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**Citation for published version:**

Hayward, K, McEwen, N & Komarova, M 2023, 'Managing Scotland's borders after independence and European Union accession', *National Institute Economic Review*, vol. 260, pp. 40-50.  
<https://doi.org/10.1017/nie.2022.21>

**Digital Object Identifier (DOI):**

[10.1017/nie.2022.21](https://doi.org/10.1017/nie.2022.21)

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Publisher's PDF, also known as Version of record

**Published In:**

National Institute Economic Review

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ARTICLE

# MANAGING SCOTLAND'S BORDERS AFTER INDEPENDENCE AND EUROPEAN UNION ACCESSION

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## Abstract

Brexit has both increased the momentum towards Scottish independence and complicated what it could mean in practice, especially if Scotland rejoins the European Union (EU). EU accession would re-open the flow of goods, people, services and capital between Scotland and other EU member-states; a corollary of this, however, would be new restrictions on movement between Scotland and its non-EU neighbours. Effective border management entails a variety of 'at the border' and 'behind the border' processes. As much as these would require dedicated infrastructure and trained personnel, they would ultimately depend upon reliable data/information and good communication among myriad agencies, including on the other side of the border. Fundamentally, the nature and form of the border controls would be determined largely by the relationship that an independent Scotland had with the remainder of the UK—and, principally, on the relationship that the UK develops with the EU.

**Keywords:** Brexit; border management; customs; Scottish independence; Trade and Cooperation Agreement (TCA).

**JEL codes:** F10; F55; K00; F15.

## 1. Introduction

On 28 June 2022, the Scottish Government (2022) announced the next steps for securing a referendum on independence. If successful both in its bid to hold a referendum and in the result, the date of 19 October 2023 could mark the break-up of the United Kingdom. Brexit has reenergised the campaign for Scottish independence, but it has made the practicalities of independence more complex (Curtice and Montagu, 2019). This is exemplified by the question of how Scotland would manage its borders as an independent nation-state and, potentially, as an European Union (EU) member-state too. If an independent Scotland were to re-join the EU, the Anglo-Scottish border would become not just an international border between Scotland and what remains of the UK, but a new land border between the EU and the UK. Brexit means that many of the cross-border arrangements that had been envisaged at the time of the 2014 referendum would no longer be possible (Scottish Government, 2013). The UK's departure from the EU does not just complicate the situation for Scottish independence, but it also gives us a foretaste of the border-related ramifications of the 'dis-integration' of the United Kingdom.

### 1.1. What borders do

In serving the practical and symbolic functions of delimiting the territory of sovereign states (Storey, 2017), borders by necessity reflect and operate through the thickly interwoven mesh of state laws, policies and governance processes (Rumford, 2006). The UK Government's 2025 Border Strategy recognises this

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by stating that a border is ‘more than a line on a map’; it is ‘a combination of policies, processes and systems delivered by both public and private organisations’ (HM Government, 2020, p. 10). This includes the ways in which laws and policies are enacted, performed and experienced throughout the jurisdiction of the state, and at external borders, in ways vital to its economy and security (including public health).

This means that a change in Scotland’s constitutional status resulting in its re-establishment as a sovereign nation-state would entail significant reorganisation of the management and control of movement across its external borders. As a delineation of one jurisdiction from another, any border is of concern to the countries on either side of it. Its significance, but also its practical operation, are affected by the relationship between the ‘legal, political or socio-cultural regulation[s] applied to different types of flows’ on either side of the border (Johnson *et al.*, 2011, p. 64), including their convergence or divergence. A change in the status of a state border that results in further divergence, that is, more conditions needing to be met for movement across it, and requiring additional checks to ensure that such conditions are met, would constitute a ‘hardening’ of that border. Indeed, Brexit provides an illustration by prompting new forms of ‘rebordering’ between the UK and the EU (Schimmelfennig, 2021).

