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# Will a no deal Brexit lead to the break-up of the UK?

Michael Kenny and Jack Sheldon



**UNIVERSITY OF  
CAMBRIDGE**

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## Preface by Philip Rycroft

The protracted attempts of successive Prime Ministers to deliver Brexit, which have dominated British politics since the referendum in June 2016, have become inextricably interwoven with the politics of the domestic Union. The prospect of the UK departing without a deal – which remains the default legal position, unless a further extension or a deal with the EU are agreed – makes another Scottish independence referendum and a border poll on the future of Northern Ireland more likely. Current polling suggests that the outcome of both of these referendums would be in the balance.

For many people in Northern Ireland, a Brexit without a deal in place would challenge the core principles of the Good Friday Agreement and risk causing immense disruption to businesses and farmers. And in Scotland the United Kingdom which a majority voted to stay within, back in 2014, is changing fundamentally as the UK leaves the external union of which it has been a member since 1973. The events of the last few years have also affected attitudes in Wales towards its own future in the UK, and there are some indications that English opinion towards the Union is shifting too.

In my previous role as Permanent Secretary at the Department for Exiting the EU in the UK government, I was closely involved in the government's planning for a possible no deal outcome. But, however careful and comprehensive the government's plans, no deal would have a serious impact on the economic and wider life of the country. And this would be especially consequential for relations between the UK government and its devolved counterparts which are already under significant stress in the aftermath of the EU referendum.

This briefing paper by Michael Kenny and Jack Sheldon provides a clear and dispassionate analysis of the key practical and political implications for the domestic Union if no deal does come to pass. As well as considering the likely short-term repercussions, it maps the political dynamics that can be expected to unfold following calls for referendums on Irish unity and Scottish independence. At a time when most attention is being placed on the likely disruption of the UK's economy and major supply chains, the paper performs an important service in highlighting how the continued existence of the United Kingdom itself can be expected to become an increasingly intense political question in the months and years after no deal.

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*September 2019*

## Introduction

The chance of the UK leaving the European Union without a deal in place has increased significantly since the election of Boris Johnson to the roles of leader of the Conservative Party and Prime Minister in July. It is not a certain outcome of the current political crisis, but, given the obstacles which lie ahead of the Prime Minister as he seeks a deal with the EU that would be approved by parliament, it remains a very possible outcome. Even if the current Article 50 deadline of 31<sup>st</sup> October is extended as envisaged by the '[Benn Act](#)' passed in September, the Conservatives will campaign at the anticipated general election on a platform of leaving the EU at the earliest opportunity, without a deal if necessary.

A good deal of [analysis](#) has been devoted to the implications of a disorderly Brexit for the supply chains that deliver food, medicines and other vital goods to UK consumers, and to the short and longer term economic shocks which may ensue. But much less consideration has been given to what no deal might mean in political and legal terms for the domestic Union, and whether – and how – the UK might break apart as a result.

This briefing paper addresses this gap. It explores some of the main potential ramifications for the territorial politics of the UK of exiting without a deal in place with the EU, and identifies some of the key flashpoints and future events that will shape the politics of the coming period.

## Warnings about no deal's implications for the Union

Pundits and politicians from across the political spectrum have identified the risks which crashing out of the EU poses to the constitutional futures of Scotland and Northern Ireland, and the boost which such a scenario may give to nationalist politicians in both territories, and Wales too. Critics of Brexit such as [Sir John Major](#) and [Gordon Brown](#) have expressed their fears about such a prospect, and so too have a number of politicians who supported Theresa May's attempts to pass her Withdrawal Agreement, for example her deputy [David Lidington](#) and former International Trade Secretary (and prominent Brexiteer) [Liam Fox](#). May herself is [reported](#) to have pivoted away from no deal on the grounds that it would make the resumption of direct rule in Northern Ireland unavoidable. Other leading voices, such as [Philip Rycroft](#), former Permanent Secretary at the Department for Exiting the EU, argue that no deal is considerably more likely to generate conflicts between the UK government and devolved administrations and may well engender support for the Scottish government's demand for a new independence referendum.

