

## Designing Scotland's citizenship regime under European conditions

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25 September 2013

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1. The creation of a new state from within an existing EU Member State, through an act of popular democratic will consented to not only by the seceding state but also by the 'rump' state, would be a unique political and constitutional act for which precedent regarding the establishment of the new citizenship regime (Ireland, Czech Republic/Slovakia, Soviet Union, Yugoslavia) are not entirely useful, although they may provide guidance on things to avoid (e.g. avoiding statelessness; protecting transnational families; avoiding an excessive 'ethnicisation' of the citizenship regime; pursuing liberal civic principles which respect both the requirements of democracy and popular will and the requirements of individual justice).
2. EU law frames national citizenship – as well as drawing upon it (only citizens of Member States are citizens of the Union). Case law such as *Micheletti* and *Rottmann* provides some guidance as to what the EU law constraints on citizenship in Scotland might be.
3. Recent research (ACIT – see [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu)) sets European benchmarks of good practice in terms of thinking about how citizenship operates at the interface of integration and immigration. What are appropriate standards both for citizenship law and citizenship practice in terms of the regimes of acquisition and loss especially for those not born in the territory, or born in the territory to non-citizens. It does not provide any conclusive guidance on setting the appropriate limits to the initial determination of the citizenry (i.e. how internally and externally inclusive should the regime be?).
4. One noticeable dimension of the constitutional debate in Scotland has been the emphasis placed on 'soft secession' – how much would remain the same, even after independence. A new state will be created, but in many respects with blurred boundaries. In the context of citizenship, this plays out in an ambition to maintain appropriate 'shared' citizenship arrangements across these islands, perhaps drawing some inspiration from those in place vis-à-vis Ireland. Toleration of dual citizenship is key to that – but this will only work if there is reciprocity and perhaps an agreement between Edinburgh and Westminster on this matter. A separation where an almost complete overlap of the citizenries post independence would be unique in history. Is this aspiration reasonable and workable?
5. The risks of such widespread dual citizenship are many. First, the Scottish citizenship regime might be 'hollowed out'. In what respects, would it be significant to opt for Scottish citizenship, and how would this be managed in the absence of a proactive registration system? With large numbers of external citizens, Scotland's elections may come under substantial pressure.

And the West Lothian question might continue to exist/operate, but in a different guise, depending upon the extent of external voting for dual Scots/Brits resident in Scotland and dual Brits/Scots resident in rUK. External citizens denied the right to vote may continue to lobby for the external vote and could exercise considerable pressure on political parties.

6. The relationship with the existing 'gold-plating' of EU electoral rights (in the referendum and in the Scottish Parliament elections) raises some difficult questions when it comes to the initial 'offer' of citizenship and the extent of non-citizen voting that might be applied in a post-independence Scotland.

A longer version of these comments was already published at <http://www.citsee.eu/citsee-story/scottish-citizenship-now-time-start-discussing-it> and a fuller working paper on Scottish citizenship will be published shortly at [www.citsee.ed.ac.uk](http://www.citsee.ed.ac.uk).