### 1.2. Lessons from Brexit

Brexit negotiations resulted in the UK leaving the EU single market and customs union, which has generated new barriers that disrupt the flow of goods, services, people and capital between the UK and the EU. UK borders and border practices have been hardened by both the terms of the UK–EU Trade and Cooperation Agreement (TCA) and the reinforcement of UK border controls in domestic legislation, particularly regarding immigration and security. It can be expected that independence would likewise generate new barriers or frictions on flows between Scotland and the remainder of the UK. The scale and scope of these barriers—the softness or hardness of the border—would be shaped by the outcome of independence negotiations. If Scotland were to rejoin the EU after independence, and thus follow the rules-based system of the EU, this ‘bordering’ process would be heavily influenced by the evolving relationship between the EU and the UK, and the extent to which the UK’s rules and regulations converged with, or diverged from, EU law.

The key phrase here is ‘evolving relationship’. The experience of Brexit tells us that change does not happen overnight, and that the nature of that change depends on the outcome of negotiations about the divorce settlement and about the future relationship. Negotiations on ending the political union between Scotland and the rest of the UK would have to reach agreement on, among other things, the division of assets and liabilities, currency and citizens’ rights. They would also settle on a transition period to allow time for Scotland to prepare for independence, including setting up new regulatory bodies, a central bank, and other institutions necessary for an independent state to function. A transition to independence would also require a substantial legislative programme. The UK parliament may transfer powers to the Scottish Parliament to empower it to prepare for and negotiate independence. In addition, it would have to repeal the 1707 Act of Union, pass a law to implement the independence settlement, as well as a law to underpin the new relationship between the (remaining) UK and Scotland.

One thing that would have to be given detailed consideration in this initial process is Scotland’s status vis-à-vis the UK–EU TCA. Scotland could not formally apply for membership of the EU until it had negotiated independence from the UK. The new rules that would apply for movement across previously internal UK borders would, therefore, initially be conceived as those determined by Scotland–UK negotiations. Scotland’s negotiations with the EU would entail a similarly complex process. Upon application to the EU, Scotland would have to be accepted as a candidate for membership. It would then enter into negotiations with the European Commission on the details and requirements for membership, usually split into 35 separate chapters. Subsequently, it would have to implement any adjustments necessary as a result of these negotiations.

The final stage would be to secure the agreement of all the member states and the European Parliament to the Treaty on Scotland’s accession. This process of EU accession could potentially commence during a transition period out of UK membership, not least because Scotland’s status

vis-à-vis the EU would heavily influence, and be influenced by, its relationship with the UK. And that relationship is, too, subject to evolution. The details of the TCA in place today may change with the political environment in the UK, or in light of experience. The extent to which the UK opts to diverge from EU law—as it is free to do under the terms of the agreement—would also have implications for the outlook facing an independent Scotland seeking to renegotiate its place between the EU and the UK. Both sets of negotiations would inevitably cover myriad issues that are beyond the scope of this paper (Hepburn *et al.*, 2021). Our focus is on the matter of what Scotland's independence and EU membership would mean for its borders. To address that question, we first need to consider why border management is important, and what Brexit has meant for the UK's borders.

## 2. Modern-day borders

### 2.1. *The contemporary significance of borders*

Historically borders are associated with a more or less rigid demarcation between state territories. But the transformation of intra- and inter-state governance regulating the mobility of goods, people, capital, finance, technology and information within and between states has transformed the nature and function of borders (Paasi *et al.*, 2022). Globalisation notwithstanding, the ability to control the conditions for movement across state borders continues to define the understanding and exercise of state sovereignty in the contemporary world (Paasi *et al.*, 2022). Indeed, one consequence of the attempts to facilitate greater economic mobility has seen them raise security concerns about 'open borders'. This has led to the simultaneous thickening of nation-state borders in the desire to better control flows of people (Barbero, 2012; Jeandesboz, 2012; van Munster, 2009). As such, a palpable disjuncture can be seen between the notion of a 'borderless world' and the reality of increased border securitization (such as those inherent in the practices and discourses of the 'war on terror', see Jones, 2012; Jones and Johnson, 2016) and the contemporary rise of political movements based on anti-immigration platforms (Travis, 2016). The slogan of the Vote Leave campaign in the UK's referendum on EU membership in 2016 was carefully and successfully attuned to popular sentiment: 'Take back control of our borders'.

