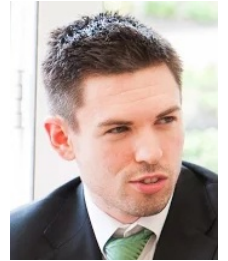


# Sturgeon's case for Indyref2 is a shaky one

[blogs.lse.ac.uk/brexit/2017/03/21/if-the-case-for-scotlands-indyref2-is-about-the-timing-of-brexit-its-a-shaky-one/](https://blogs.lse.ac.uk/brexit/2017/03/21/if-the-case-for-scotlands-indyref2-is-about-the-timing-of-brexit-its-a-shaky-one/)

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*The SNP have concluded that the political weather to announce Indyref2 will never look as good as it does right now. Looking at the process of negotiating Brexit, however, the claim that the case for Indyref2 is about the timing is a highly contestable one, write **Daniel Kenealy** and **Stuart MacLennan**.*



The UK and Scottish Governments are locked in a showdown over a second Scottish independence referendum (Indyref2). Nicola Sturgeon is demanding one between autumn 2018 and spring 2019, indicating some flexibility over the timing. Theresa May responded by saying, “now is not the time”, with the UK government focused on the challenge of delivering Brexit. Yet it is Brexit – or what the SNP perceive as the ‘hard’ Brexit being pursued by the UK government – that triggered the Indyref2 call. We remain in a ‘[phony war](#)’.



Sturgeon claims that the UK government has been unwilling to engage with her attempt to find a Brexit compromise. But, what Sturgeon describes as compromise – the position set out in [Scotland's Place in Europe](#) – is no such thing. The paper outlined an all-but-impossible demand and made that the litmus test of whether Theresa May was reasonable or unreasonable. As one of us argued [here before](#), it was a deeply flawed document: a cynical political move, not a serious proposal to achieve a differentiated Brexit for Scotland. The SNP's political strategy has brought them to the position it was designed to, with a little help it must be said from Theresa May's tone.

Both Sturgeon and May are appealing to a sense of national interest. Sturgeon claims to be acting on the basis of a [manifesto](#) commitment to hold Indyref2 if a “significant and material change in circumstances” occurs. While the SNP manifesto specifically cited Brexit as such a change in circumstances, it is a change that the SNP [did little to prevent](#) and may not even be willing to [reverse](#). Furthermore, it remains unclear whether Scots want another referendum, with [polls](#) suggesting a majority, at least for now, do not.

Sturgeon's argument focuses on timing, sequencing, and process. She has [remarked](#): “Scotland should have the right to choose our own future, once the terms of Brexit are clear, but before it's too late for us to choose a different path ... that means a window of autumn next year through to the spring of 2019.” Anybody who researches the EU for a living knows that achieving a comprehensive deal on the future UK-EU relationship in eighteen months is possible only in Alice's Wonderland. What we will have – perhaps – by autumn 2018, is an agreement to keep talking, a fairly threadbare agreement that formalises the divorce terms. A clearer picture will by then also have emerged about [what new powers](#) the Scottish Parliament might receive as a result of Brexit.

Put simply, by autumn 2018 the picture will be coming into focus. And in the months leading up to it – months in which the SNP wants to be engaged in a formal Indyref2 campaign – the most we'll be able to engage with are fragments of information from closed-door negotiations. We will be seeing through a glass, darkly. It would create the risk that Indyref2 would be characterised by the emptiness of the EU referendum, as opposed to the richness of the 2014 independence referendum.

Theresa May's national interest argument rests on surer ground. The UK – which 55% of voters in Scotland's 2014 referendum opted to stay a part of – is facing its biggest peacetime governmental challenge. The [Institute for Government](#) has shown that Brexit is stretching Whitehall. Defending the UK national interest, and ensuring that the UK as a whole has its best chance of securing a decent deal, cannot be squared with launching into Indyref2 now. Is that a ‘selfish’ UK position? Yes. But then a majority of Scots voted, in essence, for the good of the whole (the UK) to sometimes be considered ahead of the good of the part (Scotland). That's the essence of a union.



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Sturgeon has been cagey in articulating the choice she wishes to offer Scots voters, saying they must get a vote before it is “too late” to choose a different path. But the choice will not be between Brexit within the UK versus EU membership outside of the UK. Barring a reversal of Brexit by the UK government, the inescapable reality is that Scotland will be leaving the EU in 2019, as part of the UK. As such, there is no “too late” or “too early” calculation to be made. The EU door – the front door, not some side door or back door, although watch this space for the Scottish Government’s next all-but-impossible proposal – will be open for Scotland to apply for membership at any point in the future.

We explored an independent [Scotland’s membership of the EU](#) during Indyref1. Although Scotland’s continued EU membership would not have been *automatic*, it was likely to be *seamless*. We based our argument on the EU’s general principles, including that of sincere cooperation. Scotland’s independence would result in a considerable dislocation in the EU’s single market, which its institutions and Member States would be legally obliged to seek to avoid. Scotland’s continued membership, we argued, could be secured through fairly simple amendments to the treaties, rather than a full accession process.

However, post-Brexit, Scotland will have to apply through the standard process. The position of a territory seceding from a state that itself is seceding from the EU (as would be the case in 2019 or beyond) is vastly different from a territory seceding from a fully-fledged Member State (as was the case in 2014). The dislocation in the EU’s single market would have already occurred, thus removing a key factor that would have worked in Scotland’s favour in 2014. During Indyref1, the EU maintained that it would not negotiate with Scotland until the latter became independent. We argued that to wait until then would be tantamount to a dereliction of duty by the EU institutions. But, at the very least, Scotland would have to wait until it voted for independence before it could begin negotiating with the EU.

As one of us has already [written](#), “Unless the Scottish Government proposes that a new state could be set up and continued membership of the EU negotiated within the space of a month, Scotland will be leaving the EU.” Put crudely, the task for the Scottish Government will be to keep track of the various new laws that Westminster might pass after Brexit – laws that would not comply with EU law – so that they might be changed if and when Scotland became independent and sought EU membership.

Yet there is [uncertainty](#) about whether Sturgeon would even seek EU membership for an independent Scotland. Although EU membership remains official SNP policy, in recent days the idea has been floated of Scottish membership of the [European Economic Area](#) instead. This is not entirely unreasonable. Given that Scotland’s [two major trading partners](#) are the rest of the UK (63% of total trade) and the EU (16%), any solution that allows an

independent Scotland to trade as freely as possible with both would arguably be the best. If the UK were outside of the EU, that solution would be EEA membership for Scotland.

Of course, there may be a more compelling political explanation for this recent equivocation. Euroscepticism, measured broadly, is [on the rise in Scotland](#) and more than a [third](#) of those who voted SNP in the 2015 general election voted to leave the EU in 2016. Furthermore, for some voters (for example, fishermen) the prospect of independence may, in fact, be more attractive if it doesn't come with EU membership.

The situation is thus highly murky, with many uncertainties circulating. The SNP may, rightly, have concluded that the political weather will never look as good for them as it does right now. But if the case for Indyref2 is about the timing of Brexit, then the case is a shaky one.

*This post represents the views of the author and not those of the LSE Brexit blog, nor the LSE.*

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Also by one of these authors: [The Scottish Government's Brexit proposals are politically savvy and all-but-impossible](#)

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