

It may be legally possible for Scotland to stay in the ...

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I was asked by a Scottish journalist yesterday whether or not Scotland could stay in the EU single market now that England has made clear that it intends to drag Scotland, Wales and Northern Ireland out with it.

I reflected on the issue and realised that the answer, like all things surrounding Brexit, is not clear. However at least in this case I have some precedent to work on. The precedent comes from the Channel Islands. [As a note from their EU office says:](#)

The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty, and confirmed in what is now Article 355 (5) (c) of the EU Treaties. Under Protocol 3, the Islands are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries (i.e. outside the EU) in all other respects. However the Channel Islands have a close relationship with the EU in many different fields, not simply those covered by the formal relationship under Protocol 3, as this note explains. Both Jersey and Guernsey voluntarily implement appropriate EU legislation or apply the international standards on which they are based.

Now let me be clear that I am not saying this statement is legal precedent. Of course it is not. Nor is Protocol 3 such precedent in itself, I think (I say I think because I am writing this in Copenhagen where I am up to my eyeballs in work and have not got time to read all that I would wish on this issue right now). But, and this is a mighty important but, what Protocol 3 seems to show is four things.

The first is that territories closely associated with the UK have been admitted to the Customs Union independent of the UK itself but as a result of their relationship with it.

Second, if the claim above is true they have been de facto admitted to the Single Market on the basis of voluntary compliance.

Third, these territories, which are self legislating but always subject to consent from the Justice Ministry in London, have been able to achieve this goal, by and large own and

precisely because they can legislate for themselves largely independent of Westminster.

Fourth, the U.K. has over the time the Channel Islands have been linked to the EU given them greater foreign policy autonomy. This has been mainly to do with tax but I very strongly suspect that London will seek to preserve the relationships of Jersey and Guernsey with Brussels when England leaves the EU because to do otherwise would suggest that they really are part of the UK and subject to the whim of English voters.

So, the question is why isn't this a precedent for Scotland? Why can't it apply for its own Protocol 3 agreement with the EU now to survive England's planned withdrawal, which would allow it to retain a relationship that might otherwise be lost? And don't doubt that this must be plausible: I will be very surprised if the Crown Dependencies do not seek to do this, meaning that there will be a surviving part of the 1972 UK agreement to join the EU on which reliance could be placed by the UK nations other than England who could argue that they too should benefit in this way.

In that case an alliance of the governments of the Crown Dependencies, Scotland, Wales and Northern Ireland could seek to explore this as a way to retain firm links with the EU even if England does not want them. Legally the mere existence of Protocol 3 and its successor clause has to make that a possibility.

Does anyone know why that reasoning might be wrong?