

# Guide to a Provisional Constitution for Scotland



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## Contents:

Preface – pages 1 - 2

Glossary – pages 3 - 10

Introduction – pages 11 -12

Constitution – pages 13 - 40

## **Preface**

There are three characteristics of a good national administration:

**Firstly**, good politicians, who lead the administration, who take decisions and who defend those decisions with conviction, both internally and externally.

**Secondly**, clearly defined areas of responsibility between the government and parliament, and regional and local government, the judiciary and the supporting public services.

**Thirdly**, efficient and conscientious employees, who know who to turn to if there are disagreements to resolve.

None of these three characteristics is self-evident or simple to achieve; but when problems arise in the administration, the causes often lie in one or more of these areas.

The structure for these three characteristics to operate effectively is a codified written Constitution that clearly sets out the areas of authority, subsidiarity and responsibility.

As at the date of a yes vote for independence there will be an incumbent government with x years to run. That government will presumably set a date for Independence Day and

- 1 Start on the business of planning the changeover. Or
- 2 It could call for a new election to earn a mandate for that task. Or,
- 3 A commission could be set up to review the various options available for a democratic system of governing and managing the nation's affairs.
- 4 The commission to consist of thirteen members representing a cross section of society with a remit to complete initial recommendations within four months. Composition of the Commission could include three Politicians, three Commercial representatives, three representatives from the public sector and four non-aligned members.

The latter would be preferable because these who currently run the Scottish Government machine are not necessarily the most competent people to draft the structure of Independence.

When we achieve Independence it would be preferable to hear a variety of views on how Scotland intends to manage its domestic affairs, define its ambitions and represent on the world stage.

The work in drafting this Constitution is supra governmental – a declaration of intent from the people which should transcend the ambitions of all sectors of the Scottish political machine.

There needs to be a transition formula contained in this draft to this effect:

On the conclusion of a vote for Independence the incumbent Scottish government will set no definitive date for the formal declaration of independence but will schedule a general election within the following twelve months. The people of Scotland will then decide upon who shall conduct these negotiations on their behalf.

## Glossary

**Accountability:** In Constitutional terms this means the concept of *responsibility* of either executive government or of the judiciary for their acts and omissions. In electoral terms this is taken to mean accountability to voters but the *executive* is also accountable to **Parliament** and the judiciary is subject to control by the Legal Services Ombudsman.

**Act of Parliament:** A law passed as primary legislation by Parliament.

**Advocate General:** The office of the Advocate General is the UK government's Scottish legal team, providing legal advice, drafting and litigation services to the UK government in relation to Scotland.

**Bill:** A draft Act of Parliament is known as a Bill. Most Bills are introduced into parliament by the government but a Bill may also be introduced as a private member's Bill.

**By-election:** An election held to fill a political office that has become vacant between general elections.

**Cabinet:** The committee of senior government ministers at the heart of the executive government and the supreme decision-maker in government. In Scotland the senior ministers within the cabinet are termed cabinet secretaries.

**Cabinet Secretary:** Cabinet Secretary is the title held by members of the Scottish Cabinet who hold individual portfolios and are appointed by the First Minister.

**Codification:** The action or process of arranging laws or rules according to a centralised statutory form.

**Commission:** A group of people entrusted by government or other official body with authority to do something.

**Constitution:** A constitution is a set of fundamental principles or established precedents according to which a state is governed. When these principles are written down in a single comprehensive document, it is said to embody a *codified* written constitution.

**Constitution Amendment:** A constitutional amendment refers to the modification of the constitution of the state. Most constitutions require that amendments cannot be enacted unless they have passed a special procedure that is more stringent than that required of ordinary legislation.

**Convention:** A large gathering of people who share a common interest to achieve a way in which something is done.

**Civil Service:** The civil service is a body composed principally of career bureaucrats that supports the government and helps develop and implement its policies.

**Constituency:** An electoral area whose voters elect a representative/s to a legislative body.

**Constitutionality:** Constitutionality is the condition of acting in accordance with the laws or guidelines as set out in a constitution.

**Declaration:** A legal remedy whereby a court states (declares) what the law is.

**Democracy:** A system of government in which citizens govern through elected representatives of the people. *Representative democracy* is a system where citizens elect individuals to represent them in government. Representative democracy underpinned by constitutional sovereignty is a system where the power is conferred by the people as opposed to being imposed on the people.

**Devolution:** The granting of power by central government to government at a local level.

**Election:** An election is a formal group decision-making process by which a population chooses an individual to hold public office. In representative democracies, elections are the process, which enables citizens to choose representatives for public office.

**Elected Representatives:** Individuals chosen by voters in an election to represent in government the interests of the voters.

**Executive:** A constitutional part of government that is responsible for the daily administration of the state.

**Executive Power:** The power to enforce executive orders as intended and given, authorised by law.

**Emergency Powers:** Powers of central government to act outside its normal powers in an emergency such as war or a major natural disaster.

**Elective Dictatorship:** A graphic phrase used by the former Lord Chancellor, Lord Hailsham to describe the dominance of the executive over Parliament reflecting the fact that once elected on a general political manifesto the government of the day will usually be able to pass whatever legislation it wishes.

**First Minister:** The First Minister is head of the Scottish Government and is ultimately responsible for all policy and decisions.

**Fundamental Principles:** Basic principles or laws from which other laws can be derived.

**Fusion of Powers:** In the unwritten United Kingdom constitution one arm of the government-the executive-is selected from another arm-the legislature (Parliament) and so instead of being separated they were inextricably fused.

**Government:** The body of elected persons with the power to control the affairs of a country or state. The current Scottish Government consists of one First Minister, nine cabinet secretaries and fifteen other ministers.

**Head of State:** A head of state is the public persona that officially represents the national unity and legitimacy of a sovereign state. Depending on the country's form of government and separation of powers, the head of state may be a ceremonial figurehead or concurrently the head of government.

**Integrity:** Integrity is the qualification of being honest and having strong moral principles. In ethics, when discussing behaviour and morality, integrity is derived from qualities such as honesty and consistency of character. As such a person has integrity to the extent that they act according to the values, beliefs and principles they claim to hold.

**Judiciary:** The system of judges and courts charged with interpreting and applying the law.

**Judicial Independence:** Judicial independence is the concept that the judiciary should be free from interference by the other branches of government or from private or partisan interests.

