Renewing Democracy through Independence

BUILDING A NEW
SCOTLAND

02

"What if that other voice we all know so well responds by saying, 'We say no, and we are the state'? Well we say yes – and we are the people."

Canon Kenyon Wright (Scottish Constitutional Convention, 1989)[1]

First Minister's Foreword

The Scottish Government believes the best future for Scotland is to become an independent country.

With independence, decisions about Scotland would be taken by the people who live here through their elected Scottish Parliament and government.

In this, the second paper in the Building a New Scotland series, we set out key democratic considerations to help people in Scotland make an informed choice about their future.

The current constitutional arrangements allow the Scottish Parliament and Scottish Government to exercise powers on 'devolved' matters, such as health and education, while the Westminster Parliament and UK Government have control of 'reserved' issues such as foreign affairs and most aspects of tax, energy, macroeconomic, and social security policy.

However, Westminster retains ultimate power – even on devolved matters – and over recent years, as this paper shows, the UK Government has acted to override decisions of the Scottish Parliament and claw back powers in devolved areas.

It has done so despite having the support of a relatively small proportion of the electorate in Scotland. The current governing party at Westminster, for example, has just six MPs representing Scotland and has not won an election in Scotland for almost 70 years.

This 'democratic deficit' has real-life consequences. In this paper we set out the impact of the damaging decisions taken by the UK Government and Westminster Parliament against the wishes and interests of the people of Scotland. The most obvious example in recent times – and with far reaching consequences – is Brexit, which removed Scotland from the EU despite the people who live here voting to remain.

There is now a substantial majority in the Scottish Parliament in favour of – indeed elected on a clear commitment to deliver – a referendum, to give the people of Scotland the choice of independence.

In an independent Scotland we can forge a better relationship – an equal partnership – with the rest of the UK, instead of the UK Government being able to assert 'Westminster sovereignty' regardless of the views of the Scottish Parliament or the people of Scotland.

Other people will have different views of course and we welcome the debate on how the democratic interests and voice of Scotland can best be served.

Rt Hon Nicola Sturgeon MSP
First Minister of Scotland

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Executive Summary

This is the second paper in the Building a New Scotland series, which is intended to give the people of Scotland the information required to make an informed choice on our future.

This paper sets out the Scottish Government's view, and the evidence supporting it, that independence is the only realistic way to renew Scotland's democratic institutions, respect the voice of the people of Scotland, and secure Scotland's democratic future. The paper rests on the fundamental belief that decisions about Scotland are best made by the people who live in Scotland through our own, independent parliament. It presents evidence to show that the tradition and practice of parliamentary sovereignty as exercised by the UK Government and the Westminster Parliament is eroding and constraining Scotland's democracy, and undermining a devolution settlement that is already too limited to enable Scotland to fully address the challenges of the future.

The United Kingdom – at least until now – has been considered a voluntary union of countries. Scotland is a nation, not a region of a unitary state. In line with the principle of self-determination, therefore, the people of Scotland have the right to determine our own future – in the words of the Claim of Right for Scotland, to choose the form of government best suited to our needs, including whether or not to become an independent country.[2]

However, the UK constitutional system is based on the unlimited sovereignty of the Westminster Parliament.

As a result, there is a clear misalignment between the reality of Scotland as a nation and a Westminster system which claims the right to make decisions for Scotland whatever the views of the people who live here.

Compounding this misalignment is the democratic deficit that Scotland all too often experiences.

UK governments are often elected with a small proportion of the vote in Scotland. Features of the UK system, such as the unelected House of Lords and the First Past the Post voting system for UK general elections, add to the democratic deficit.

Devolution has addressed aspects of this democratic deficit by giving Scotland a range of powers over domestic policy issues. However, since the EU referendum in 2016, this paper shows that the assertions of Westminster authority have become more pronounced. Devolution is being weakened – arguably deliberately – by the actions and decisions of the Westminster Government, for example, the passing of legislation on devolved matters without the consent of the Scottish Parliament and the constraining of devolved powers in key areas.

In this paper we present evidence to show how significant decisions made at Westminster recently – for example, on Brexit, energy, social security and immigration – are having detrimental effects on Scotland. There are no constitutional safeguards for the Scottish Parliament or democratic mechanisms that can be exercised by the people of Scotland to prevent these or further damaging decisions. Indeed, the intention of the current UK Government to pass legislation in breach of international law even calls into question its willingness to respect the democratic, rules-based, international order.

Pledges of more devolution – even if the intention to deliver was in any way credible – would not resolve the democratic deficit because ultimate power would be retained by Westminster.

In any event, no UK government of any party has ever shown the appetite for the fundamental reform required to provide effective and guaranteed self-government for Scotland within the UK.

The Scottish Government is committed to respecting, protecting and strengthening Scotland's democracy. The choice that would secure Scotland's democratic future, where decisions about Scotland are taken by the people of Scotland through our democratically elected and accountable Scottish Parliament, is independence.

Scotland's two futures

Who decides

If Scotland does not become independent	If Scotland becomes independent
The people of Scotland – through the Scottish Parliament and Government – will make decisions about devolved matters, but the UK Parliament will continue to have ultimate control of what is devolved and will be able to override devolved decisions. Decisions on reserved matters, such as most social security, tax, employment and macroeconomic policy, will continue to be made at Westminster by governments which can hold power without the support of the people of Scotland.	Decisions about Scotland will be taken by the people who care most about Scotland – those who live here – through our own, independent parliament. The Government of Scotland will be determined by the results of elections in Scotland.

These islands

If Scotland does not become independent	If Scotland becomes independent
Control of the arrangements for governing the relationships between the nations of the UK – and ultimate decisions on their application – will remain at Westminster. While there is no devolved parliament in England, UK governments will represent England as well as their responsibilities for reserved matters UK-wide.	The sovereignty of the people of Scotland – rather than the sovereignty of any parliament – can be written into a constitution. The Scottish and Westminster Parliaments, and the Scottish and UK Governments, can co-operate with each other as equal partners. Scottish Governments will – when Scotland becomes independent – continue to participate, as now, in the British-Irish Council (BIC) alongside the independent governments of the UK and Ireland, the devolved governments of Wales and Northern Ireland, and the Crown Dependencies of Jersey, Guernsey and the Isle of Man. Indeed, the BIC has the potential to become a much more powerful forum for co-operation and collaboration across these islands.

The EU

If Scotland does not become independent	If Scotland becomes independent
The UK has left the European Union, and neither the Labour nor the Conservative party in the UK Parliament proposes re-joining. Under the terms of the EU-UK Trade and Co-operation Agreement, Scotland is outside the European Single Market and Customs Union. Scotland has been taken out of a range of EU programmes which were to our benefit, including the Erasmus programme of student exchanges. In spite of our substantial vote to remain, Scotland is outside the EU and, given the position of UK-wide parties, this will continue to be so if we do not become independent.	With independence, Scotland would be able to apply to re-join the EU as soon as possible, and thereby benefit from being part of the world's largest single market, with the opportunity to represent Scotland's interests directly for the first time.

The world

If Scotland does not become independent	If Scotland becomes independent
Scotland remains subject to the foreign policy of the United Kingdom, with no guarantee that Scotland's interests, or the views and aspirations of the people of Scotland will be considered or heard.	Scotland will become an independent state, and the 194th member of the United Nations, able to conduct independent foreign and development policies according to Scottish interests and values, while working closely with the rest of the United Kingdom, our fellow Europeans and other international partners.

The economy

If Scotland does not become independent	If Scotland becomes independent
Significant economic powers – including macroeconomic policy, immigration policy, and employment, competition and company law – will remain at Westminster. On past and current trends, the prevailing UK economic model – the result of policy choices taken over decades, and long distinct from those of its European peers – will continue to generate relatively poor outcomes.[3] Outside the EU, the UK economy is likely to be less successful than if it were an EU member. The Office for Budget Responsibility forecast assumes a long-run productivity decline of 4% for the UK outside the EU relative to it remaining in the EU.[4]	Economic policy will be in the hands of the elected Scottish Parliament and Government and can be tailored to Scotland's needs. Across a range of economic indicators independent western European countries comparable to Scotland's have tended to outperform the UK.[5]

Taxation

If Scotland does not become independent	If Scotland becomes independent
The UK Government retains responsibility for the majority of taxes and the macroeconomic levers that help to drive tax revenues. The Scottish Government retains a limited set of tax powers, including only partial control of Income Tax.	By deploying the tax powers conferred in the Scotland Acts 2012 and 2016, the Scottish Government has delivered a fairer and more progressive tax system in Scotland, through its distinctive Scottish Approach to Taxation.[6] Full powers over taxation would build on this approach and allow the Scottish Government to create a modern and efficient tax system, tailored to Scotland's needs.

Social security

If Scotland does not become independent	If Scotland becomes independent
The UK Government retains responsibility for the majority of welfare benefits for people of working age, including key income replacement benefits like Universal Credit and the State Pension. The Scottish Government has a limited set of social security powers, primarily targeted at people who are ill, disabled and their carers.[7]	Full powers over social security and state pensions would enable Scotland to build on the existing approach for those benefits that are under devolved control, based on dignity and respect, and with access to social security as a human right. The progressive use of limited powers, most notably the establishment of the Scottish Child Payment, demonstrates the difference that could be made with the full powers that independence would provide.

Energy

If Scotland does not become independent	If Scotland becomes independent
Energy policy is largely reserved to the Westminster Government. Current market approaches incentivise nuclear power, in preference to renewable technologies where Scotland has significant natural resources. Currently, generators in Scotland also pay the highest charges in the UK for access to and use of the GB grid system.	Scotland is an energy rich nation, with a unique mix of energy resources in and around Scotland. Independence will provide Scotland with the means to build greater energy security, maximise our energy assets and deliver economic and social benefits, including better consumer protection. It will also enable us to prioritise and incentivise investment to decarbonise our energy systems and so accelerate our just transition to net zero.

Environmental and regulatory standards

If Scotland does not become independent	If Scotland becomes independent
The United Kingdom Internal Market Act 2020 requires Scotland to accept different, and potentially lower standards set elsewhere in the UK, even in devolved areas (including environmental protection and animal welfare).[8] The Scottish Parliament has no power to refuse to allow the import and sale of goods into Scotland which the UK Government may decide to accept in order to secure Free Trade Agreements.[9]	Standards in Scotland will be set by the Scottish Parliament and Government. As a member of the EU, Scotland would take part in decision-making on common European standards.

Equality and Human Rights

If Scotland does not become independent	If Scotland becomes independent
While important human rights safeguards, drawn from the European Convention on Human Rights, are currently written into Scotland's devolution legislation, these rights are not secure and can be changed or repealed by the UK Parliament at any time. The Westminster Government is proposing to replace the Human Rights Act 1998 with a "modern Bill of Rights"[10] that will weaken and undermine important protections.	With independence, the Scottish Parliament and Government will be fully responsible for all aspects of equality and human rights law. Human rights can be entrenched in a written constitution.

Scotland's place in the United Kingdom

The debate over Scotland's future involves two different views of the United Kingdom and Scotland's place within it.

The 'Scotland as a nation within a union of nations' view

In one view, Scotland is a nation, not a region, within a United Kingdom that is "a union of nations".[11]

The range of voices recognising that Scotland is a nation within a voluntary partnership of nations, with a right to democratic self-expression and determination, is longstanding and reaches across the political spectrum:

> **"Scotland is not a region, but a member nation of the United Kingdom."**
>
> Submission to the Kilbrandon Commission by the Labour Party 1970[12]
>
> **"as a nation, [the Scots] have an undoubted right to national self-determination; thus far they have exercised that right by joining and remaining in the Union. Should they determine on independence no English party or politician would stand in their way."**
>
> Margaret Thatcher 1993[13]
>
> **"the Scottish Parliament, which adjourned on March 25, 1707, is hereby reconvened."**
>
> Winnie Ewing, 12 May 1999[14]
>
> **"Power lies with the Scottish people and we believe it is for the Scottish people to decide how we are governed."**
>
> Joint statement by the leaders of the Scottish Conservatives, Scottish Labour Party and Scottish Liberal Democrats. June 2014[15]
>
> **"Our Union rests on and is defined by the support of its people … it will endure as long as people want it to – for as long as it enjoys the popular support of the people of Scotland and Wales, England and Northern Ireland".**
>
> Theresa May 2019[16]

The status of Scotland as a nation is established through historical developments and reflected in current realities. Scotland is a recognised political and territorial entity, with its own legal and education systems; and sporting, religious and cultural institutions. Many of these aspects of Scotland's distinct national status were deliberately retained within the Treaties of Union as conditions of Scotland's entry into that Union and remain in effect today.

