

# **The Prospects of a second Scottish Independence Referendum**

The process, politics and personalities

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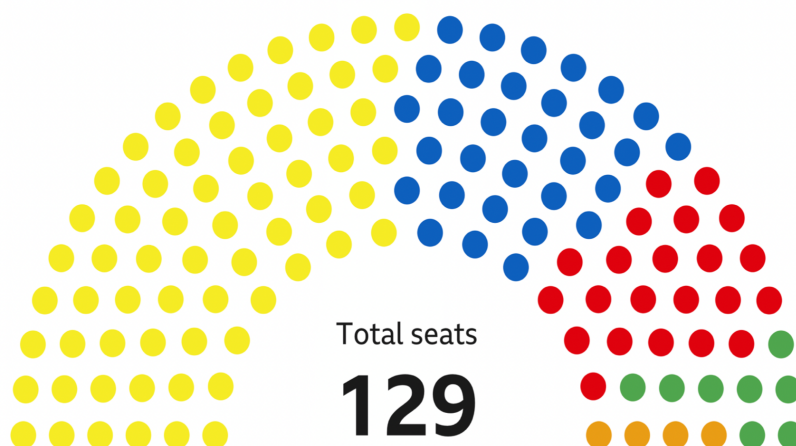
## Deciphering the Election Results

The Scottish Parliament elections were unusual in that almost every party leader emerges happy with the result.

### SNP fall one seat short of majority

Number of seats by party

- Scottish National Party: **64**
- Green: **8**
- Conservative: **31**
- Liberal Democrat: **4**
- Labour: **22**








Source: BBC News

The SNP narrowly missed out on winning an outright majority. This will not matter too much to them in terms of governing as they will likely continue to have the willing support of the Scottish Green Party to enable them to get much of their legislative agenda through parliament. Often seen as an adjunct to the SNP, the Greens did show occasional independence in the last parliament. But when it comes to strategic issues or the prospect of serious consequences for SNP Ministers, the smaller party knows that their MSPs are elected with the second preference votes of SNP supporters. Indeed it is this dynamic which led to the Greens being the only party to make significant gains in this election.

### Scottish constituency vote share

After all seats declared. Parties with at least 1%

		Vote share	Change from 2016
	SNP	47.7%	+1.2
	Conservative	21.9%	-0.1
	Labour	21.6%	-1.0
	Lib Dem	6.9%	-0.9
	Green	1.3%	+0.7

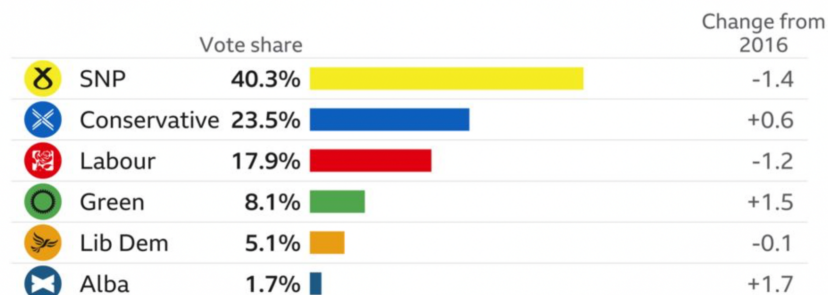
Source: BBC News



This is a significant achievement for the SNP fourteen years into government and, despite failing to secure a majority, still represents a huge victory. The combined parliamentary votes with the Greens also allows the SNP to make their case that a mandate for another referendum has been won.

## Scottish regional vote share

After all regional seats declared. Parties with at least 1%



Source: BBC News

Meanwhile the two main unionist parties, both of whom changed leaders in somewhat panicked circumstances weeks before the polls, are also satisfied. Denying the SNP a majority reduces the immediate pressure on the Conservatives and Labour over the constitutional debate and creates time for them to get their arguments and organisation into better shape.

The Conservatives were widely considered to have run a bad campaign, with some suggesting that their leader Douglas Ross underperformed in debates and their message was criticised for being one-note unionism. But despite this, or perhaps because of their remarkable message discipline, they maintained their position as the official opposition party in Holyrood. However, the party is likely to find it difficult to break beyond their 20% ceiling.