**Legislature:** A deliberative body of elected persons, who are empowered to make, change, or repeal the laws of the state. Laws enacted by legislatures are known as legislation. Legislatures are often contrasted with the executive and judicial branches of government. Names for legislatures include “parliament” or “assembly”.

**Legislation:** Laws passed by a legislature or other governing body. Primary legislation is law passed by Parliament in the form of an Act of Parliament. Prior to being enacted the draft law is called a Bill. Secondary Legislation, sometimes called subordinate or delegated legislation, is law made under the authority contained in primary legislation. Primary legislation generally sets out broad outlines and principles, but delegates specific authority to an executive branch to issue secondary legislation creating legally enforceable regulations and the procedures for implementing them.

**Law:** Law is a system of rules that are created and enforced through social or governmental institutions to regulate behaviour. A distinction can be made between (a) civil law jurisdictions, in which a legislature codifies and consolidates their laws, and (b) common law systems, where judge-made precedent is accepted as binding law.

**Lord Advocate:** The Lord Advocate is the chief legal officer of the Scottish Government and the Crown in Scotland for both civil and criminal matters. He or she is the chief public prosecutor for Scotland and all prosecutions on indictment are conducted nominally in the Lord Advocate’s name.

**Member of Parliament:** A Member of Parliament is the representative of the voters to a parliament.

**Nation:** Is a cultural-political community, residing within a defined territory, that has become conscious of its autonomy, unity and particular interests.

**Oversight:** When someone has oversight of a process or system, they are responsible for making sure that it works efficiently and correctly.

**Parliament:** In modern politics, a parliament is a legislative, elected body of government. Generally, a modern parliament has three functions: representing the electorate, making laws and overseeing the government via hearings and inquiries.

**Preamble:** An introductory or explanatory statement in a document such as a Constitution that explains the document's purpose and underlying philosophy.

**Prerogative Power:** The special power or peculiar right possessed by an official by virtue of his or her office, that is unaffected by any other power. The powers are non-statutory and many are outside the control of the courts. Many of the prerogative powers of the monarch have been delegated to the central government, but are still exercised on a non-statutory basis. It is considered that all prerogative powers should be placed on a statutory footing and brought within the control of the courts.

**Private Member's Bill:** A Bill (proposed law) introduced into the legislature by a legislator who is not acting on behalf of the executive branch (government).

**Political Party:** A group of people who come together to contest elections to attain and maintain political power in government consistently with a published political manifesto.

**Proportional Representation (PR):** An electoral system designed to ensure a close approximation between the percentage of votes cast and the number of seats allocated

**Recall:** A means of removing an elected representative from office by a vote when a certain threshold of dissatisfaction has been reached.

**Referendum:** a vote by the electorate on a specific proposal, usually of a significant or constitutional nature. Sometimes called a plebiscite.

**Responsibility:** Responsibility is the obligations, whether legal or moral, owed by citizens to each other or to the state.

**Rule of Law:** A principle that all are subject to the law and that the law is publically published and publically administered in the courts.

**State:** A state is an organised political body that exercises control over a particular area. States may or may not be sovereign.

**Statutory Law:** Statutory law is written law set down by a body of legislature. Statutes may originate with national, regional assemblies or local municipalities.

**Sovereignty:** Government free from external political and financial control.

**Constitutional Sovereignty:** Under constitutional sovereignty, the legitimacy of a government is determined by the consent of the people in a codified written Constitution. The authority of Parliament is derived from the constitution and if a passed law is deemed to be in contrast with any provision in the constitution then it could be taken to court and challenged as unconstitutional.

Constitutional sovereignty is the antithesis of parliamentary sovereignty, which is derived from the claims of the English Parliament as reflected in the Bill of Rights 1689 (pre 1707 Treaty of Union).

**Parliamentary Sovereignty:** A constitutional doctrine that holds that the legislative body has absolute sovereignty and is supreme over all other government institutions, including executive and judicial bodies. It also holds that the legislative body may change or repeal any previous legislation and so it is not bound by written law or by precedent. It has also been taken to mean that the validity of Acts of Parliament cannot be challenged in the domestic courts. The origins of the doctrine are obscure.

**Single Transferable Vote:** A system of proportional representation used in multi-member constituencies in which voters have only one vote but can rank the candidates in order of preference.

**Separation of Powers:** The constitutional doctrine that divides governmental power into separate organs (branches) of state so that no one branch acquires a monopoly of power over another, normally the executive, legislature and judiciary. In the UK there is a fused system in which the executive and legislative branches of government are not truly separated and in which, the central government (the executive) dominates the legislature.

**Statutory Instrument:** The main form in which secondary legislation is made in the UK.

**Unconstitutionality:** Being in violation of the requirements of the Constitution of the state.

**Unicameral Legislature:** A representative form of government with a single legislative chamber.

**Whip:** A whip is an official of a political party whose task is to ensure party discipline. A role in party politics designed to ensure control over attendance at votes and compliance with the wishes of the party as to the vote cast on pain of sanction.

## Introduction

### Why a Constitution for a Self-Governing Scotland

A codified written Constitution is a framework for government institutions rather than a detailed policy document. It sets out the fundamental law that defines the state, establishes and regulates its institutions, protects its citizens by authorising the extent of powers available to the government, and in general provides an overarching legal framework for the governance and well-being of the people and the conduct of politics.

1. **The Scottish Nation**, a fusion of multiple peoples, is one of the most ancient nations in Europe, with 1500 years of shared experience as a political unit that has occupied its national territory throughout its entire history. Historical evidence shows that the Scottish Kingdom was founded by Fergus Mor around the year 500 AD and was a sovereign state for over 1200 years until Union with England was imposed in the year 1707.
2. **The UK parliamentary system has not adapted to society as it is today.** The system was built up in the industrial era, at a time of limited education and at a time of rigid traditional bonds of place, class, and institutional social structures. Today's better educated, more affluent and socially flexible population expects greater control and choice over the many aspects of their lives than today's politics provide. The people have moved on, but in the main, the system has stagnated.
3. **Status of Governance:** Currently, Scotland has too much centralised government - by Brussels, Westminster, Holyrood and Local Authorities, yet there is a marked lack of democratic representation and accountability.
4. **Remote Control Governance:** The current system was set up for remote, centralised control by the Westminster based Scottish Office, with little or no accountability to the electorate, resulting all too often with the stifling red tape driving our brightest talent to seek pastures abroad. Devolving some authority to Holyrood has merely transferred some of these controlling powers to the Scottish Cabinet.
5. **Accountability:** Under the current forms of government there is an absence of accountability to the electorate (the employers) that makes a written Constitution not only desirable but also essential. A **Codified Written Constitution (CWC)**, underpinned by constitutional sovereignty would provide improved accountability and democracy in comparison to the current system of parliamentary sovereignty that makes accountability very difficult.
6. **Public Involvement:** It is considered that the necessary constitutional reform can only be achieved by a codified written Constitution. Further, the new Constitution should be compiled following extensive public debate.
7. **Authority:** Under a codified written Constitution the supreme sovereign authority rests with the people not with Parliament as currently accepted.