The EU is a prime example of the erosion of economic borders to facilitate the free movement of goods, services, capital and people within its internal or 'single market'. The UK joined the then European Economic Community in 1973 opening itself to (what it then saw as) the benefits of the processes and practices of European economic integration. The creation of the Single Market (with its official entry into operation on 1 January 1993) erased many obstacles to cross-border trade and economic development internal to the EU. Regulating this free movement has required an extensive legal framework and a complex multi-level system of governance in which all member-states participate but which operate beyond the boundaries of any single state. Brexit has helped to reveal for the first time at the popular level the 'formidable corpus of law' (Laffan *et al.*, 2000, p. 74) and regulation via which the huge array of common programmes, negotiated international agreements, commercial flows, citizens' and workers' rights, and so forth are governed and regulated (Weatherill, 2021).

### 2.2. *The growing scope of border management*

We use the term 'border-related controls' advisedly, because much of the effect and impact of border controls happens away from the border itself in the practices used by authorities to regulate the flow of people and goods across a border. For example, travellers confront bordering practices not just at the point they enter a country, but also when they complete online passenger information forms from their computers at home. Workplaces, too, have become sites of border control. Employees are often required to validate their right to work, and students to validate their right to study, with passports, visas and registered attendance. Importers and exporters may be required to complete forms and secure certification to prove eligibility for cross-border trade before their goods even begin their journey. In all cases,

failing to provide the right information can result in entry/work/residence/trade being refused or delayed. All border controls centre on information in the first instance. It is the production and sharing of the relevant data that causes the ‘paperwork’ burden that adds friction, costs and time to the movement of goods.

The impact of hardening borders is felt far beyond the realms of trade and immigration. What moves across borders, and the purposes for doing so, can vary widely, for example, family weddings, horticultural shows, temporary art exhibitions, processing into more valuable products. Border controls thus need to manage, and be appropriate for, a wide variety of movements, rules and scenarios. This underscores the limitations of ‘technological solutions’ to the inconvenience of border controls. The promise of ‘smart’ borders being able to facilitate ‘good’ cross-border mobility whilst preventing entry by ‘unwanted others’ has been a feature of the twenty-first century discussions of border management (Amoore, 2006). By using state of the art and biometric security controls, military-grade surveillance technology, and algorithmically regulated decision-making systems, smart borders are taking border controls far beyond what we would have traditionally conceived of as the job of border agents at the territorial boundary (Bialasiewicz, 2012; Vukov and Sheller, 2013; Yeung, 2018). This same logic of a technologically-reliant border is exhibited in the UK government’s 2025 UK Border Strategy (HM Government, 2020). In the name of efficiency, the strategy attempts to technologically resolve and reconcile the competing logics of prosperity and security that drive the control of different forms of movement. But from a critical perspective, excessive reliance on technology can be seen as effectively hiding the ethical and political character of border controls (Amoore, 2006; Andersson, 2016; Bigo, 2014; Yeung, 2018).

### 2.3. Varieties of border control

To refer to ‘border controls’ covers a wide variety of movements, purposes and restrictions. The type of border control most commonly experienced by the ordinary traveller is *passport control*. These are used at points of entry to manage the flow of people across borders. Passport controls verify the right of entry of people into the country. These may also involve officials checking stamps on a passport at exit to see when a person entered the territory to make sure they have not stayed longer than permitted (e.g., no more than 90 days in a 180-day period for British citizens in the EU). They may also include checking visas and documents verifying the veracity of statements made earlier in support of visa applications. Passport controls also allow security checks of the type that might capture people wanted by criminal justice organisations.