More fundamentally, that the people of Scotland are a distinct nation, with the right to determine our own form of government, has been recognised in practice repeatedly, in the referendums of 1979, 1997 and 2014.

Scotland's status as a nation is recognised in the nature of the Scottish Parliament: a body that makes law and provides a democratically elected, national, political voice on all matters concerning Scotland. This was famously expressed by Donald Dewar at the opening to the first Scottish Parliament in 1999:

> "Today there is a new voice in the land, the voice of a democratic Parliament. A voice to shape Scotland, a voice above all for the future."[17]

Extensions to the powers and responsibilities of the Parliament after the 2014 independence referendum reflected the clear support of the people of Scotland for greater self-government that had emerged during the campaign. Continued widespread support for the Scottish Parliament and Scottish Government[18] reinforces the status of these bodies as national political institutions, reflecting the views of the people of Scotland on the place of the nation within the United Kingdom.

The 'Westminster sovereignty' view

The other view is that the United Kingdom is a "unitary state in which Westminster has merely 'lent' powers to Scotland, Wales and Northern Ireland and can take them back at any time".[19] It is part of the UK's constitutional system that Westminster has 'unlimited sovereignty' which it can exercise without legal constraints, and that no Parliament can bind its successors. This doctrine was also set out in the Scotland Act[20], which made clear that devolution did not affect the power of the Westminster Parliament over all matters, devolved and reserved.

The practical effect of this view is that Westminster can, at any time, by a simple majority in each House, change the powers of the Scottish Parliament or Government. There are no legal safeguards for the devolved institutions and the courts could not intervene. The position of devolved institutions is entirely contingent on the decisions of Westminster Governments and Parliament.

Despite these inherent features of the UK constitutional system, until 2016 there was some basis to argue that the United Kingdom could operate as "a multi-national country whose constituent parts enjoy different constitutional settlements and rights"[21] with Scotland's democratically-expressed identity within that voluntary union respected. This system depended on the Westminster Government and Parliament exercising self-restraint in the use of their powers and abiding by the Sewel Convention, which provided a non-legal safeguard for devolved institutions, as set out in the box below.

> ### The Sewel Convention
>
> The Sewel Convention is a constitutional convention that describes how the UK Parliament will act when legislating on devolved matters (matters within the competence of the Scottish Parliament, Senedd Cymru/Welsh Parliament or the Northern Ireland Assembly), or changes to the powers and responsibilities of the devolved institutions.
>
> Under the Sewel Convention, the UK Parliament will "not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament."[22]
>
> The Sewel Convention was observed from 1999. Although the Scotland Act 1998 was amended in 2016[23] to mention the convention, in 2017 the UK Supreme Court ruled that that this did not convert the Convention into a judicially enforceable or legally binding rule, but rather that it remained only a 'political convention' which the UK Government could set aside without the risk of legal challenge or any binding sanction or remedy.[24]

Since 2016, however, the underlying authority of Westminster within the UK system has become more prominent and more strongly asserted, and the difficulties of accommodating and securing any measure of national self-government for Scotland within this view of the Union has become clear. For example:

- the Westminster Parliament has repeatedly legislated on devolved matters – and to limit the powers of the Scotland's Parliament – without the consent of the Scottish Parliament, which voted against consent on seven occasions between 2016 and February 2022[25]

- there was no meaningful engagement by the Westminster Government with the devolved governments on the crucial issue of Brexit or the manner of implementing it[26]

- the absence of any legal or constitutional machinery to ensure effective intergovernmental working relations and respect for devolution has become clear, with the 2022 procedural reforms dependent, in the Scottish Government's view, on a "step change in attitude and behaviour from the UK government"[27]

- the Westminster Government has repeatedly refused to acknowledge the electoral mandate of the Scottish Parliament for an independence referendum, ignoring both the principle of self-determination that underpins any notion of the UK as a voluntary union, and the precedent set for the 2014 referendum.[28]

The Westminster Government's encroachment on devolution is also being felt in Wales. Concerned by the impact of the United Kingdom Internal Market Act 2020 on the competence of Wales' devolved parliament, the Senedd, the Welsh Government has sought to challenge the actions of the UK Government through the courts, with the Counsel General for Wales seeking permission to take the matter to the UK Supreme Court. The issue at stake for the Welsh Government, as it is for the Scottish Government, is for its democratically elected parliament to legislate in devolved areas without interference from the Westminster Parliament and the UK Government.[29] The impact of the 'Westminster sovereignty' view of the Union on the Scottish Parliament and self-government in Scotland (as well as Wales) is obvious. Westminster sovereignty, exercised without restraint, constrains, undermines and destabilises devolution. The Welsh Government has called this "grace and favour devolution" or "get what you're given devolution".[30]

Scotland's democracy and independence

This paper sets out the practical implications for Scotland of decisions taken in Westminster without regard to Scotland's interests; by contrast, what can be delivered when Scotland's democratic institutions work for Scotland; and the consequences if a centralised Westminster-based view of Scotland's place in the Union prevails.

The paper also demonstrates that only independence can provide the assurance that Scotland's democracy can thrive and its democratic institutions be protected.

The Scottish Government's view, shared by the Welsh Government, is that the United Kingdom should be recognised for what it is – a voluntary union of countries.[31] As the Welsh Government has put it, the law should "recognise the constitutional and political reality".[32] In the view of the Scottish Government, for as long as Scotland remains in the United Kingdom, its constitution should enshrine:

- the right of the people of Scotland to choose the form of government best suited to their needs

- the primacy of the Scottish Parliament on matters within its control, with protection against any Westminster decision to override

- the ability of the Scottish Parliament to choose whether and when to hold a referendum on Scotland's constitutional future
- the right of Scotland to become an independent country, should the people of Scotland vote for it to become one.[33]

The Scottish Government believes that Scotland should exercise these powers to become an independent country.

Independence will ensure the people of Scotland will always get a government chosen by the people of Scotland and that those governments can exercise decision-making over all the key policy levers that impact on life in Scotland.

By becoming an independent country, Scotland and the UK can become partners on the basis of genuine equality, co-operating closely when it is in our respective national interests – as on many issues it will often be.

Independence will also provide an opportunity to build new or strengthen existing arrangements to co-ordinate and develop relationships between the nations and governments of these islands. These will enable cooperation where that is in our mutual interests.

For example, there is the potential to promote positive, practical relationships through forums like the British-Irish Council and the British-Irish Intergovernmental Conference. International regional bodies are a feature of other successful partnerships in the world (for example, the Nordic Council). While Scotland currently sits at the table of the British-Irish Council, "co-operating on the basis of equality as an independent country will be much, much better than the situation just now".[34]

Whether in formal or informal structures, an independent Scotland will be able to negotiate and function from a position of parity with the rest of the UK and Ireland. Shared arrangements governed by the principles of equality, fairness and accountability will provide for mutual respect and parity of esteem, and strengthen relationships across these islands.

Scotland will continue to share both a history and future with people across the British Isles. The Scottish Government believes an independent Scotland would be a vibrant, diverse nation keen to work in partnership with the UK, fellow Europeans and the wider world. In contrast to Scotland's position in the Union, through which our influence is limited and curtailed, joining the EU as a member state would make Scotland an equal partner, able to take part fully in decision-making processes.

The UK Parliamentary system

The UK is a parliamentary democracy, but the Westminster Parliament embodies the notion of unlimited sovereignty to legislate on all matters, free of any constraint from underpinning principles of international law or human rights, and now also from EU law. The Westminster Parliament cannot legally be bound or limited by precedent, conventions, or agreements with others or the courts. Effectively, the only reliable check on power in the UK constitution is the need to command a majority in the House of Commons: all the commonly understood rules and limitations on the exercise of the power of Westminster are contingent on and can be overturned by the views of the majority at any moment.

The Westminster system does not adequately recognise the multi-national nature of the United Kingdom nor protect the interests of its nations.

Within the Union as currently configured, there is a clear lack of any effective, let alone entrenched, constitutional safeguards to manage democratic differences of opinion between the nations of the UK or even, in light of such differences, to properly respect and accommodate distinct political identity through the devolved institutions. When differences exist – as over Brexit, for example – Westminster's will always prevails.

In the Scottish Government's view, continued Westminster sovereignty over devolved matters means there is no realistic prospect of effective reform of this system

Indeed, even very limited reforms, such as the Fixed-term Parliaments Act, can be, and have now been, reversed by Westminster in favour of traditional prerogative powers exercised solely at the hand of the Prime Minister.

The interests of Scotland can never be protected, much less guaranteed, within the Westminster system.

Westminster sovereignty would make it difficult to protect the interests of Scotland in any circumstances. However, population disparity makes this even more difficult and the Union even more unequal. Only 9% of MPs in the House of Commons are elected by the people of Scotland. While this broadly reflects Scotland's population share, it does not reflect a status for Scotland as one of four equal nations within the UK.[35] England, the largest of the UK's nations, contributes 82% of MPs. On current population trends, by 2045 Scotland's population within the UK is estimated to be 5,385,081 of 70,968,244, or 7.6 per cent of the UK total,[36] with reductions to Scotland's representation in the UK Parliament likely as a result of boundary reviews. As a result, the ability of people in Scotland to influence the UK Parliament and Governments that govern us – already very limited – will be diminished even further.

A result of this disparity in population is that, at every UK general election since 1979, the largest party after the general election would have been no different had Scottish MPs not been counted.[37] For 39 of the 77 years since the Second World War, Scotland has been governed by UK governments that were elected by fewer than half of Scottish constituencies. The Conservative and Unionist Party last won a majority of seats in Scotland in 1955. Since 1979, and despite never winning an election in Scotland in all of that time, Conservative or Conservative-led Westminster Governments have been in power for a total 30 years – 70 per cent of that entire period.[38]

The fact is that the overwhelming majority of people living in Scotland today have been – and are currently – governed by Westminster Governments that do not reflect our political choices.

The democratic deficit is not, however, restricted to Scotland's lack of influence over the election of Westminster Governments. Even to the extent that Scotland can contribute to UK democracy, there are elements of the system that remain deeply and fundamentally flawed from a democratic perspective.

The House of Lords

The House of Lords, the upper house of the UK Parliament, is not elected by the people for whom it passes laws. As of May 2022, there are 764 members of the House of Lords. 650 are life peers, 89 are hereditary peers and 26 are Bishops of the Church of England.[39] Just under 29 per cent of its members are women.[40] The House of Lords is one of the largest legislative bodies in the world and an outlier in terms of size, hereditary element and unelected composition.[41] And as has been observed, "there are still no enforceable constraints on how many peers a Prime Minister can appoint to the second chamber of the UK legislature".[42]

The undemocratic nature of the House of Lords is a serious matter. Unelected Lords can and do currently act as UK Government Ministers. The House of Lords also has an important role in the UK's legislative process. Nearly every type of legislation passed or considered by the UK Parliament has to be approved by the House of Lords.[43] Lords can introduce amendments to Bills and vote to approve secondary legislation. The fact that in recent years the House of Lords has appeared – on some issues – to be more progressive than the Commons does not justify the lack of any democratic basis to it.