8. **Rationale:** A codified written Constitution would provide the path to a fairer, more enterprising and inclusive society based on greater citizen involvement. It would change our lives for the better by supporting the values that we hold dear.
9. **Constitutional Framework:** To promote flexibility, the Constitution - as the Fundamental Law - performs as the roots and trunk of a treelike structure, with the branches being the enabling Acts of Parliament. The Acts of Parliament contain the detailed content, which can, when appropriate, be amended to suit the evolving needs of society.
10. **Devolved Government:** In order for the electorate to feel any ownership of the political system they must understand how they can influence the decision-making process system and see the results of their input on a local or a personal basis. It is therefore proposed that the Community Councils be provided with clearly defined powers, funds and assets.

It is proposed that the thirty-two (32) Local Authorities and their current powers be re-organised and divided between a lesser number of larger Regional Assemblies and the local Community (Burgh) Councils.

All of the powers and responsibilities of the current local authorities should be evaluated and progressively divided between regional assemblies and community councils to achieve viable and practical, fit for purpose people based outcomes.



## **PROVISIONAL CONSTITUTION OF SCOTLAND**

### **PREAMBLE**

The people of Scotland share a common belief in democracy, freedom, fairness, tolerance and equality. They are entitled to liberty and justice; safety, security and sustainability; health and economic well being; with accessibility, participation, partnership and accountability as principles of governance.

The Constitution enshrines clearly defined principles of governance whilst recognising individual rights and responsibilities and will seek to:

recognise a system of government wherein the people of Scotland are the sovereign power and invest that sovereignty in a Scots Parliament for and of the people.

define the rights and responsibility of the state and the people, and define the powers, obligations, duties and limitations of the state.

provide a system of government in which power is shared between national, regional and community government, and managed by elected representatives who are accountable to the people.

### **CONSTITUTION**

**We, the people of Scotland, being the supreme sovereign authority in Scotland, grant the Parliament of Scotland the authority to govern the people and territory of Scotland in accordance with the following Constitution:**

## **Article 1: General Provisions**

**1.1** Scotland is a free, independent and sovereign commonwealth. Its form of government is a parliamentary democracy based on the sovereignty of the people, social justice and respect for human rights.

**1.2** This Constitution is the supreme and fundamental law of Scotland: all new law shall be governed by these articles and existing laws shall continue in force upon its formal adoption but shall within a period of three years therefrom be reviewed under the aegis of the Supreme Courts of Justice in Scotland and where necessary modified to comply.

**1.3** The land, territorial waters and airspace of Scotland are an inseparable and indivisible whole, belonging to the people of Scotland collectively as a nation, as communities and as individuals.

**1.4** The territory of Scotland comprises all land to the north of the land border, running as in 1707 between the Solway Firth and the mouth of the River Tweed, and the surrounding sea and air space areas to a limit of 200 nautical miles or the relevant median lines, from Shetland in the North to Rockall in the West, or to such further limits as may in future be set or allowed by international law.

**1.5** Citizenship: All persons born in Scotland with a parent of Scots nationality have the right to be citizens of Scotland.

**1.6** All persons with at least one parent of Scots nationality, although they themselves have not been born in Scotland, have the automatic right to apply for citizenship.

**1.7** All persons, resident, and on the electoral register, when Scotland resumes sovereign status, have the right to be citizens of Scotland.

**1.8** Parliament will enact laws to regulate the acquisition of Scottish citizenship by adoption, marriage, descent, or naturalisation, and to specify the manner in which citizenship may be lost or renounced.

**1.9** Parliament will specify the circumstances and conditions under which dual citizenship with other states may be held.

**1.10** Laws concerning the acquisition or renunciation of citizenship must not unfairly discriminate on the grounds of gender, ethnicity, religion, beliefs, disability, personal status or sexual orientation.

**1.11** All citizens of Scotland, resident, and on the electoral register, are entitled to vote in all referendums and elections on reaching the Statutory Age of Maturity, except for persons under guardianship due to severe mental incapacity as defined by a specific medical or judicial certification.

**1.12** Governmental authority will be exercised on the basis of this Constitution, on election and electoral mandates, and such laws as are in accordance with the Constitution.

**1.13** Only laws published in the manner prescribed in Article 4 may be enforced.

## **Article 2: The Fundamental Rights, Liberties and Duties of the People**

**2.1** The European Convention on Human Rights that entered into force, on the 3rd September 1953 will be adopted in full as part of the Fundamental Law of Scotland. The European Convention on Human Rights enables the principles of the Universal Declaration of Human Rights proclaimed by the General assembly of the United Nations on the 10th December 1948.

**2.2** All citizens will be expected to uphold these rights. There will be no interference by a public authority with the exercise of these rights, except in the interests of national security or public safety, unless permitted in law.

**2.3** The rights and freedoms set forth in this Constitution will be enjoyed without discrimination on grounds of age, sex, race, colour, disability, impairment, language, culture, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**2.4** Freedom of expression through the media and electronic communication and public demonstrations is guaranteed, subject to the law.

**2.5** The right to life is protected. The death penalty is prohibited. All persons have the right to die with dignity and to request assistance to end their lives.

**2.6** All citizens have the right to liberty, other than by lawful arrest and detention.

**2.7** All citizens have the right to freedom of religion, provided it is practiced within Scots law.

**2.8** All citizens have the right to freedom of expression, within the law.

**2.9** All citizens have the right to freedom of information in relation to all public organisations and public bodies, as provided for under data protection legislation.

**2.10** All citizens have the right to peaceful assembly. This right may be restricted in accordance with procedures determined by law for the purpose of national security, and the safety of individuals.