For the movement of goods, customs procedures are primarily designed to prevent smuggling illegal or counterfeit goods across a border, and to ensure that any duties (taxes) liable are paid. What this means in practice is that, unless certain conditions apply (e.g., when the economic operator has ‘Trusted Trader’ status), a good crossing a customs border is accompanied by a declaration as to what it is. Sometimes this can be brief, with a more detailed supplementary one completed at a later point. But the level of detail required for customs processing can be considerable and the data needs to be submitted into the specific IT systems being used by the countries in question, and can apply to imports, exports and goods in transit. Goods subject to import and/or export licencing will need evidence that the licence has been granted. These procedures allow assessments to be made as to duties liable or the risks associated with these goods entering the territory. The process of data submission (including time and training/recruitment of staff to do so) can be where businesses experience the greatest ‘friction’ and cost of border controls, even where there are zero tariffs and zero quotas. It is a process that must be performed with care; making deliberate false declarations to customs is a serious criminal offence.

Regulatory controls arise when different rules and processes govern product standards and specifications, such that a product that can be legally sold in one jurisdiction cannot automatically be sold in another. There is also the important matter of which regulatory body authorises a product for sale or use.

Even if the standards are the same on either side of a border, different regulatory authorities and rules can effectively prohibit sale in the other jurisdiction, unless there is agreement on mutual recognition of regulations. This is why the proper labelling of products is so important. Such non-tariff barriers to trade are often the most complex to navigate. Regulatory controls also apply to services trade. Without mutual recognition provisions in services trade, businesses trading services across borders must satisfy business regulations, licencing and authorisation requirements in each jurisdiction.

Sanitary and phyto-sanitary controls (SPS) are often the most onerous and rigorous. These apply to animals, agri-food and plants. They are intended to protect public health and keep out diseases, such as may be transmitted in animals, animal products or plant products. Very strict certifications and types of inspection are required for these to cross a border. Inspections require specialised, purpose-built, facilities close to the border, for example, for storing and inspecting livestock or refrigerated products. Under EU rules, live animals and most consignments of animal products must enter the EU through a Border Control Post with specialised facilities and inspectors present. SPS controls also apply to the travel of domesticated animals across a border. For example, the EU has strict requirements for owners bringing their dogs into the EU from a third country (including Great Britain), such as microchipping, certain vaccinations and vet-issued certificates.

As you might expect when it comes to state borders, taxes also come into play. Value added tax (VAT) is only due from the final consumer of a product. The movement of a good from one economic operator to another needs to be traceable so that those who are not the final consumer can reclaim VAT they paid on a good. When a good is exported (e.g., between an EU member-state and a third country), the VAT owed by the exporter is 0 per cent because the good is to be consumed outside the market. The difficulty here is not about differences in VAT rates, but about the exporter being able to prove that the good was exported and therefore no VAT payments are necessary. Proving this across an external customs border requires a certain amount of paperwork to control the movement of goods and thus minimise tax-evasion or fraud.

A similar question of proof of physical export arises in relation to cross border movements of excise goods. Excise goods are those to which domestic duties apply, such as alcohol, tobacco and fuel. Evasion of excise duty is a common motivation for large-scale cross-border smuggling. This is a lucrative source of funding for organised crime and comes at great cost to the state in lost revenue. Under EU legislation, excise duties are paid at the final point of consumption; while in transit to their final destination, these goods are in duty-suspension. Duties are paid on those goods as they enter the destination territory, or as they are withdrawn from bonded warehousing. Making sure such duties are not evaded is an essential function of border management.