The unelected House of Lords can vote to change the law in ways that limit and reduce the powers of the elected Scottish Parliament, including through Bills that have been refused consent by the Scottish Parliament under the Sewel Convention.[44] In the view of the Scottish Government, it cannot be right to have an entirely unelected chamber able to overrule and override the decisions of the democratically elected Scottish Parliament.
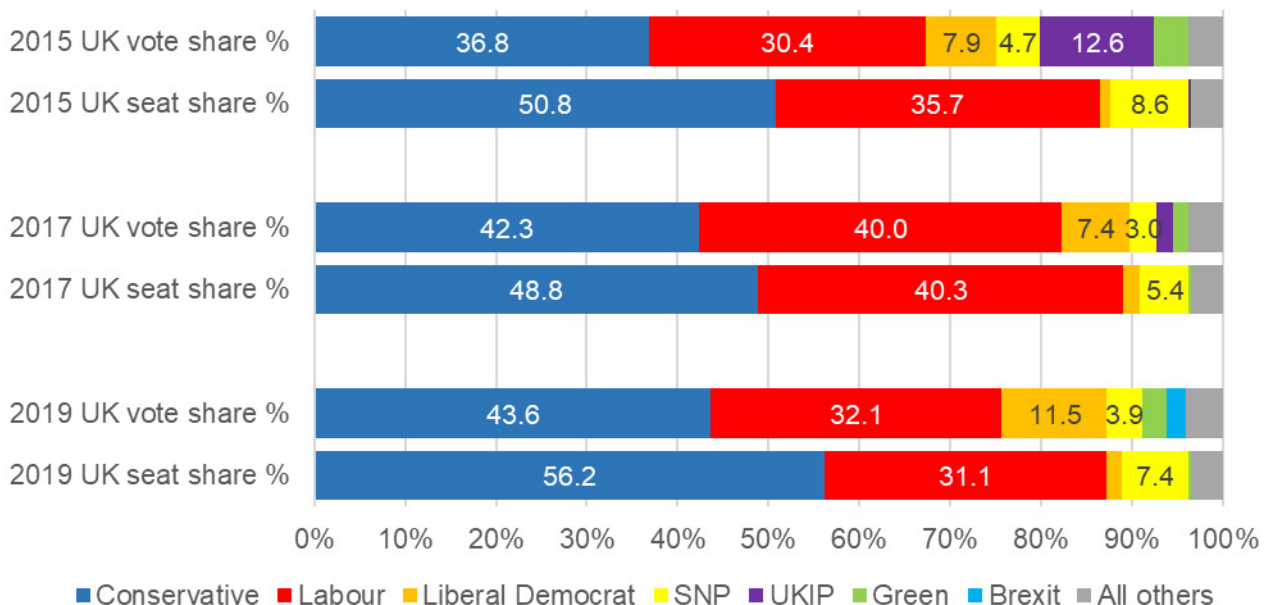
The UK electoral system

The voting system used to elect the House of Commons compounds the democratic deficit for Scotland.

One of the features of first-past-the-post in a multi-party system is that it generally produces disproportionate results, with national vote share not matched by seats won.[45] This frequently results in single-party governments with large majorities in the House of Commons, won on the basis of a minority of votes.[46]

This has significant implications for Scotland. As Figure 1 shows, in the 2015 UK general election the then UK Government won 36.8 per cent of the vote across the UK (15 per cent in Scotland) and on that basis had a majority of 12 in the House of Commons, allowing it to hold the referendum on EU membership.[47] In the 2019 election, the current government won 43.6 per cent of the vote across the UK, which resulted in a majority of 80[48] – on that basis it claimed an overwhelming mandate to agree the EU-UK Withdrawal Agreement (see Figure 1).[49]

Figure 1
Seat share and vote share at the most recent three UK general elections

	Conservative	Labour	Liberal Democrat	SNP	UKIP	Green	Brexit	All others
2015 UK vote share %	36.8	30.4	7.9	4.7	12.6			
2015 UK seat share %	50.8	35.7	8.6					
2017 UK vote share %	42.3	40.0	7.4		3.0			
2017 UK seat share %	48.8	40.3		5.4				
2019 UK vote share %	43.6	32.1	11.5			3.9		
2019 UK seat share %	56.2	31.1		7.4				

Source: House of Commons Library Briefing – General Election 2019: Turning votes into seats (parliament.uk)

In 2017 and 2019 Westminster debates on proportional representation, triggered by public petitions reaching the 100,000 signatory threshold, a range of voices called for a move away from first-past-the-post in order to address the democratic deficit and deliver a

> "voting system that is fair, representative and allows a wide range of views to be heard and represented in Parliament."[50]

The Scottish electoral system

In contrast, elections to the Scottish Parliament are by proportional representation. There is also a wider electoral franchise, including a minimum voting age of 16 and the right to vote for all people with a legal right to live in Scotland.[51] As Figure 2 indicates, this system produces results in the Scottish Parliament that much more closely reflect the votes cast in Scottish Parliament elections.[52, 53]

Figure 2
Seat share and vote share at the 2021 Scottish Parliament election
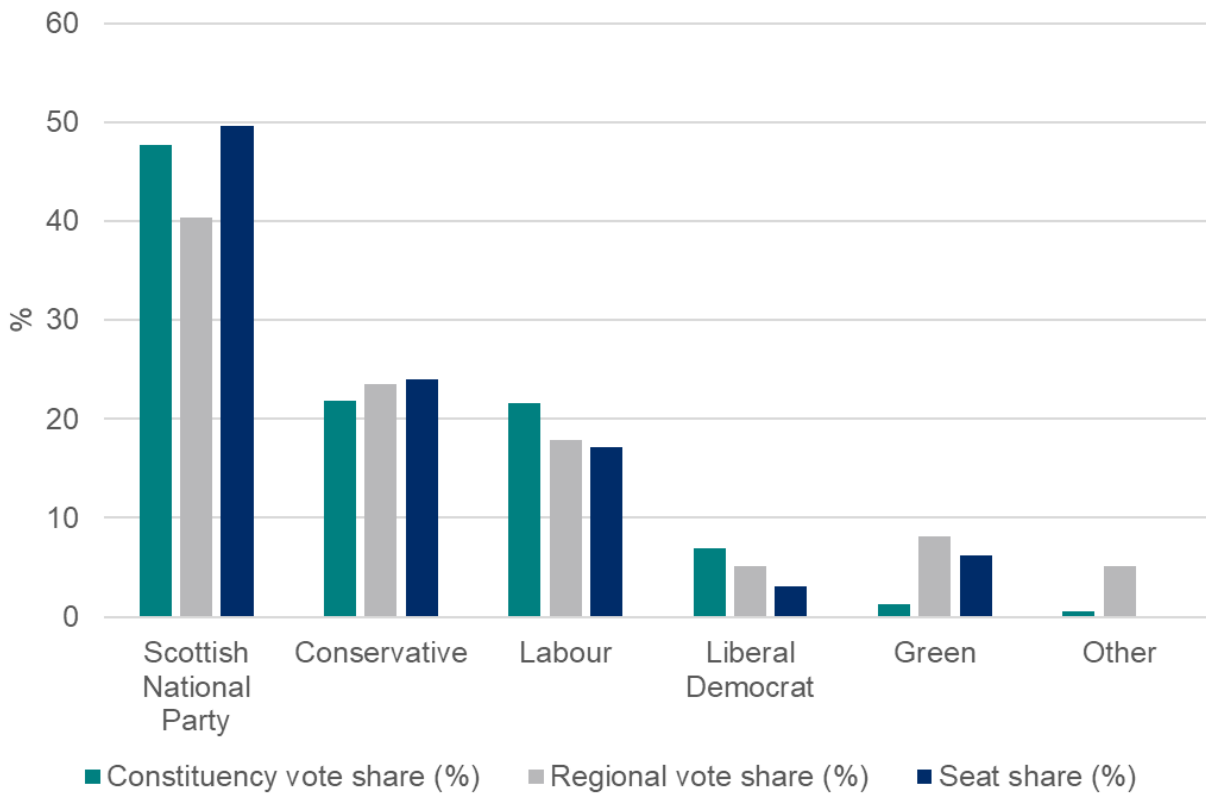
Source: Electoral Management Board for Scotland – votes and seats by party for Scottish Parliament Election 2021

While political debate and choices are just as keenly contested in Scotland as elsewhere, the way the Parliament is set up has meant that over successive sessions different forms of government have worked with other parties and stakeholders to deliver policy as well as exploring new forms of participative democracy such as citizens assemblies. Since devolution there has been majority and minority government, formal coalitions and currently a government based on a cooperation agreement between two parties.[54] MSPs from seven political parties, plus independent candidates, have been elected to Scottish Parliaments since 1999,[55] and MSPs from four different political parties have held ministerial office since devolution.

UK electoral law

Electoral law is generally a reserved matter, except where it relates to Scottish Parliamentary elections and local government elections, but there is nothing in the UK's constitutional arrangements that protects or guarantees the fundamental features of our democracy, including devolution. Under UK parliamentary sovereignty, the laws that govern elections and parliaments can be modified or repealed if a parliamentary majority in Westminster so decides.

The passage of the recent Elections Act 2022, for example, demonstrates that legislation described as "an unacceptable risk to the functioning of our democracy"[56] can be passed by any party with a Westminster parliamentary majority. This legislation will require voters to show an approved form of photographic ID before being able to vote in UK (not devolved) elections. This risks disenfranchising voters, despite there being no evidence of significant electoral fraud to justify this measure.[57] The Elections Act 2022 also gives the Westminster Government the power to issue a strategy and policy statement to the independent Electoral Commission, a move that has given rise to concerns about its operational independence. This has been described as a proposal that "should concern anyone with an interest in the proper functioning of a democracy".[58]

The introduction and repeal of fixed-term parliaments legislation in the UK Parliament also demonstrates the vulnerability of constitutional laws in the United Kingdom. Previously, the Westminster Parliament was dissolved by Her Majesty The Queen on the advice of the Prime Minister, or when five years since the last general election had passed.[59] This meant in practice that the timing of a general election was a matter for the Westminster Government of the day. The Fixed-term Parliaments Act 2011 transferred the ability to call an early general election to the House of Commons. The Act provided that early general elections could only be called where two-thirds of the House of Commons voted in that way, or where a vote of no confidence was passed with no alternative government confirmed.

In 2019, the UK Government failed three times to secure a vote for an early general election, before resorting to the passage of legislation, the Early Parliamentary General Election Act 2019, which could be passed by a simple majority.[60] Following the 2019 general election, the Westminster Government introduced, and the UK Parliament passed, legislation to return to the system which gave the Prime Minister the power to determine when general elections were held.[61]

This demonstrates that fundamental features of the UK's democracy – how often general elections are to be held, and who can decide when to hold one – can always be decided on the basis of simple, temporary majorities in the Westminster Parliament. This is possible despite the Fixed-term Parliaments Act, when it was passed, being described as "a permanent constitutional reform".[62]

Any of the laws that enshrine and protect our democracy – to do with the conduct or calling of elections, to do with the electoral system or the electoral franchise – can be altered or repealed at any point by a Westminster Government with a simple majority in the Commons, even if the party or parties forming the government did not secure a majority of the votes in the electorate as a whole.

Democracy and the Scottish Parliament – strengthening protections

Democracy in Scotland is designed to be different. As well as a proportional voting system that does not typically result in a majority for any party, changes to fundamental aspects of electoral law in the Scottish Parliament – including the franchise (those entitled to vote), the electoral system, the number of constituencies, regions or electoral areas by which MSPs are elected, as well as the number of members to be returned for each constituency, region or electoral area – require a two-thirds super-majority of MSPs to vote for them.[63] This reflects the principle that changing key rules of our democracy should require a process that is deliberative and based on consensus, and not subject to the simple political advantage of the government of the day.

So long as the Parliamentary sovereignty version of the United Kingdom prevails, Scotland's democratic institutions and processes remain vulnerable.

IN A NUTSHELL

The uncodified constitution of the UK contains many features that are significantly flawed.

These include:

- the limited ability of voters in the smaller nations of the UK to influence the results of UK Parliament elections, frequently resulting in them being governed by Westminster Governments they did not vote for

- the electoral system used for the UK Parliament, that produces disproportionate results

- the reforms to electoral law introduced by the current UK Government, which will make elections even less fair and

- the inability under the UK constitution to entrench or protect the fundamental features of democracy – including devolution – from being altered on the whim of the Westminster Government of the day

Why it matters who makes the decisions

Following the 1997 devolution referendum, the creation of the Scottish Parliament and the transfer of devolved powers from Westminster to Holyrood extended and deepened democracy in Scotland. It established democratically accountable national self-government – allowing Scottish decision-making on key issues in line with the choices of people in Scotland. It also introduced a fairer voting system for devolved elections.