**2.11** All citizens have the right to free, quality healthcare at the point of need, subject to available resources.

**2.12** All citizens have the right to privacy respected in regard to electronic and written communication regarding private and family life, other than is necessary and reasonable in a democratic society to prevent abuse of this right.

**2.13** All citizens have the right to use reasonable force to defend self and family under threat of violence. Reasonable force defined as up to and inflicting actual bodily harm on the antagonist, short of actual death.

**2.14** All citizens have the right to be secure against search, seizure or forced entry, other than in accordance with a warrant issued by a magistrate on evidence presented or in accordance with police powers to respond to protect someone in immediate danger.

**2.15** All citizens have the right to be free from, and protected from, torture or inhuman or degrading treatment or punishment. No person will be held in slavery and all forms of forced labour are prohibited, but work incidental to the serving of a sentence of imprisonment imposed by a court of law will not be taken to be forced labour within the meaning of this Article.

**2.16** All citizens have the right to be treated with dignity, and to participate in society as full and equal members, and to have barriers to such participation removed.

**2.17** All citizens have the right to enter and to remain in Scotland, and to leave the country unless subject to a court order.

**2.18** All citizens have the right to an adequate and free basic education. Children have the right to receive basic education. The education provided will enable development of the individual's abilities and needs, and promote respect for democracy, the rule of law and human rights.

The authorities of the state will ensure access to upper secondary education and equal opportunities for higher education for all citizens on the basis of qualifications.

**2.19** All citizens are equal before the law, and have the right to equal benefit of the law.

**2.20** All children will be guaranteed by law the protection and care that their well-being requires; the best interests of the child will always take precedence when decisions are made regarding a child's affairs.

**2.21** Everyone arrested or detained has the right to be informed of the reasons, and to be informed of their right to retain and instruct counsel. They have the right to have the validity of their detention determined by habeas corpus, being a writ requiring persons to be brought into court for a judge to decide whether their detention is lawful.

**2.22** Any person charged with an offence has the right to be informed of the particulars of the alleged offence; to be tried within a stated elapse of time and to be presumed innocent until proven guilty.

**2.23** Scots, English, Doric and Scots Gaelic are the languages of Scotland. Notwithstanding, all documentation of a legal nature, and concerning the actions or deeds of the Scottish Parliament and Justice System, will be recorded in the English language, which will have precedence over any other written translations.

### **Article 3: The Head of State**

**3.1** The People of Scotland will select the Head of State

**3.2** The Head of State will be bound by an Oath, as prescribed by Schedule 1, to uphold, defend and obey the Constitution and laws of Scotland.

**3.3** The Head of State will be remunerated as determined by law. The Head of State accounts will be open to scrutiny by Parliament, and reviewed as per law.

**3.4** The Head of State will be deemed to be a servant of the state, and will therefore be considered to be impartial to all matters politic.

**3.5** The Head of State will possess only such powers as are expressly vested in him or her by this Constitution, and will exercise those powers with the advice and consent of the responsible constitutional authorities.

**3.6** The Head of State will dissolve Parliament on the advice of the Presiding Officer in accordance with the provisions of Sections 4.10, 4.11 and 4.12 of Article 4.

**3.7** The Head of State will confirm assent to legislation, in accordance with the provisions of Section 4.29 of Article 4.

**3.8** The Head of State will award civic honours in recognition of public services, as proposed by an Independent Commission in accordance with the law.

**3.9** The Head of State will accredit and receive ambassadors, and perform other associated duties, as directed by the Scottish Government.

**3.10** During the absence of the Head of State from Scotland, or inability to perform his or her duties, the constitutional powers and functions of the Head of State stated in Section (3) of this article may be delegated to a designated Commissioner. The Executive will appoint the Commissioner, on the nomination of the Parliamentary Bureau. No serving Member of Parliament, or Minister, may serve as the Commissioner.

## **Article 4: Parliament**

**4.1** Subject to the rights of the People, the supreme legislative power is entrusted to a unicameral Parliament.

**4.2.** Parliament consists of representatives, elected by the People, together with an executive Council of Ministers, elected from the representatives in Parliament, hereafter termed the Scottish Government.

**4.3** Parliament will sit for a statutory period of four years and will be supported by a Civil Service.

**4.4** Parliament comprises one hundred and eighty-four representatives elected from thirty-eight parliamentary constituencies affected under an Act. (5 representatives elected from each of 35 parliamentary constituencies plus 3 representatives elected from each of the 3 island parliamentary constituencies).

**4.5** Representatives in the Scottish Parliament, hereafter referred to as Members of Parliament, are elected by a secret ballot using the Single Transferable Vote system of proportional representation.

**4.6** The general elections take place on the first Sunday in May with the rules for campaign expenditure for parliamentary candidates being set by an Act (of Parliament).

**4.7** All registered Scottish citizens, aged sixteen years or over are entitled to vote in the Parliamentary elections.

**4.8** Parliamentary Constituency boundaries are set by an Act, on the recommendation of the Boundary Commission, having due regard for regional, cultural and historical ties, economic expediency and the requirements of regional planning.

**4.9** Every person eligible to vote in elections for the Scottish Parliament is eligible to stand for election to Parliament. No person who holds executive, administrative, military, diplomatic or judicial public office (other than Ministerial office) may be elected to Parliament unless they resign from the incompatible office.

**4.10** Vacancies in Parliament arising from the death, resignation or removal of a member will be filled within three months. Unless a general election is due in that time, vacancies will be filled by a by- election.

**4.11** Parliament will elect from amongst its members a Presiding Officer and Deputy Presiding Officers to convene its sessions and enforce its rules of procedure. These officers are elected as the first item of business after each general election, by a secret ballot and by a majority vote. The Presiding Officer and the Deputy Presiding Officers when in the chair must perform their duties in a strictly non- partisan manner.

**4.12** Parliament will, except as stated in Sections 4.11 and 4.12 of this Article, continue in office for a fixed statutory term of four years; and the Head of State, acting on the advice of the Presiding Officer, will dissolve each Parliament on the fourth anniversary of the preceding dissolution, and issue writs for a general election to be held within the next thirty days.

**4.13** If Parliament has failed to appoint a new First Minister within the period of 30 days as specified in Section 5.3 of Article 5, then the Presiding Officer, after consulting the various parliamentary groups, may advise the Head of State to dissolve Parliament; writs will thereupon be issued for a general election to be held within a period of 30 days.