#### *2.4. Post-Brexit border management*

The extent to which any border controls are in place, and the form they assume, depends upon the political relationship and agreements between the territories on either side of a border. As an EU member-state, the UK was part of the EU customs union and single market and therefore did not require customs checks, regulatory controls or SPS controls. Outside of the EU, the lines on the map remained the same, but the policies, processes and systems to manage these borders changed significantly. As it stands, the TCA means that customs formalities are required on goods crossing the border between Britain and the EU. Under the TCA, there are no tariffs or quotas (i.e., no taxes or limits on the amount of trade in specific goods) on British goods entering the EU, and vice versa. However, declarations need to be made to be sure that enough of the product originated in the UK or the EU to qualify for free trade (as per 'Rules of Origin') and to see appropriate duties are paid if it does not. New SPS also require the creation of physical as well as IT infrastructure, for example, to allow for lorry queues and inspections of refrigerated containers. For all this, the UK has had to develop a new border strategy (HM Government, 2020). There are lessons in this for Scotland.

### 3. Post-independence and EU accession border management

#### 3.1. Scotland's borders as an EU member-state

EU membership would mean that an independent Scotland would rejoin the EU single market and customs union. In so doing, it would be obliged to adopt the whole body of EU law—the *acquis communautaire*—as a condition of membership (unless it could negotiate to opt out of some aspects). This would open up Scottish goods, services and capital to the EU market, creating opportunities for new supply chains, new business prospects, increased trade and new pools of workers. The free movement of workers and students would also expand employment and study opportunities for Scotland's citizens. But one consequence of more open Scottish-EU borders (even across the English land-bridge) would be the responsibility to ensure that all goods and services entering the Scottish (and therefore the EU) market met EU standards, to protect the integrity of the European single market.

This would necessitate new types of border controls between non-EU member-states (including England and Wales) and an independent Scotland within the EU's internal market and customs union. If the Protocol on Ireland/Northern Ireland were fully operational at such a point (thus allowing free movement of goods between Northern Ireland and EU member-states), the movement of Scottish goods into Northern Ireland would become easier than at present.<sup>1</sup> And the matter of Northern Ireland goods having unfettered access into Scotland would come automatically as a consequence of the Protocol, rather than, as now, under the UK Internal Market Act (2020). For third country goods, both Scotland and Northern Ireland would be applying the Union Customs Code.<sup>2</sup> But, as discussed above, border management is about much more than tariffs, even in the sphere of trade.

#### 3.2. Trade implications of a new EU border around Scotland

Scotland has a very open economy. In 2019, the value of exports was over £87 billion, an estimated 60 per cent of which was trade with the rest of the UK (rUK)—over three times the value of exports to the EU. The majority (56 per cent) of Scottish-rUK exports is in services, led by financial and insurance activities and utilities. In 2019, Scotland's goods' exports to rUK were at a similar level to those destined for the EU (Scottish Government, 2021). Information on interregional trade is difficult to estimate, especially for imports, but however these estimates are calculated, the Scottish economy would clearly be exposed to any trade disruption with the rest of the UK (Greig *et al.*, 2020). One study by the LSE's Centre for Economic Performance (Huang *et al.*, 2021) estimated that the effects of independence, even if Scotland were to rejoin the EU, could see a reduction in Scottish income per capita of between 6.3 and 7.6 per cent. New trading opportunities could be generated with the rest of the EU, to reduce dependence on GB trade and offset some of these costs, but this may take time. When Ireland joined the European Community along with the UK in 1973, 55 per cent of its exports were destined for the UK. By 2020, this had fallen to just 9 per cent (Adams *et al.*, 2021).

We might also expect more sourcing of products locally in Scotland and from the EU by large chains and manufacturers, and less from England/Wales. This is in part because harder borders—as a new GB/EU border across Britain would be under the terms of the current TCA—have consequences. Frictions bring costs and delays, and we would expect trade to follow the path of least resistance. The picture would be a complicated one, not least given the geographical position of Scotland. If Scotland were to join the EU as a member-state in its own right, it would not share a land border with any other European member and would have a large non-member-state territory between it and much of the rest of the EU. This suggests that 'frictionless' trade between Scotland and the rest of the EU could be more

<sup>1</sup>The Protocol on Ireland/Northern Ireland, part of the UK–EU Withdrawal Agreement (2019), is discussed in more detail below.