In his opening speech in 1999, the then First Minister of Scotland, Donald Dewar MP MSP, called the establishment of the Scottish Parliament "a turning point, the day when democracy was renewed in Scotland".[64] Scottish Parliament elections, where the electorate comprise the people of Scotland, give Scotland the opportunity to express itself distinctly as a nation: what Donald Dewar described as a "new voice in the land, the voice of a democratic Parliament".[65]

Scotland's democratic voice is embodied in our democratic institutions. Scotland's institutions have the power to make many – though far from all – choices for the people of Scotland in a way that may not be reflected in the decisions of governments at Westminster. Scotland's institutions can reflect on and respond to the different conditions in Scotland, encouraging innovation in policy-making in Scotland. This, for example, has allowed Scotland under different governments to deliver free personal care, the UK's first indoor smoking ban, minimum unit pricing for alcohol, world-leading climate ambitions, pass laws that protect breastfeeding women, provide free period products, protect tuition-free university education, establish the Scottish Child Payment and double state-funded childcare.

Devolution is also about democratic accountability. It has brought decision-making about devolved matters closer to the people affected. The Scottish Government can be held to account by the Scottish Parliament and by the Scottish electorate.

Devolution has been good for Scotland. Scottish Parliaments and Scottish Governments since 1999 have taken steps that have improved the lives of the people of Scotland in meaningful ways.

Devolution has provided the opportunity for Scotland to make different and distinct choices:

- Reinvigorating our democracy, through the introduction of proportional representation in local authority elections, making the franchise wider and fairer in Scottish Parliament and local authority elections, by reducing the voting age to 16, and expanding the electoral franchise in devolved elections to all people legally settled in Scotland

- Implementing innovative public health measures, such as the UK's first smoking ban, laws which protect breastfeeding women, and minimum unit pricing for alcohol

- Modernising land ownership and making better use of our land, including the abolition of outdated Feudal Tenure, the introduction of the right to responsible access, the establishment of two National Parks, a community right to buy and land reform on an ongoing basis

- Improving health and wellbeing, including the introduction of free personal care, the end of prescription charges and dental charges, the introduction of the Baby Box, the integration of health and social care, and protection of the NHS from privatisation

- Keeping education available for everyone, through free university tuition, expanded free early learning and childcare, and expansion of universal provision of free school meals

- Enabling a fairer and more progressive system of income tax and the establishment of our own tax authority, Revenue Scotland

- Establishing Social Security Scotland, now delivering 12 benefits, seven of which are new, with an approach founded on the principles of dignity, fairness and respect set out in a statutory Charter[66]

- Taking strategic action to tackle child poverty – setting stretching statutory targets and increasing family incomes by interventions such as the Scottish Child Payment[67]

- Tackling the climate crisis, through world-leading climate change targets, reducing emissions, building resilience, creating more woodlands, and introducing free bus travel for those under 22 and over 60. Scotland was the first country in the UK to declare a 'climate emergency' and has legislated for some of the most ambitious legislative emissions reductions targets in the world (75% reduction by 2030 and net zero by 2045 – 5 years ahead of the UK). Scotland's emissions are down more than half of the way to net zero and we continue to outperform the UK as a whole in delivering long term reductions. We have also been able to harness, through the devolved management of the Scottish Crown Estate, our abundant marine resources to unlock the renewable energy which will help power Scotland to achievement of our net zero targets

- Protecting our natural environment by setting ambitious targets to reduce waste, investing in peatland restoration, creating protected areas in our land and seas, and being the first country in the UK to ban a range of harmful single-use plastic items

- Making our communities safer – Scotland has also become a much safer society since devolution. Recorded crime has fallen to one of the lowest levels since the 1970s. Over this time the excellent work of the Violence Reduction Unit has contributed to a substantial fall in the proportion of people experiencing violent crime, down 39% since 2008-09.[68] The Unit, which was established over a decade ago with cross-party support, is now being replicated across the UK

Trust in Scottish institutions

The benefits of devolution have been reflected in the trust of the people of Scotland in Scotland's democratic institutions. Since 1999, the Scottish Social Attitudes survey has found that, by a margin of 30 percentage points or more, adults in Scotland have been significantly more likely to say that they trust the Scottish Government to act in Scotland's best interests 'most of the time' or 'just about always', than to say that they trust the UK Government to do so (see Figure 3).[69]

Figure 3

Trust in Scottish Government and UK Government to work in Scotland's best interests 'just about always' or 'most of the time' (1999-2019)
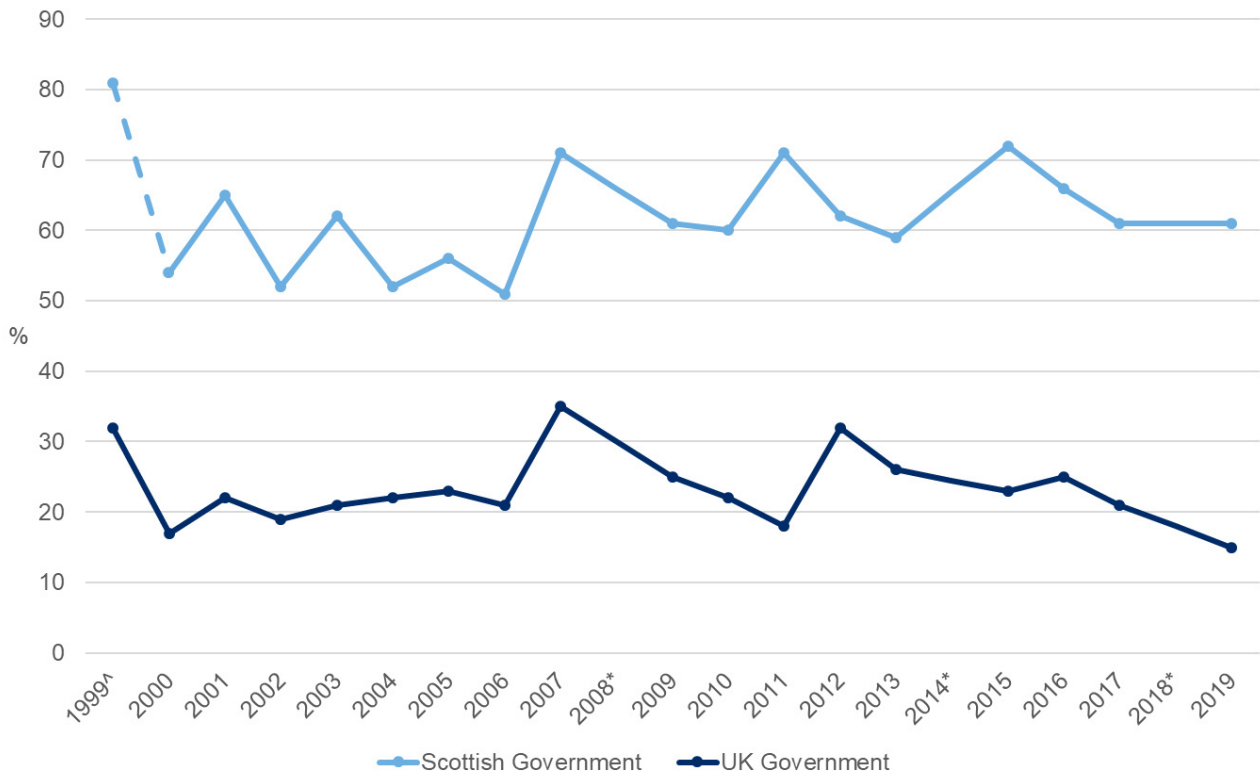

^In 1999 this question was asked prospectively: 'How much would you trust a Scottish parliament to work in Scotland's best interests?' From 2000-2004 the question asked: 'How much do you trust the Scottish Parliament...?' and from 2005 onwards asked: 'How much do you trust the Scottish Executive / Government...?'.

*No data was collected in 2008, 2014 or 2018.

Source: Scottish Social Attitudes 2019: attitudes to government and political engagement – gov.scot (www.gov.scot)

The people of Scotland have also been clear on who ought to have most influence on how Scotland is run – the Scottish Government. In 2019, the most recent year for which data are available, almost three-quarters (73%) felt that the Scottish Government ought to have the most influence over how Scotland is run, with only 15% believing the UK Government ought to have the most influence. This pattern has been consistent throughout the life of the Scottish Parliament (see Figure 4).[70]

Figure 4
Perceptions of who ought to have the most influence over how Scotland is run (1999-2019)
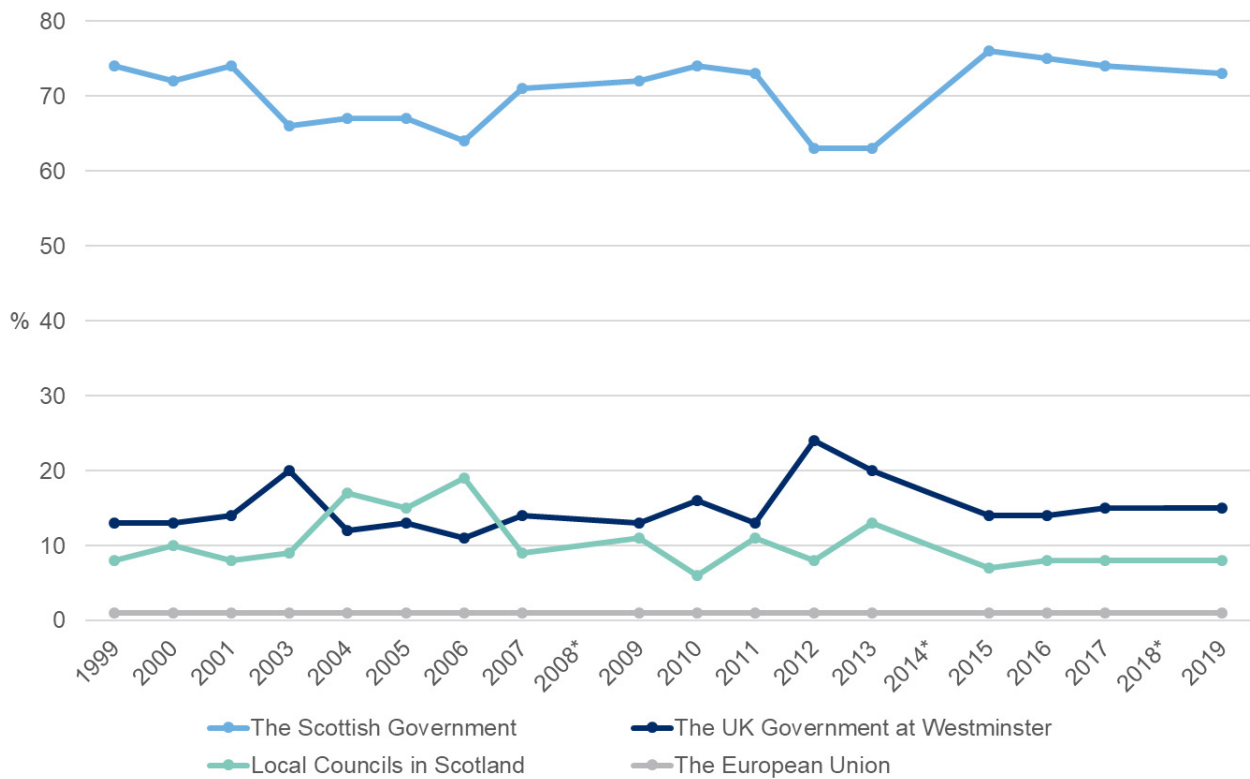
*No data was collected in 2008, 2014 or 2018.

Source: Scottish Social Attitudes 2019: attitudes to government and political engagement – gov.scot (www.gov.scot)

The people of Scotland have shown that they value the democratic institutions that devolution has delivered and that they trust those institutions to work for them.

The challenge to devolution and Scottish self-government within the UK

Devolution was intended to address concerns about Scotland's democratic deficit, which became increasingly obvious and acute through the 1980s and 1990s. National democratic self-government, for at least some domestic issues, would allow the people of Scotland to choose political representatives and leadership that reflected our views and priorities. Previously Ministers governing Scotland (in the old Scottish Office) were drawn from the party that had a majority across the UK as a whole, whatever its support in Scotland.