The prospect of a disorderly exit from the EU will also carry directly into the next election campaign, and could well be an important factor in shaping outcomes in Scotland and Northern Ireland, each of which have key [marginal constituencies](#) that could be crucial to determining the composition of the new parliament.

We will suggest too that no deal will not just impact upon the Union and its governance in these parts of the UK. In England too, there could be some powerful, unforeseen implications of the events that may well cascade from a disorderly departure.

Against this backdrop we identify some of the most likely immediate repercussions of no deal for different parts of the Union, and also consider the chain of future possible events and developments which will have a major bearing upon the future constitutional relationships of the UK's constituent parts. Our assessment draws upon a body of research we have undertaken as part of the [Between Two Unions](#) project, funded by the Economic and Social Research Council.

## Key findings

Our key conclusions are:

- There is very little political support for a no deal Brexit outside England. This course stands in opposition to the expressed wishes of most members of the Scottish Parliament and National Assembly for Wales, and four of the five main parties in Northern Ireland.
- The short-term repercussions of a no deal Brexit would be felt particularly heavily in Northern Ireland. In the absence of a functioning Northern Ireland Executive, managing this will require the UK government to take on additional powers to direct civil servants.
- It is highly likely that a no deal Brexit would lead to fresh calls for a border poll on Irish unity and for a second Scottish independence referendum. If the UK government did not accede to these demands, there would be a strong likelihood of future legal challenges. The achievement of Irish reunification and Scottish independence could only happen after complex, and probably protracted, negotiations on a whole range of fundamental issues, so it is unlikely that either could realistically happen before the middle years of the next decade.
- A no deal Brexit will also have various repercussions for politics elsewhere in the Union. Independence may increasingly come onto the political agenda in Wales. Meanwhile, a more ambivalent stance towards the implications of Union for England may well emerge if the state's concern for Northern Ireland is seen as stymying the mandate supported by a clear majority of England's voters.

## Attitudes towards no deal across the UK

The overwhelming majority of elected politicians outside England are strongly opposed to the prospect of leaving the EU without a deal. Motions rejecting no deal have repeatedly been carried by large margins in the Scottish Parliament and the National Assembly for Wales. On 5<sup>th</sup> September 2019 a vote stating that the UK should ‘in no circumstances leave the EU on a no-deal basis’ passed by [87 votes to 28](#) at Holyrood and by [32 votes to 12](#) at Cardiff Bay. There have been no equivalent votes in Northern Ireland as the Assembly has not sat since the collapse of the Executive in January 2017. However, aside from the DUP, all the other main parties – Sinn Féin, the SDLP, the UUP and Alliance – are opposed to no deal, and between them represent a clear majority of voters. Political support for this option is stronger in England – a majority of MPs with English constituencies have voted to retain no deal as an option, in line with the policy of the Johnson government.

It is hard to speak in precise terms about levels of public support for no deal, as a [variety of different questions](#) have been used to test opinion on it by pollsters, and these can produce varying results. Nevertheless, there are some notable patterns in recent opinion surveys. These suggest that no deal is the first preference of 18% of Scottish voters ([YouGov, 30<sup>th</sup> August – 3<sup>rd</sup> September](#)), and 21% of British voters (YouGov, [5<sup>th</sup> – 6<sup>th</sup> September](#)). However, [polls](#) that ask simply whether voters are in favour or opposed to no deal have found as many 40% of voters across Britain to be in favour. Polling in Northern Ireland has found that 57% of voters believe no deal would be disastrous for Northern Ireland, although attitudes on this issue align very clearly with unionist and nationalist affiliations ([Lord Ashcroft Polls, 30<sup>th</sup> August – 2<sup>nd</sup> September](#)). There has been no recent polling on attitudes to Brexit that is confined to Wales.