**4.14** If Parliament, by a two-thirds majority vote of its members, passes a resolution calling for its own dissolution, in order to resolve an impasse or to seek a fresh mandate from the people, the Presiding Officer will advise the Head of State to dissolve parliament; writs will therefore be issued for a general election to be held within a 30 day period.

**4.15** Parliament will have the power, in time of war or national public emergency, to extend its term of office for a period not exceeding 12 months, by means of a resolution passed by a two-thirds majority of its members.

**4.16** Parliament will determine its own sessions and adjournments; provided, that it must assemble within seven days after each general election, and it must assemble each year for regular sessions as provided by law. The Presiding Officer will summon extraordinary sessions, whenever she/he deems it necessary, or if so required by the Scottish Government, or by one-third of the members of Parliament.

**4.17** The Presiding Officer shall convene a Parliamentary Bureau consisting of eight Members of Parliament representing a cross-section of members. The Parliamentary Bureau will prepare Parliament's agenda and order of business. In the arrangement of parliamentary time, due precedence will be given to the legislative business initiated by the Council of Ministers, but at least one-fourth of the parliamentary time will be reserved for the Opposition and individual member's business.

**4.18** There will be a Parliamentary Corporate Body, consisting of the Presiding Officer (as convenor), the Deputy Presiding Officers, and four other members of Parliament elected by proportional representation at the commencement of each session. The Corporate Body will manage Parliament's staff, buildings, facilities, security and budget, and will propose the rules of procedure, which may be adopted for amendment by a two-thirds majority vote of Parliament.

**4.19** All Members of Parliament will be allowed Freedom of speech and debate in Parliament, subject only to Parliament's own rules of procedure (Standing Orders).

**4.20** All Members of Parliament will be allowed Freedom to vote in accordance with their personal conviction and electoral pledges, free from intimidation from others

**4.21** All Members of Parliament will be allowed a moderate salary, and other incidental allowances, as prescribed by law.

**4.22** Parliament is the sole authority empowered to enact legislation on behalf of the people. All such legislation will have a term life of 50 years for civil and criminal laws, 25 years for general laws, and four years for those laws which place certain restrictions on civil liberties, thereafter terminating unless continued by the Parliament.

**4.23** Subject also to any detailed provisions prescribed by Parliament's own rules of procedure, Parliament will enact laws as prescribed in sections 4.24 to 4.29.

**4.24** Legislative bills may be proposed by the Scottish Government, by any individual member of Parliament, or by means of a public petition signed by at least five per cent of the registered voters; provided, that money bills, which will be limited to matters of public revenues and finance, may only be proposed by a responsible Minister.

**4.25** The submitted legislative bills will be subjected to deliberation and process by an appropriate cross-party parliamentary committee before they are debated in Parliament. An assessment of the impact of legislation will accompany legislative bills.

**4.26** A submitted bill will be debated in Parliament, and if approved by a majority of those voting, it will be presented to the appropriate committee of Parliament. The committee will conduct hearings, to which representations may be made by or on behalf of all persons or groups interested in the subject matter of the bill. The committee will have the right to subpoena persons, who will be required to provide evidence, under oath.

**4.27** The appropriate committee will report on a proposed bill to Parliament, and will recommend such amendments, as they deem necessary or expedient. The committee will ensure the bill is fit for purpose and the financial costs of implementation are fully evaluated. Parliament will vote on the amended bill.

**4.28** Parliament will vote upon the proposed bill in the form agreed following assessment by the appropriate committee. The bill will be deemed to have passed if approved by a simple majority of Members of Parliament.

**4.29** The Head of State, on the advice of the Presiding Officer, will grant assent to, and thus enact as law, all bills passed by Parliament.

**4.30 The Act of Parliament for the levying of public revenues and the fiscal budget (money bill) will remain in force for a full term of Parliament after the date on which the Act came into force.**

**4.31** Parliament will appoint committees to inspect and oversee the Government and to scrutinise specific legislation. They will consist of at least seven (7) members, chosen by parliamentary vote, by proportional representation of political groups.

**4.32** Parliament will also appoint Parliamentary Commissions and Boards of Enquiry, which may include expert advisors from outside of Parliament, in order to investigate and report on particular decisions or particular aspects of policy, legislation, or administration. Their composition, duration and terms of reference will be specified by a parliamentary resolution.

**4.33** Parliamentary Committees, Parliamentary Commissions and Boards of Enquiry will have right of access to official documents, files and other evidence, and the power to summon and subpoena witnesses, including Ministers and other officials, to provide evidence given under oath.

**4.34** Members of Parliament holding a ministerial office will, by virtue of that office, be disqualified from membership of all select committees and from Parliament's Corporate Body. They may serve on Parliamentary Commissions and Boards of Enquiry only where there is no conflict of interest.

**4.35** The proceedings of Parliament, its committees and commissions, will be open to the public and media, except in matters of national security, where the Presiding Officer may, upon appropriate advice, determine that it is advisable to carry out the debate in camera.

**4.36** The non-government aligned Members of Parliament may elect a member who will be designated by the Presiding Officer as the Leader of the Opposition.

**4.37** Members of Parliament will swear an oath of allegiance to serve and promote the wellbeing of the people of Scotland, to uphold the laws and Constitution of Scotland; and to act on behalf of the people of the constituency represented.

**4.38** Parliament will have the authority to initiate a vote of no confidence in an individual Minister, the Scottish Government as a whole, or an individual Member of Parliament. The Parliamentary Bureau will have the authority to discipline the offender/s.

**4.39** The electorate are empowered to raise a Petition to Recall a Member of Parliament, hereafter referred to as an MP.

**4.40** Stage one of the Petition to Recall an MP will be initiated when 1 (one) per cent of the registered electorate of the constituency, consider that a constituency MP has failed to perform his or her duties on grounds of negligence, corruption, criminal conviction, dishonesty, or other gross misconduct or, in the view of the constituents has simply ceased to represent their interests.

**4.41** Stage two of the Petition to Recall an MP procedure requires to be signed by 10 (ten) per cent or more of the registered electorate of the constituency within a time period of eight weeks. The Electoral Commission will regulate the Recall Petition process.