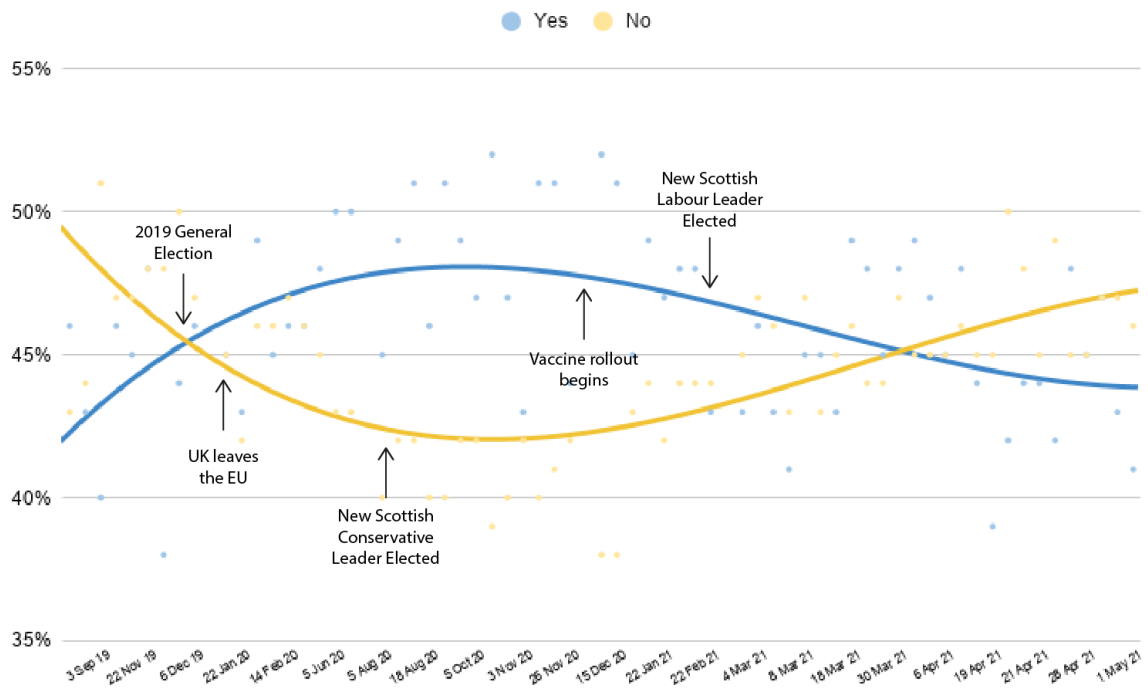
At the moment Labour continues to bump along at or near their 20% floor of support. Labour feels that they lost the election but won the campaign. Their new leader Anas Sarwar struck a positive and optimistic tone which the previous leader struggled to communicate in the face of polarised politics. Sarwar's message of uniting the country risked the party being run over in the middle of the road. However his strategy of talking about ending the bitter division in Scottish politics rather than exploiting and continuing it won over just enough voters. This is a strategy for the longer term when Labour hopes enough Scots tire of the endless constitutional wrangling. Expect Sarwar to continue to talk in terms of building a credible alternative to the SNP in contrast to the Conservatives who will position itself as the alternative to nationalism.

The one leader who comes out of the election diminished is Alex Salmond. His new Alba party was humiliated and failed to win a single seat. This is a huge relief for Nicola Sturgeon who, at the start of the campaign, faced the prospect of relying on the votes of her mentor-turned-enemy. Alba's failure makes it more likely that the SNP will play the long game on independence rather than take precipitate action around another referendum.

At the time of writing, after a prolonged period where independence has led in the polls, it has fallen back to near 2014 levels. More significantly, a slew of polls asking voters' views on the timing of another referendum suggest that less than a third of voters support a fresh vote on the First Minister's proposed timetable of the next two and half years. The worry for the SNP is that those voters who say they are happy putting off a vote for a few years today will still be saying that in a few years time.



By the conclusion of the election Scotland had a pro-independence parliament but an anti-independence population, albeit narrowly.