## Short-term repercussions

### Northern Ireland

The immediate implications of leaving without a deal in place on 31<sup>st</sup> October would be felt most heavily in Northern Ireland. The Irish border would become the EU’s external border, requiring customs and goods checks in order to comply with EU law. As a [recent report by UK in a Changing Europe](#) makes clear, this is likely to hit traders from Northern Ireland especially hard who – when they cross the border – ‘will have to make customs declarations, pay tariffs, ensure proper certification for goods, make sure notification is given in a timely way and be registered as economic operators’. The Irish government has [pledged](#) to implement such checks in a way that minimises disruption, for example by initially carrying out checks at sites away from the actual border, but there will nevertheless be substantial challenges involved in rolling out these arrangements effectively in the immediate aftermath of a disorderly Brexit, and they cannot all be introduced immediately. Businesses and supply chains that operate on a cross-border basis will be badly hit, and security arrangements will have to be put in place given the threat of

smuggling, and the risk of any border infrastructure becoming a target of paramilitary activity. The UK government has declared that, in this eventuality, it does [not initially intend to carry out checks](#) on goods crossing from Ireland, except where absolutely essential. However, this would be a very difficult position to maintain if this situation were to persist for any length of time as it would place Northern Ireland's businesses at a significant disadvantage vis-à-vis their counterparts in the Republic.

It has been widely suggested that if there is still no Northern Ireland Executive in place (which is very likely to be the case), managing these risks will require UK ministers to take on additional powers to direct civil servants to make preparations in advance of a no deal departure. In response to a [parliamentary question](#) on 5<sup>th</sup> September the Northern Ireland Secretary, Julian Smith, confirmed that the UK government will seek the decision-making powers that are needed 'at the earliest opportunity' in order to protect 'rights, jobs and the economy and the commitments made by the Irish and UK Governments on the Good Friday Agreement'. Legal provisions for direct rule were repealed following the St Andrews Agreement of 2006, so new primary legislation would be needed for this to happen. Smith is [reported](#) to have been frustrated at the implications of the prorogation of parliament for the prospect of introducing this legislation. Whether this would constitute the formal resumption of direct rule by the British state remains open to debate, but it establishes a direction of travel which – in the absence of the resumption of devolved government in the province – is likely to lead to it. This would have major political consequences, and may well inflame some nationalist opinion in the six counties. It would increase the pressure on Northern Ireland's parties to reach an agreement on restoring devolved government. And there would be questions about whether direct rule is compatible with the terms of the Good Friday Agreement. The Irish Taoiseach, Leo Varadkar, has already [indicated](#) that his government would be opposed to the full introduction of direct rule and expects Ireland to be consulted on these developments through the full use of 'east-west' institutional structures such as the [British-Irish Intergovernmental Conference](#).

## **Devolved governments**

The devolved governments in Scotland and Wales would also be called upon to act immediately should a no deal Brexit occur, in areas that fall within their competence – for instance on issues that bear upon health, food and (in the Scottish case) justice policy. But the challenges which a disorderly exit will raise are very likely to cut across the demarcation between reserved and devolved issues, and there will be important spillover effects from decisions taken in response to this situation which impact upon neighbouring territories. These risks mean that an enhanced level of co-ordination between the UK and devolved governments, at both official and ministerial level, will be required. Anticipated disruption at ports in England may well have implications for the provision and pricing of food in Scottish and Welsh supermarkets. Devising a system that allows officials in the different tiers of government to plan for, and respond to, problems of this kind will be a priority, and devolved government ministers are likely to be invited to attend UK government meetings and briefings – something that has already been happening [since last January](#). The Welsh Government has published a '[No Deal Action Plan](#)' that it suggests 'represents a scale and breadth of work, which is unprecedented in our history as a government and a nation'.

