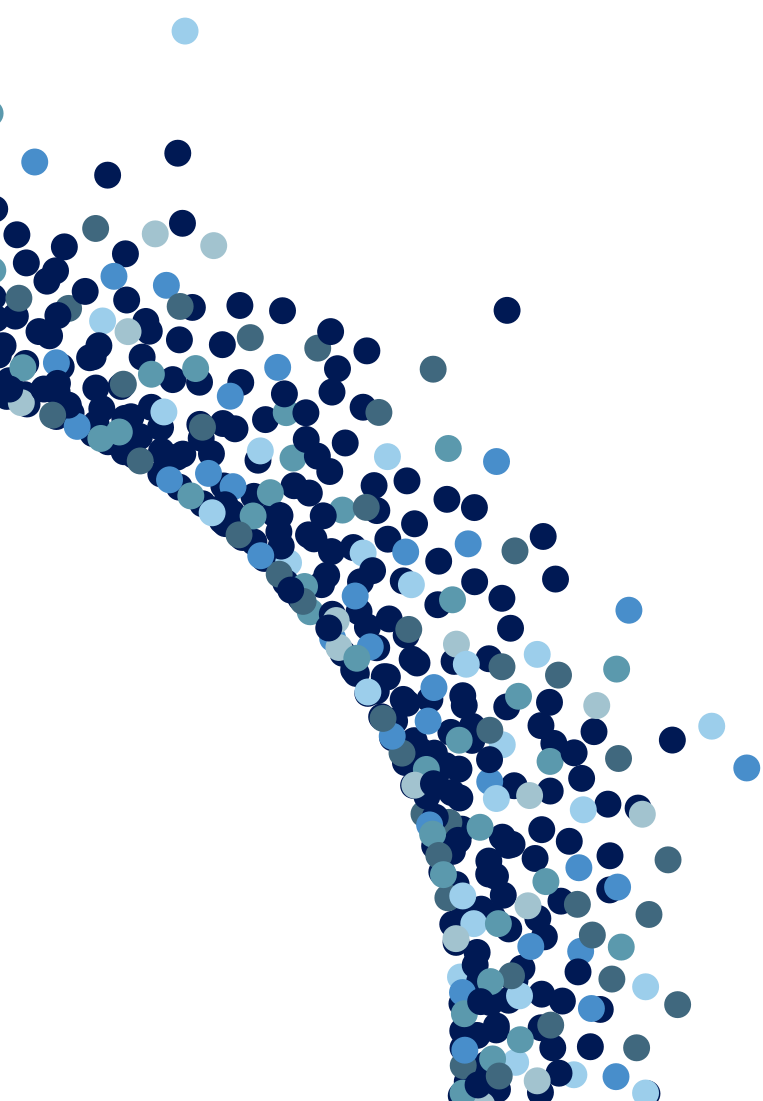




# POLICY PRIMER

## Citizenship, Borders and Migration in an Independent Scotland



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## This policy primer discusses how an independent Scotland might define its boundaries, in terms of access to citizenship and physical territory.

If Scotland were to become a separate, independent country important questions arise for citizenship and migration. Who would be a citizen of the new country? What policies would it adopt in relation to migration – who would be allowed residence and how would asylum seekers or illegal migrants be dealt with? The answers depend, of course, on the decisions that would be taken by an independent Scotland and how others reacted to these decisions. It is nevertheless possible to draw some conclusions on the issues which will arise and the potential outcomes.

### Possibilities and dilemmas for Scottish citizenship

Citizenship in general can depend on where a person is born (*ius soli*) or where their parents come from (*ius sanguinis*), or some combination of the two; additionally many states allow the possibility of obtaining citizenship by application (“naturalisation”), usually after residence of some length of time and perhaps other requirements. An independent Scotland would have to make policy choices about each of these, though in practice these would be constrained by its likely relationships with the rest of the UK and the EU.

First of all, however, as a new country Scotland would have to decide who became a citizen on “day one” of the new state. One obvious possibility is that British citizens resident in Scotland at the time of independence would be given the option of becoming Scottish citizens. That would include the overwhelming majority of Scottish residents.

Not all residents however might take up that option: according to the Scotland Analysis series, around 450,000 people living in Scotland were born elsewhere in the UK and some might prefer to retain UK citizenship only. This would be more likely if the UK and Scotland are permissive toward dual citizenship, but this would be a decision for the two new states. The UK has taken a relaxed attitude to dual citizenship and might continue to do so in respect of Scotland. The new Scottish state

might do the same, but these are policy choices yet to be made and are discussed further below.

