



Open Letter to the Leaders of the Pro-Independence Parties in Westminster and Holyrood over a Rapid Route to Independence and EFTA/EEA Membership

10 November 2021

From:

- The Scottish Sovereignty Research Group (SSRG)
scottishsovereignty2021@gmail.com

To:

- Nicola Sturgeon: First Minister of Scotland and SNP Leader
- Patrick Harvie: Green Party Co-Leader in the Scottish Parliament
- Lorna Slater: Green Party Co-Leader in the Scottish Parliament
- Ian Blackford: SNP Leader in the Westminster Parliament
- Neale Hanvey: Alba Party Leader in the Westminster Parliament

Dear Ms. Sturgeon, Mr. Harvey, Ms. Slater, Mr. Blackford, and Mr. Hanvey,

We at the SSRG are writing to you as you are respective party leaders in the Westminster and Holyrood Parliaments, pursuant to our email sent to all SNP and Alba Westminster MPs, and SNP and Green Party MSPs on October 12, 2021 from scottishsovereignty2021@gmail.com.

We wish to express our deep concern over the stated strategy for achieving independence by seeking a Section 30 order from the Westminster government to hold another referendum under the auspices of the UK electoral commission. We hold that it is not only highly problematic, but may also be impossible to successfully achieve. However, it is also our informed view that you, as pro-independence party leaders in the Holyrood and Westminster Parliaments, already hold the power to achieve independence for Scotland and join the European Free Trade Agreement (EFTA) within weeks if our proposal is rapidly adopted.

The following are our concerns over the Section 30 order strategy:

A. The Conservative UK Government has reiterated numerous times that it has no intention of granting a Section 30 order to hold a referendum.

B. Holding a referendum outside of a Section 30 order would be subject to legal challenge, likely boycotted by the Unionist parties, and not recognised by the UK State.

C. Even if a Section 30 order were granted, holding a referendum under the auspices of the UK Electoral Commission would be highly problematic for the following reasons.

1. The referendum would presumably be held using the franchise of local elections, which would allow for part-time residents and those with vacation homes to vote in what should be limited to Scots and those who permanently make Scotland their home. Many countries with a written constitution limit the franchise on constitutional matters to its citizens and permanent residents.

2. It would also allow the UK Government undue influence in the timing, framing, and execution of the referendum. Given the UK's stated opposition to Scottish independence, it is inevitable that this influence would be calculated to damage the prospects for a successful referendum.

It is therefore the view of the SSRG that a legitimate and legal alternative to achieving independence must be sought, and we have collectively developed the following means to rapidly achieve independence, join EFTA, and re-enter the European Economic Area.

Mr. Blackford and Mr. Harvey: it is our informed view that as the leaders of parties with a massive pro-independence majority of Scottish MPs, you have the authority to enable the following;

I. Pro-independence Scottish MPs withdraw from the 1707 Treaty of Union

When the Treaty of Union was negotiated and ratified in 1707, it was to be a Union of equals between Scotland and England. Scotland retained its own legal and educational system, and under the terms of the treaty the UK Parliament could not interfere in Scots Law. Scotland did not renounce its sovereignty, which had been legally established in the Declaration of Arbroath in 1320, the Claim of Right in 1689, and reaffirmed numerous times including by the UK Parliament as recently as July 4, 2018.

It is the informed view of the SSRG that there is nothing in the UK unwritten constitution that prevents a majority of Scottish MPs, representing the Scottish party to the Treaty of Union, to collectively vote to withdraw from it. This would mean that if 30 of the 59 Scottish MPs voted to withdraw, the Treaty of Union would be annulled. While it may be argued that only the full UK Parliament may vote on such matters, English Votes for English Laws (EVEL) set a precedent under which Westminster Parliamentary procedure can allow MPs from the UK nations to vote on issues uniquely concerning that nation. Scottish MPs can do likewise in voting to withdraw from the 1707 Treaty of Union.

Previously, it was essentially the view held by Margaret Thatcher and politicians of all political stripes, that if in a General Election Scotland elected a majority of pro-independence MPs to the Westminster Parliament, this would constitute a mandate to dissolve the Union. This has now occurred in three General Elections: 2015, 2017, and 2019. Based on this view, this incontestably represents three mandates in four years to withdraw from the Treaty of Union. Nothing in the unwritten UK constitution prevents this method to achieve independence from being employed, and while it is unclear when it changed it was previously official SNP policy.