Devolution in 1999 therefore established the Scottish Parliament and the Scottish Government (at that time called the "Scottish Executive"). Except for a defined set of "reserved matters" (such as foreign affairs, defence, economic policy and social security) the Scottish Parliament could make laws about anything else – so called "devolved matters" (for example, education, health, policing, justice and the environment). Ministerial powers – for example to make regulations, fund public services, appoint public authorities – were transferred from UK Ministers for all devolved matters and in relation to a number of reserved areas too. The UK Parliament at Westminster retained

its power to legislate about anything, but in line with the Sewel Convention, agreed that it would not normally pass laws about matters within the powers of the Scottish Parliament or change the powers or responsibilities of the Scottish Parliament or Government without the consent of the Scottish Parliament.

Those arrangements worked as intended for the first seventeen years of devolution. The Sewel Convention was respected and on several occasions devolved powers were increased, responding to public opinion in Scotland as demonstrated in elections and the 2014 referendum campaign. For example – after extensive negotiation and agreement between the two governments and parliaments, political parties and wider society in Scotland – the Scottish Parliament took on new powers for tax, social security and other matters in 2012 and again in 2016. The then UK Government also recognised the mandate given by the Scottish Parliament election in 2011 for an independence referendum and negotiated and agreed the arrangements in the Edinburgh Agreement for it to take place in 2014.[71]

Brexit and devolution

Since 2016 decisions taken by the UK Government have highlighted the inherent vulnerability of devolved institutions within the UK's constitutional system.

The referendum on EU membership delivered a result in Scotland, in favour of Remain, that contrasted with the results in England and Wales. The four governments in the UK initially agreed a process that committed them to work together in EU negotiations, to discuss each government's requirements of the future relationship with the EU and to seek to agree a UK approach to the negotiations on Brexit.[72] This could have provided an opportunity for the views of the Scottish electorate to be taken into account and for consideration of a compromise proposal by the Scottish Government for mitigating the risks of leaving the EU.[73] In practice, however, there was little discussion between the governments, and no meaningful opportunity for the Scottish Government to influence the UK negotiating position. The form of Brexit – with the UK leaving the European Single Market and Customs Union as well as the European Union – was very different from this compromise proposal and reflected solely the views of the UK Government.

Brexit was also the context for several pieces of Westminster legislation that placed new constraints on the powers of the Scottish Parliament and Government and passed by Westminster despite the refusal of consent by the Scottish Parliament under the Sewel Convention.[74] Of these, the United Kingdom Internal Market Act 2020 has the most significant adverse effect on devolution, by requiring Scotland effectively to accept standards for goods and services set elsewhere in the UK and severely limiting the ability of the Scottish Parliament to set standards in large areas of devolved policy such as environmental protection and animal welfare.[75]

The UK Government also took on new powers for UK Ministers to spend money in devolved areas that had been removed from them in 1999.[76] The UK Government has used these powers to by-pass and divert funding from the Scottish Parliament, which has the primary responsibility for devolved policy matters in Scotland, risking incoherent and wasteful public expenditure, and removing clear accountability for public spending decisions on devolved areas in Scotland.[77] Independent analysis suggests that decisions made by UK Ministers to spend Levelling Up funds in Scotland resulted in "local authorities with the highest homelessness rates receiving less Levelling Up funding than the areas with the lowest" and Scotland "only receiving 3.5% of all Levelling Up funding we analysed, despite having 8.2% of the population".[78]

Recent developments and future trends

The UK Government has continued to impose legislation about devolved matters when it cannot reach agreement with the devolved governments and secure consent from the devolved parliaments. For example, it has recently taken powers to decide unilaterally how to implement certain devolved elements of trade agreements,[79] rejecting the view of both the Scottish Parliament[80] and Welsh Senedd[81] that agreement should be required when our devolved responsibilities are affected. The UK Government's approach was particularly concerning as international trade negotiations will become more prominent following Brexit and these agreements can affect a wide range of devolved interests. The UK Government's justification for ignoring the clearly expressed views of the Scottish Parliament was essentially that it disagreed, and wanted to have powers to make decisions unhindered by the need for agreement by the Scottish Government or Parliament – and thus deny democratic accountability for a matter within devolved responsibilities.

In the Scottish Government's view – a view shared by the Welsh Government[82] – this approach is fundamentally at odds with the devolution settlement, and cannot reasonably be described as "not normal" (in the terms of the Sewel Convention) to justify overriding the views of the devolved parliaments. There is therefore every reason to believe that breaches of the Sewel Convention will become more frequent, if the UK Government continues to rely on such justifications to ignore the views of the Scottish Parliament.

As the Welsh First Minister said in his evidence to the Lords Constitution Committee:

> "When it became inconvenient for the UK Government to observe Sewel, they just went ahead and rode roughshod through it."

> "More recently, I am afraid, the Sewel convention has withered on the vine."[83]

This encroachment into devolved responsibilities by the UK Government appears set to continue and increase.[84] The UK Government's legislative programme announced in May 2022 includes Bills for a UK Infrastructure Bank with powers to spend directly in devolved areas, without ensuring these decisions respect the priorities of the Scottish Parliament in areas for which it is responsible. The UK Government's "Brexit Freedoms Bill" potentially threatens the ability of the Scottish Parliament to align with the high standards set in EU law in devolved areas. The "levelling up agenda" includes "levelling up missions" covering devolved matters – such as education, health and justice[85] – developed without the agreement of the devolved governments or legislatures. The UK Government has indicated that it does not intend to seek the consent of the Scottish Parliament for its legislation on these "levelling up missions", despite the Parliament's democratic responsibility for these policy areas in Scotland.[86]

The recent Review of Intergovernmental Relations promised:

> "new structures and ways of working [...] built on principles of mutual respect and trust, respecting the reserved powers of the UK Government and Parliament and the devolved competences of the Scottish Government, Welsh Government, Northern Ireland Executive and their legislatures."

However, changes to structures and ways of working alone cannot deliver effective relations and respect between the governments of the UK without a genuine change in attitude and behaviour from the UK Government. The recent events set out in this paper provide no evidence of the necessary shift from the UK Government.[87]

Instead, the underlying approach of the UK Government towards devolution can be seen clearly from these trends: like the Westminster Parliament, it claims the power to intervene on all devolved matters and impose its views on Scotland, whatever the views of the devolved institutions.

This approach was set out by the then Prime Minister, Theresa May, shortly after the Brexit referendum:

"As the government serving the whole United Kingdom, formed in a Parliament drawn from the whole United Kingdom, the UK Government exercises a responsibility on behalf of the whole UK that transcends party politics and encompasses all aspects of our national life. While fully respecting, and indeed strengthening, the devolution settlements and the devolved administrations across the UK, we must unashamedly assert this fundamental responsibility on our part."[88]

More recently, the UK Government's white paper "Levelling Up the United Kingdom" said:

"Devolution settlements in Scotland, Wales and Northern Ireland recognise that devolved governments are best placed to deliver certain services, like health and education. But outcomes are a shared interest for the whole of the UK….In practice, this means all layers of government need to come together with a common purpose."[89]

The approach of the UK Government continues to be fundamentally at odds with the principle and purpose of devolution within the UK: a measure of national self-government for Scotland, providing democratic decision-making and accountability within Scotland for devolved matters.

The future of Scottish self-government within the UK is therefore clear: erosion of the autonomy of the Scottish Parliament, through constraints in UK legislation imposed without consent and in breach of the Sewel Convention; and policies increasingly imposed by the UK Government for Scotland, in devolved areas, whatever the views of the Scottish Parliament, or the people who live here.

IN A NUTSHELL

Devolution, which the people of Scotland supported in the 1997 referendum with an overwhelming 74% of votes, has delivered material benefits for the people of Scotland and is trusted by them to work in Scotland's best interests.

However, devolution has not protected Scotland from being taken out of the EU against the clear views of the majority (62%) of Scottish voters in the 2016 referendum, nor from the "hard" form of Brexit imposed by the UK Government.

Devolution has also been undermined by a series of actions by the UK Government and Parliament since 2016 that have the effect of limiting the ability of the Scottish Parliament to make decisions and laws for Scotland, and which encroach on devolved spending powers, without the agreement of the Scottish Parliament. This trend appears set to continue and increase, as will the UK Government imposing its views in devolved areas and against the wishes of the Scottish Parliament.

Under the UK's constitution there is no way to entrench or protect devolution. It will always be vulnerable to being overridden by the exercise of UK Parliamentary sovereignty and decisions of the UK Government.

The consequences of UK decisions for Scotland

There are practical consequences felt across Scotland and by all who live here from the decisions made by successive UK governments. The first paper in the Building a New Scotland series 'Independence In The Modern World. Wealthier, Happier, Fairer: Why Not Scotland?'[90] shows that, across a range of economic and social indicators, independent European countries comparable to Scotland have outperformed the UK.

Other significant decisions made at Westminster have proved not to be in Scotland's interests. These decisions at key points in Scotland's recent history have had a profound, damaging impact on the country.

Failure to invest oil revenues for the future

Like many nations, over several decades, Scotland has been a leading producer of oil and gas. Today, and looking ahead, it is a major force in renewable and sustainable energy. Scotland can look to a future where its abundant natural resources can be harnessed in a just transition to a net zero economy.

The extraction of oil and gas has generated substantial revenues for many countries, including the UK. A large part of the economic benefit of extraction flows to the UK Exchequer, through taxation of oil and gas production. Choices about managing the economic benefit of Scotland's oil and gas have also rested with the UK Government. Over the last 50 years, the UK has received £396 billion in revenue from North Sea production in real terms.[91]

However, rather than choosing to steward these energy resources, particularly oil and gas reserves, to produce long-term, structural benefits for the economy, successive UK governments have used the tax revenue to fund current spending.[92] In other words, the revenue generated from oil and gas reserves which could have been invested to generate a return for current and future generations, equalising wealth between generations, was allocated to current spending for shorter-term purposes[93].

Other policy choices were available. Recognising the non-renewable nature of the benefits extractable oil and gas reserves bring, other countries implemented innovative policies to ensure that these resources provided lasting returns. Norway invested in a sovereign wealth fund, which at the end of 2021 stood at 12,340 billion kroner or over $1.3 trillion.[94] By contrast, the Institute for Public Policy Research has estimated that:

> "If a fund had been created from the North Sea oil revenues in the 1980s, it would be worth over £500 billion [in 2018]."[95]

Austerity

In 2010, the UK Government introduced its first austerity budget, putting in place a set of policy choices that economists and economic historians have called "disastrous" and "reckless".[96] Like the decision not to introduce a sovereign wealth fund, austerity was a choice "and not one of Scotland's making".[97] The Scottish Government repeatedly called on the UK Government to "abandon its harmful and counterproductive austerity agenda"[98] pointing out that:

> "Scotland has suffered under a decade of austerity that has disproportionately hurt the poorest and most vulnerable in society."[99]

The effect of the UK Government's austerity policy is directly felt by low-income families in Scotland and exacerbated by measures such as the benefit cap and bedroom tax.[100] It is also felt by the wider population of Scotland by restricting the resources available for public services and through the narrowing of options available to the Scottish Government, as it spends to mitigate the effects of UK Government austerity with money that could have been spent on other priorities.

In 2019, for example, the Scottish Government spent more than £100 million counteracting the effects of UK austerity policy,[101] and in the year 2022-23 the Scottish Government is spending up to £78 million to mitigate, as far as possible, the UK Government's bedroom tax and benefit cap policies, with:

- around 91,000 Scottish households being supported through Scottish Government mitigation of the bedroom tax – which is costing £68 million in 2022-23; and[102]

- up to 4,000 households being supported this year through Scottish Government mitigation of the benefit cap, 97% of which are families with children.