**4.42** A petition signed by 220,000 or more registered voters within six months, calling for a popular vote on an issue of concern, will be referred to Parliament. A Public Petitions Committee will decide on petitions submitted by individuals, community groups and organisations. If the issue or concern cannot be resolved by Parliament then it will be put to a referendum. A referendum held under this provision will be legally binding.

## **Article 5: The Scottish Government**

**5.1** The Executive power will be invested in the Scottish Government, which will consist of a Cabinet, comprising a First Minister, a Deputy First Minister and Cabinet Secretaries. The Cabinet will be supported by such Ministers as may be required to conduct the government of the state. The Scottish Government will collectively be responsible to Parliament.

**5.2** The First Minister will be elected by Parliament from amongst its numbers, by open ballot and a simple majority vote.

**5.3** The First Minister will be elected and appointed within thirty (30) days after each General Election, and within thirty (30) days after the death, resignation, or removal, of the former First Minister. If a First Minister has not been elected during this time, Parliament may be dissolved in accordance with the provisions of Article 4 Section 13.

**5.4** The incumbent First Minister and Cabinet will continue in office in a caretaker capacity, following a General Election, until a successor is appointed. Following the death, resignation or removal of a First Minister, and until the appointment of a successor, the Scottish Government will act in a caretaker capacity.

**5.5** All Cabinet Secretaries and other Ministers will be nominated by the First Minister, from amongst the members of Parliament, and voted in by a simple majority of Parliament.

**5.6** The Scottish Government, subject to the Constitution and the law, will determine all matters of foreign and domestic policy. It will direct the administration, conduct foreign relations and manage monetary and fiscal policies. It may prepare draft legislation, and other business, to lay before Parliament. A majority of Cabinet Secretaries must be present at the meetings when such decisions are made.

**5.7** The administrative officials, subordinate to the Scottish Government, will be recognised as a permanent, professional and non-partisan Civil Service, and will be regulated by the Public Service Commission.

**5.8** Authority over the Armed Forces, subject to the Constitution and law, will be vested in the Scottish Government. No declaration of war may be made, or overseas deployment of troops undertaken, except with the prior consent of a two-thirds majority of Parliament. If Scotland is under actual, or imminent, enemy attack, the Scottish Government will undertake all necessary defensive action.

**5.9** No treaty or international agreement of any kind will come into effect unless it is ratified by Parliament, either by a majority resolution or, to the extent that it concerns domestic laws, by enabling legislation.

**5.10** Treaties delegating sovereignty powers (legislative, administrative, judicial, military, fiscal or territorial) to a confederation, union, alliance or international body will take effect only if ratified by a two-thirds majority of Parliament followed by a public plebiscite achieving a majority vote.

**5.11** The Cabinet will appoint an executive quorum to provide an informed response to any significant or emergency situation when Parliament is not in session.

**5.12** Non-government organisations will operate under the direct authority of the office of the responsible Cabinet Secretary.

**5.13** The Scottish Government may appoint Special Advisors from outwith Parliament. The Special Advisors will be selected on account of their specialist knowledge, experience and qualifications.

**5.14** All Cabinet members are required to provide Parliament with a yearly report outlining an account of matters falling under their authority.

**5.15** While in office, Cabinet Secretaries and Ministers are not permitted to undertake any other employment, whether paid or unpaid, and must not engage in employment in any way related to their ministerial duties for a period of five years after leaving office.

**5.16** On appointment to a cabinet or a ministerial post, any existing commercial obligations or contract of service must be declared and settled or unconditionally terminated. All shares or investments in commercial organisations owned by the appointee must be declared and will be held in escrow for the duration of the appointment, and for a further period of six months after leaving office.

**5.17** It will be illegal for any individual or organisation to lobby or otherwise influence a Member of the Scottish parliament without having first registered with the Parliamentary Bureau and agreed to the terms and conditions applicable to lobbying.

## **Article 6: Public Finances**

### **National Currency**

**6.1** The National Currency of Scotland is the Scots Pound, being Constitutional Money guaranteed by the State in accordance with the Constitution.

**6.2** There shall be a Constitutional Monetary Authority (CMA) holding ultimate responsibility for the administration of the National Currency. It will be independent of the legislative and executive branches of the Government. Its members will be nominated by a Public Appointments Commission, and appointed by Parliament by a simple majority vote in a secret ballot. The CMA shall be funded by making its own requisition upon the normal revenues of the State.

**6.3** The Central Bank of Scotland is the executive arm of the Constitutional Monetary Authority and will (a) originate the currency and (b) regulate its distribution through the Full Reserve banking system.

**6.4** The Scots Pound is issued free of debt by the Central Bank of Scotland and in Scotland is the sole legal tender and circulating medium of exchange comprising cash or credit instruments. The origination or placing into circulation of any other money or money substitute shall be an act of counterfeit.

## **Government Finances & Taxation**

**6.5** The government is required to raise a significant proportion of its public revenues, in the form of ground rent or an equivalent form of land taxation, from Scotland's greatest single natural resource, namely the land, the seabed and the seas under Scottish jurisdiction.

**6.6** The government may not issue any other bonds or debt instruments other than as required by the Central Bank in settlement of foreign balance of trade deficit and as limited within its regulation by the Constitutional Monetary Authority.

**6.7** National, Regional and Community government will obtain funding, required to finance new infrastructure projects, directly from the Central Bank of Scotland.

**6.8** The Scottish Government will adopt a budget, limited to a maximum deficit of three per cent of the gross domestic product, for the full term of its administration.

**6.9** Regional Assemblies will adopt annual budgets limited to a three per cent deficit, during their term of administration.

**6.10** Regional Assemblies will agree budgets adequate for the proper functioning of each of the Community Councils within their area of responsibility.

**6.11** The Scottish Government will allocate up to two per cent of all revenues to a National Sustainability Fund utilised as a national reserve fund.

**6.12** A National Revenue Service will collect all revenues.

## **Article 7: Judiciary and Prosecution Service**

### **The Judiciary**

**7.1** In the exercise and function of its jurisdiction, the Judiciary is independent of the legislative and executive branches of government.

**7.2** The judicial powers of Scotland are invested in the Court of Session and the High Court of Judiciary and in such subordinate courts as provided in law.

**7.3** The Lord President of the Court of Session, judges, sheriffs and justices of the peace are appointed in accordance with the law.

**7.4** The Judiciary will operate in accordance with the Statement of Principles

**7.5** The organisation, powers, structure, jurisdiction, privileges, and procedures of the various Courts are governed by law.