In addition, Scotland becoming independent through the withdrawal from an international treaty is perfectly valid and recognized under international law. The December 10, 2018 European Court of Justice ruling over whether the UK could unilaterally revoke the letter of notification to leave the EU held that they were perfectly entitled to do so. As a matter of law, the decision to withdraw from or remain within a treaty is a decision for the signatory party to the treaty, which in this instance is Scotland, under this scenario being the majority of Scotland's political representatives.

Ms. Sturgeon and Mr. Harvie and Ms Slater: it is our informed view that as the leaders of parties with a pro-independence majority of MSPs in the Scottish Parliament, you have the authority to do the following:

II. Reaffirm the Sovereignty of the Scottish People and declare that the Scottish Parliament is the only Parliament which Represents their Sovereign Will

It has been legally established and is beyond doubt that Scotland is a nation and that the people of Scotland are a sovereign people, and that they and they alone can determine the form of governance they so choose.

The current Scottish Parliament was elected by the Scottish people in a general election on May 6 2021, and comprises a majority of MSPs whose parties declared their support for Scottish independence in their manifestos for that election.

This majority has empowered the Scottish Parliament to seek independence, and the Scottish Government has indicated that it will pursue the referendum route to achieve that end, whether it is held with or without a Section 30 order. However, by the power vested in it by the sovereign Scottish people, the Scottish Government can choose to use whatever democratic means it deems suitable to achieve independence.

The Scottish Parliament should therefore pass a resolution establishing both that it is the only parliament which represents the sovereign will of the Scottish people, and to declare that the Nation of Scotland is sovereign, and is withdrawing from the 1707 Treaty of Union with England with immediate effect. This could easily be legally justified by citing the myriad of ways in which the UK Government has broken the terms of the Treaty over the years, and continues to do so in respect of Brexit and the Internal Market Bill among others.

It could be argued that last May the independence majority in the Scottish Parliament was not elected with a mandate to withdraw from the Treaty of Union and affirm the sovereignty of the Scottish people, and therefore cannot pursue this route. However, democratically elected governments are empowered, and indeed duty bound to take whatever actions they see fit to best serve the interests of their electorate and the nation they represent, especially under exigent circumstances as Brexit clearly is. Rapidly achieving independence is clearly in Scotland's interest. In addition, as the UK's own submission to the 2010 International Court of Justice advisory opinion over the legality of Kosovo's unilateral declaration of independence holds, international law allows devolved parliaments to act outwith the laws of the predecessor state to achieve independence, and still be internationally recognised.

The Scottish Government is on record with frequent declarations that independence is the only real solution to the serious problems facing the country. As these problems increase and UK constitutional obstacles continue to impede progress, you as Scottish elected representatives must be aware that you already hold the power to rapidly implement the solution you continually advocate.

III. Accession of Scotland to EFTA and the EEA

In February 2021, the SSRG approached the European Free Trade Association (EFTA) and asked them whether if the May 2021 Holyrood elections were used as a plebiscite for independence, could Scotland join EFTA? We received a response, which would not have been given if there were not agreement among the member states. Yes, Scotland could join provided that the Scottish Parliament had the competences to sign international treaties, and the powers to abide by them. They are agnostic as to how these powers would be acquired. Once they were, the Scottish Government would simply send a letter to the EFTA Council requesting membership, which would be readily accepted. EFTA would then ask the European Economic Area (EEA) Council to allow Scotland to be readmitted to the single market, for which they foresaw no impediment to achieve.

We recontacted EFTA again in October, and asked if the scenario proposed in this letter was pursued, could Scotland join? They rapidly responded that EFTA membership for Scotland is essentially an open door, as long as the Scottish government has the

competency to sign international treaties, and the powers to abide by them. For them, the SSRG scenario would suffice to acquire these powers. This would allow Scotland to rejoin the European Economic Area (single market), and seek recognition as a sovereign state under international law, which it will achieve if the reasons are explained carefully to the international community. The UK has never been weaker and more internationally reviled than it is now, and the SSRG has it on good authority that many nations and international institutions would rapidly recognise Scotland as an independent state. And while they are sympathetic to the plight of Scotland under the submission of the UK and fully understand the reasons for independence, they continually stress that only Scottish elected officials can do this, no one else can do it for them.

