

# **Issues Around Scottish Independence**

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## Executive Summary

The debate about Scottish independence should include not only the case for and against independence but a better understanding of the process of independence itself. There are a number of key issues which would need to be resolved before Scotland could become independent.

1. If the issue of independence is put to a referendum who should vote in that referendum and what should the question be? Should that referendum be held before or after negotiations on independence?
2. Once negotiations are taking place, how quickly can a transition to independence be achieved?
3. What are the key issues that will need to be negotiated? Can any likely sticking points be identified?
4. What would the position of an independent Scotland be in international law? Would Scotland automatically succeed to UK treaty rights and obligations, including membership of the EU? Or would these have to be renegotiated?
5. What are the economics of an independent Scotland? Answering this question involves understanding the current financial position of Scotland within the UK, the likely future finances of Scotland as an independent country, and the costs of transition to independence.
6. An independent Scotland would continue to maintain a special relationship with the rest of the UK. Private, public and civil sector links are likely to continue after independence. How would this alter the impact of independence for business and for individuals?

These are the issues to be addressed in the Constitution Unit's forthcoming project on Scottish Independence. The project still needs funding before it can get properly under way. If you would like to be involved with the project, or you have ideas about funding it, please contact the Unit's Director Professor Robert Hazell.

## Introduction

Had the Scottish National Party won a majority of the seats in the May 1999 elections for the Scottish Parliament, Scotland would now be facing the issue of exactly how it would conduct independence negotiations with the rest of the United Kingdom (rUK). That the SNP did not win such a majority does not mean that this issue no longer merits consideration. The SNP is now the official opposition in Scotland and will use that position to advance its views on the merits of independence. As the other main parties argue that the costs of independence outweigh the benefits, the independence debate will continue to be part of the Scottish political scene for the foreseeable future.

This briefing is the first in a series that the Constitution Unit hopes to make as a contribution to that debate.<sup>1</sup> The Unit starts from a position of strict neutrality on the independence issue. The briefings will not argue the case for or against nor consider how to make independence more or less likely. The focus will be on the procedures by which independence could be obtained. Considering the procedures will also make it clearer what kind of country an independent Scotland would be. This initial briefing sets out the parameters of the series, the questions that need to be answered and provides an early indication where the answers might lie. The overall aim is to show that gaining independence is a process not an event. The series will suggest how that process could be managed.

## The road to independence

The *Claim of Right for Scotland*, adopted at the inaugural meeting of the Scottish Constitutional Convention acknowledges "the sovereign right of the Scottish people to determine the form of Government best suited to their needs."<sup>2</sup> This is something that even opponents of Scottish devolution or independence have accepted.<sup>3</sup> Thus, there would be support across any political divide for the proposition that Scottish independence should not, for example, be subject to an English veto. There is likely, however, to be less agreement on two key procedural questions that need to be resolved when determining whether or not the Scottish people wish to be independent: who the Scottish people (or more precisely, who the Scottish electorate should consist of) are and how can their wish for independence be ascertained.<sup>4</sup>

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<sup>1</sup> This series has not, as yet, been funded so further briefings will follow only when resources allow.

<sup>2</sup> Scottish Constitutional Convention, *Scotland's Parliament. Scotland's Right* (Edinburgh: Scottish Constitutional Convention, 1995) p10.

<sup>3</sup> "As a nation, they have an undoubted right to national self-determination; thus far they have exercised that right by joining and remaining in the Union. Should they determine on independence no English party or politician would stand in their way, however much we might regret their departure." Thatcher, M., *The Downing Street Years* (London: HarperCollins, 1993) p624.

<sup>4</sup> A third question, that of where the boundaries of Scotland fall (which arises mainly in relation to the border under the North Sea) will be considered below.

## The referendum: who votes, and who decides the question?

The 1997 referendum on the establishment of the Scottish Parliament was open to all voters who were registered to vote in Scotland at that time. This, administratively the simplest system, produced anomalies that could have become politically important had the result of the referendum been closer.<sup>5</sup> This has been the case in Quebec where the last referendum fell by a margin of 0.06%. The legitimacy of that vote was questioned because of the large number of federalists with holiday homes in Quebec who were encouraged to register to vote (against), although this may have been countered by the attempts of the Quebec government to find ways of allowing Quebecois who were living outside Quebec to vote in the referendum.

The experience of Quebec shows many of the difficulties of organising a referendum on independence. For example, the 1995 Referendum on Quebecois independence asked: *Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and the agreement signed on 12 June 1995?*<sup>6</sup> A wafer thin majority - just 50,000 votes or 0.06% - rejected this. Federalists argued that the close result was indicative, not of a strong desire for independence but, in part, of misunderstanding caused by asking a 'loaded' question. For example, asking whether Quebec should become *sovereign* rather than *independent* could be seen as misleading; and the reference to the June agreement may have been taken as implying that an agreement with Canada had already been reached, when in fact the agreement was one between different Quebecois parties on their negotiating stance. In 1998 the Supreme Court of Canada ruled that any future referendum must pass the hurdle of a 'clear majority on a clear question' whilst leaving it to the 'political actors' to determine exactly what that means.<sup>7</sup>