Beyond these immediate challenges, the implementation of the [European Union \(Withdrawal\) Act 2018](#) will mean that the repatriation of powers previously managed at EU level, but which fall within formal devolved competence, will happen straightaway if no agreement is in place. It seems unlikely that, in the short term, the devolved administrations would seek to diverge from existing EU regulations. Indeed, in its recent [Programme for Government](#) the Scottish Government announced a new Continuity Bill that would provide for Scotland to be able to 'keep pace' with changes to EU regulation within devolved areas once the UK has left. The Welsh Government may well pursue a similar course. The two administrations have been [notably co-ordinated](#) in their approaches to the Brexit negotiations. Both support the development of UK-wide 'common frameworks', which apply to different policy areas, such as food and fisheries, where the governments agree that these are necessary. Work on these is now [well advanced by officials from all governments](#), but negotiating frameworks at political level, especially in more controversial areas such as agriculture and fisheries, will be challenging against the backdrop of no deal. The imminence of these discussions would also mean that the [ongoing official review](#) of intergovernmental machinery would take on greater urgency.

## **England**

English affairs, in the context of a no deal scenario, will for the most part be managed by Whitehall, because of the absence of any tier of government at the national level in the largest part of the UK. But, how well local authorities and the new combined authorities prepare to deal with potential impacts on the health and welfare of their populations will be key. Whitehall has for some while been working with these different tiers, stress-testing their resilience and capabilities, and agreeing emergency response plans with them.



# Ramifications for territorial politics

## Northern Ireland

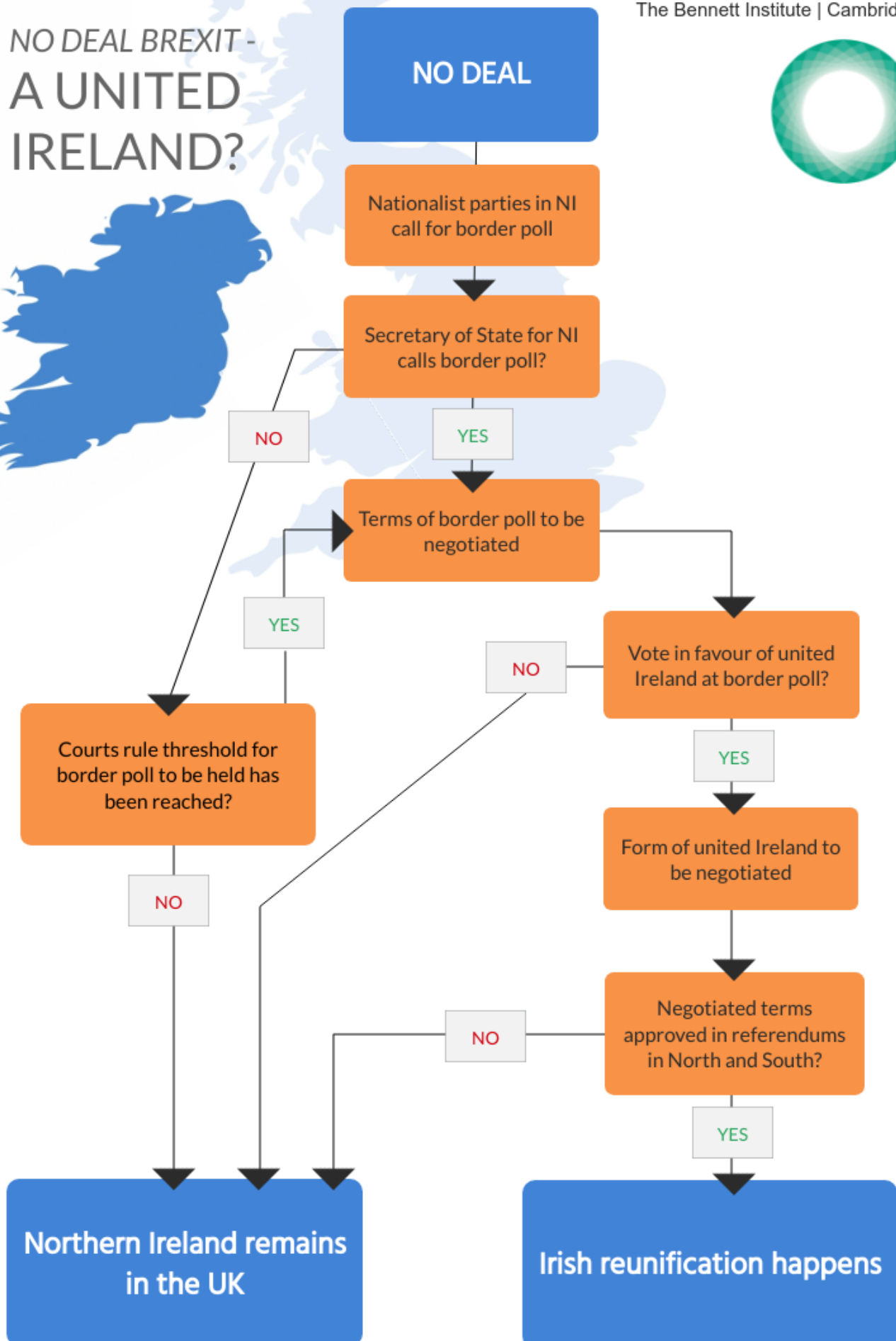
In the aftermath of a disorderly departure from the EU there will be new calls for a border poll on whether the North should join the Republic from some nationalist politicians, who will point to the pro-Remain majority vote in Northern Ireland in 2016, [recent polling](#) which suggests that a small majority of the public there might now favour a united Ireland and the contention that the introduction of border checks breaches the terms of the Good Friday Agreement.