**7.6** The organisation and procedures of the Law Commission are governed by law.

### **Scottish Prosecution Service**

**7.7** The Crown Office and Procurator Service is the independent prosecution service of Scotland and a Ministerial Department of the Scottish Government.

**7.8** The Lord Advocate is responsible for the Crown Office and the Solicitor General is responsible for the Procurator Service. Both appointments are made on the recommendation of the First Minister.

**7.9** The Cabinet Secretary for Justice will exercise the right of pardon, and of remitting punishments, following due consideration by an independent Pardons board.

### **Article 8: Constitutional Amendments**

**8.1** Amendments to the Constitution will require a two-thirds majority vote in parliament followed by a public plebiscite achieving a majority vote.

### **Article 9: Government Audit and Complaint Services**

**9.1** The Auditor-General service is responsible for auditing central government departments, government agencies and non-departmental public bodies and for setting national codes of audit practice and guidance for local government bodies.

**9.2** The Public Services Ombudsman is the organisation whose duty is to investigate complaints of maladministration, injustice, neglect of duty, incompetence, delay, or mistake, alleged to have been committed by, or to have been caused by the negligence or mistake of, Ministers, civil servants, local government bodies, public utilities, or other public authorities.

**9.3** The Auditor-General and the Ombudsman have full powers of investigation, including access to all records and correspondence, and the right to summon and subpoena witnesses, and hear evidence on oath. They submit annual reports of their activities to Parliament and Regional Assemblies, but are independent of the Government in the exercise of their functions, with a duty to act impartially.

## **Article 10: Regional and Local Government**

**10.1** In accordance with the principles of subsidiarity and to empower decision-making at the appropriate local level, autonomous authority for governance and administration is devolved to eighteen (18) Regions, which are then sub-divided into multiple Communities with devolved powers.

**10.2.** The apportioning of devolved administrative authority, resources and funding between Regional Assemblies and Community Councils, are jointly agreed. A National Convention will be held every four years to review the devolved authority and resources.

**10.3** The public services provided will meet national standards of quality and performance and will be audited annually.

**10.4** Candidates for Regional Assemblies and Community Councils are elected by secret ballot using the single transferable vote system of proportional representation, for a four-year term of office.

**10.5** The numbers of representatives for Regional Assemblies and Community Councils will be based on a system of proportionality of the electorate as set by law.

**10.6** Elections will take place on the first Sunday in May and all of the registered electorate, resident within the region, are eligible to vote in the regional elections, and those resident in communities are eligible to vote in community elections.

**10.7** All registered Scottish citizens, aged sixteen (16) years or over, are entitled to vote in Regional and Community elections.

**10.8** Campaign funding expenditure for each prospective candidate will be set by law.

**10.9** Members of Regional Assemblies and Community Councils are remunerated as determined by law. The details of remuneration received by elected representatives to be available on public websites.

**10.10** Regional Assemblies and Community Councils will have independent budgets, for which the law will determine the principles of formation and procedures; the Regional Assemblies and Community Councils are required to maintain balanced budgets within specified limits.

**10.11** Regional Assemblies and Community Councils shall be non-party in politics and non-sectarian in religion.

**10.12** The electorate are empowered to raise a Petition to Recall an Elected Member of a Regional Assembly or Community Council.

**10.13** Stage one of the Petition to Recall an elected member will be initiated when 1 (one) per cent of the registered electorate of the constituency, consider that an elected member has failed to perform his or her duties on grounds of negligence, corruption, criminal conviction, dishonesty, or other gross misconduct or, in the view of the constituents has simply ceased to represent their interests.

**10.14** Stage two of the Petition to Recall an Elected Member procedure requires to be signed by 10 (ten) per cent or more of the registered electorate of the constituency within a time period of eight weeks. The Electoral Commission will regulate the Recall Petition process.

**10.15** The Electoral Commission will regulate the Recall Petition process.

### **Regional Assemblies**

**10.16** The eighteen regions comprise ten (10) mainland regions plus the five (5) cities of Glasgow, Edinburgh, Dundee, Aberdeen and Inverness, plus the three (3) island communities of the Orkney Isles, Shetland Isles and Comhairle nan Eilean Siar.

**10.17** Regional Assembly boundaries are set by law, on the recommendation of an Independent Boundary Commission, having due regard for cultural and historical, economic expediency, and contained within the Parliamentary Electoral Constituency boundaries.

**10.18** Representatives in Regional Assemblies, hereafter referred to, as Commissioners are required to abide by a Code of Conduct and operate in accordance with a written Constitution, which will set out the powers, duties and responsibilities of Commissioners.

**10.19** Persons standing as candidates for election as Commissioners will when elected be resident in the Region represented throughout their term of office.

**10.20** Each Regional Assembly elects from amongst its numbers a Convener and a Depute Convener to preside over meetings and to represent it in its external affairs. Each elected body will also select a Chief Executive to oversee the regions employees.

**10.21** The employees of the Regional Assemblies will be organised as a permanent, professional and non-partisan service, which is accountable to the Regional Assembly and regulated by the Public Service Commission

**10.22** Regional Assemblies are responsible, within their area of jurisdiction, for the collection of all public revenues, legal fines, rents and duties imposed by Parliamentary Money Bills.

**10.23** Regional assemblies are empowered to set and collect local revenues, legal fines and rents from their areas of jurisdiction, including the seabed within the adjoining Exclusive Economic Zone.

**10.24** Regional Assemblies are statutory consultees in the preparation of parliamentary legislation.

**10.25** There will be provision for Regional citizen initiated referendums, whereby a petition signed by one fifth or more registered voters calling for a popular vote on an issue of concern to the people within the Region is first referred to the Regional Assembly and then put to a popular vote if the issue of concern has not been responded to by the Regional Assembly

## **Community Councils**

**10.26** Regions are sub-divided into Communities, each governed by a Council. The Community Council jurisdiction boundaries are set by law on the recommendations of an Independent Boundary Commission, having due regard for cultural, local associations and established local communities.

**10.27** Community Councils operate in accordance with devolved authority, agreed in consultation with the Regional assembly, which sets out the powers, duties and responsibilities of Community Councillors and the public service resources accountable to them.

**10.28** Elected Representatives on Community Councils, hereafter referred to, as Councillors are required to abide by a Code of Conduct and operate in accordance with a written Constitution.