## When should a referendum be held?

A further issue for Scotland will be exactly when a referendum should be held. There are essentially two options. A referendum can either be held before negotiations for independence begin (to initiate those negotiations) or after they have been concluded (to accept or reject their outcome). It would of course be possible to hold referendums at both points. Since 1976 the Parti Quebecois (PQ) has taken the first approach. It does not consider that winning a majority of seats in the Quebec Parliament constitutes a mandate to commence negotiations and commits itself to seeking a mandate in a subsequent referendum. The SNP's *Policy intentions for the 1999 Elections* implies that it would take the second approach, stating that had it received a majority in the elections it would "take that as a mandate for Independence negotiations ... At the conclusion of negotiations the proposed settlement would be put to the Scottish people in a referendum for their approval."<sup>8</sup>

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<sup>5</sup> In the event the establishment of the Scottish Parliament was supported by 74.3% of Scottish voters on a 60% turnout (with 63.5% supporting the granting to the Parliament of tax varying powers) see <http://www.scottish-devolution.org.uk/referendum/f-refer.htm>.

<sup>6</sup> see McRoberts, K., *Misconceiving Canada: The struggle for National Unity* (Toronto: Oxford University Press, 1997) p230-1.

<sup>7</sup> *Reference re Secession of Quebec* [1998] 2 SCR 217.

<sup>8</sup> Scottish National Party, *Towards the Scottish Parliament. Enterprise Compassion and Democracy - Policy Intentions for the 1999 Elections* (Edinburgh, SNP, 1999) p20. The SNP's *Manifesto for the Scottish Parliament 1999 Elections* was less clear on this issue simply pledging that "an SNP administration will hold a referendum on independence within the first four years of the

There are advantages to both approaches. A single-issue referendum that would initiate the independence process provides a greater degree of clarity as to voters' views on the principle of independence than victory or defeat at a multi-issue election ever could. On the other hand, as the Scottish Centre for Economic and Social Research noted in its 1996 report "*independence* in this context is not an abstract concept, but must be framed as a concrete proposal for a duly constituted state with a clearly stated constitution standing in a defined relationship to its neighbours and enjoying a definite position in relation to international and transnational organisations." The report argued that a referendum would ideally be held once negotiations are complete on a "precise proposal for a duly constituted independent Scotland."<sup>9</sup> There are people, in other words, who might support independence on some terms but not on others, and they should be presented with a specific proposal on which to cast judgement.

Whether a referendum takes place before or after negotiations, there will be a variety of procedural matters surrounding the negotiations themselves. Some of these relate to the subject matter of the negotiations, and are considered more fully below, but there are also issues relating to how long the negotiations should be allowed to take and who negotiates for each side.

### **Speed of the transition**

Negotiations can be swift. Once there is a clear will for separation it may be in the interest of all sides to proceed as quickly as possible. As a recent report on the economics of Scottish independence noted, senior businessmen who are hostile to Scottish independence are "willing to admit that they could 'live with' independence, once achieved. What they fear most is the uncertainty which would accompany the transition to independence. In their view this could be extremely damaging. This damage would be worse if the transition period were prolonged."<sup>10</sup> The rUK perspective is unlikely to be different.

A paradigm case of a speedy break-up is provided by Czechoslovakia, which dissolved within six months. Following federal elections in June 1992 and a failure to agree a governing coalition, the Czech and the Slovak governments (neither of whom had been elected on a pro-independence platform) came separately to the conclusion that the country should be dissolved. Negotiations were held in October, which produced the formal decision that the republics should separate. On 11 November 1992, the Federal Assembly approved the dissolution of Czechoslovakia - illegally because the required referendum was not held<sup>11</sup> - and separation took effect on January 1st 1993.

An indication of the scale of this achievement is that the negotiations led to over

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Parliament".

<sup>9</sup> Scottish Centre for Economic and Social Research, Scotland's Government - the transition to Independence (Peterhead: SCESSR, 1996) p6.

<sup>10</sup> Simpson, D., Main, B., Peacock, A. and Zuleeg, F., *Report on the Economic Aspects of Political Independence* (Edinburgh, The David Hume Institute, 1999) p20 (emphasis in the original).

<sup>11</sup> Cox, R.H. and Frankland, E.G., *The Federal State and the Breakup of Czechoslovakia: An Institutional Analysis*, *Publius* (25:1) 1995 pp71-88, 86.

2,000 separate agreements between the two parties. Issues that needed to be agreed ranged from the very large – how should the national debt be shared? – to the very small – how will the two countries co-operate on repairing crossborder roads? In the Scottish context some issues are predictably contentious – what will happen to Faslane nuclear base? – whilst others may flare up unexpectedly. Thus in Czechoslovakia there were arguments over the national flag (should the Union Jack be redesigned to remove the St Andrews Cross?) and the fate of collections in the national museums.