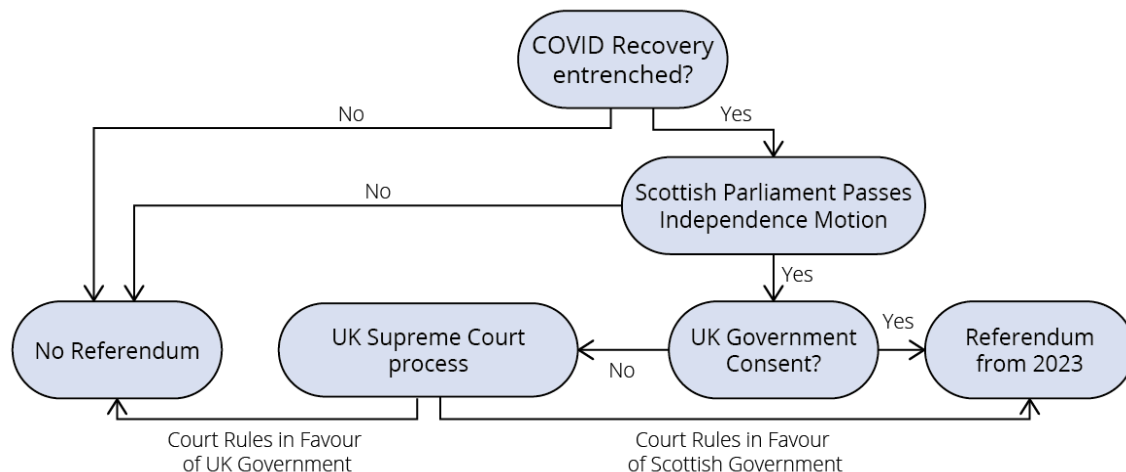
This note looks first at possible strategies for an SNP government in Holyrood and the Conservative government in Westminster. We then offer analysis of what the political parties may do next and what shape of any referendum campaign may look like.

## PART 1

### What Comes Next: The Process

We are now likely to see a period of uncertainty where both the UK and Scottish Government's make arguments which are about framing the election result and the prospect of another referendum.

The SNP are already prosecuting a message that Scotland should have a right to choose. This message relies on the UK government explicitly denying another referendum. The First Minister's hope is that this denial will push undecided voters in the arms of the pro-independence camp.



So far the UK Government has tried to avoid stepping into this trap and becoming the antagonists the SNP seek. Rather than a blanket refusal, Michael Gove, who is leading on this issue within the UK government, has said “not now” and has avoided saying “no”.

Ultimately though a decision on whether to grant or oppose another referendum cannot be avoided indefinitely.

### Scenario 1 – The UK Government Agrees Another Referendum

In this situation the Johnson government would grant what is known as a Section 30 Order, a type of Secondary Legislation which is made under the Scotland Act 1998. It can be used to increase or restrict – temporarily or permanently – the Scottish Parliament's legislative authority. It does this by altering the list of 'reserved powers' set out in Schedule 5 of the Act. In this case, by transferring the power to hold a referendum on the Union for a designated period of time, and with certain conditions attached (for example there must only be two options on the ballot paper).

This process can be achieved fairly quickly. When a section 30 Order was granted in 2012 the subsequent timeline was rapid:

- The Edinburgh Agreement between the Scottish and UK Governments, agreeing the way forward for a referendum, was signed on 15<sup>th</sup> October 2012.
- The section 30 Order was laid before the House of Commons a week later.
- The Scottish Parliament passed the section 30 Order on the 5<sup>th</sup> December.
- By the 16<sup>th</sup> January it had passed both Houses of the UK Parliament.

After this the Scottish Parliament passed two Acts: one to determine the question and rules and another to extend the franchise to 16 and 17 year olds. This process was completed by 17<sup>th</sup> December 2013.

