

# The Scottish and UK governments should beware the Ides of March

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27/03/2017

*Theresa May and Nicola Sturgeon will meet today to discuss the triggering of Article 50, which will begin the process of the UK leaving the European Union. [Simon Toubreau](#) and [Jo Murkens](#) assess the likely issues up for discussion, noting that if the two leaders maintain the direction they have taken, there could be a bumpy road ahead for both Scotland and the rest of the UK.*



Theresa May and Nicola Sturgeon, Credit: First Minister of Scotland/flickr (CC-BY-SA-2.0)

Whispers of betrayal have been circulating since January, when the Prime Minister delivered her strident speech at Lancaster House. But the daggers were finally drawn a fortnight ago – poignantly timed and served with a Shakespearean twist. And, as it came to pass during the fall of Caesar, both camps feel betrayed.

Theresa May, soaring in popularity, victorious in driving the Brexit bill and on the cusp of triggering Article 50, was suddenly betrayed by nationalist grumbling in Scotland. Indyref2 is on the table. The plot lead by the rebellious Tartan faction has grown in fervour with every broken promise. The promise of continued access to the Single Market and of working with the devolved administrations.

Instead of being granted the recognition it deserves as one of the UK's constituent nations – and one with strikingly different priorities when it comes to the EU – the SNP feels Scotland has been treated with contempt from an 'intransigent' English Conservative government. This betrayal makes for the kind of 'material change' in circumstances that warrants launching another referendum.

We will witness how this initiative unfolds over the next few months. Two matters will be resolved. First, whether the UK government grants the Scottish government the right to hold the referendum, by granting the Scottish parliament a section 30 order. And second, *when* the referendum is eventually held. The SNP wants to ensure that Scottish voters are given a meaningful choice.

What is clear though is that the prospect of a referendum brings with it both opportunities and dangers for both camps. Holding a referendum is a source of leverage for the Scottish government. During the first Indyref, the rising tide in support of independence forced British political parties to make a 'vow' for greater devolution to Scotland. Now, again, the SNP hopes to extract concessions over two important issues.

The first is the UK's withdrawal from the EU. The Scottish government's preference for remaining in the Single Market was ignored by the British government, which decided to withdraw fully, to regain control over migration and to escape the oversight of the European Court Justice. It is highly unlikely that the SNP will manage to obtain a separate deal that would allow it to remain in the Single Market. But, what it can do is try to influence the conditions of withdrawal and the content of any interim arrangement, that might eventually affect the substance of a future trade deal.

The second issue is the content of the 'Great Repeal Bill' that the British government will pass to consolidate all European legislation into UK law. This is a gargantuan task that provides the British government with the discretion over which bits of EU legislation to keep, discard or modify.

The SNP wants to make sure that this is not an opportunity for the UK government to set policy in those erstwhile EU sectors that are reserved for the Scottish parliament, such as agriculture, fisheries, and the environment. For the SNP, any future regulation on air and water pollution, fishing practices or on the disposal of industrial and agricultural waste should be set in Holyrood, not Westminster.

For the Scottish government to protect Scotland's interests, it needs to establish and maintain continued dialogue with the British government. The normal forum for this is the Joint Ministerial Committee on EU negotiations (JMC(EN)), where the members of the central and devolved executives meet periodically to discuss issues related to the Brexit negotiations.

But, this forum has proved unsatisfactory for the SNP. The JMC(EN) has not been convened with sufficient regularity or been equipped with sufficiently strong legal clout to allow the SNP's voice to be acknowledged. So, the SNP will seek to promote the long-standing goal of formalising the channels of dialogue in the JMC(EN). It will want to speak more regularly, it will want to have greater say, and it will want that say to have legal backing.

How the UK government responds to this pressure will be central to understanding what kind of outcome eventually prevails. So far, its attitude – in public at any rate – has been to commit itself to strengthening the Union. And re-invigorating the formal channels of communication between the UK and devolved governments presents it with the opportunity to make good on this commitment.

But, in fact, the UK government has largely ignored the wishes of the devolved governments, all of which wanted to remain in the Single Market. This may reflect sheer arrogance. Or it may simply reflect a lack of creativity and a degree of unpreparedness in how best to integrate these (opposing) demands into the UK government's position.

Another reason is that the UK government does not want to have its hands tied during negotiations with the EU. Any existing commitment to areas that are dear to Scotland, like agriculture or fisheries, will limit the UK government's margin for manoeuvre in what are going to be complex and difficult negotiations. Faced with a rigid European Union (itself composed of 27 states, each of which must approve the final deal) that will therefore have little ability for compromise, the UK government feels it needs to remain 'flexible'. It feels this way, without a hint of irony.

However, by persistently refusing to accommodate the wishes of the Scottish government, the British government risks alienating Scottish voters further and increasing their support for independence. A vote for independence

would almost certainly lead to the dismemberment of the UK, leaving a rump state of England and Wales, to face the chilly winds of the North Sea, alone and outside of the EU.

The prospects for Scotland are however no less rosy. And they would depend entirely on the kind of interim and long-term trade deal that the UK government is capable of fashioning. If the UK falls off a 'cliff-edge' – i.e. leaves without a deal from the EU – Scotland would have very little to lose. It could vote to leave the UK in a referendum, revert to the same WTO rules that the UK would enjoy in its trading arrangement with the EU, and could then apply for EU membership as an independent country, but with all the delays and complexities that follow.

If, on the other hand, the UK manages to obtain a palatable transitional and long-term deal, the costs of independence for Scotland could be much greater. A majority of Scottish voters would have to accept that the short-term economic costs of leaving the UK and, by extension, its new relationship with the EU, would be outweighed by the long-term economic benefits of being re-admitted to the EU's Single Market. Given the very close integration of the Scottish economy into the UK economy, it is uncertain that this would be the case. That apart, making this a selling point of the Independence campaign is unlikely to win many votes.

As they meet today to discuss the triggering of Article 50, both Theresa May and Nicola Sturgeon would do well to consider the perilous road ahead, if they both maintain the direction they have taken.

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*Note: This article gives the views of the authors, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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