### **Who negotiates for each side?**

In the Czech-Slovak split it was clear that the negotiating parties should be the two republics. In other countries, the relevant parties may be more numerous. For example, negotiations on independence for Quebec necessarily involve the other Canadian provinces. Under the Canadian Constitution changes to the constitution generally require the consent of the federal parliament plus two-thirds of the provinces having 50% of the population.<sup>12</sup> The provinces have to be involved.<sup>13</sup> No such requirement exists in the UK, but the governments of Wales and Northern Ireland (and the English regions, should devolution have progressed that far) might feel that they had a legitimate interest in the outcome of the negotiations. Some of the mechanisms that have been setup around devolution - the Joint Ministerial Committee or the Council of the Isles<sup>14</sup> - could provide fora in which their views are incorporated into the negotiations.

Negotiations on independence may also throw up a variant of the so-called West Lothian Question. How could UK MPs or UK Ministers representing Scottish constituencies, or a UK Government reliant for its majority on those MPs, conduct negotiations that might result in those MPs and Ministers leaving the UK Parliament? There is no obvious precedent to turn to for a solution to this.

## **Scotland in the World**

Alongside negotiations with the UK Government, the Scottish negotiating team would have to consider an independent Scotland's relationship with the rest of the world. The most pressing question is likely to be the nature of the relationship that Scotland would have with the European Union (EU): would Scotland automatically be a member of the EU or would it have to renegotiate its entry (either alone or in the company of the rUK).

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<sup>12</sup> There is some debate as to whether unanimity would, in fact, be required because separation would require amending the office of the Queen, Governor General and Lieutenant Governor. Flanagan, T., *Should a Supermajority be Required in a Referendum on Separation?* in Trent, J., Young, R. and Lachapelle, G. (eds), *Quebec-Canada: What is the Path Ahead?* (Ottawa:University of Ottawa Press, 1996) pp129-34, p131.

<sup>13</sup> The Canadian Supreme Court in *Reference re Secession of Quebec* also referred to 'other participants' in the negotiations which implies that alongside the federal and provincial governments, groups such as the Aboriginal nations might have a voice. See Nationalism and the Pathology of Legal Systems: Walter, M., *Considering the Quebec Secession Reference and its Lessons for the United Kingdom* (1999) 62, 3 *Modern Law Review* pp371-96, p379 .

<sup>14</sup> see Hazell, R., *Constitutional Futures: A History of the Next Ten Years* (Oxford: Oxford University Press, 1999) pp139-40.

In part the answer to this question is a matter of international law but it is also a matter of international politics. On the political side even if Scotland were not automatically to be a member, it might be that the rest of the EU member states would wish it to be so and therefore act so as ensure that result. The analogy might be with the clear political wish of the members of the United Nations that Russia inherit the Security Council seat of the former Soviet Union even though the international law governing state succession was less than clear on this issue.<sup>15</sup> There are arguments that the politics might work out either way. Thus Robin Cook, the Foreign Secretary, has suggested that EU member states, many of whom have secessionist movements of their own which their central governments are not keen to encourage, would veto Scottish membership.<sup>16</sup> On the other hand, an European Commission spokesman denied this, claiming there would be a strong moral feeling that Scotland should be a member as quickly as possible<sup>17</sup>

The international law governing the position of Scotland needs to be understood alongside the political position.<sup>18</sup> The first issue that has to be resolved is whether Scotland is seceding from the UK or whether the UK itself is being dissolved. On the one side it is claimed that the UK is a Union between England (and Wales) and Scotland created in 1707. The withdrawal of one party to that union dissolves the state that was thereby created. The UK (which is the country that joined the European Community in 1972) would no longer exist and both its constituent parts would have equal claims under international law as successor states to membership. Both would be in or out together - and if both were out, the political case for a swift and ideally seamless rejoining might be strengthened.

Advocates of the alternative view argue that the process of Scottish independence as implied by the *Claim of Right* - whereby only the Scots are to have a vote - is evidence that it is Scotland that is seceding from the UK.<sup>19</sup> If Scotland is seceding from the UK then the question is whether it is also seceding from the EU. A popular reference at this point in the debate is one referred to in the SCESR report: "the example of Greenland is instructive in this regard ... [and shows] ... there should be no question of Scotland having to apply for membership of the European Union, nor of any other member state having a veto over recognition by the European Union of Scotland's continuing membership"<sup>20</sup> However, as Annex 1 indicates, the Greenland example whilst instructive in showing how the EU might be able to respond flexibly to the issue of re-admitting an independent Scotland, does not demonstrate that Scotland would not need to seek re-admittance in the first instance.

If it were the case that an independent Scotland had to negotiate its re-admittance

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<sup>15</sup> see Malanczuk, P., *Akehurst's Modern Introduction to International Law* 2nd ed (London: Routledge, 1997) chapter 11.

<sup>16</sup> *The Guardian* 21 November 1998.

<sup>17</sup> *Ibid.*

<sup>18</sup> a recent summary of the issues can be found in Happold, M., *Scotland Europa: independence in Europe?* (London: Centre for European Reform, 1999).

<sup>19</sup> It is argued that one of the factors that militated against holding a referendum in Czechoslovakia was the fear by the Slovaks that the Czechs would vote to preserve the Union and that Slovakia would then be treated as having seceded from Czechoslovakia rather than having dissolved it.