Look at what is happening now with Brexit, and what could be avoided if this course were pursued. As you know, the UK government is undermining and seeking to rewrite the Northern Ireland protocol, which they agreed to purportedly in 'good faith'. If the UK invokes article 16 of the protocol and enters a trade war with the EU, Scottish salmon and whisky could be the first products to be hit with punitive tariffs. Tensions are rising with France over fishing permits, which could lead to Scottish salmon being banned from French supermarket shelves. The Owen Paterson scandal demonstrates that the UK government is fundamentally corrupt and untrustworthy. As you are well aware, Scotland is still part of the UK, which has increasingly become a pariah state. The actions of the UK will continue to reflect very poorly on Scotland, and will lead to further devastation of the Scottish economy if we remain part of it. It doesn't have to be this way.

We understand that this route requires a democratic endorsement through a vote of the Scottish people. However, rather than a highly problematic Section 30 referendum, this can be in the form of a confirmatory referendum after a 2-year period, once the independent Scottish constitution and state is well under construction. The vote could be over whether to continue building the Scottish State, or to negotiate a new treaty of Union with the UK.

In any case, Scotland is in an emergency situation with Brexit and unwilling removal from the EU/EEA, and a successful Section 30 referendum is impossible in the short term. However, Scotland rapidly achieving independence through the SSRG plan will enable us to enter EFTA, and Scotland can subsequently:

- Rejoin the EEA, reinstating the freedom of movement of people, goods, services, and capital.
- Rejoin the Erasmus student exchange program, and any other EU programs à la carte as the other EFTA member states do. Scottish Universities would be able to participate in EU research programs on the same terms as EFTA members do.
- Obviate any trade deals the UK government was or is negotiating involving Scottish goods. As an EFTA member Scotland will be part of the EEA, and be able to pursue its own trade agreements.
- Given that EFTA and the UK have reached a post-brexit trade agreement, Scotland as an EFTA member will be part of this agreement with England.
- Trade between Scotland and Northern Ireland and the Republic of Ireland will be unimpeded, because Scotland will participate in the single market as part of the EEA.
- Apply to rejoin the European Union subject to a referendum over whether to join the EU or remain in EFTA. As part of the EEA, Scotland would be in a much more favourable economic position to negotiate the terms of membership, and the EU would need to make a positive and convincing case to Scotland as to why being a member of the EU would be better than remaining in EFTA.

The SSRG therefore respectfully yet confidently submits to you, as leaders of pro-independence parties in Holyrood and Westminster, that collectively you hold the electoral, internationally legal, and moral authority to withdraw Scotland from the 1707 Treaty of Union and affirm the Scottish Parliament as the sole representative of the sovereignty of the Scottish people.

We sincerely hope you will avail yourselves of this opportunity that the SSRG has meticulously cultivated. Our group of experts remain at your disposition to answer any questions you may have, and to conduct any further research required pro bono. The next papers the SSRG will produce will include a focus on the innumerable breaches of the 1707 Treaty of Union up to the present day to bolster the legitimacy of this strategy, and we hope it will be useful.

However, given how much effort and intellect we have poured into this proposal, we sincerely expect an honest and serious response from you as to its political feasibility. If you embrace this strategy, Scotland could be independent and back in the single market in weeks. If you refuse to embrace it now, and as the prospect of holding a successful Section 30 referendum becomes increasingly forlorn, how much more dire do political and economic circumstances need to become for you to do so? How do you justify not taking this opportunity to get back into the single market, potentially saving dozens of Scottish industries and thousands of jobs? If there are genuine impediments, please let us know what they are so we can help seek to address them. In any case, the Scottish people also deserve an honest and serious response to this proposal. We sincerely trust that responses will be rapidly forthcoming, and look forward to their reception. They can be sent to the above physical and/or email address.

Sincerely,

Dr. Mark McNaught and the SSRG Team