The latest poll suggests that 46% of voters in Northern Ireland would now be in favour of reunification ([Lord Ashcroft Polls, 30<sup>th</sup> August – 2<sup>nd</sup> September](#)). The Irish government will come under some pressure to support these calls, but it would most likely adopt a cautious approach given the many unresolved questions about what a united Ireland would mean for the existing Irish state.

Under the terms of the [Northern Ireland Act 1998](#) the Secretary of State for Northern Ireland is required to call a border poll 'if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland'. No detail has been supplied about the criteria which would be used to inform this judgement, and there is every reason to think that the UK government would approach this issue with extreme caution. It is unlikely to view a no deal Brexit as sufficient grounds for such a poll of itself. But if subsequent polling indicates that majority opinion in the province becomes consistently in favour of unity, there would be considerable pressure on the Northern Ireland Secretary to call one in order to comply with the legislation and with the Good Friday Agreement. A judicial review may well happen if a poll was not called in these circumstances. Exactly how this vote, and a possible parallel referendum in the Republic of Ireland, would be conducted [remains unclear](#) at present. Issues that would need to be resolved include how and at what stage citizens as well as politicians and experts might be engaged in discussions about different options, how campaigns would be regulated, and whether the UK and Irish governments would advocate for a particular outcome.

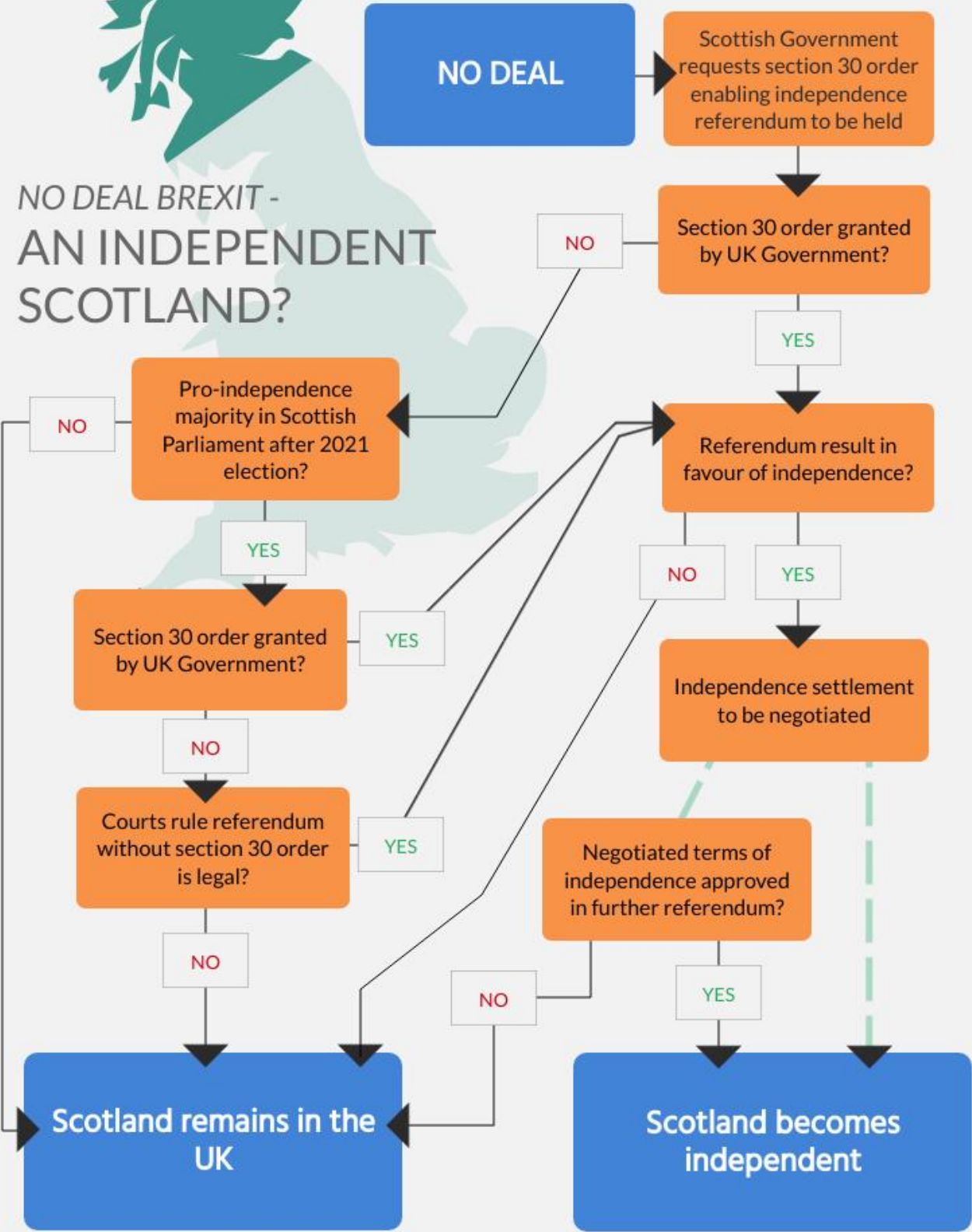
Were a vote in favour of reunification to happen, major questions about the future status of Northern Ireland within a united Ireland would arise. Would its power-sharing devolved institutions be retained within the Irish state? Would the North be fully integrated into Ireland, or would the UK government retain a future role as an advocate of the interests of unionists in the north of a united Ireland, as Ireland has had in relation to nationalists? All these are potentially contentious and divisive issues that will take time to work through. Further referendums on the agreed settlement would probably be necessary in both the North and the South, consistent with the approach taken to ratification of the Good Friday Agreement, and given the requirement that all amendments to the Irish Constitution must be subject to public approval. Consequently, it is highly unlikely that Irish unity would happen until the middle of the 2020s at the earliest.

