

# Journal of Contemporary European Research

Volume 8, Issue 4 (2012)

## Scotland: 40 Years of EU Membership

**Jo Shaw** *University of Edinburgh*

This chronology was commissioned by the *European Parliament Information Office in the United Kingdom* and has been published here with their kind permission and that of the author.

Professor Jo Shaw is Salvesen Chair of European Institutions and Dean of Research of the College of Humanities and Social Science, Edinburgh Law School, University of Edinburgh.

### **Citation**

Shaw, J. (2012). 'Scotland: 40 Years of EU Membership', *Journal of Contemporary European Research*. 8 (4), pp. 547-554.

Published in: [www.jcer.net](http://www.jcer.net)

**KEY DATES**

This chronology picks out the most significant UK and EU events, noting where possible how these affect Scotland in specific ways. It also identifies some Scotland specific events.

- 1967 Establishment by JDB Mitchell (first Salvesen Chair of European Institutions) of the Centre for European Governmental Studies in the Law Faculty of the University of Edinburgh, on of the first centres for the study of European integration institutions in the UK (now Edinburgh Europa Institute)
- 1972 European Communities Act adopted
- 1973 UK joins the European Communities
- 1973 George Thomson appointed as one of the UK's first two European Commissioners
- 1973 Lord (Jack) Mackenzie Stuart becomes UK judge in the Court of Justice (President of the Court 1984-1988) (retired 1988)
- 1974 UK General Election leads to election of Labour Government committed to holding a referendum of UK membership of European Communities
- 1975 European Commission office in Scotland established
- 1975 UK referendum on European Community membership; Scotland votes in favour of retaining membership by 58.4% to 41.6%, although this majority is lower than elsewhere in UK. Shetland and Western Isles vote against.
- 1979 First direct elections to the European Parliament; 8 MEPs elected by first past the post election from constituencies in Scotland (5 CON, 2 LAB, 1 SNP) (constituencies). Election of Winnie Ewing as SNP MEP played significant role in changing attitudes in the SNP towards the European Communities
- 1979 UK General Election leads to election of Conservative Government, adopting noticeably more skeptical policies towards certain aspects of European integration (although SEA and Treaty of Maastricht are signed) (re-elected in 1983, 1987 and 1992)
- 1984 Second direct elections to the European Parliament; 8 MEPs elected by first past the post election from constituencies in Scotland (5 LAB, 2 CON, 1 SNP) (constituencies). David Martin LAB MEP first elected (Scotland's longest serving MEP)
- 1986 Single European Act comes into force giving significant new powers to the European Parliament

- 1988 Bruce Millan is appointed as one of the UK's two European Commissioners under Jacques Delors. Significantly, Millan held the portfolio for regional policy and cohesion
- 1988 Significant reforms of the Structural Funds lead to new principles of regional policy creating a direct link between Scottish partners and the European Commission. New programmatic approach adopted, along with a significant increase in funding, and real impetus given to the slogan 'Europe of Regions'
- 1988 SNP adopts 'Independence in Europe' policy, highlighting most significant political shift on European integration by a political party in Scotland, building on strand of thinking pioneered by Jim Sillars – by then Deputy Leader of the SNP – when a member of the shortlived Scottish Labour Party, before joining the SNP
- 1988 Establishment of a Scottish Constitutional Convention, bringing together all the mainstream parties apart from the Conservative Party, and many large and small organisations within civil society including the churches established the momentum which led to the successful devolution campaign in 1997. SNP participated initially, but then withdrew
- 1989 Sir David Edward becomes first UK judge in the newly established Court of First Instance, becoming in 1992 the successor to Sir Gordon Slynn as UK judge at the Court of Justice (retired 2004)
- 1989 Third direct elections to the European Parliament; 8 MEPs elected by first past the post election from constituencies in Scotland (6 LAB, 1 CON, 1 SNP) (constituencies)
- 1992 Establishment of Scotland Europa – now part of Scottish Enterprise to lobby for Scottish issues
- 1992 Edinburgh Summit (European Council meeting) during UK Presidency significant for the concessions made to enable Denmark to hold second referendum on Treaty of Maastricht, and also for putting Edinburgh on the European map
- 1993 Treaty of Maastricht comes into force – without UK participation in 'social chapter' and with arrangements for opt out from monetary union, and creating the Committee of the Regions, with members representing Scotland
- 1994 Fourth direct elections to the European Parliament; 8 MEPs elected by first past the post election from constituencies in Scotland (6 LAB, 2 SNP) (constituencies)
- 1997 UK General Election leads to election of a Labour Government committed to introducing the Maastricht 'social chapter', and also to holding referendums on devolution in Scotland, Wales and Northern Ireland (re-elected in 2001 and 2005)