<sup>2</sup>Notably, Scotland would apply the EU's Common External Tariff on third country goods and, because Northern Ireland remains in the UK customs territory under the Protocol, it would continue to apply UK tariffs and quotas on third country imports.

**Table 1.** Export statistics Scotland: 2019

Export destination	Value of exports in 2019 (billion)	Change since 2018 (billion)	% Change since 2018
International	£35.1	£1.1	+3.4
...of which EU	£16.4	£0.4	+2.6
...of which Non-EU	£18.7	£0.7	+4.1
Rest of the UK	£52.0	£2.5	+5.0
Total (Int + RUK)	£87.1	£3.6	+4.3

Source: Scottish Government (2021).

complicated than when the UK was in the EU. England would represent a sizeable ‘land-bridge’ to get to the main EU markets.

In theory, loads destined from/to Scotland from/to the EU could be sealed as they cross the English ‘land-bridge’ and thus not have to go through the type of paperwork, checks and controls required for goods going to/from England and Wales. This would require a change to current practice. Generally, lorry loads tend not only to be distributed at a single end point, but goods can be taken or added at different points of the journey. We might also expect particular difficulties for trade involving mixed lorry loads, particularly those carrying food products. Supermarkets are at the forefront of such difficulties. Further complications would arise if anything were to happen to an EU good (e.g., if it were to be repackaged) whilst in the territory of a non-member-state, as this could result in it losing its EU origin status. Tariffs would then be due on entry back into the EU territory. As such, accessing the European market via the land-bridge could pose difficulties for Scotland unless there are adjustments to distribution routes, processing and supply chains.

For such reasons, we could expect, in this instance, increased use of direct routes between Scotland and the EU, avoiding the non-EU land-bridge. Ireland’s trade routes post-Brexit suggest that this can occur relatively rapidly, if there is clear information provided by public and private authorities that enable advance planning by those businesses and agencies affected.<sup>3</sup> In the Scottish case, this would see the existing capacities of the Forth ports at Grangemouth and Rosyth to the Netherlands, Belgium and France considerably expanded. Even before the end of the transition period, new freight shipping services were opened between Scotland and the EU (e.g., Samskip’s Grangemouth—Amsterdam service, via Hull). If the Northern Ireland/Ireland Protocol is still operational, goods could trade from Scotland via the island of Ireland, which could conceivably become an alternative, convenient, ‘land-bridge’ from Scotland to the EU, exploiting additional capacity in direct freight services from Ireland to ‘mainland’ Europe.

The biggest consideration when it comes to preparing for a new or hardened state border is not the length of the line but rather the number of crossing points along it. The main trunk road connecting Scotland with the rest of Great Britain is the M74/M6 Glasgow—Carlisle route. Three other crossings are also designated as trunk roads (A1 Edinburgh—Berwick upon Tweed; A68 Edinburgh—Carter Bar; A6091/A7 Melrose—Galashiels—Carlisle). A further two non-trunk A roads cross the border (the A6105 near Berwick and the A697 at Coldstream), and there are just over 20 cross-border minor roads. But much of the borderline follows rivers (including the River Tweed in the east and River Sark in the west) and a considerable stretch between east and west runs alongside nature reserves and forest parks (e.g., between the Cheviot Hills and Northumberland National Park). The lack of crossing points in these wilder cross-border areas means that the risk of smuggling is quite low. The difficulty could come in

<sup>3</sup> According to the Irish Maritime Development Office’s *Unitised Traffic Report* (Fallen Bailey and Treacy, 2021), during the third quarter of 2021, whilst overall volumes of freight traffic remained the same as in 2019, there had been a rapid, significant reduction in traffic to Britain—reduced to two-thirds of all Irish freight volumes within 6 months of Brexit, compared to 84 per cent in 2019. A third of all Roll-On-Roll-Off (RoRo) traffic from the Republic of Ireland now operates via direct routes to the EU—double the rate 2 years previously—with seven new direct EU RoRo services available to Irish traders.



places alongside the Kershope Burn. This is a narrow river/stream that runs along the border, with minor roads running each side, creating a potential opportunity for easier cross-border access for smugglers. But for the most part, it can be expected that the main trunk roads would be designated for customs movements, including with some form of border control and inspection facilities, whilst the minor routes could be monitored by other means, including cameras. It is most likely that major designated crossing points would utilise a Green (for those with ‘nothing to declare’ or pre-declared goods) and Red (those with goods to declare) channel system, to minimise disruption or delay in the flow of traffic.