Mitigating the benefit cap as fully as possible within devolved powers is expected to cost up to £10 million in 2022-23. Mitigation by the Scottish Government makes up for a loss of around £2,500 per family, helping families with the cost of living.[103]

The Institute for Fiscal Studies estimated that the UK's austerity policy resulted in a 6% fall in Scottish Government resource funding between 2010/11 – 2017/18.[104]

In Scotland, though core funding (which excludes temporary Covid funding) will be around 3% higher in 2021-22, after accounting for population growth it will still be around 2% lower per person over this 11 year period.[105]

Over the nine years of austerity prior to COVID-19, £13.6 billion less has been spent on Scotland's public services than if spending had been kept flat in real terms at the level it was in 2010/11 (see Figure 5).[106]

Figure 5
Scottish Government Resource Department Expenditure Limits (RDEL) excl. depreciation, real terms
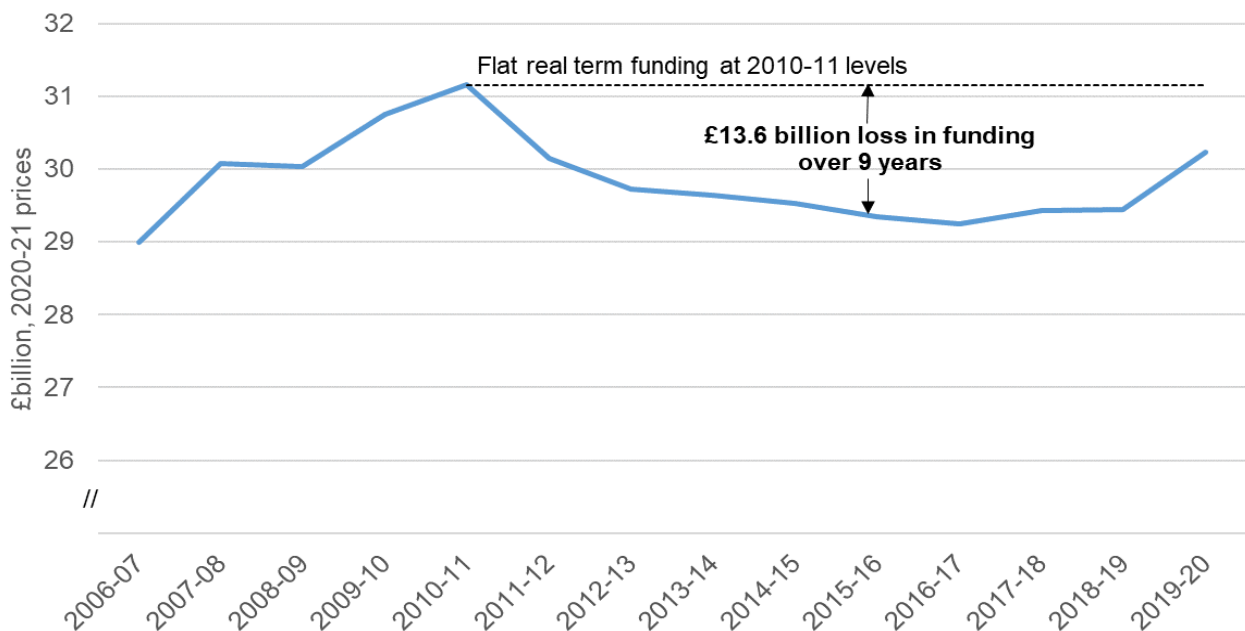
Source: Scottish Government analysis of HM Treasury Public Expenditure Statistical Analyses, table 1.5. Inflation adjusted using HM Treasury March 2022 GDP deflators. 2020-21 spending excluded due to large increase in RDEL driven by COVID-19 response.

Leaving the EU

As set out in *Scotland's Right to Choose*, Scotland's place in Europe was a major issue during the 2014 independence campaign.[107] The people of Scotland were assured by those campaigning for Scotland to stay in the UK that voting 'no' to independence would secure Scotland's place in the European Union.[108] The UK Government explicitly made EU membership part of its case for a vote to stay part of the UK.[109]

The Scottish Government's 2014 independence White Paper[110] clearly stated that an independent Scotland should continue as a member of the EU and that one of the benefits of independence was a stronger guarantee of continued participation in the European Union:

"The advantage of independence is that the people of Scotland will have the sole and final say. We will not be taken out of the EU against our wishes as may turn out to be the case if we are not independent."[111]

In advance of the Brexit referendum, the First Minister, Nicola Sturgeon, called for a double lock mechanism in the referendum legislation to require majorities in votes by all of the UK's four nations before EU exit could take place.[112] Such a move would have reflected the commitments made by Prime Minister David Cameron in 2015 that

"Governing with respect means recognising that the different nations of our United Kingdom have their own governments, as well as the UK government."[113]

The UK Government took forward the Brexit referendum on the basis of a manifesto commitment in the 2015 general election, with legislation voted through by the Parliament in Westminster without any double lock mechanism. In Scotland, however, only one of 59 Scottish MPs was elected on a manifesto commitment to hold a referendum, and 53 of 59 Scottish MPs voted against the legislation for the referendum itself.

In June 2016, the people of Scotland voted to remain in the European Union. 62% of voters supported remaining in the EU, with a majority for remain in every Scottish council area. On 31 January 2020 Scotland, as part of the UK, left the European Union against the wishes of the people of Scotland.

Brexit was taken forward in a way that cut across Scotland's interests at three levels, with direct effects on Scotland's democracy and Scotland's people:

- it was a rejection of the views of the Scottish Government, which set out in December 2016 a proposal for how Scotland might be protected from the worst effects of Brexit. *Scotland's Place in Europe* made proposals for giving effect to the result of the referendum falling short of its preference of independence in the EU.[114]

- it was a rejection of the views of the Scottish Parliament, which consistently voted against the UK Government's proposals for EU withdrawal,[115] including in September 2016 voting on a cross-party basis in favour of Scotland remaining in the European Single Market.[116] The Scottish Parliament also repeatedly rejected on a cross-party basis legislation which required its consent that related to the approach to Brexit.[117] The UK Government and Parliament passed this legislation regardless, limiting and reducing the Scottish Parliament's powers without the consent of the Scottish Parliament.[118]

- and it was a rejection of the expressed position of the people of Scotland, who had voted to stay part of the UK on the basis of continued UK membership of the EU and who voted overwhelmingly to remain in the EU.

The practical outcomes of Westminster's decision on EU departure are that the choices of the people of Scotland are narrowed: it is harder for Scots to travel, work, trade, and provide services in EU countries and for young Scots to benefit from the Erasmus student exchange programme.

Scotland's population and labour force

Migration is critically important to Scotland's demographic, economic and social prosperity.

It is clear in the official population projections produced by National Records of Scotland and the Office of National Statistics that Scotland is facing a demographic challenge.[119] Scotland is the only country in the UK where the population as a whole and in terms of people of working age is projected to fall over the next 25 years. The population of the UK as a whole is projected to grow by 5.8% in the years to mid-2045. Over that same period, the population of Scotland is projected to fall – by 1.8% from its peak. There are projected to be more deaths than births in Scotland each year and the number of people aged 65 and over is projected to grow by almost 30% by mid-2045.

Scotland is the only country in the UK to project population decline over the next 25 years. In particular, the 2020-based projections – which incorporate effects of the first phase of the COVID-19 pandemic – show that Scotland's population is now projected to begin to decline within the next decade. These are the first projections in many years to show Scotland's population falling in the near term (see Figures 6 and 7).
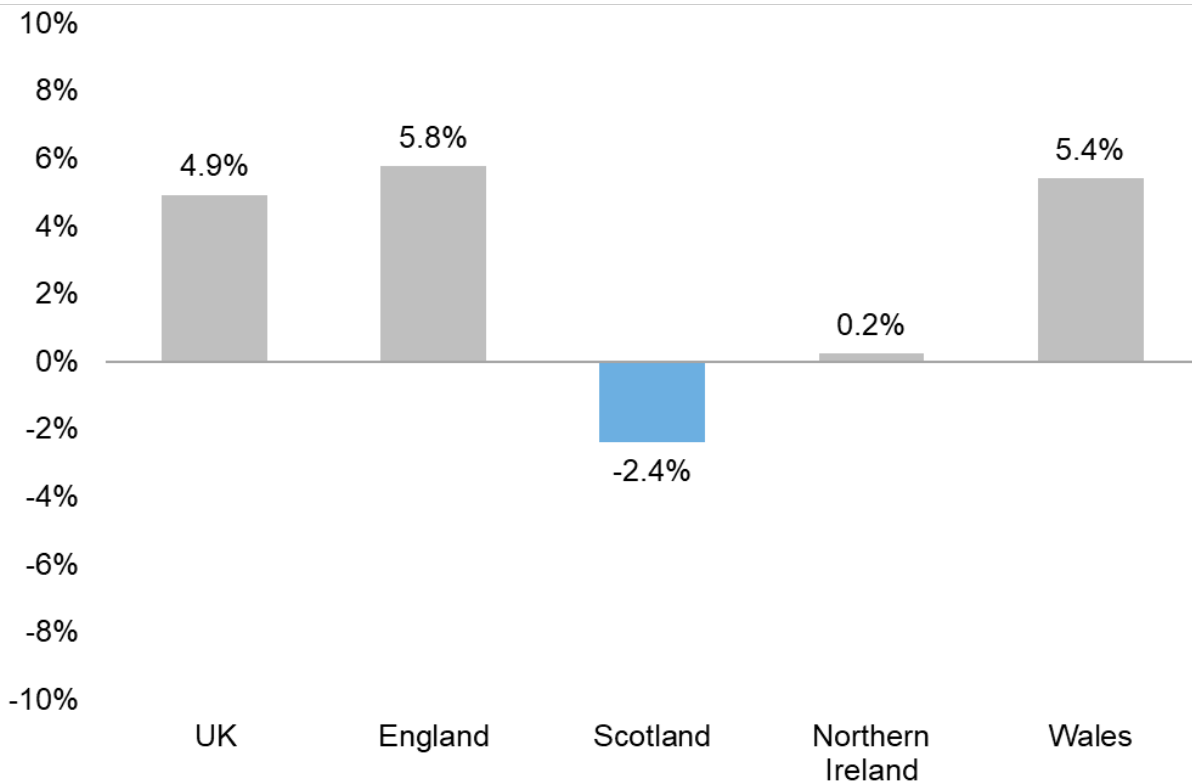
Figure 6
Population of Scotland, mid-2005 to mid-2045
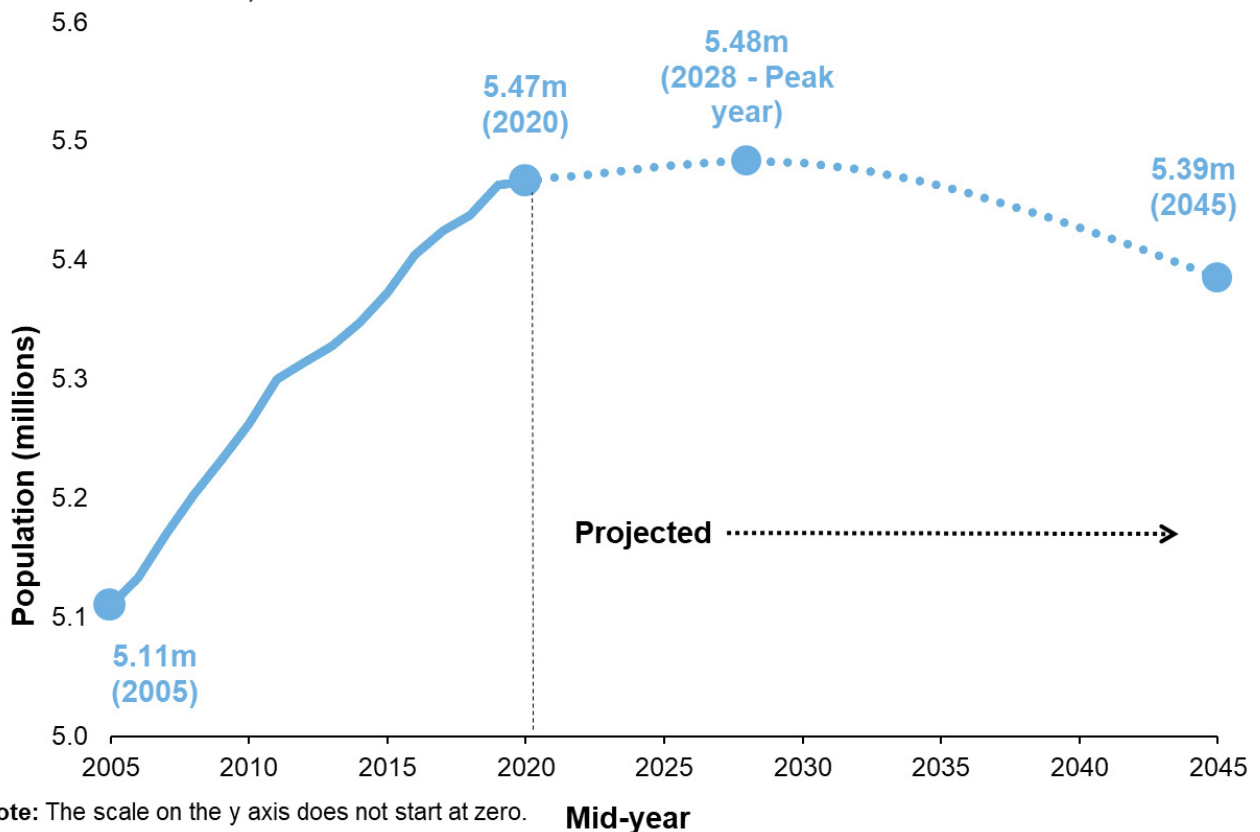
Note: The scale on the y axis does not start at zero.

