regulatory checks on goods moving between Scotland and England/Wales through a bilateral regulatory agreement.

A free trade agreement would fall far short of the promise that independence would allow a close relationship with the EU

The third alternative to EU membership that Scotland could pursue would be a classic free trade agreement (FTA). Many of the EU's neighbours have chosen such arrangements: deep and comprehensive free trade agreements form the core of the stabilisation and association agreements the EU has signed with six Balkan countries, as well as the EU's relationships with Ukraine and Georgia. The UK, of course, has its Trade and Cooperation Agreement (which, from the standpoint of EU law, is also an association agreement).

Once again, however, this option would preclude the maintenance of an open Anglo–Scottish border. When in 2013 Ukraine tried to sign an FTA with the EU at the same time as joining a customs union with Russia, the EU made it quite clear that this was not an option. Ultimately, Ukraine had to make a choice between the EU and Russia.

The Ukrainian model does, however, provide some suggestions for a middle ground that Scotland could pursue. Ukraine's association agreement with the EU is in some ways a hybrid of a traditional FTA and an EU accession process. Ukraine is obliged to incorporate specific pieces of EU legislation into its domestic law. Conditional on this, Ukraine's access to European markets increases over time. The agreement is therefore a 'living agreement' that can grow and change depending on Ukraine's convergence with the EU.⁵¹

An independent Scotland might wish to pursue EU accession over time but not be prepared to put up a full customs border with rUK immediately. It might be possible to agree a trilateral solution between Scotland, rUK and the EU to separate out different parts of their trading relationship. Under such a solution, Scotland could agree in the first instance to remain in a customs union with rUK for goods and to apply regulations for goods compatible with preserving a single market for goods across Great Britain without internal borders. In consequence of this, Scotland's relationship with the EU as far as trade in goods was concerned would continue to be based on the UK–EU TCA.

In other sectors, however, Scotland could pursue closer integration with the EU – for example, participating in the single market for services and in EU programmes such as Erasmus, and agreeing to free movement of people between Scotland and the EU. This could then provide the basis for an accelerated accession process if and when Scotland was ready to lift the drawbridge with England and join the EU fully.

Such a bespoke, evolutionary solution could minimise disruption to trade in goods while allowing Scotland to pursue a notably more European orientation than its southern neighbour. That said, this approach would leave Scotland subject to two sets of regulations – those decided in Westminster for goods and those decided in Brussels for services – in neither of which it would have any say.

An independent Scotland could in principle remain within a permanent customs union with the rest of the UK rather than the EU

Finally, an independent Scotland could in principle seek to remain in a customs union with rUK to minimise disruption to cross-border trade. Some countries choose to remain in a customs union with their erstwhile compatriots following independence: the Czech Republic and Slovakia took this route between their separation in 1993 and their joint accession to the EU in 2004. The option of remaining in a customs union with rUK after independence – combined with some degree of regulatory harmonisation – would offer the best chance of avoiding the need for customs posts on the Anglo–Scottish border.

But this solution would also have substantial downsides from a Scottish government perspective. First of all, unless English politicians (and voters) changed their minds about the kind of relationship they want with the EU, it would mean that Scotland would still have a 'hard Brexit' relationship with the EU that the Scottish government has said "would severely damage Scotland's economic, social and cultural interests".⁵² In addition, in any such customs union it is probable that Scotland would in effect have its trade policy controlled by ministers at Westminster.

Table 2 **Summary of options for an independent Scotland's relationship with the EU and the UK**

	Customs union with UK, TCA with EU	Free trade agreement with EU and UK	Customs union with EU, TCA with UK	EEA, Free trade agreement with UK	EU membership, TCA with UK
Relationship with rUK (excluding NI for goods)					
Customs duties	No	Depending on agreement	No, subject to RoO	No, subject to RoO (unless in CU with UK)	No, subject to RoO
Customs formalities	No	Yes	Yes	No if in CU with UK, otherwise yes	Yes
Regulatory controls	Depending on agreement	Depending on agreement	Depending on agreement	Yes	Yes
Access to services market	Depending on agreement	Depending on agreement	Depending on agreement	Depending on agreement	Depending on agreement
Common Travel Area	Yes	Yes	Yes	Yes	Depending on Schengen
Relationship with EU					
Customs duties	No, subject to RoO	Depending on agreement	No	No, subject to RoO (unless in CU with EU)	No
Customs formalities	Yes	Yes	No	No if also in CU with EU, otherwise yes	No
Regulatory controls	Depending on agreement	Depending on agreement	Depending on agreement	No	No
Access to services market	Depending on agreement	Depending on agreement	Depending on agreement	Yes	Yes
Free movement in EU	No	No	No	Yes	Yes
Membership of EU programmes					
Common Agricultural Policy	No	No	No	No	Yes
Common Fisheries Policy	No	No	No	No	Yes
Contribution to EU budget	No	No	No	No, but some contribution to common programmes required	Yes
Schengen	No	No	No	If desired	Possibly
Euro	No	No	No	No	Possibly

Less friction



More friction

Conclusion

The UK's exit from the European Union has reinvigorated calls for a second Scottish independence referendum, but it has also fundamentally changed the context in which independence might conceivably come into effect. In a nutshell, the UK–EU decision to conclude a loose trade deal through the Trade and Cooperation Agreement means that an independent Scotland would have to choose between having a frictionless trading relationship with the UK or with the EU. It would not be able to have both.

Ultimately, there are no easy solutions to this problem. EU membership would bring with it both costs and benefits, the arguments around which have been well-rehearsed in the past five years of debate over Brexit. But the implications of EU membership for an independent Scotland's relationship with the rest of the UK have not been widely discussed.

The impact of Scotland rejoining the EU on trade across the Anglo–Scottish border would be a central issue of debate in any future independence referendum campaign, particularly if the Scottish government made clear that a vote for independence would lead automatically to Scotland seeking to become an EU member. Ultimately it would be for Scottish voters to weigh up the costs and benefits of the status quo – remaining part of the UK outside the EU – and the form of independence promoted by the Scottish government.

As the SNP sets out its plans for the path to independence, it should be open about the trade-offs of the alternative routes that an independent Scotland could take, and clear about the route it is advocating – including the detail of the new relationships it envisages with Scotland's nearest neighbours. That will allow Scottish voters to make up their mind with a clear understanding of the choices and challenges that would lie ahead.

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