**Scots' Referendum Raises a Slew of Legal Issues**

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**By STEPHEN CASTLE**

BRUSSELS — With their promise to hold a referendum on independence, Scotland’s politicians have already sparked a lively debate with their English neighbors. Now the issue is prompting questions among their continental ones, too.

During a visit to Brussels this week, Scotland’s deputy first minister, Nicola Sturgeon, argued that Scottish independence, if approved in a referendum expected in 2014, could usher her country smoothly into the European Union as a separate member.

But she sought to squash fears that this would set a precedent for other separatists. “It is a decision for the Scottish people,” said Ms. Sturgeon, referring to the referendum. “It would not set any precedent in other parts of Europe. There is a particular set of circumstances in the United Kingdom.”

On a continent made up with a patchwork of regions, many with aspirations for greater autonomy, the stakes are high. Some fear opening the floodgates of separatism, leading to more fragmentation within a European Union already suffering from divisions.

Ms. Sturgeon’s argument rests mainly on the fact that Scotland, which entered its union with England in 1707, has always been considered a country within the United Kingdom. By contrast, the Basque country in Spain or Brittany in France do not have the same constitutional status.

But while they accept there are differences between the Scottish case and others who want independence, some believe Scotland’s referendum could set a precedent.

“The Scottish referendum process shows that a state is just an instrument — something to be used by citizens to fulfill their needs — and that citizens can decide themselves on the form this instrument should take,” said Oriol Junqueras, president of the ERC, a Catalan pro-independence party, in e-mailed comments.

“If a majority of Catalans wants to have a state to better fulfill their needs, Catalonia should become an independent state and automatically a member state of the E.U,” he said.

The status of an independent Scotland within the E.U. is such a thorny issue that the Council of Ministers, the body that represents the member states, has no formal legal position on it.

During her visit to Brussels, Ms. Sturgeon argued that a newly independent Scotland would simply remain inside the E.U. and would not have to re-apply. “We would automatically be members of the E.U.,” said Ms. Sturgeon, “I don’t think that position is in any doubt.”

Asked about that scenario, an E.U. official described it as just a hypothetical question.

It is nevertheless an important one for Scottish nationalists, in part because nations that join the E.U. are legally obliged to sign up to the euro. And that idea isn’t too popular in Scotland right now.

But while stressing that Scots would not be obliged to adopt the euro, Ms. Sturgeon sowed confusion by initially likening the position of an independent Scotland to that of Sweden, before backtracking.

Unlike Britain and Denmark, Sweden has no legal opt-out from Europe’s single currency. It put the question to a referendum in 2003, but joining was rejected by voters. The country remains outside the currency union but in legal limbo.

In fact a vote for Scottish independence would take Europe into uncharted territory. No country has ever attempted to split but stay inside the bloc.

Jo Murkens, senior lecturer in the law department at the London School of Economic and Political Science, says that an independent Scotland would have to reapply for E.U. membership.

“The U.K. minus Scotland would be the continuing state and would continue with its current treaty obligations,” Mr. Murkens said. “Scotland would have to apply as a new applicant state. It is 100 percent clear under E.U. law, although the Scottish nationalists have never accepted fully this.

“Changes to arrangements within the E.U require a treaty change and the fact of having a new member state requires a treaty amendment. Accession to the E.U. requires unanimity among the existing member states,” he said.

Even if a full membership application process could be avoided, independence for Scotland would mean changes within European decision-making bodies that would need unanimous consent.

Some could be easily organized providing there was an amicable divorce with the rest of Britain; for example Scotland could simply keep its quota of six of the 72 U.K members of the European Parliament.

But an independent Scotland would presumably want to send its own diplomats and ambassador (or permanent representative) to take part in official discussions. Similarly it would probably want its own member of the European Commission.

Any such change would need to be approved by all of the other E.U. nations, several of which might not want to encourage their own regions to copy Scotland’s path.

Some have already demonstrated how sensitive the principle is. Because they did not agree with Kosovo’s decision to break away from Serbia in 2008, five E.U. states — Spain, Slovakia, Romania, Cyprus and Greece — still refuse diplomatic recognition to the Kosovars.

Much of that opposition comes from the fact that there was no agreed parting of the ways between Kosovo and Serbia, and some officials believe that, if Scotland can extricate itself from the U.K. without rancor, then it could be accommodated without much difficulty. Others are not so sure.

“Spain, France, and Italy all have separatist movements and are anxious to avoid splintering their states,” Mr. Murkens said. “Would they watch Scottish independence without any form of resistance?”