There is already legislation before the Scottish Parliament, as in 2013, to determine the question and rules of the SNP's proposed legislation. Assuming a nationalist majority, this could pass the Scottish Parliament by June 2021 and the SNP leadership have suggested there would then be a six month period before a referendum could be held – meaning a vote could in theory take place no earlier than December 2021. In reality nobody is likely to want to vote in the Scottish winter and the SNP recently announced that they would wait until Covid had dissipated before pushing for the plebiscite. For them this would mean a referendum in 2023.

The failure of the SNP to win an outright majority, in the context of expectations that they probably would achieve control of the Scottish Parliament, makes this scenario less likely, at least in the next two or three years.

## **Scenario 2 - The SNP doesn't secure permission from the UK government**

In March 2017 Nicola Sturgeon wrote to then Prime Minister Theresa May requesting discussions about a new section 30 Order. The request was refused, but in the Scottish First Minister's correspondence she made it clear her view was not 'if' a referendum would take place but 'when', whether the UK government agreed or not. Since then the question that has dogged Nicola Sturgeon within her own party is what her 'plan B' is if the UK Government does refuse a section 30 Order.

In 2019 Nicola Sturgeon told impatient party members at the SNP conference that:

"If we were to try to hold a referendum that wasn't recognised as legal and legitimate – or to claim a mandate for independence without having demonstrated majority support for it– it would not carry the legal, political and diplomatic weight that is needed. It simply wouldn't be accepted by the international community, including our EU friends and partners."

A spike in support for independence in 2020 increased pressure on the First Minister, as did the internal party civil war over Alex Salmond, and so she had to offer an alternative route. In January 2021 a document by Cabinet Secretary for the Constitution Mike Russell MSP set out a new more confrontational approach. The Scottish Government would complete the passage of the referendum legislation and then seek to test in the courts whether the Scottish Parliament has competence to hold such a vote without the consent of the UK Government. Such a case may appear before the Supreme Court either through a request for clarification by the Scottish Law Officers or through a challenge from the UK Government.

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There is already a speculative case on legal competence, brought by a private individual, before the Supreme Court. The Court initially refused to rule, describing the case as "hypothetical, academic and premature."

Any move might provoke legislation from the UK government to clarify that referendums on the Union are not within the remit of the Scottish Parliament. Something similar occurred over disagreements over the withdrawal from the European Union and the Internal Market Bill.



It is unclear what the timescale or outcome of such a legal challenge would be. It does seem clear that if such a challenge fails, the prospect of a referendum would be, for the time being, very unlikely. Any referendum without legal certainty is likely to deter voters due to the messy and risky nature of the process. Further, an illegal vote may also be boycotted by many on the unionist side. For example, the Conservative leader has made it clear his party would not take part in such a vote. The 2017 referendum in Catalonia illustrates why most undecided voters in Scotland are anxious about an illegal vote.

If the legal route fails it would be the beginning, rather than the end, of turmoil over Scottish Independence with political action (protests, wrecking actions in the House of Commons by SNP MPs, etc) likely to follow.

It is worth noting that when asked if the UK Government would take the Scottish Government to court over a referendum held outside of their legal powers, UK Ministers have so far refused to say they would. It may well be that they will rely on a private legal challenge from a group of pro-Union Scots to block the referendum rather than allow the story to be that it was UK Ministers who blocked a vote.

## PART 2

### What Comes Next: The Politics

Analysing Scottish politics potential legal routes only offers a partial picture. The reality is that, for all the talk of democratic mandates being respected (either the vote of the Scottish people in 2014 or the election in 2021) both sides will be making hard-headed political calculations about which option(s) best suit their preferred political outcome.

The immediate context for political judgements about whether to have another vote and when is the pandemic. During the election campaign Nicola Sturgeon went to great lengths to say that she would only revisit the issue once the crisis was over. The debate may centre around different views as to what 'after the crisis' means. SNP ministers are beginning to argue that it means once infections have abated while pro-Union politicians are arguing that the knock-on effects of the pandemic on the economy, education and the NHS also have to be dealt with before other priorities are considered.

### Both sides are weaker and stronger

It is Arden's view that the nationalists are tactically stronger than they were in 2014. But their failure in recent years to address some of the reasons why they lost in 2014 means that they enter this period strategically weaker. Primary among those intellectual failures are a clear view on the currency question and why they would wish to leave an island union to join a continental one.