**10.29** Each Community Council elects from amongst its numbers a Chair and a Depute Chair to preside over meetings and to represent it in its external affairs.

**10.30** Each Community Council elects from amongst its numbers a secretary to record council decisions and minutes of meetings.

**10.31** All persons standing as candidates for election as Community Councillors will when elected be resident or working in the area represented throughout their term of office.

**10.32** Community Council agreement will be required to effect change to legislation relevant to the functioning of community council administration and area of authority development.

## **Article 11: Independent Commissions**

**11.1** There will be non-partisan, task specific, Independent Commissions, free from outside or political control, which works towards a specific goal for the state. Their major responsibilities are to protect the sovereignty of the people; to ensure that all state bodies observe democratic values and principles; and to promote constitutional values and principles; Commissions are supported by staff appointed by and accountable to them.

**11.2** Independent Commissions will consist of seven to nine members; of which three members will be appointed by Parliament and Regional Assemblies will appoint the other members; they may not simultaneously hold any other public office; their terms of employment, salaries and allowances will be fixed by law and in parity to those of Members of Parliament.

**11.3** Included within the range of Independent Commissions will be a Training Standards Commission that will determine and set the standards of mandatory management training for elected representatives for Parliament, Regional Assemblies and Community Councils, to provide them with the necessary skills and knowledge to carry out their duties effectively.

## **Article 12: General Statutes**

### **Law Enforcement.**

**12.1** Law enforcement is the responsibility of five Decentralised Police Authorities accountable to geographically adjacent groups of Regional Assemblies; each group of Regional Assemblies appoints a Chief Constable. The Justice Secretary chairs the National Police Commission to manage the National Police Services Agency that optimises cooperation among Regional Police Authorities and provides them with those specialist services and facilities, which the National Police Commission deems to be more efficiently provided at a National Level.

**12.2** The law provides for participation with international law enforcement agencies.

**12.3** Armed Forces. To provide territorial defence and support in civil emergencies there is a conventionally armed Scottish Defence Force; the law provides for participation in humanitarian aid activities and in selected United Nations mandated peacekeeping operations. All units of the Scottish Defence Force wear the same range of rank insignia and uniforms, with each unit being identified by specific badges and symbols.

**12.4** Coastguard. The coastguard is tasked with: protection and monitoring of maritime assets including fishing and other maritime resources within territorial waters out to 12-nautical-miles; effecting compliance with the rules regarding the 12-nautical-miles contiguous zone; protection and monitoring of the natural resources of the 200-nautical-miles exclusive economic zone; monitoring compliance with the United Nations Convention on the law of the Sea; effecting compliance with Maritime Law; coordination of search and rescue at sea operations.

**12.5** Security Agencies: There are such agencies as to provide: effective control of all borders; issuance of passports and visas; customs and excise; compliance with international standards of safety and human rights in the airspace over Scottish territories; and the safeguarding of national cyberspace.

**12.6** National Security. Under the oversight of the Scottish Government a national agency coordinates interactive strategy among the departments of the police, intelligence services, the armed forces, coastguard, customs service and government agencies effecting national security.

**12.7** Prohibition on Death Penalty. The Constitution prohibits Parliament from enacting any law allowing for the imposition of the death penalty even during a time of war or armed rebellion.

**12.8** The Laws will be amended as required to ensure the harshest of penalties to be placed on those who commit crimes such as premeditated murder, serial killings and treason. Additionally, our police, rescue workers, medical staff and prison officers and others serving the public will be given protection against those who do them harm by the application of severe penalties.

**12.9.** During a national emergency the executive can declare a state of emergency; a declared state of emergency allows the executive to immediately make any desired regulations to secure public order, safety and health; the declaration will expire after 30 days or the legislature can revoke it earlier; the actions of the executive cannot be found to be unconstitutional provided they are pursuing the humane conclusion of the emergency; these emergency powers will however be restricted to the duration of the

**12.10** The Government is authorised to enter into treaties, international agreements and membership of international organisations in the name of the Scottish people. Such commitments are always subject to ratification by Parliament. Where any transfer of sovereignty is involved a referendum must be held. All such international commitments must comply with this Constitution and be revocable at any time in accordance with the sovereign will of the Scottish people.

**12.11** Scotland's natural resources are valuable assets held and utilised under both national and private ownership. Resources under national ownership include the seas and seabed within Scottish jurisdiction, wave, tidal and wind energy, the harvestable fauna and flora of the seas including mineral rights both proven and unproven, all land development rights including sources of fresh water, geothermal energy and minerals.

**12.12** Land is a finite and crucial resource to be used and owned in the public interest for the common good. The Scottish Government will adopt a Land Rights and Responsibilities Statement, which will be reviewed every five years.

**12.13** The Scottish Government will secure the completion of the Land Register within two years of a vote in favour of independence and complete the process of appeal within 2 years thereafter.

**12.14** Government authorities, together with those who utilise Scotland's Natural Resources, are responsible for the protection of the natural resources. The Law permits government authorities to grant permits for the use or utilisation of natural resources or other public goods against full consideration and for a reasonable period of time. Such permits will be granted on a non-discriminatory basis and will never entail ownership or irrevocable control of the resources, but will always incur a bonded obligation of reinstatement.

**12.15** The protection of animals against abuse and the protection of endangered species of wildlife will be provided for by law.

**12.16** As codified in the Vienna Conventions on Diplomatic and Consular Relations, Scotland will comply with the rights, duties and obligations for the sending and receiving diplomatic and consular services and the law regarding diplomatic and consular staff.

## **Schedule 1: Oath of Office or Duty**

In many positions within our society a person requires to undertake an oath or affirmation before undertaking the duties of an office, such as a position in government and other organisations, to act impartially, or to affirm loyalty.

The wording of the oath or affirmation may vary dependent upon the duties to be carried out. The wording will however commit the individual to serve and abide by the Constitution and laws of Scotland.

An oath of office or duty is required by such as: Elected representatives

Head of state The Judiciary

Members of the armed Forces Police

Prison Governors New citizens

### **Sample Oath as Member of Parliament**

I, (Name), having been elected as a Member of the Parliament of Scotland, do solemnly swear (or affirm) that I will faithfully discharge my duties conscientiously, honestly and with integrity, to the best of my ability, that I will bear true faith and allegiance to the People of Scotland, and that I will preserve, protect and defend the Constitution and the Laws of Scotland.