# NO DEAL BREXIT - A UNITED IRELAND?





NO DEAL BREXIT -  
AN INDEPENDENT  
SCOTLAND?



## Scotland

The prospect of a no deal Brexit intersects closely with the independence question that remains at the forefront of Scottish politics. Since 2016 public opinion on independence has been relatively stable, with [polls](#) typically finding small majorities for remaining in the Union. However, there is some evidence that a shift to the pro-independence camp has taken place as the crisis at Westminster has deepened over the past few months. YouGov's most recent polling found support for independence at 49 per cent, compared to the 45 per cent who supported independence in 2014 ([YouGov, 30<sup>th</sup> August – 3<sup>rd</sup> September](#)). The same pollster also found that 45 per cent of Scots now believe that a second independence referendum should be held in the next five years. For many of those who voted No in 2014 and then Remain in 2016, the UK has changed in quite fundamental respects, as it prepares to leave the EU, given that the country's membership comprised an important argument against independence in 2014.

[Legislation](#) establishing the rules relating to the calling and conduct of referendums held in Scotland is currently passing through the Scottish Parliament and is expected to be law by the end of 2019. The Scottish Government has already signalled that it will make a request to hold a new referendum before 2021. It is probable that it would table this in the immediate aftermath of a no deal Brexit, calling for the power to hold a referendum to be transferred under section 30 of the Scotland Act – the procedure used [ahead of the 2014 referendum](#). It would cite as justification for another poll the exceptional and, in its view, highly damaging implications of the UK's decision to leave the EU without an agreement in place and the SNP's [2016 manifesto](#) commitment to holding a fresh referendum in the event of a 'material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will'. These claims would carry particular weight if the SNP had gained seats at a general election held prior to no deal, as current [polling](#) suggests would be the case.

Several of the candidates in the Conservative Party leadership contest indicated that they would refuse any such request, and it seems very likely that if Boris Johnson is still Prime Minister, he would [take this approach](#). At that point the Scottish Government might come under pressure from some independence supporters to press ahead with a referendum under its new Scottish referendum legislation without a section 30 order. Such a move would almost inevitably result in a case before the UK Supreme Court, and Nicola Sturgeon has [previously indicated](#) that she is unlikely to pursue this high-risk approach. More likely, the next key moment in this sequence would be the Scottish Parliament election of May 2021 which could be framed as a proxy for a referendum. Should a majority of seats again be won by parties that favour independence, there is every prospect that this would heap enormous pressure upon the UK government to grant a section 30 order. If the UK government did not relent in the face of this pressure, a major stand-off would result. It is quite possible that if such a scenario arose, there would then be an attempt to test the legality of holding a referendum without a section 30 order.

But while a no deal Brexit might well give advocates of a new independence referendum a significant boost, its outcome is far from certain. In some ways Brexit makes the case for independence more complicated, and difficult, to make. In particular, the Anglo-Scottish border would become a major factor in a way that it was not in 2014 when common EU membership was a default assumption. The importance of the UK market to Scottish industry and business,



the prospect of a hard border with England if Scotland rejoined the EU, and the economic consequences of such a divide may well give many pause for thought about independence. Equally, the experience of the extended political instability that has resulted from Brexit could deter some voters from the prospect of enacting another major constitutional change.

Were there to be a vote in favour of independence, Scotland would not leave the UK immediately, just as the UK did not leave the EU straight after the vote in June 2016. There is no agreement about how these negotiations would be structured, and how long they might take. Some experts have [argued](#) that there should be a further referendum on any independence deal at the end of these negotiations. Given that an independence referendum is very unlikely to happen before the latter half of 2021 at the earliest, Scotland would not become an independent country any earlier than the middle years of the next decade.