<sup>20</sup> Scottish Centre for Economic and Social Research *Scotland's Government - the transition to Independence* (Peterhead: SCESR, 1996) pp10-1.

into the EU it is worth considering on what terms it might be re-admitted. Timing matters here because the EU is in a process of enlargement and it may be that the terms that an independent Scotland could negotiate would differ if the EU had 23 rather than 15 member states. In either case, however, the process of negotiation is unlikely to be easy. Evidence from other candidate countries suggests that the EU uses its pre-accession bargaining strength to extract the maximum concessions from acceding parties. Member states are obviously aware that once candidates have joined, existing member states will never have such an advantage again.

Aside from the EU there are numerous other bodies and treaties that an independent Scotland might wish to join - the UK itself is party to over 12,000 treaties. Once again the rules on which treaties Scotland might automatically be bound by and those bodies or treaties where there would be an element of choice (either on Scotland's side as to whether to accept the obligations, or on the other members as to whether they should admit Scotland) are not completely clear in international law. In any case the answer will vary according to whether Scottish independence is treated as a case of secession or not. This issue will also affect the position of the rUK - can the rUK continue as an international legal entity broadly unaffected by Scottish independence or will it have to renegotiate alongside Scotland?

## Economics of Independence

There are three broad economic questions that ought to be answered during any debate about Scottish Independence. The first concerns Scotland's current fiscal position - is Scotland currently in surplus or deficit vis-à-vis rUK? Secondly, Scotland's future fiscal position - would an independent Scotland be better off than one that continued as part of the UK? Thirdly, the costs of the transition to independence - is it possible to estimate the set-up costs, if any, of an independent Scotland? The questions are quite distinct, although the debate on the subject often proceeds without a clear understanding of this.

Scotland's current fiscal position is the subject of heated argument which revolves around the accuracy or otherwise of the Government's annual publication, *Government Expenditure and Revenues in Scotland*.<sup>21</sup> The somewhat futile nature of this debate is captured in the caveat printed in the report itself that the headline deficit it calculates "**is the difference between two large numbers, both of which are estimates and subject to potential margins for error.**"<sup>22</sup> This is considered in more detail in Annex 2.

Although it is widely (but not universally) accepted that Scotland is currently in deficit to rUK, in many ways the more interesting question is what the position of an independent Scotland would be after independence. A recent paper published by the David Hume institute noted that "independence will not, by itself, lead to an improved economic performance" but that it could provide the opportunity to pursue radical

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<sup>21</sup> this debate is considered further in Annex 2.

<sup>22</sup> *Government Expenditure and Revenues in Scotland* (Scottish Office, 1998) s.8 (emphasis in the original).

economic policies that might boost performance.<sup>23</sup> There are lessons to be learned from abroad here. It should also be possible to see how much comparable countries to Scotland spend on areas such as defence, tax collection or foreign affairs to arrive at some sort of picture of the public sector economics of an independent Scotland.

The economics of an independent Scotland would also vary depending on how it managed its relationship with rUK. Would the two countries (on a permanent or temporary basis) retain a common currency? Would they set common tax rates to prevent fiscal policies distorting trade? Would they co-operate in areas such as competition policy or defence procurement?

It is also commonly suggested that Scotland's fiscal position might be strengthened once it gained full control of its share of the revenues from the North Sea. Of course, the value to the Scottish exchequer of North Sea oil and gas will vary depending on, amongst other things, the future prices of oil and gas and how much is drawn at any given stage from the Scottish sector of the North Sea. A survey by *The Economist*<sup>24</sup> showed that Scotland's share of North Sea tax revenues would have varied between 98% in 1981 and 66% in 1998. Looking forward, if oil prices were \$10 per barrel in the year 2000, the survey estimated Scotland's share would be 45% of a £1.2 billion tax yield and that this yield would more than double if oil prices were to rise to \$18 per barrel.<sup>25</sup>

A lesser factor affecting revenue yields from the North Sea would be the location of the boundary between Scotland and England in the North Sea.<sup>26</sup> Although it is not of great economic significance it is likely to be one of the more contentious issues that would need to be settled between an independent Scotland and rUK.<sup>27</sup> The governing principle of international law that settles such matters is fairly clear – all points on a boundary should be equidistant from the nearest point of the coastline of the two countries – but there are a myriad of reasons that either party could cite as grounds for deviating from the equidistant line. This is an issue that may well have to be settled by the International Court of Justice, a process that can take years.

The final question concerns the costs of achieving independence. On a whole range of areas there are 'one-off' costs that a new country has to incur, ranging from the acquisition of embassies to the establishment of a tax collection system. There have been over twenty newly independent countries set up over the past decade (mostly as a result of the collapse of the Soviet Union) all of whom can provide an indication of the range of institutions that a new state has to construct for itself, and the likely costs. Of

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<sup>23</sup> Simpson, D., Main, B., Peacock, A., and Zuleeg, F., *Report on the Economic Aspects of Political Independence* (Edinburgh: David Hume Institute, 1999) p1.

<sup>24</sup> *The Economist, It's England's Oil Too* (The Economist, January 16<sup>th</sup> 1999, pp31-3).