Such a system was proposed by the UK Government as a means of easing the impact of controls on goods moving from Britain into Northern Ireland under the conditions of the Protocol on Ireland/Northern Ireland (HM Government, 2022). Agreed as part of the UK–EU Withdrawal Agreement, the objective of the Protocol was to avoid the creation of a hard Irish land border even as Brexit made it an external border of the EU (HM Government, 2019c). As written, the Protocol allows free movement of goods across the Irish border in both directions by effectively keeping Northern Ireland in the EU’s single market for goods. A corollary of this is that there are new restrictions, formalities and checks on goods entering Northern Ireland by sea and air ports. The UK Government’s green/red channels proposal is an effort to reduce the proportion of goods moving from Britain to Northern Ireland which are subject to such controls.

Some have suggested that the Protocol would form the basis of a model for avoiding a hard land border for an independent Scotland (Russell, 2022). However, the case of Northern Ireland is exceptional—as both the UK and EU have been keen to stress—and there cannot be expectations of a similar EU commitment with respect to the Anglo-Scottish border. This is for three main reasons. The first is there is, thankfully, no history of recent political conflict centred upon the Anglo-Scottish border. The important place of the Irish border in the 1998 Good Friday (Belfast) Agreement focused minds across the EU27 in the withdrawal negotiations. Secondly, the prospect of managing a land border with some 208 officially-recognised public road crossings (let alone rail and inland waterways) was extremely daunting (Department for Infrastructure, 2018). The practical challenge of managing the Anglo-Scottish border is considerable but it is far less complex than the Irish case.

Thirdly, neither the EU nor Scotland would want ambiguity about what is entering and circulating in Scotland from the third country across the land border. The geographical location of England between Scotland and the rest of the EU would be more likely to give rise to a demand for extra diligence and vigilance than a willingness to greater flexibility. In the case of Northern Ireland, flexibility from the EU has principally been justified in relation to the 1998 Agreement, and not on the grounds of the burden or complexity of the controls themselves. Judging by the terms applied for other association and accession agreements made by the EU, flexibility from the EU for Scotland is most likely to be found in the length of the transition period to full application of the border management rules rather than in relaxing the requirement themselves.

### 3.3. *The movement of people across Scotland’s borders*

What might happen for the movement of people? According to the Treaties of the EU (Protocol 19), countries applying to become member states are required to accept ‘in full’ the body of law relating to the Schengen Agreement. This would mean removing border controls between Scotland and the 26 participating countries. But this would be matched by the obligation to maintain tight controls on the movement of people across Scotland’s section of the EU’s external borders. Thus, if Scotland joined the Schengen area, it would imply the need for passport controls between Scotland and its nearest neighbour.

However, given its unique geographic and historic circumstances, most specifically the existence of the common travel area (CTA), most experts (e.g., see Hepburn *et al.*, 2021) assume that Scotland would most likely seek and be granted an opt-out from the border control elements of the Schengen Agreement during membership negotiations with the EU. This would not only preserve free movement between

Scotland and the rest of the UK but, importantly, would ensure free movement between Scotland and Ireland, its closest EU neighbour (including the automatic right to reside and work in the other jurisdiction). The CTA includes the UK, Ireland, the Channel Islands and the Isle of Man. It already has legal recognition in the EU Treaties and was protected in the UK–EU Withdrawal Agreement. In 2014, the plans for independence included remaining within the CTA, and it is expected that this would be part of any new independence prospectus, and the top priority for the Scottish team in EU accession negotiations.