- 1997 Referendum on devolution votes overwhelmingly in favour (74.3% in favour of a Scottish Parliament, with a significant majority also in favour of it being given tax raising powers (63.5%))
- 1998 Scotland Act 1998 – Scottish Parliament precluded from legislating in a manner which is incompatible with EU law and reserving international relations, including EU matters to the Westminster Government
- 1999 First Scottish Parliament elections leads to LAB-LD coalition Scottish Executive
- 1999 Scottish Executive opens first representative office in Brussels – now Scottish Government European Union Office (SGEUO)
- 1999 Memorandum of Understanding and related overarching Concordat on the Co-ordination of European Union Policy Issues (updated most recently 2010) between Westminster Government and the devolved administrations, including attendance of Scottish Ministers at meetings in the Council of Ministers (and COREPER)
- 1999 Fifth direct elections to the European Parliament; 8 MEPs elected using the d'Hondt method of party-list proportional representation from Scotland (3 LAB, 2 SNP, 2 CON, 1 LD). MEPs include Neil MacCormick
- 1999 European Parliament Information Office in Edinburgh opened
- 1999 Treaty of Amsterdam comes into force – with UK participation in 'social chapter', but with UK opt out from Schengen related matters
- 2001 Establishment REGLEG – the network of regions of European Union Member States with legislative power, of which Scotland is a member
- 2002-2003 Neil MacCormick appointed substitute member of the Convention on the Future of Europe where he pushes for a significant boost to the principle of subsidiarity to recognize its importance for regions, and for places such as Scotland
- 2003 Treaty of Nice comes into force
- 2003 Second Scottish Parliament elections also leads to LAB-LD coalition Scottish Executive
- 2004 Constitutional Treaty (based primarily on work of Convention on Future of Europe) approved by Member States for ratification, containing significant recognition of diversity of governance arrangements *within* Member States and recognizing these as an element of national identity; not ratified but same provision reappears in Treaty of Lisbon

- 2004 Sixth direct elections to the European Parliament; 8 MEPs elected using the d'Hondt method of party-list proportional representation from Scotland (3 LAB, 2 SNP, 2 CON, 1 LD)
- 2007 Third Scottish Parliament election leads to a minority SNP Scottish Government
- 2009 Treaty of Lisbon comes into force, giving legal force to Charter of Fundamental Rights, and establishing Treaty on European Union and Treaty on the Functioning of the European Union, and also introducing various powers for national parliaments in relation to the implementation of the subsidiarity principle which are significant also for subnational parliaments
- 2009 Seventh direct elections to the European Parliament; 6 MEPs elected using the d'Hondt method of party-list proportional representation from Scotland (2 LAB, 2 SNP, 1 CON, 1 LD)
- 2010 UK General Election leads to a Con-LD coalition
- 2010 Scottish Parliament European and External Relations Committee report on the implications of the Treaty of Lisbon for Scotland notes the need (and opportunity) for enhanced engagement with EU law and policy-making after Lisbon
- 2011 Fourth Scottish Parliament election leads to an SNP Scottish Government with an absolute majority of MSPs and committed to holding a referendum on Scottish independence before the end of its term
- 2012 Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland (Edinburgh Agreement), paving the way for enabling legislation in the Westminster Parliament and the Scottish Parliament
- 2012 Scotland Act 2012 giving significantly enhanced tax variation powers to the Scottish Parliament

## THE NARRATIVE

Scotland is, of course, part of the EU because it is part of the United Kingdom, which has been a Member State of the EU for 40 years on 1 January 2013. On the other hand, given that there have been – throughout the UK's membership of what was then the European Communities and is now the European Union – debates about 'home rule', devolution and now independence for Scotland, these offer a significant gloss upon the meaning of EU membership for Scotland. The 'idea of Europe' and lately the notion of 'independence in Europe' has been an important trope within Scottish nationalist politics for many decades. Hence, many of the significant moments of Scottish constitutional politics since the UK's accession to the EU also have resonance for a chronology of Scotland in the EU.