<sup>25</sup> North Sea Brent Crude was trading at over \$21 a barrel at the time of writing (September 1999). In February 1999 the price of Brent Crude was under \$10 a barrel. Much of the increase in price is attributed to OPEC's reaching an agreement in March 1999 on new quotas to cut output and a decision by Russia to cut exports in order to boost domestic oil supplies.

<sup>26</sup> *The Economist, It's England's Oil Too* (The Economist, January 16<sup>th</sup> 1999, pp31-3).

<sup>27</sup> There is already the beginnings of a dispute over the redrawing of the North Sea border between the Scottish and English fishing zones (*The Times*, 15th May 1999).

course, the Scottish context would be different from any of these (Scotland might wish for more embassies but have less need of a large army, for example), so these examples could be, at best, only indicative. However, they remain a good starting point for what will be a lively debate.

## **Scotland and the rest of the UK**

Were Scotland to achieve independence it would still have close ties with rUK. Geographically, of course, Scotland and rUK would remain close neighbours; but emotionally too there will be ties - centuries of intermarriage, intermingling and immigration will see to that. Furthermore, assuming that Scotland and rUK are both members of the EU, there will be significant co-operation at that level with free movement of people, goods and capital guaranteed.

Over and above this Scotland and rUK could co-operate adopting Nordic-Council style arrangements which could grant additional rights and duties to their citizens.<sup>28</sup> The EU would have an important impact here because its non-discrimination provisions may mean that co-operation between Scotland and rUK is constrained by having to offer similar terms to nationals of all member states; the UK has recently had to reduce some of its reciprocal arrangements with Ireland for this reason. Thus, whilst the two countries might wish to allow each other's nationals access to the highest posts in their respective civil service, they would not be able to under existing EU legislation, without offering similar opportunities to all EU nationals.

Scotland and rUK are also likely to develop inter-governmental bodies to pursue matters that remain of mutual interest post-independence. The governments might wish to meet before EU meetings to try to arrange a common position on upcoming issues (as Nordic Council members do) or co-operate on areas as diverse as running a joint heart-lung transport operation or civil service exchange (as the British and Irish governments do). Scotland and rUK may also wish to co-operate in foreign affairs (including sharing embassies like the Czech and Slovaks have) and defence. This co-operation might take place bilaterally or more broadly and including the Irish Republic through the Council of the Isles. Given the range of interests that Scotland, Ireland and rUK will have in common, it is possible to foresee pressures for the Council of the Isles to act as the body at the centre of a very loose confederal arrangement of the countries of the British Isles.

The relationship between Britain and Ireland since 1921 is instructive in this regard. The British Nationality Acts state that although people born in the Irish Republic are not British citizens, Ireland is not a 'foreign' country and its citizens are not to be considered as 'aliens'. The relationship between the two countries is closer than that that they have with other EU members states with, for example, a common travel area (for people and pets) and reciprocal voting rights in national elections. At the sub-government level, the level of private organisations, the ties are even closer. Almost 20% of voluntary organisations (ranging from sporting bodies through Churches to Trades Unions and Charities) are organised on either an all island basis (ignoring the

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<sup>28</sup> See The Constitution Unit *The Nordic Council: Lessons for the Council of the Isles* (London: The Constitution Unit, 1998).

North-South split) or on all Archipelago basis.<sup>29</sup>

If the Irish example is followed, many individuals and organisations may find it convenient to act as if independence had not occurred. Of course, they will not be able to ignore it completely, but the relationship between rUK and Scotland and its citizens could vary from extremely close – a truly special relationship – to that of just neighbours.

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<sup>29</sup> Whyte, J. The Permeability of the United Kingdom-Irish Border: A Preliminary Reconnaissance (1983) *Administration* 31,3 pp300-15.

## Annex 1: Greenland and Scottish Independence

One country with a bit part in the Scottish independence debate is Greenland. The example of Greenland is cited by those who wish to demonstrate that a newly independent Scotland would not automatically find itself outside the EU.<sup>30</sup> The negotiations which led to Greenland's exit from the EC seem to imply that should Scotland wish to leave the EU, it would have to negotiate its exit. On the other hand, should Scotland wish to remain in the EU the example of Greenland is held up to suggest that this would be the default position anyway.

This paragraph from the 1996 SCESR report on *The Transition to Independence*, is a typical instance of Greenland's entry into the Scottish debate:

"In 1979 Greenland secured autonomy from Denmark and in 1992 the people of Greenland voted in a referendum to withdraw from membership of the European Community. This decision was given effect only by difficult and protracted negotiations explained to the House of Commons by a British government minister, Malcolm Rifkind, in the following terms: 'As the Treaties contain no provision for withdrawal of a member-State, or part of one, the precise terms of Greenland's change in status had to be negotiated within the Community to provide appropriate amendments to the Treaties' (HC Debates, 31 October 1984). There therefore appears to be no basis for any assumption that Scottish independence would remove Scotland from the European Union."<sup>31</sup>