In contrast, we assess that the anti-independence forces are tactically in a far weaker position than in 2014; not least because the Scottish Labour Party remains in the relative doldrums and the appetite

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for a formal cross-party campaign has gone. Further, the international trend towards 'alternative facts' may reduce the effectiveness of the economics based pro-UK attacks on the SNP. However, supporters of the Union should be cheered by the sense that the economic arguments for independence are far weaker with

oil below the SNP's target of \$113 a barrel and medium term oil revenues reduced in the carbon transition.

### An argument without end suits both governing parties' interests

Even leaving aside the potential for years of argument over the legal competences, there is good reason to doubt whether a referendum is likely in the short term. The SNP are simply not ready, intellectually or organisationally, to fight another referendum. It also suits both the SNP and Conservative governments for a constitutional stalemate to continue. Of course, there's no doubt that the Conservative leadership wants to maintain the Union and the SNP want to leave it. Though both parties would deny it, they are in political symbiosis.

For Boris Johnson and the Conservatives, prolonging this fight over the constitution has a dual benefit. Firstly, it attracts some non-Tory unionists to vote tactically for them. But more importantly it hinders Labour's message of moving away from identity politics and delays Labour's recovery in Scotland; thus reducing Keir Starmer's hopes of winning a majority. The PM can then go into the next

UK election saying to England that a vote for Labour is a vote for having the SNP in a Labour led government. For the SNP, playing identity politics bolsters their base and allows them to stay in power without the political risk of testing independence support which, for reasons discussed below, may be softer than some anticipate.

### **Challenges for the Nationalist camp**

The most significant development for the nationalist politics since 2014 is the passage of time. All governments have a sell-by date, even those as dominant as the SNP have been. Events overtake ministers, parties get tired and complacent, promise is not met, voters become bored. On the backbenches the number of disappointed parliamentarians eventually outnumber those with hope of being promoted to ministerial office.

While the SNP no longer resembles the formidable and disciplined message machine they were in 2014, it is still likely to be led by one of the most skilled communicators in British politics. This time however Sturgeon will have very noisy dissenting voices disrupting her strategic message.

For example, the issue of currency is felt by the SNP to be why they lost in 2014. The leadership, through the process that resulted in their Growth Commission Report attempted to win fiscal credibility by painting an austere picture of a decade of economic adjustment before finally moving to a new currency. This position has been overturned at successive SNP conferences but the leadership continue to claim that Scotland would use the pound informally for as long as a decade. The deep divisions on this issue, as well as the serious impacts of the leadership's position for financial services and other parts of the Scottish economy, means that their currency policy will not be the one that the party fights a future referendum on.

The currency issue touches on another important challenge. The nationalist offer to voters in 2014 was one which attempted to combine change with continuity: get rid of all the things you don't like (the Conservatives, austerity, etc) but keep the things you do like (your currency, being part of a bigger economy through EU membership, etc). This is where Brexit, which has so far been a tactical gift for the nationalists, risks becoming a strategic trap. No longer can the SNP use the shared economic frameworks of the EU single market to shrug off the economic impact of disentangling from the more tightly-woven UK single market. While Brexit negotiations continued, SNP ministers offered a "wait and see" answer to the question of what their harder border with England will look like. It is a question that can no longer be avoided and one that cannot be answered without exposing a deep contradiction: how can building borders be both the problem and the solution for Scotland?

The border and currency issue were both featured in the Holyrood election campaign and it became clear that the SNP Government are some distance away from having answers to these questions. Under repeated questioning they promised that they would answer them when a referendum was called, a tacit acknowledgement that these are issues which cause them real political difficulty.

In 2014 the nationalist side were able to use independence as a catch-all solution for every problem tapping into a myriad of frustrations. Two developments make that more playbook more difficult today. The first is that the Scottish Parliament has significantly more tax and welfare powers to collect and redistribute money. You don't need to leave the UK, for example, if Scots want to increase welfare spending.



The second is that the public spending argument has been turned on its head. In 2014, the nationalist campaign seized on an unusually good year's set of Scottish public finance figures to argue that Scotland could choose more socially democratic choices. Today the oil revenues which created the statistical platform for that argument have evaporated.