It might well be that the Scottish state would wish to give the same rights to persons born on Scottish territory. This would follow the *ius soli* logic of citizenship. As a new state, however, this decision would have implications not only for new births in Scotland, but also potentially for anyone living today who was born in Scotland. Over 730,000 people born in Scotland are British citizens living in England and Wales, according to 2011 Census data. They will not be eligible to vote in the independence referendum, but might well hope to retain their connection with the new Scottish state. Similarly, people born in Scotland but resident elsewhere in the EU, or elsewhere in the world, would hope to be able to claim Scottish citizenship. How far this extends is an important policy choice – what about the children of Scots and to at least some of their descendants. These individuals might not have been born in Scotland, but would have claims to nationality under a *ius sanguinis* logic based in ancestry.

An obvious analogy is with Ireland. Article 2 of the Irish constitution provides:

“It is the entitlement ... of every person born in the island of Ireland....to be part of the Irish Nation”.

This provision allows Irish citizenship to anyone born in Ireland (including Northern Ireland). But, further, its constitution also allows for citizenship “by descent” to the children of citizens. In practice, citizenship can be obtained by anyone with an Irish grandparent. Thinking of its own diaspora, Scotland would have to make similar choices.

### Constraints on citizenship from the EU and UK

The scope for offering citizenship, however, would be constrained if Scotland were a member of the European Union. At present, it seems likely that Scotland would be able to become a member, though this would not

be automatic – negotiations would be required and conditions might be set as part of those negotiations. These could include some conditions relating to citizenship. An obvious analogy again comes from Ireland. The Constitution of the Republic of Ireland was changed in 2004 so that not all persons born in Ireland would become citizens. Article 9 of the constitution now provides that

“ a person born in the island of Ireland, ..who does not have, at the time of [their] birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality...’

The effect of this restriction to *ius soli* was to exclude the children of illegal immigrants without Irish ancestry, as this was seen as a backdoor way of gaining entry to the European Union.

Despite the fact that the UK is in general not opposed to dual citizenship, it is a matter of debate whether the rest of the United Kingdom would be prepared to allow dual Scottish and UK citizenship after independence. The position of UK Ministers is that this would depend on the citizenship rules adopted by an independent Scotland, as the Home Secretary said in Parliament on 10 June 2013 (an SNP member, by contrast, asserted that this might not be up to the UK and that “retaining a UK passport” would be automatic). It might be, however, that the UK would not wish to deny continuing citizenship to persons born within its territory, though it might not wish to extend that right to their children born in Scotland.

## Nationality and borders with the EU and UK

A related set of questions involves the free movement of people in and out of Scotland, with possibilities including free movement within the “Common Travel Area” of the UK Ireland and the Channel Islands as currently exists, or free movement within the EU. One of the privileges of national citizenship is generally free movement into and out of national territory, and for nationals of EU member states this privilege extends (with a few limitations) to other EU member states’ territory as well. Free movement for Scottish nationals would depend on decisions about membership in several transnational bodies: the EU (and within that, the Schengen agreement) and the British/Irish Common

Travel Area. Both options raise questions about the arrangements needed for border controls at the external boundaries of an independent Scotland.

Since the creation of the Irish Free State (except during wartime) there has been a Common Travel Area (CTA) between the UK, Ireland and the Channel Islands (Ryan, 2001). The Common Travel Area means that there are not routine immigration checks on travel between Ireland and Britain and passports are not required to move within the CTA (although these may be in common use in practice, for example to show to airline carriers).

The origins of the CTA are historical and reflect not only Ireland’s previous status as part of the UK, but also the initial ambivalence on the UK side about the nature of Irish independence. It reflects also the porous nature of the UK-Irish border, which is often in practice no more than a line on the map. Similar practical issues would arise if Scotland were independent. Although there are existing legal and administrative boundaries – setting out the jurisdiction of the courts and providing for responsibility for administering local services – there are no physical constraints and many border crossing points.