Greenland's relationship with Denmark dates back over a thousand years, but it was not until 1953 that Greenland formally became part of Denmark. When Denmark joined the European Community in 1973 no special mention was made of Greenland, other than a reference to fishing and settlement rights.<sup>32</sup> Greenland therefore acceded to the EC alongside the rest of Denmark. In 1979 the (Greenlandic) Home Rule Act granted substantial autonomy to Greenland, and in 1982 a referendum was held on Greenland's continued membership of the EC. In that referendum Greenlanders voted for withdrawal by 12,615 votes to 11,180. The Greenland government then asked Denmark (which retained responsibility for its foreign affairs) to negotiate its withdrawal from the EC and to allow it to re-associate through the overseas countries and territories (OCT) formula.<sup>33</sup> Although the

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<sup>30</sup> For example, Professor Neil MacCormick wrote in a letter to the *Glasgow Herald* (June 1st, 1999) "The Greenland precedent is of decisive importance, for it shows that as a matter of European law a territory cannot sever itself unilaterally from the constitutional jurisdiction of the European Communities (or, now, European Union) simply by means of a change of the constitutional relationships within a member state."

<sup>31</sup> Scottish Centre for Economic and Social Research *Scotland's Government - the transition to Independence* (Peterhead: SCESR, 1996).

<sup>32</sup> Weiss, F., 'Greenland's withdrawal from the European Communities' *European Law Review*, 173 91985) pp173-85, p176. This is in contrast to the Faroe Isles which, although Danish, had achieved by 1973 a substantial measure of home rule and had requested (and were granted) specific exemption from membership.

<sup>33</sup> The OCT status is primarily designed for the non-European colonial possessions of member states, allowing duty free entry of goods from the OCT into the Community in

standard OCT terms were modified slightly to prevent Greenland having access to the European market for its fishing products without some access by the EC to Greenlandic waters, the Commission essentially accepted Denmark's proposals. Greenland left the EC on 1st February 1985.

Are there any lessons for Scotland here? That Greenland's exit from the EC had to be negotiated can not be taken as evidence that an independent Scotland would have to negotiate its exit from the EU (or, more pertinently, would remain in the EU unless it specifically negotiated an exit). In 1979 Greenland did not become independent of Denmark, and the referendum held in 1982 was simply a vote to leave the EC by a portion of a continuing member state, in essence no different from a request by Jutland or Zealand to leave. The situation is analogous to a vote by Scotland (or mid-Lothian) to seek to leave the EU whilst remaining part of the UK. Furthermore, the negotiations were not simply about Greenland leaving but about on what terms it could transfer to OCT status.

Thus, the precedent of Greenland is a complex one. On the one hand, it shows that the Commission can respond pragmatically—"Its approach has been one of adapting EC legal theory to the economic and geographic realities of Greenland, rather than rigidly applying various treaty provisions."<sup>34</sup> The member states accepted Greenland's modified status despite the fact that the EC treaties did not really make provision for such a change in status. On the other hand, there can be no guarantee that a claim by a newly independent Scotland would be met with the same flexibility: "It is indeed ironic that a case such as Greenland's can do such violence to the Community legal order and yet go through, as it were, 'on the nod'. If it came, however, to a matter of raising a nationality to 'equal partnership' *within* the EC, to integrating it more directly in the fate of the Community in response to the aspirations of its people—legally, a far less traumatic event than withdrawal—it would, no doubt, be opposed vehemently and obdurately by more than one 'master of the treaty'."<sup>35</sup> If we are to predict the chances of an independent Scotland remaining within the EU it is not to Greenland that we must turn, but to the likely attitude of the other member states to the issues of regionalism and nationality.

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return for partial reciprocity from the OCT.

<sup>34</sup> Mason, K., 'Greenland—withdrawal from the EEC' *Georgia Journal of International and Comparative Law*, 13 (193) pp865–76, p874.

<sup>35</sup> Thomas, H., 'Perestroika in the Western Wing—Nationalism and National Rights within the European Community' in Twining, W. (ed.) *Issues of Self-Determination* (Aberdeen: Aberdeen University Press, 1991).

## Annex 2: The Background to the Arguments over Scotland's Fiscal Deficit

Until the 1990s the economic side of the independence debate in Scotland tended to exclude specifics. The nationalist argument was, in essence, that Scotland was a resource-rich modern industrialised country with an educated work force and it is simply patronising to imply that an independent Scotland was economically impossible. In principle an independent Scotland should be no less viable than Denmark, Ireland, or any other smaller European country.

However, during the course of the last decade the nature of debate has changed. Although the nationalists still take this line, the argument has been given added content. Protagonists on either side now try to quantify the costs (if any) of independence. There are four main reasons for this change of tack:

- The increasing electoral support for the SNP has forced commentators once again to look at the economics of independence.
- The relative economic success of Ireland since its accession to the EC in 1972 has made the argument that small peripheral European countries cannot survive economically look less plausible.
- The accession of Alex Salmond, a former economist with the Royal Bank of Scotland, to the leadership of the SNP in 1990 prompted the SNP to sharpen up the economic side of its arguments and to try to put a figure on the costs of the Union to Scotland.
- The publication in 1992 by the Government of *Government Expenditure and Revenues in Scotland* (GERS) - subsequent editions appeared in 1995, 1996, 1997 and 1998 - has provided a background against which the debate can take place.