The final change for the nationalist side has been the hubris that has grown as a result of recent opinion polling. As with many nationalist movements, there has always been a minority tendency in the SNP that was so convinced of the inevitability of their cause that they were unwilling to compromise with the electorate. In most recent polls support for leaving the UK is hovering just above the 45% they achieved in 2014. In truth, the nationalist side has been bolstered, not by the polls, but by a lack of confidence on the pro-Union side.

### **Challenges for the Pro-Union camp**

On paper, the Union case is in many ways stronger than it was in 2014. The problem is that the parties and the wider movement lack leadership who can make their arguments.

The pro-UK parties, already battered by a landslide defeat at Holyrood in 2011 followed by an electoral earthquake at Westminster in 2015, have seen their confidence shattered by the victory of Brexit nationalism in 2016.

The Conservatives appeared to have engineered a post-2014 recovery based on opposition to Scottish nationalism, but then Boris Johnson took control of their UK party, and their charismatic leader Ruth Davidson departed. The Prime Minister has so far lacked the political subtlety of David Cameron. Cameron stubbornly refused to step into traps set by Alex Salmond, stressing that the campaign to remain in the UK was being led from Scotland by Alistair Darling. The pro-UK side is still, on balance, more likely to win, but it would be in spite of recent Downing Street's efforts rather than because of it.

The small group of undecided Scottish voters is sceptical about leaving unions, whether the EU or the UK. The pro-UK side should be able to use Brexit as a cautionary tale about the costs of erecting trade barriers and physical borders. However a UK government pursuing Brexit can hardly use Scotland's doubts about Brexit as the premise of their argument.

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There is a practical need for a broad-based campaign in any referendum but the parties are unwilling to work together to fight against independence as they did in 2014. We are likely to see a non-partisan campaign this time, perhaps with politicians such as Gordon Brown and Ruth Davidson offering political leadership, but without the personality of a cross party campaign. It would be strengthened by being a looser, more insurgent campaign than that run in 2014.

The Pro-Union side this time will feel that, unlike in 2014, they may be able to portray a more fatigued and divided SNP as the status quo. And for the UK and international media, a possible narrative about the defeat of a hegemonic nationalist movement may be just as interesting a story to tell as the end of the UK union.

## Conclusion

In many ways the election has left Scotland where it was: politically divided with a minority SNP government relying on Green support to govern. However, while the SNP have spent the last 5 years kicking the can down the road rather than forcing the issue of a referendum, they are now running out of road. Sooner or later they will be forced by expectations to force the issue. The reaction of the UK government will determine whether Scotland is set to repeat 2014 or whether it enters a new and possibly more fraught period of constitutional uncertainty.

The one thing that might prevent the issue being forced by the SNP is wavering public opinion. One Yougov poll on the eve of the election exactly mirrored the result of the 2014 vote. Just as the UK Government wants to play for time because Boris Johnson does not want to be the First Minister who loses Scotland, Nicola Sturgeon does not want to be the SNP Leader who kills the independence cause for good by losing another referendum. Sturgeon may secretly hope that a referendum is blocked both by the UK Government or the UK's courts so that this prospect never becomes real.

In the event of Indyref2, the pro-UK side can make a convincing case that leaving the UK entails more economic upheaval than it would have done in 2014. However, the shadow of Brexit will make it more difficult for many on the unionist side, especially Conservative ministers, to make that case. Nationalists aim to use the personality of Boris Johnson as an avatar for everything which many Scottish voters do not like about the UK." However, while in 2014 the SNP were able to share a story which offered change alongside economic continuity. In the event of a new vote the need for a new currency, fiscal constraints and a harder border with England are significant challenges for nationalists that have yet to be exploited by supporters of the Union.

The most important feature that hasn't changed since 2014 is that the debate is still dominated by two vocal tribes, with opinions as firmly fixed as the flags on their social media profiles. If a second referendum were to take place, and it remains an 'if', then the campaign that wins is likely to be the one that is best able to have a respectful conversation with that small group in the centre ground.