Source: Projected Population of Scotland (2020-based) | National Records of Scotland (nrscotland.gov.uk)

Projected working age population change (%) across the UK, mid-2020 to mid-2045

Source: Projected Population of Scotland (2020-based) | National Records of Scotland (nrscotland.gov.uk)

The threat of population decline to Scotland's economy, public services and fragile communities has long been a concern. It was recognised as a key issue among policymakers from the time the Scottish Parliament resumed in 1999 as was the value of inward migration to meet the challenge. In the early years of the new Scottish Parliament, the Labour and Liberal Democrat Scottish Executive of the time worked with the Labour government in Westminster to introduce a tailored route in the immigration system to help address these concerns.

The Fresh Talent: Working in Scotland initiative was a post-study work visa for international graduates of Scottish universities. It was designed to attract and retain talented young people, encouraging them to put down roots in Scotland and contribute to the society where they benefitted from our world-leading higher education. Fresh Talent ran only for a short period, for four years from 2004 – but that was because it was mainstreamed across the whole of the UK from 2008.[120] This was an early example of policy innovation in Scotland influencing policy decisions elsewhere in the UK.

However, the subsequent government in Westminster abolished the post-study work visa in 2011 as part of its measures to limit immigration.[121]

The need for tailored routes to address the more pronounced demographic challenge in Scotland was raised by the cross-party Smith Commission in 2014. The report of the Smith Commission recommended "introducing formal schemes to allow international higher education students graduating from Scottish further and higher education institutions to remain in Scotland and contribute to economic activity for a defined period of time".[122]

A working group representing interests across civic society in Scotland, guided by a cross-party steering group involving every party in the Scottish Parliament, presented concrete proposals for a new scheme[123] which were rejected by the UK Government.

A post-study work visa has now been reintroduced across the UK, after a ten-year gap, with stricter eligibility criteria than Fresh Talent.[124] But in that time, the impact of Brexit and the ending of free movement has increased the importance of a wider and more tailored approach to support immigration to Scotland.

The UK Government's immigration system after Brexit puts in place thresholds and criteria that significant numbers of vacancies in Scotland cannot meet. Employers who previously were able to recruit EU workers under free movement are now not able to access labour supply through the immigration system. Table 1, below, produced by the Expert Advisory Group on Migration and Population in 2020, shows occupations within the Scottish labour market and the estimated proportion of roles that did not meet the thresholds and criteria in the UK immigration system. Over 90% of caring personal services, skilled agriculture, and secretarial, administration services and sales occupations did not meet the requirements in the UK immigration system. Almost 60% of associated professionals in health and social care did not meet the requirements.

Table 1
Effects of salary threshold on selected broad occupations within the Scottish labour market

Occupation	Proportion not meeting £25,600 threshold
Sales occupations	97.4%
Elementary administration service occupations	91.8%
Skilled agricultural related trades	91.2%
Caring personal service occupations	90.9%
Secretarial related occupations	90.7%
Sales customer service occupations	89.6%
Caring, leisure and other service occupations	88.9%
Elementary occupations	88.5%
Leisure and travel related personal service occupations	88.3%
Customer service occupations	77.9%
Administrative and secretarial occupations	71.5%
Administrative occupations	68.9%
Culture, media and sports occupations	62.4%
Health and social care associated professionals	59.0%

Source: Expert Advisory Group on Migration and Population[125]

The Expert Advisory Group on Migration and Population estimated that UK Government policy proposals on immigration after leaving the EU could reduce net migration to Scotland by between 30% and 50%.[126] Scottish Government modelling during the Brexit negotiations estimated that real GDP in Scotland will be 4.5% lower by 2040 than it would have been otherwise, as a result exclusively of the Brexit-driven reduction in migration.[127, 128]

The Scottish Government has presented proposals for options to tailor the UK-wide immigration system to create new routes for Scotland, up to and including a Scottish visa to encourage people to live and work here.[129] These moderate and considered proposals were dismissed by the UK Government[130] despite assertions during the EU referendum campaign that "Holyrood would be strengthened if we left the EU. The Scottish Parliament would have new powers... over immigration".[131]

Alongside migration issues, Scotland, like many other nations, is also facing a falling birth rate. Deciding to have a child is an important decision and it is a decision for that individual or couple. It is not for government to seek to dictate or influence whether an individual should have a child or how many children they should choose to have. However, there is a role for government in addressing the barriers that may prevent individuals and couples from starting a family. There are a range of factors which influence people's decision to start, or to expand, their family. However, we know that financial concerns are often key.

The Scottish Government is committed to building a family friendly nation. This will involve further action to address financial concerns, focus on the pre-birth to 3 stage – which makes a huge difference to life outcomes – and ensure the wellbeing of the family unit. Current actions to support this include: providing a box of essential items to all expectant mothers with our baby boxes; commitments to fund more early learning and childcare hours; commitments to free education for all of our children; providing support through the range of Scottish benefits; and transforming the provision of whole family support.

Employment Law, including the provision of parental leave and pay is a matter reserved to the Westminster Government, which means Scotland is currently limited to following the decisions of the UK Government in these areas.

Independence would provide the Scottish Parliament with powers to address population decline in Scotland, put in place an approach to immigration that meets Scotland's demographic, economic and social needs, and treat everyone involved in the immigration system with dignity, fairness and respect.

Reform within the UK?

In the Scottish Government's view, independence is the best means of establishing a secure future for Scotland and the only approach that enables a partnership of equals between Scotland and the other nations of these islands.

However, a range of other options has been proposed to redress the shortcomings of the current constitutional arrangements. One could be to give added protection in legislation to the devolved institutions and their powers and responsibilities through fuller legislative protection of the Sewel Convention or a statutory underpinning for intergovernmental relations machinery. Another option could be to enhance the powers of the devolved nations so that a bare minimum rest exclusively with the UK Parliament (a maximum devolution model sometimes called "devo-max"). A third is what is sometimes called "federalism" to secure the powers and responsibilities of the nations of the United Kingdom so that they are an embedded or permanent part of the UK's constitution. These ideas are not new, although they have gained greater prominence as part of the debate about Scottish independence.[132]

Although greater and more flexible powers for the Scottish Parliament – such as on employment law and a fuller and effective set of taxation and borrowing powers – would confer advantages, greater devolution or additional protections would do nothing to address the fundamental lack of symmetry in the UK's constitutional arrangements, which is embedded through the tradition of unlimited Westminster parliamentary sovereignty at the heart of the UK's constitution. No UK government of either of the two main UK political parties has shown any appetite for fundamental reform that would address that systemic problem. Indeed, the doctrine of Westminster sovereignty was embedded in the devolution statutes in 1998 and has been used by the UK Government since 2016 to limit devolution and claw-back decision-making in key areas to Whitehall and Westminster at the expense of self-government in Scotland.

The powers devolved to Scotland within the UK have always been the result of a compromise between achieving a coherent and comprehensive set of powers for the Scottish Parliament to address the challenges facing the nation, and an inherent bias towards retaining control by the UK Government. This tension has become very apparent in recent years – and has tilted firmly towards Westminster control.

Transforming the United Kingdom into a federal state with a written constitution enshrining the relationships between constituent parts, or even increasing devolution, would therefore require a radical departure from historical and cultural tradition, as well as current policy, and there seems no realistic possibility of the collective political will to undertake it.[133]

Scotland's right to decide

In 1997, the people of Scotland exercised our right to choose and chose devolution. In the 2014 independence referendum, the people of Scotland exercised their right to choose and chose, albeit narrowly, to continue to be a nation of the United Kingdom. In the aftermath of that referendum, the cross-party Smith Commission agreed that:

"nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose."[134]

The people of Scotland's decision in 2014 did not cancel our democratic rights.

Scotland's place in the United Kingdom requires the ongoing consent of the people of Scotland.[135] For the multi-national character of the United Kingdom to be meaningful, and for the right of the people of Scotland to determine the form of government best suited to their needs to be more than an aspiration, the people of Scotland must be able to decide whether and when they exercise their right to choose.

The people of Scotland express themselves politically through elections. Both in elections to the UK Parliament under the first-past-the-post system, and elections to the Scottish Parliament under a broader electoral franchise and a more proportional voting system, the people of Scotland have repeatedly returned a majority of parliamentarians committed to an independence referendum:

- After the **2016 elections to the Scottish Parliament**, a Scottish Government was formed with a manifesto commitment that "the Scottish Parliament should have the right to hold another referendum … if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will", and in March 2017 the Scottish Parliament mandated the Scottish Government to seek an agreement with the UK Government for an independence referendum to be held.[136]

- In the **2017 elections to the UK Parliament**, a majority of Scottish MPs were elected on a manifesto that reinforced that commitment: "Last year's Holyrood election delivered the democratic mandate for an independence referendum. The recent vote of Scotland's national Parliament has underlined that mandate. If the SNP wins a majority of Scottish seats in this election [the 2017 UK Parliament election], that would complete a triple lock, further reinforcing the democratic mandate which already exists."[137]

- In the **2019 elections to the UK Parliament**, a majority of Scottish MPs were elected on a manifesto commitment that "the people of Scotland have the right to choose their own future in a new referendum on becoming an independent country" and that "it must be for the Scottish Parliament not Westminster to decide when an independence referendum should be held."[138]

- In the **2021 elections to the Scottish Parliament**, a majority of MSPs, 72 out of 129, were elected on manifesto commitments to holding an independence referendum within the current Scottish Parliament (2021-2026), and in August 2021 the Scottish Government and Scottish Green Party concluded the Bute House Agreement, which commits them to "secure a referendum on Scottish independence […] within the current parliamentary session on a specific date to be determined by the Scottish Parliament. If the Covid crisis has passed, our intention is for the referendum to be within the first half of the five-year parliamentary session."[139]

In two successive Scottish and UK parliamentary elections, the results have therefore been clear majorities in favour of offering the people of Scotland the right to choose their own constitutional future once again. These have been democratic decisions.

It is not consistent with the UK as a voluntary association of nations, expressing themselves through democratic institutions, for anyone other than the people of Scotland, through our elected Scottish Parliament, to decide when a referendum should take place.

The Scottish Government is committed to a lawful and constitutional process for holding a referendum, and for Scotland becoming independent in the event of a vote for independence. We have called on the UK Government to enter discussions about a transfer of power that would put beyond doubt the Scottish Parliament's competence to legislate for an independence referendum.[140] And in the absence of any willingness to engage by the UK Government, we have sought legal clarity on the Scottish Parliament's powers to legislate for a consultative referendum, by asking the Lord Advocate to refer the matter to the UK Supreme Court.

The starting point of any discussions with the UK Government must be a recognition that it is for the people of Scotland to decide whether and when they will exercise their right to choose, and that the results of successive elections show they wish to do so.

IN A NUTSHELL

It is widely accepted that Scotland's continuing place in the Union depends on the consent of the people of Scotland, who have the right to choose independence if they wish.

The people of Scotland have given the Scottish Parliament a mandate to offer the choice of independence and the Scottish Government intends to deliver on that mandate.