While 'Europe' was not a significant factor in the first devolution referendum in 1979, when Scots voted by a majority for devolution, but did not surpass the 40% population threshold set by the Westminster legislation (and thus this referendum is not included in the timeline), by 1997 when the second referendum was held, the landscape had shifted to a very substantial degree. The footprint of European integration was to be found by then all over Scotland, and not just in the traditional policy areas of agriculture and fisheries that had generated a previous hostility to European integration, which saw Scotland vote in the 1975 membership referendum by a lower majority to remain in the Communities.

The changes which mattered most stemmed not just from the evolving character of the European integration project after the amending treaties of the Single European Act, the Treaty of Maastricht and the Treaty of Amsterdam (agreed during the first weeks of the new Labour Government elected in May 1997 which also put in train the wheels of devolution) and subsequent to a significant increase in focus on regional and structural policy in partnership with the regions after 1988, but also related to alterations in the landscape of Scottish politics.

As a result of hostility to Thatcherism in Scotland during the 1980s, the electoral representation of the Conservative party had declined dramatically, and while electoral politics was largely dominated by the Labour Party which was itself moving gradually towards greater acceptance of European integration because it saw this as a vehicle for social democratic politics, from 1979 onwards the Scottish National Party was represented in the European Parliament. This representative opportunity, held initially by Winnie Ewing MEP, opened the eyes of a hitherto Eurosceptic party which had campaigned for a no vote in the UK referendum on membership in 1975 to two key factors: first, the possibility of being an effective small polity within the broad protective umbrella of European integration, which would give access to markets but also a voice in international negotiations, e.g. on trade matters (a view also championed by Jim Sillars, the pioneer of 'Independence in Europe'), and second, the opportunities offered by regional and structural policies for direct partnerships between Scottish bodies and the European Commission, in the period of structural funds growth before the accession of the post-1989 Member States in 2004 resulted in a decisive shift eastwards of the focus of those policies.

Meanwhile, the idea of a Europe of the Regions, the establishment of the Committee of the Regions after the Treaty of Maastricht, and the setting up of the so-called REGLEG network for regions with legislative powers within the EU have all provided opportunities for voice for Scotland and Scottish institutions within the framework of European integration. From 1992, Scotland had a presence in Brussels in the form of Scotland Europa. And in the midst of the crisis over the first Danish 'no' to the Treaty of Maastricht, a crucial European summit was held in Edinburgh which helped to resolve some of the most intractable tensions to ease the way towards a second Danish referendum, and which had the side effect of putting Edinburgh at that point firmly on the 'European map.' By that stage, meanwhile, a more or less unstoppable momentum towards a greater degree of governmental autonomy was building, most evidently in the form of the Scottish Constitutional Convention established in 1988 and bringing together most significant forces within civic and political Scotland including, for a time, the SNP, except the Conservative Party.

The devolution settlement after the overwhelming 'yes' vote in the referendum in 1997, which resulted in the Scotland Act 1998, the reconvening of a Scottish Parliament in 1999 for the first time in almost 300 years and the creation of a Scottish Executive of Ministers (now largely designated the 'Scottish Government', with significant practical responsibilities in relation to the implementation of all types of matters falling within the competences of the EU, required a sophisticated power-sharing and intergovernmental communications structure to be established. Thus by 1999, not only were Scottish governmental institutions established, but also the European Parliament had joined the

European Commission (since 1975) in opening an (Information) Office in Scotland. This also reinforced a stronger sense – buttressed also by the introduction of the d'Hondt method of election based on party lists which created a single constituency for EP elections in Scotland – of a 'Team Scotland', interfacing between Scottish representatives in Brussels and European institutions with offices in Scotland.

