

**If Scotland votes yes** Dear Prime Minister and First Minister Our advice on the tricky disputes and dilemmas involved in breaking up the union

Jul 12th 2014 | From the print edition

**If Scotland votes “yes”**

Dear Prime Minister and First Minister...

Our advice to David Cameron and Alex Salmond on the tricky disputes and dilemmas involved in breaking up the union

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**IT IS September 19th 2014 and—confounding the opinion polls—Scotland has voted “yes” to independence. You, Alex Salmond, are elated. You, David Cameron, are distraught; you are already being lambasted as the prime minister who botched Britain’s 307-year-old political union. There are noisy calls for your resignation.** Prior certainties—such as the contours of Britain’s general election in 2015—are melting in the late-summer sun. Emotions in both nationalist and unionist camps are raw. **One side feels triumphant, the other utterly humiliated.**

**In short, this is a terrible time to begin the most complicated and sensitive internal negotiation in modern British history. And yet you will have to conduct it. Even you, Mr Cameron, pre-emptively declared the result of the referendum binding.** There will be “no second chances,” you insisted; a “yes” vote will mean splitting the union. On some subjects, the two of you will find that the interests of Scotland and the remainder of the United Kingdom (the RUK) overlap. On many others you will be rancorously at odds, and your electorates in no mood for compromise.

Your first task will be to agree the practical details of the negotiations. Even picking a venue will be a challenge. Talks could be split between Edinburgh and London; Dublin would make an alternative, neutral location (and the Irish government a possible arbitrator). The timetable will be contentious, too. **Mr Salmond claims that Scotland could become independent on March 23rd 2016, the 309th anniversary of the Act**

**of Union. That is fanciful.** The date may fall conveniently before the Scottish election—and appeal to Mr Salmond’s well-developed sense of history—but such breakneck negotiations will store up problems for the future. Consider the hurried creation of the Irish Free State and the subsequent traumas in Northern Ireland. A deadline of 2018 would be more sensible.

### **Of successors and secessionists**

The Irish secession of 1922 also offers a handy template for the negotiations themselves. The Free State was a spin-off, not a break-up. The rest of the United Kingdom inherited the predecessor state’s legal personality, its rights and obligations; the new government in Dublin had to start from scratch. Something similar happened when Singapore became independent of Malaysia in 1965, and when South Sudan broke from Sudan in 2011. This precedent should apply to Scotland’s secession. The RUK will have an exclusive claim on institutions such as Britain’s diplomatic service and the Bank of England, and on international affiliations such as membership of the European Union.

**This principle should provide one pillar of negotiations. The second should be that movable assets (such as arms) be split proportionately and that immovable ones (such as public buildings) remain with the state they are in. This, too, is rooted in international precedent.**

The reality will be messier. Even if Mr Salmond is willing to adopt such a framework (and you have indicated that you are not), implementing it would be tricky. To begin with, the word “proportional” could be interpreted in different ways—according to population, wealth or past contribution to the relevant asset. In some cases it will be in your interests, Mr Cameron, pragmatically to strike deals with Mr Salmond. In other areas there will be no obvious, common-sense outcome. Expect five in particular to dominate your discussions.

The first is Scotland’s place in the EU. In theory Edinburgh will have to wait until it is independent to apply for membership through the route for non-member countries set out in Article 49 of the European treaties. However, a post-independence period in which Scotland was not a member would impose mighty bureaucratic costs on governments and businesses on both sides of the border. **Mr Cameron may therefore generously decide to negotiate on Scotland’s behalf before it becomes independent, and help it secure EU membership through the “fast-track” route—treaty change by a simple majority of member states, as set out in Article 48.**

Such a measure would help an independent Scotland establish the international role that Mr Salmond wants for it: a European player, with armed forces that resemble Denmark’s (focused on maritime defence but able to muck in elsewhere when asked to). Rather than taking a slice of every bit of Britain’s armed forces, Mr Salmond will want to grab iconic Caledonian army units, such as the Black Watch, and other chunks relevant to Scotland’s priorities, above all patrolling oil and fishing assets in the North Sea and maintaining the security of the high North Atlantic.

### **Oil in troubled waters**

**You, Mr Salmond, want Scotland to join NATO.** Yet you have already indicated that you want to expel Britain’s submarine-based Trident nuclear deterrent from the chilly waters of the Clyde—which, reckons Trevor Taylor of the Royal United Services Institute, a think-tank, could cost some £20 billion (\$34 billion). It would take at least ten

years. Together, therefore, you will need to strike a grand bargain on defence. This may involve the RUK supporting Scotland's NATO application and helping it assemble viable armed forces, in return for a long-term deal to postpone Trident's move (something akin to Britain's 99-year lease of Hong Kong from China).