Conclusion

The Scottish Government believes that decisions about Scotland are best made here. This paper has set out examples of Westminster decisions that are against the best interests of Scotland and have had long-term adverse impacts.

Since devolution, Scotland has had new democratic institutions and the people of Scotland have been able to choose, hold to account and dismiss devolved governments in Scotland.

Much has been achieved by Scotland with the limited powers of devolution. But in recent years, the vulnerability of those powers and increasing encroachments into devolved responsibilities by Westminster have been obvious – "devolution in Scotland has entered a new era of restrictive powers, Westminster override, and constitutional subordination".[141] In the Scottish Government's view, it is clear that the current UK constitutional system will not – and cannot – be reformed to provide guaranteed safeguards for devolved institutions and self-government in Scotland.

Scotland is already on a different democratic path from that being taken for the United Kingdom by the UK Government. The Scottish Parliament has a fairer electoral system and a wider and more representative franchise. Scotland has expressed its desire, through the ballot box, to remain in the EU. The EU referendum in 2016 has surfaced the contradictions in the devolved settlement, and the Scottish Government believes there is only one way to settle these contradictions and provide democratic certainty for Scotland – through independence.

This paper has set out the democratic case for independence. Further papers in the Building a New Scotland series will cover what Scotland could achieve with the full powers of an independent state.

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20   See Section 28 of the Scotland Act 1998

21   Scottish Government (2019) Scotland's right to choose: putting Scotland's future in Scotland's hands, p4 and note 7

22   The terms of the policy were first set out by Lord Sewel in the House of Lords during the passage of the Scotland Bill 1997-98 on 21 July 1998. House of Commons Library (2005) The Sewel Convention

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28   See First Minister letters of 31 March 2017 and 19 December 2019 – Scottish Government (2017) [Section 30 letter (2017)](); Scottish Government (2019) [Section 30 letter (2019)]() (as reported in The Scotsman), and Brooks, L (2021) [Scottish independence: Boris Johnson pushes back against IndyRef2]() The Guardian. See also the response of the UK government to the First Minister's statement on 28 June 2022 – [Scottish independence: 19 October 2023 proposed as date for referendum]() and BBC News (2022) [Supreme Court to rule on Scottish referendum plan - BBC News]()

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30   Miles, J. [We will no longer tolerate a 'get what you're given' approach to devolution]() (Welsh Government, Brexit Minister speech to National Eisteddfod, August 2019)

31   The view of the Welsh Government is that "… the United Kingdom is best seen now as a voluntary association of nations taking the form of a multi-national state". Welsh Government (2021) [Reforming our Union: Shared governance in the UK]()

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33   Scottish Government (2019) [Scotland's right to choose: putting Scotland's future in Scotland's hands](). These views are also supported by the Welsh Government, in terms of understanding the rights of individual nations, as set out in: Welsh Government (2021) [Reforming our Union: Shared governance in the UK]()

34   First Minister, quoted in Paton, C. [Sturgeon: Sinn Fein success shows 'big questions' being asked about UK future](), The Independent, 7 May 2022

35   59 of 650 MPs – approx. 9% of UK parliamentary constituencies, with the current population of Scotland approximately 8% of the UK population. See UK Parliament [Parliamentary constituencies]() (accessed May 2022) and Office for National Statistics (2021) [Population estimates for the UK, England and Wales, Scotland and Northern Ireland: mid-2020]() (accessed May 2022)

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37   House of Commons Library (2014) [General Elections without Scotland, Part 1: 1945-2010](). The House of Commons Library analysis went up to the 2010 UK general election. Using the same methodology to look at the 2015, 2017 and 2019 elections shows that, on each occasion, the largest party following the election would not have been different if Scottish constituencies were not included.

38   House of Commons Library (2021) [UK Election Statistics: 1918-2021: A century of elections]()

39   No other religious officeholders are entitled to places in the Lords, although some religious leaders have been given life peerages.

40   UK Parliament [MPs and Lords: Lords membership]() (Numbers correct as at 10 May 2022)

41   The UK Parliament is the only bicameral legislature whose upper house is larger than its lower house, and it is the second-largest legislative body in the world, after the Chinese National People's Congress. There are a few remaining legislatures with some hereditary element, mainly reflecting tribal sociology in their countries: Senate of Lesotho [Lesotho Senate – Lesotho Senate (parliament.ls)](), House of Elders in Somaliland [House of Elders (Somaliland) – Upper Chamber (govsomaliland.org)]()

42   Russell, M (2020) [Boris Johnson's 36 new peerages make the need to constrain prime ministerial appointments to the House of Lords clearer than ever]() The Constitution Unit (blog)

43   Under the Parliament Acts 1911 and 1949, the Lords ability to veto Bills (other than Bills to extend the duration of a Parliament, and some types of less common legislation) was limited so that they could become law despite the opposition of the Lords in certain circumstances. Seven Bills have been passed under the provisions of the Parliament Acts. And Money Bills, that is Bills designed to raise money through taxes or spend public money, may only begin in the Commons and must receive Royal Assent no later than a month after being introduced in the Lords, even if the Lords has not passed them. The Lords cannot amend Money Bills. UK Parliament, [The Parliament Acts]()

44   For example, the [United Kingdom Internal Market Act 2020]()

45   Electoral Reform Society [First Past the Post]() (accessed May 2022)

46   Of the 21 UK general elections since the Second World War, only three have not produced a majority government: February 1974 (Labour minority government), 2010 (Conservative-Liberal Democrat coalition government), and 2017 (Conservative minority government). The last election at which a single-party UK Government was formed that secured over 50% of the popular vote was in 1931, though in 1955 and 1959 the Conservative Party won over 49% of the popular vote, and in 2010 the combined vote of the Conservative and Liberal Democrat parties UK-wide was 59%. See also: Electoral Reform Society [Proportional Representation]() (accessed May 2022)

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49   Singh, K UK PM Johnson: All Conservative election candidates pledge to back my Brexit deal, Reuters, 16 November 2019

50   Thewliss, A MP contribution to House of Commons 2017 debate on Proportional Representation, UK Parliament, Hansard, debated on 30 October 2017. See also Sheppard, T MP contribution to House of Commons 2019 debate on Proportional Representation UK Parliament, Hansard, debated on 23 April 2019; and, Stone, J The SNP would vote to introduce proportional representation at Westminster, Nicola Sturgeon confirms, The Independent, 4 May 2015

51   Scottish Parliament elections are held under the Additional Member System, where 73 MSPs are elected in single-member constituencies and 56 MSPs are elected on regional lists (Scottish Parliament, How MSPs are elected)

52   Electoral Management Board for Scotland (2021) Votes and seats by party for Scottish Parliament Election 2021

53   The other devolved legislatures in the UK are also elected by proportional representation. The Senedd (Welsh Parliament) uses the same Additional Member System as the Scottish Parliament. The Northern Ireland Assembly uses the Single Transferable Vote system, where voters elect 90 MLAs from 18 constituencies, by ranking candidates

54   Following the 1999 and 2003 Scottish Parliament elections, Labour / Liberal Democrat coalition administrations were formed. Following the 2007 and 2016 Scottish Parliament elections, Scottish National Party minority administrations were formed. Following the 2011 Scottish Parliament election, a majority Scottish National Party administration was formed. And currently, following the 2021 Scottish Parliament election, the administration is formed by the Scottish National Party and, following the conclusion of a cooperation agreement with the Scottish Government, the Scottish Green Party.

55   The Scottish National Party, Scottish Conservative Party, Scottish Labour Party, Scottish Liberal Democrat Party, Scottish Greens, Scottish Socialist Party and Scottish Senior Citizens Unity Party have had MSPs elected. The Scottish Socialist Party split, also creating the "Solidarity" party, but Solidarity did not win a seat at an election. SNP, Labour, Liberal Democrat and Scottish Green Party members have held ministerial office.

56   Wragg, W MP. Letter from Public Administration and Constitutional Affairs Committee to Secretary of State regarding Elections Bill House of Commons, Public Administration and Constitutional Affairs Committee, 12 April 2022

57   Legislative Consent Motion Reference S6M-03009 on UK Elections Bill, Scottish Parliament, 1 February 2022. See also Electoral Commission (2020) 2019 electoral fraud data

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61   Dissolution and Calling of Parliament Act 2022 (c.11) TSO (The Stationery Office), 2022

62   House of Commons Public Administration and Constitutional Affairs Committee The Fixed-term Parliaments Act 2011 Sixth Report of Session 2019–21, HC 167, 15 September 2020, paragraph 7

63   cf ss 31(2A), (4) and (5) and 31A, 32(2A) and 32A of the Scotland Act 1998, inserted by the Scotland Act 2016.

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74   See: UK Government (2018) European Union (Withdrawal) Act 2018; UK Government (2020) European Union (Withdrawal Agreement) Act 2020; UK Government (2020) European Union (Future Relationship) Act 2020; UK Government (2020) United Kingdom Internal Market Act 2020; Institute for Government (2022) Sewel convention

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133   Martin, C (2021) Resist, reform or re-run?: Short- and long-term reflections on Scotland and independence referendums (Blavatnik School of Government, University of Oxford)

134   The Smith Commission (2014) Report of the Smith Commission for further devolution of powers to the Scottish Parliament, p12

135   For example, "The Acts of Union of 1707 [...] marked the beginning of a single multi-nation state." Scotland analysis: devolution and the implications of Scottish independence, UK Government, HMSO, 2013 (Cmnd. 8554): "Scotland is a nation and voluntarily entered into Union with England as a partner and not as a dependency". Report of the Royal Commission on Scottish Affairs. HMSO, 1954 (Cmnd. 9212); "successive UK Governments have said that, should a majority of people in any part of the multi-national UK express a clear desire to leave it through a fair and democratic process, the UK Government would not seek to prevent that happening." Scotland analysis: devolution and the implications of Scottish independence, UK Government, HMSO, 2013 (Cmnd. 8554); "And if the Union is to flourish in the future a more concerted recognition of Scotland's status as a nation will be necessary. It should be a mark of Scotland's self-confidence in her own status as a nation that she shares her sovereignty with the other parts of the United Kingdom. But the willingness to share that sovereignty must never be taken for granted." Scotland in the Union: a partnership for good. HMSO, 1993 (Cmnd. 2225); "Scotland is a proud historic nation in the United Kingdom and the plans we put forward in this White Paper will give it an exciting new role within the United Kingdom." Scotland's Parliament. HMSO, 1997 (Cmnd. 3658);

136 The Scottish Parliament (2017) Motion S5M-04710: Scotland's Choice – "That the Parliament acknowledges the sovereign right of the Scottish people to determine the form of government best suited to their needs and therefore mandates the Scottish Government to take forward discussions with the UK Government on the details of an order under section 30 of the Scotland Act 1998 to ensure that the Scottish Parliament can legislate for a referendum to be held that will give the people of Scotland a choice over the future direction and governance of their country at a time, and with a question and franchise, determined by the Scottish Parliament, which would most appropriately be between the autumn of 2018, when there is clarity over the outcome of the Brexit negotiations, and around the point at which the UK leaves the EU in spring 2019; believes that this gives people in Scotland a choice at a time when there is both the most information and most opportunity to act; further believes that 16 and 17-year-olds and EU citizens, who were excluded from the EU referendum, should be entitled to vote, and considers that this referendum is necessary given the Prime Minister's decision to negotiate a hard exit from the EU, including leaving the single market, which conflicts with assurances given by the UK Government and prominent Leave campaigners, and which takes no account of the overwhelming Remain vote in Scotland." Agreed: for 69, against 59

137 SNP (2017) Stronger for Scotland – The SNP General Election Manifesto, p8

138 SNP (2019) Stronger for Scotland – The SNP General Election Manifesto, p10; Scottish Greens (2019) Demand Climate Action!

139 Scottish Government (2021) Scottish Government and Scottish Green Party – Shared Policy Programme, p6

140 Scottish Government (2019) Scotland's right to choose: putting Scotland's future in Scotland's hands, p22. Scottish Government 2022 Next steps in independence referendum set out – gov.scot (www.gov.scot)

141 McHarg, A. (2022) Devolution: A View From Scotland – Constitutional Law Matters (Centre for Public Law, University of Cambridge)