The Scotland Act itself provides that international and European relations are a reserved matter. The Scottish Parliament is also explicitly prohibited from legislating in a manner that is incompatible with EU law. Thus from the perspective of the EU institutions and the other Member States, they are only dealing with the UK as a Member State, including in matters related to the responsibility for breach of EU obligations. However, in practice many areas of highly active EU policy-making, including a number that have become more significant in recent years such as criminal justice and environmental policy, fall within the law-making powers conferred upon the Scottish Parliament. A Memorandum of Understanding and associated Concordats between the UK government and the government of the devolved parts of the UK establish the practical arrangements which deal with the inevitable complexities and frequent tensions that are going to arise in such circumstances, such as granting Scottish Ministers representation at Council and COREPER level in areas such as agriculture and fisheries, while ensuring that a 'UK line' is adopted, and allowing flexibility in implementation in relation to sensitive matters such as criminal justice which are not only devolved matters under the Scotland Act, but – more significantly from a historical perspective – were always preserved as distinctive Scottish matters under the Act of Union. The Scottish Government now maintains a substantial presence in Brussels as part of the 'UKRep family'.

European Union policy is an inevitable source of friction between the UK and Scottish governments, with both Scottish Ministers and the Scottish Parliament puzzling over the most effective ways to ensure sufficiently early engagement with policy priorities of the Commission in order to be able to make a difference to the types of proposals made as well as how to work with the UK government. For the first time after the Treaty of Lisbon, the European and External Relations Committee of the Scottish Parliament compiled, after hearing extensive evidence, a substantial report on the impact of the treaty on Scotland, marking a new level of sophistication in its engagement with European affairs. Alongside a continuing interest in the future of the Structural Funds, the current preoccupations of the Committee have also turned to other opportunities which arise to promote both science and economic development in Scotland, such as Horizon2020.

Scotland's distinctiveness in European affairs has also been maintained by a succession of major public figures who have contributed to European debates. Two of the UK's most distinguished judges – including the only UK judge thus far to hold the office of President of the European Court of Justice – have hailed from a background of Scots law: Lord (Jack) Mackenzie Stuart and Sir David Edward. Both have been associated in different ways with one of the first centres for the study of European affairs to be established in the UK (and the first with a specific legal focus) by the pioneering legal scholar Professor JDB Mitchell. This is now the Edinburgh Europa Institute. Similarly, a powerful contribution to the work of the Convention on the Future of Europe – belying his status as a mere 'substitute' member – was made by Sir Neil MacCormick, SNP MEP from 1999-2004 and legal scholar and philosopher. He pushed for a stronger sense of subsidiarity to be embedded in the European treaties, and in some respects his vision for better recognition of intra-state diversity is recognized in the text of the Treaty of Lisbon. Meanwhile, Scotland has supplied three of the UK's eleven Permanent Representatives since 1973 (Sir Donald Maitland, Sir John Kerr and Sir John Grant), and Kerr was also Secretary General of the Convention on the Future of Europe. Two Commissioners have hailed from Scotland – George Thomson and Bruce Millan.

It is hard to gauge public opinion in Scotland and to ascertain whether – on controversial issues such as the call for a further referendum on UK membership – there are

significant differences between Scotland and the rest of the UK. Polling figures – where they disaggregate Scotland – are based on very small numbers, but they appear to indicate that the Scottish public is marginally more supportive of UK membership than the UK as a whole. On the other hand, the political forces most associated with such calls for a referendum – the Conservative Party and the UK Independence Party – have little or no traction in electoral terms in Scotland. Moreover, individual elected representatives of the Conservative Party in Scotland are not amongst those prominent in calling for the UK to seek a radically looser relationship with the EU and the other Member States. And amongst those who are most publicly passionate about increased autonomy and even independence for Scotland, full participation within the European integration project continues to be one of the most important elements of their argument. Overall, therefore, it is very hard to separate out the debate about the future of Scotland within the EU – whether as part of the UK or not – from its own constitutional futures debate.

\* \* \*