Citizens across CTA territories can move freely, work and study anywhere in the CTA, and access health care, social housing, social security and education, as well as enjoying the right to vote in local and national elections. These reciprocal rights were reaffirmed in a Memorandum of Understanding in 2019 (HM Government, 2019a). But the CTA is a largely informal set of arrangements rather than an international treaty, and it is important to recognise its limitations. The first is that, while the CTA retains the right of citizens from its member countries to live, work and access services, and to travel across borders for business purposes, it does not extend to the free movement of services. The relationship with Ireland in services trade is as set out in the UK–EU TCA. Under the TCA, there is no mutual recognition of services regulations or professional qualifications; a UK business providing services in Ireland must therefore follow Irish regulations. Assuming a similar relationship was in place after Scottish independence, the right to establish a business or to provide a service would not be automatically enabled for those crossing into the UK from Scotland, or vice versa. It may, however, be possible to reach a bilateral agreement as part of the future relationship negotiations. The UK and Ireland are committed to agreeing arrangements for recognising professional qualifications, acknowledging this as an ‘essential facilitator’ of the right to work anywhere within the CTA (HM Government, 2019b).

Secondly, although immigration controls may not be manifest at a border, they can still have consequences for those crossing it. The Nationality and Borders Act (2022) includes the requirement for an electronic travel authorisation (ETA) to permit entry to the UK to non-Irish EU citizens and third country nationals who do not require a visa (ETAUK, 2022). EU citizens crossing into UK territory from an EU territory (potentially including the land border between an independent Scotland and the remaining UK) may find themselves in breach of the law for not having completed an ETA in advance. This further illustrates that a hardened border has wide implications that go far beyond matters of trade. Keeping a harder border as open and ‘invisible’ as possible would have to be balanced against the need for people to be aware of its existence. An important part of border management is making sure that everyone is aware of what might be required from them to do what they want to do in the jurisdiction on the other side.

#### 4. Conclusion

Border management is a responsibility that all sovereign countries must consider. The rules governing the UK–EU relationship at the time of an independent Scotland’s accession to the EU will shape the nature of the border between Scotland and the remainder of the UK, and the tasks required to manage it. Over time, we can expect the UK–EU relationship to continue to evolve, such that its trading relationship at some future point at which Scotland might transition to independence within the EU may be very different from the one we see today. If the UK and the EU were to reach agreements to align SPS rules, for example with a New Zealand-style Veterinary Agreement, it is estimated that this could dramatically reduce the need for physical checks down to 2 per cent and for documentary checks to 10 per cent. Conversely, the UK may continue to diverge from the rules-based system governing the EU, exercising its regulatory autonomy to forge its own path. That divergence may be reinforced by new trade deals with third countries that diverge from standards set by the EU. The greater the divergence between the UK and the EU, the harder will be the borders they share, and this would include the border between an independent Scotland in the EU and England/Wales.

As we have outlined above and as has been seen in the Brexit process, ‘hardening’ any state border brings costs, disruption and myriad complex challenges, and it is important that these are anticipated and planned for as much as possible. Assuming responsibility for managing an EU border across Britain need not preclude cross-border cooperation, including in areas like policing, criminal justice and security, where EU competence is more limited. Indeed, effective management of the border would be supported considerably by cooperation between authorities on either side of it.

This article has set out some of the issues that might arise if Scottish independence was to result in an EU border across Britain. It has identified what we believe to be critical issues, but it is not intended to be a comprehensive overview. Other issues, challenges and opportunities may emerge, and these may increase or diminish over time in response to political, economic and technological developments. Nonetheless, to ensure debate on independence and its implications is informed, and that Scotland can be prepared should that debate result in an independence process being initiated, it is vital that any detailed prospectus or white paper confronts the challenges that Brexit has presented, including the management of Scotland’s future borders.

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