If Scotland were to join the EU, then the treaty provisions relating to freedom of movement for citizens of member states would continue to apply and Scotland would have the same obligations to allow EU citizens to enter the country as the UK presently does. However, a major additional issue for immigration would be whether or not Scotland as an independent country was required to adopt the Schengen agreement, allowing passport-free movement within the European Union. Britain and Ireland have opted out of this, thus maintaining the Common Travel Area. If Scotland were required to be a full member of Schengen as a condition of EU membership, then by Schengen requirements there would have to be immigration controls at the borders with the rest of the UK and Ireland. This would be a very challenging proposition for Scotland and indeed the rest of the UK. However, it would clearly not be in Scotland’s interest to restrict the movement of its citizens across the English border – the Scotland Analysis series estimates that 40,000 people do so on a daily basis – and it would also be a problem for the rest of the UK also. For this reasons, many in Scotland and the rest of the UK believe that in practice it seems unlikely that

such conditions would be imposed. Both countries would be involved in the putative Scottish accession negotiations and might well press for a relaxation of the requirement to join Schengen so as to preserve the Common Travel Area. At this writing, however, the terms of such a settlement are not clearly visible.

If Scotland were not to become an EU member (or were outside the EU for a period while membership were agreed) then similar border controls would be required. Scotland would then be a “third country” with respect to the EU and even if Scotland did not put up its own border controls, EU member states, notably the UK, would be required to under EU law. This would obviously be a serious practical problem and has implications for the length of the transitional period between an independence vote and the assumption of statehood. The Scottish government has suggested that this could be as short as 16 months. Whether, even with goodwill from all EU member states, the necessary Treaty changes could be agreed and ratified (with referendums in a number of member states as their constitutions require) is not at all clear (a full account of this see McLean et al. 2013).

## Implications for immigration policy

An independent Scotland would be legally free to determine its immigration policy. It might indeed see an argument for adopting a rather more open policy than the rest of the UK, or indeed than much of the EU. Scotland’s population structure is a policy challenge: Scotland contains proportionately fewer young people and more elderly than the rest of the UK and this trend is set to continue. This would appear to be principally related to lesser in-migration than into England in recent decades (National Statistics, 2011). It has been a policy of successive Scottish devolved governments to take what steps they can within the UK immigration framework to attract migrants, though this has not had marked effects on population.

But an independent Scotland’s freedom to adopt radically different policies in practice would be limited. First of all, as a member of the EU, the views of other member states on substantial in migration from third countries would be a constraint. An independent Scotland would have to adopt the EU’s common

approach to migration and the resultant harmonisation of immigration and asylum policies. Secondly, if Scotland sought to maintain a Common Travel Area with the UK, the rest of the UK would insist on consistency on policy on to avoid Scotland’s becoming a way of avoiding whatever immigration rules were set for it.

The practical implications for immigration services depend on the choices made. If Scotland remained part of the Common Travel Area with the rest of the UK and Ireland, then it would continue to require to police only its external borders (ports, airports) as at present. If it did not (for example if it had had to sign up to the Schengen agreement and had to police a land border with England and sea travel to Northern Ireland) then a substantially increased border control function would be required. No estimates of these costs have been made by the Scottish government, as it appears to be their policy position that the Common Travel Area will continue.

As a new state, Scotland would have responsibility for setting its own immigration policy. But if it wished to retain the Common Travel Area it would in practice have to adopt the same immigration policies as the continuing UK, or else invest significantly in enforcement of something akin to Canadian- or Australian-style regional-level migration policy-making (see the Migration Observatory policy primer “Sub-National Immigration Policy: Can it Work in the UK?”). Otherwise migrants would simply enter on whatever side of the border were easiest and relocate across it. This could also serve as a constraint on the extent to which Scotland could offer citizenship to, for example, the descendants of the Scottish diaspora. An approach similar to that of the Republic of Ireland would presumably be uncontentious (after all, most of those allowed citizenship under it would probably be in England) but anything more open might require a negotiation with the UK. An independent Scotland would obviously have responsibility for dealing with illegal immigrants and would be able to choose how they were treated, including the processes leading up to deportation. Again, if the Common Travel Area were maintained, the practical scope to operate more generous policies than England would be limited as the incentive for illegal migrants to cross the border would be high.

The overall conclusion is that if Scotland were a separate, independent state it would have legal power over migration and citizenship issues, but in practice its scope to diverge from EU and UK rules and approaches would be greatly constrained in practical and political terms.

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## Related material

- Migration Observatory Policy Primer - Sub-National Immigration Policy: Can it Work in the UK? [www.migrationobservatory.ox.ac.uk/policy-primers/sub-national-immigration-policy-can-it-work-uk](http://www.migrationobservatory.ox.ac.uk/policy-primers/sub-national-immigration-policy-can-it-work-uk)



## The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



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The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

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