The 1998 GERS report provides a headline fiscal deficit for Scotland of £7.1 billion. This figure is the balance of the GERS estimate of general government expenditure in Scotland (£31.8bn) and its receipts (£24.7bn). The deficit of £7.1bn is 11.25% of Scottish GDP.

A closer look at the figures shows, however, that relying on the headline figure is unwise. Firstly as GERS emphasises, the deficit **“is the difference between two large numbers, both of which are estimates and subject to potential margins for error.”** (s8. emphasis in the original). Furthermore, the report provides a number of alternative estimates of the deficit, depending on whether Scottish revenue from the North Sea is included. According to GERS's own figures if oil and gas output from the North Sea were added to Scotland's GDP then that GDP would increase from £63.7bn to £78.3bn. GERS also calculates North Sea Revenues in 1996-7 to be £3.56bn. Were Scotland to receive 90% of this (the figure most commonly mentioned) and were this then applied to the enlarged GDP, the deficit drops to £3.9bn, which is 4.9% (compared to 3.25% for the UK as a whole). Include Scotland's share of privatisation receipts and the Scottish deficit drops to £3.5bn or 4.4% of GDP.

These figures are contained within GERS reports and are presented as alternatives to

the £7.1bn which could be used as a starting point for understanding the deficit. Were one to seek to put a positive (from a nationalist viewpoint) spin on the GERS own figures, this would be the chosen headline figure.

Because the GERS headline figure is used as a basis for debate, most reports result in producing a horrific deficit.<sup>36</sup> For example, in December 1998 stories in the Scottish Press that income tax would double in an independent Scotland were based on figures from the accountants Chantrey Vellacott/DFK.<sup>37</sup> CV/DFK took the £7.1bn, subtracted £2bn to take account of the fact that the UK overall has a fiscal deficit of £22.7bn (and it would be unreasonable to assume that Scotland should balance the books when the UK does not) and then subtracted £1.2bn to account for North Sea oil revenue to come up with a revised deficit of £3.9bn. Using Treasury figures which estimate that each 1p on basic income tax rate in Scotland raises £150m they then calculated that the basic rate would have to rise to 49p from the current 23p; hence, the headlines.

Before we look more closely at the GERS figures, we can see that there are some obvious problems with CV/DFK. Firstly, their figures purport to be for 1999-2000 (thus they reduced oil revenue from £3.56bn to £1.3bn) but aside from the new level of oil revenues, they use 1996-7 figures. The CV/DFK figures also use the non-North Seas Oil GDP figure which is almost 20% lower than the North Sea inclusive figure. This makes the fiscal deficit appear to be a significantly higher percentage of GDP than would otherwise be the case. But most seriously of all, CV/DFK make no effort to analyse their starting place.

For these reasons, the response in the press to CV/DFK was predictably disappointing. Lord Macdonald of Tradeston, the Scottish Office Industry Minister warmly welcomed the report as “independent and reliable” whilst the SNP dismissed it as “back of the envelope gibberish which simply recycles London Labour’s fiddled figures about Scotland’s finances.” Rather embarrassingly for Labour, Frank Dobson had previously dismissed CV/DFK as “two-bit accountants” for the work that they had done on NHS waiting lists. It is certainly true that a more rigorous analysis would have probed the £7.1bn figure.

The headline figure of £7.1bn is derived from the balance of government expenditure in Scotland (£31.8bn) and its receipts (£24.7bn). We have already seen that this figure is only of a number that the government presents depending on how oil revenues and privatisation receipts are treated. Leaving these considerations aside, it is worth briefly looking at the two large totals (£31.8bn and £24.7bn).

## **Expenditure**

GERS divides expenditure into three categories:

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<sup>36</sup> A more thoughtful analysis is provided in the Fraser of Allander Institute’s *Quarterly Economic Commentary* – see for example, vol 24, No1, 1998.

<sup>37</sup> Chantrey Vellacott/DFK Economics Briefing Note released to the Press Association on 3/12/1999.

1. Identifiable public expenditure (UK-wide 75% of government expenditure can be geographically allocated) which is identifiably spent for the benefit of Scotland and Scottish people. This includes items such as social security which at 36.9% in Scotland is the largest single item of identifiable public expenditure. In 1996-7 £24.7bn was identifiably spent in Scotland. Overall the government's figures show that identifiable expenditure in Scotland is 19% higher than the average for the UK as a whole. Variances run from agriculture, fisheries and food at 85% higher (but still only 3% of the total budget) to law and order at 1% above average (and 5.9% of the total budget).
2. Non-identifiable General Government Expenditure is expenditure that cannot be separated into specific geographic locations. This includes items such as defence (three-fifths of the total), payments to the EC, costs of tax collection, etc. In general these non-identifiable items are allocated in accordance with Scotland's share of GDP (8.6%), but some, such as defence, are allocated on a population basis (8.7% so using rounded figures this is still £1.8bn).
3. Other expenditure includes interest on debt and depreciation charges which have generally been charged to Scotland on a percentage of GDP basis.