## Wales

Largely unnoticed by the London media, the political weather in Wales has also been changing in the context of the Brexit crisis, and a renewed debate among Welsh politicians about its future relationship with the UK is underway. The new leader of Plaid Cymru, Adam Price, has been keener to stress the party's [pro-independence position](#) than his predecessors were, and has begun to broaden the base of support for the party. And some senior Labour politicians in Wales have tentatively started to contemplate the position that they would take in the event that Scotland became independent. In an intervention that would have been unthinkable before Brexit, former First Minister Carwyn Jones has admitted to being '[indy-curious](#)', indicating that his objections to independence were pragmatic rather than principled, and suggesting that he saw 'no future' in a UK comprised only of England and Wales if Scotland and Northern Ireland left the Union.

A no deal scenario will not lead to immediate moves for Welsh independence, but it may well contribute further momentum to these developments. And there too, the devolved elections of 2021 may constitute an important moment. Recent polling suggests that it is not inconceivable that Plaid Cymru could usurp Labour as the largest party for the first time since the Assembly was set up in 1999 ([YouGov, 23<sup>rd</sup> – 26<sup>th</sup> July](#)). At the same time there also continues to be significant support for Brexit among the Welsh public, which is not reflected among its current elected politicians. Depending on the context in which the 2021 election is held, this may present opportunities for the Conservatives and for the Brexit Party, which topped the Welsh poll at the recent [European Parliament election](#). Meanwhile a recent poll that used the question format used for the Scottish independence referendum found support for Welsh independence now lies at 24% ([YouGov, 6<sup>th</sup> – 10<sup>th</sup> September](#)).

## England

It is in England that no deal has most support, with more of those who favour Brexit prepared to support this way of delivering it than in other parts of the UK. [Opinion surveys](#) from the last two years indicate more generally that the achievement of Brexit is a higher priority for many English

citizens than other potentially competing goals, such as preserving the stability of the Union. In this context, no deal – which has been framed by some politicians as a clean, radical break from the EU – has for some become synonymous with Brexit itself.

Whether this will translate into open hostility to the domestic Union remains to be seen. Certainly arguments stressing no deal's potential impact upon Northern Ireland and the stability of the Anglo-Scottish Union appear so far to have little cut-through with this group of English voters.

One important institutional issue that will – as indicated above – become more salient after no deal concerns intergovernmental decision-making as powers return from Brussels. How England – which is not currently represented within the extant machinery for IGR – is treated and represented within these negotiations may well become an issue of wider concern. The current model leaves the UK government in the awkward position of wearing a 'dual hat' as both the government overseeing English interests and the supposed arbiter for these engagements. For example, in intergovernmental discussions about future agriculture policy the particular needs of the Scottish, Welsh and (if devolved government is restored) Northern Irish sectors would be defended by representatives of their governments, but there would be no figure playing the same role for England. Resolving this problem is [complex](#), in institutional and political terms. But if intergovernmental relations become more visible, pressure to address this lack of English representation may grow.

## Conclusion

The UK's territorial politics was already strained before the 2016 referendum. Events since then have ratcheted up these tensions, and generated some sharp conflicts. New dynamics affecting public opinion in Northern Ireland and Scotland may result in existential challenges for the UK as a multi-national state. Our analysis suggests that leaving the EU without a deal may well precipitate a full-blown crisis in either or both of these contexts.

No deal has very little support among elected politicians beyond England, and its short-term repercussions would be felt most heavily in Northern Ireland. Consequently, it may trigger immediate calls for referendums on Irish unity and Scottish independence, and may well intensify debate about the future position of both England and Wales in any remodelled Union.

There is no certainty that referendums on Irish unity and/or Scottish independence would be held, or that they would be won by their proponents if they were. Even if there were referendum votes in favour of dissolving the Union, these would need to be followed by complex and protracted negotiations about future trading and political relationships with the remaining parts of the UK. But no deal has the potential to bring a growing set of conflicts and tensions within its territorial constitution to a head. And this prospect needs to be brought more squarely, and given fuller consideration, within the increasingly intense debates about Brexit.

## About the authors

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