**The toughest negotiations will concern financial matters. Here you will both be tempted to argue for retrospective justice. For example, the most sensible way of calculating an independent Scotland's debt would be to use its population to work out its share of the British government's total current liabilities. This should spit out a figure between £121 billion and £143 billion (or between 73% and 86% of an independent Scotland's GDP), say Angus Armstrong and Monique Ebell of the National Institute of Economic and Social Research.**

Faced with such a burden, Mr Salmond may be tempted to fall back on a more subtle argument: that the tax revenues garnered from Scotland's oil, since it began to be pumped from the North Sea in large quantities in 1980, should be offset against its share of national debt. This would be a mistake, as it would enable Mr Cameron to argue that Scotland's generous funding from central government has disproportionately contributed to Britain's debt pile. Thus an independent Scotland should take on more, not less, than its population's share of national debt. Or Mr Cameron could stress that non-Scottish soldiers died fighting to defend the waters containing the oil. Best for both of you to eschew these historical gambits.



On the question of dividing those waters, too, the simplest option is the most promising. Mr Salmond may reject the assumptions used in drawing the line between Scottish and English fishing fields in 1999 (the median along which all points are equidistant from the borders of the two jurisdictions: see map). But Pieter Bekker and Penelope Warne of the University of Dundee argue that international courts would likely uphold this method if Scotland and the RUK could not reach agreement, as it is consistent with other inter-state disputes.

Expect the angriest clashes to concern the use of sterling. Mr Salmond has stated that the currency belongs as much to Scotland as it does to the rest of Britain. But Mr Cameron and his unionist allies have stridently ruled out a monetary union. On this, they are right. Given the economic and financial links between the two countries, the RUK would likely have to bail out Scotland in the event of a financial crisis; Edinburgh's fiscal and banking discipline could slacken. Much better for Scotland to join the euro or introduce its own floating currency. Its small size should not be a barrier, as countries such as New Zealand and Israel demonstrate.

**Alas, Mr Salmond, your retort that Scotland could continue to use sterling informally is incredible.** In that scenario, all Scottish banks would probably move their headquarters to the RUK to maintain their access to the Bank of England's lender-of-last-resort facility and to a strong government backstop. Not only would Scotland lose most of its financial sector: it would be left without either the benefits of euro membership or the ability to control its own currency.



## OFENSIU....

Once the two of you have dealt with these headaches—the EU, the armed forces, debt, oil and currency—other matters should fall into place relatively simply. It would make little sense to insist on splitting the BBC, which benefits from economies of scale and could adopt a federal structure fairly easily. Nor should you do anything that threatens the openness of the English-Scottish border; the British-Irish one is a good model of police co-operation, with forces collaborating so closely that they bypass the system of European Arrest Warrants.

Cleaving the electricity grid would be trickier. At present the Westminster government subsidises renewables north of the border in order to meet its green energy targets, but after independence the RUK could well opt to import cheaper green electricity from continental Europe. Without its support Scotland would probably need to invest in gas or nuclear stations. That would be bad news for its many wind farms, which Mr Salmond has unwisely adopted as an emblem of the country's shiny industrial future.

**After independence day**

**As negotiations proceed, Mr Salmond, you and your colleagues will have to assemble the skeleton of nationhood: UN membership, a dialling code (+424 is the most likely choice) and an internet domain (though the Seychelles have nabbed .sc, and Sierra Leone has .sl).** Perhaps Mr Cameron will offer you some of the British government's property in foreign capitals for use as embassies in return for other concessions.

Mr Cameron will also have business at home. Ahead of the general election next May, you and the speaker of the House of Commons will need to marshal agreement on the status of Scottish MPs. Probably this will involve them stepping down on independence day—and another general election shortly afterwards, if the government no longer has a majority in Parliament. Their Lordships will also need to discuss, and probably eject, the Scots in their ranks. Other decisions will be more symbolic. For example, what should the RUK flag look like? Should Scots in the British Olympic squad quit to form their own team before the 2016 games?

Both of you (or your successors) should be prepared for a long slog. Past break-ups suggest that even after independence day, fiddly negotiations will continue. **The Czechs and the Slovaks only reached agreement on Czechoslovakia's gold reserves in 1999, seven years after they had opted to break up.** The British High Commission in Edinburgh and the Scottish High Commission in London will be finessing the details for years.

The process will be difficult and, at times, fractious. On many subjects, especially oil reserves and national debt, one of you will be the overall winner, the other the loser. On others, such as the BBC, both of you could succeed. Sadly the full benefits of economies of scale, and of close co-operation across the English-Scottish border, which Britain currently enjoys, will fall neither to an independent Scotland nor to the RUK. **They will fade away, along with the union that, for all its flaws and foibles, has lasted for three centuries, and has helped to turn a small island in the North Atlantic into one of the world's freest and most successful countries. That inauspicious legacy will be yours to share.**

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