There are a number of difficulties with this analysis which are not easy to resolve. For example:

1. Not all identifiable expenditure allocated to Scotland really is Scottish. For example Scottish universities have a net inflow of students from other parts of the UK. The extra money spent on these students is counted as being Scottish expenditure, but should really be allocated to other parts of the UK. However, the net effect of such items is likely to be small, and it is noteworthy that the SNP has tended not question the identifiable expenditure total.
2. There are arguments about the allocation of defence expenditures because of the pre-ponderance of defence establishments in the South of England. The SNP calculates that less than 8% of defence expenditure benefits Scotland whilst GERS calculates the figure *pro-rata* at 8.7%.
3. The miscellaneous activities, such as the £3bn spent on the Foreign Office are disproportionately based in England and the economic benefits therefore disproportionately accrue there.

We can see how this plays out if we compare SNP expenditure estimates<sup>38</sup> with those provided by GERS:

	GERS £bn	SNP £bn
Identifiable Expenditure	24.7	24.3
Non Identified	3.1	2.8
Debt Interest	2.5	2.4
Other Expenditure	1.5	1
Privatisation receipts	-0.4	-0.4
TOTAL	31.4	30.1

<sup>38</sup> Scottish National Party, *Scotland Pays Her Way* (Edinburgh: Scottish National Party, 1996).

## Revenue

As GERS itself notes “estimating revenues for the individual countries of the UK is more difficult than estimating GGE [General Government Expenditure].” This difficulty stems, in part, from the fact that in a unitary state the government has no need to identify the regional sources of its revenue (and, of course, in a unitary state taxpayers have no incentive to adjust their behaviour to take account of differential regional tax rates). However, as the table below shows, despite some disagreements between GERS and the nationalists (as represented by the SNP), there is a surprising correspondence between their two sets of figures.

The highlighted rows are those where there are differences between the two figures, some of which result from methodological differences (e.g. using GDP rather than population as a basis for allocating proportionate revenue) and others where there are more profound disagreements.

General Government Receipts in Scotland (excluding North Sea oil revenues) 1996-7

	GERS £bn	SNP £bn
Income tax	5.5	6.1
Corporation Tax (excluding N Sea)	2.5	2.2
Capital Gains Tax	0.1	0.1
Inheritance Tax	0.1	0.1
Stamp Duties	0.2	0.2
VAT	4.0	4.0
Fuel Duties	1.2	1.5
Tobacco Duties	0.9	0.9
Alcohol Duties	0.6	0.6
Betting and Gaming Duties	0.1	0.1
Customs Duties and Agricultural Levies	0.2	0.2
Air Passenger Duties, Insurance Premium and Landfill Tax	0.1	0.1
Vehicle Excise Duties	0.3	0.3
Non-Domestic Rates	1.2	1.2
Other taxes and Royalties	0.7	0.5
Social Security Receipts	4.2	4.1
Council Tax	1.0	1.0
Interest and Dividends	0.5	0.4
Local Authority Housing Rents	0.6	0.6
Other	0.7	0.9
<b>TOTAL</b>	<b>24.7</b>	<b>25.1</b>

From the data available it is not always possible to indicate why the SNP and the government disagree, but for illustrative purposes the basis for two of the disagreements is given below:

1. **Income Tax** (which forms 24% of UK revenue and 22.2% of Scottish revenue). GERS figures are based on the Inland revenue’s Survey of Personal Incomes which samples around 6,000 tax payers in Scotland. The SNP criticises this as unreliable and

prefers to calculate income tax by using Scotland's proportion of UK income tax payers adjusted for the average income in Scotland (although this method is itself problematic because it fails to take account of the importance of tax bands and investment income). GERS figures also exclude certain tax reliefs the most importance of which is mortgage interest relief where lower house prices mean that Scotland under claims proportionately to the tune of about £30m a year.

2. **Fuel Duties.** GERS figures are based on estimates of inland delivery of petrol etc., whilst the SNP figures are based on population percentages.

## Conclusions

Despite the headlines, there is not as much disagreement between the nationalists and the GERS as one might think. The table below shows the net effect of comparing the two sides' figures:

	GERS £bn	SNP £bn
Revenue	24.7	25.1
Expenditure	31.4	30.1
Balance	-6.7	-5

Both sides agree that, discounting oil revenues, there is a deficit and the difference is limited to £1.7bn. This represents between 2 and 2.5% of Scottish GDP depending on how this GDP is calculated. Given the imprecision in the figures, this is probably within the margin of error.

Furthermore, both sides agree that oil revenues are currently £3.56bn and, in the event of a split, there would be ways of agreeing Scotland's share. So it may be that beneath the headlines a compromise lurks. This would be that Scotland is in deficit to the tune of somewhere between £3.5bn and £1.8bn. This is between 5.5% and 2.2% of GDP and compares to an UK deficit of approximately 3.25% in 1996-7. Putting this figure in a slightly wider context, it may be worth noting that the UK deficit was 7% of GDP in 1993-4 but is likely to fall to 0.5% in 1997-8.