

Scottish independence

The road to the EU

The May 2021 Scottish elections returned a pro-independence majority to the Scottish Parliament with a mandate to request a second Independence Referendum. It is not clear when such a request will be made or whether the UK Government would agree to such a request but the debate about independence will have a greater profile.

Brexit has been one of the main reasons why there has been an increase in support for independence among Scottish voters and the Scottish Government has stated that an independent Scotland would seek to rejoin the EU. This paper discusses what the EU application process would look like if Scotland were to vote for independence, and what issues would need to be addressed by the Scottish Government and the Scottish Parliament.

Application

Unlike in 2014, there is now no doubt that Scotland would need to apply for membership through Article 49 of the EU treaties. An application may only be made by an independent state so it cannot be submitted during the transition period between the UK's acceptance of the vote and independence.

Criteria

The criteria for admission is set out in the Copenhagen criteria. It should be noted that the wording is broad and is open to political, as well as legal, interpretation. The main criteria is whether the existing EU members are prepared to agree to Scotland's membership. Some broad issues arising from the Copenhagen criteria can be simplified as follows:

Functioning Democracy

Is Scotland a stable democracy operating under the rule of law and with robust institutions and respect for human rights? It is assumed that this will not be problematic although, despite Scotland having many of its own separate institutions, others will need to be developed.

Common Standards

The EU would require that Scotland has introduced into Scots law prior to membership the regulatory standards of the Single Market. At present, Scotland is largely in line with those standards but there may be divergence due to UK policy. The Scottish Government has stated that it will seek to continue to follow EU standards to the extent possible.

Financial stability

In 2014, the Scottish Government suggested that Scotland could share not only a common currency but also a central bank and a financial regulator with a post-independence UK (rUK), but many analysts doubted that the EU would accept this. As the UK has left the EU, it should be assumed that Scotland will need to create its own central bank and regulators; presumably with the financial talent pool within Scotland these could be put in place but it would take time.

Currency

As mentioned in our [currency insight paper](#), Scotland may seek to use Sterling for a period following independence; however, whilst the Copenhagen criteria do not focus on currency, there is a question mark over whether the EU would be concerned if an applicant does not have its own currency. It should be noted that an EU applicant, Montenegro, has unilaterally adopted the

euro which has caused some concerns in Brussels.

Also, any new applicant will have to agree to join the euro and it is highly unlikely that a new applicant would receive a derogation from this requirement. This would mean that Scotland would need to commit to adopt the euro although this would be subject to meeting the membership criteria for the euro. Sweden agreed to join the euro when it joined the EU in 1995 and has still not done so but it is open to the EU to request a more stringent commitment.

Budget Deficit

Much has been written about a requirement for Scotland's budget deficit to be below 3% of its GDP which, at this stage, it is not. However, the 3% relates to euro membership and not EU membership and the last successful EU applicant, Croatia, had a deficit in excess of 6% of its GDP when it joined. This does not mean that the deficit is not important as EU members are subject to budgetary targets and a willingness by the EU to accept an applicant may be subject to it reducing its deficit over a specified period following EU membership.

Customs Union

Membership of the EU would also involve membership of the EU customs union. This could have consequences if the rUK is not closely aligned with EU standards and regulations, in which case there is likely to be a customs border between Scotland and the rUK although the form of customs checks would be dependent upon what arrangements have been agreed between the rUK and EU.

Schengen

It is anticipated that members would join the Schengen scheme for the free movement of people across internal EU borders. If Scotland were to join Schengen, then it is likely that this would necessitate a "hard" border between Scotland and the rUK. However, another EU member, Ireland, is a member of the Common Travel Area between Ireland and the UK and it would be open to the Scottish Government to try to seek a similar derogation from the EU to avoid a "hard" border.

Political

As previously mentioned, membership of the EU is a political issue and meeting application criteria makes no difference if there is political opposition. Possible Spanish opposition is mentioned frequently but the Spanish Government has stated since Brexit that it would only be opposed to an application from Scotland where it had declared independence following an unlawful referendum;

this is one of the reasons why the Scottish First Minister, Nicola Sturgeon, has emphasised the need for a lawful independence referendum. However, EU states do have the ability to block or delay membership and a diplomatic campaign by an independent Scotland to persuade EU members to support Scotland's membership would be likely.

Consent

It is likely that the EU would require that Scotland's electorate approve Scottish EU membership in a referendum.

Transition

The EU membership process is not "all or nothing" and it is anticipated that the EU and any applicant would enter into arrangements to deepen economic and political ties both before an application and during the application process. It is open to Scotland to seek to put in place economic arrangements with the EU that commence on the date of Scottish independence. This would require the agreement of the rUK which would still be responsible pre-independence for Scotland's foreign relations.

Alternative Arrangements

Due either to EU hesitancy or political opposition in Scotland, Scotland may prefer a relationship with the EU which falls short of full membership, such as joining EFTA. Such an arrangement may, for instance, allow it to opt out the Common Fisheries Policy and the Customs Union whilst benefiting from substantial access to the Single Market.

Summary

The EU will not discuss possible Scottish EU membership prior to any referendum and their approach to the issues raised above would be unclear until discussions commence between Scotland and the EU.

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