

# SCOTLAND (AUTONOMY) ACT, 2015

An Act to provide for the autonomy of Scotland within the United Kingdom; to give effect to the sovereignty of the people of Scotland through a Charter of Autonomy; and for connected purposes.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## **1. Short Title and Application**

- (1) This Act may be cited as the Scotland (Autonomy) Act, 2015.
- (2) This Act shall be in force in Scotland and, unless the context otherwise requires, shall apply to Scotland only.

## **2. Scotland to be autonomous**

- (1) From the commencement of this Act Scotland is to be an autonomous and internally self-governing and self-financing jurisdiction with the United Kingdom.
- (2) The Parliament of the United Kingdom shall not legislate for Scotland, except in the manner and to the extent permitted by the Charter of Autonomy set out in the Schedule to this Act.

## **3. Representation of Scotland in UK Parliament**

- (1) With effect from the commencement of this Act, Scotland shall cease to elect members of the House of Commons, and the members of the House of Commons representing Scottish constituencies shall cease to hold office as such.
- (2) The UK Government shall provide by order-in-council for the consequent re-apportionment of seats amongst the constituencies of the rest of the United Kingdom.
- (3) In lieu thereof, the Parliament of Scotland shall send a delegation to the House of Commons in accordance with Section 85 of the Charter of Autonomy.
- (4) The number of delegates shall be determined by law in proportion to Scotland's share of the UK population at the most recent census.
- (5) Scotland's delegates to the House of Commons shall not:
  - (a) Sit, speak or vote in the House of Commons except in relation to matters concerning Scotland and specified in sub-sections 84 (1) or (2) of the Charter of Autonomy;
  - (b) Participate in any vote of confidence or no-confidence in the House of Commons;
  - (c) Be eligible for any ministerial office in the UK Government;
  - (d) Serve as Speaker or as a Deputy Speaker of the House of Commons; or
  - (e) Be a member of any committee of the House of Commons, except as a non-voting member of a committee concerning a matter specified in sub-sections 84 (1) or (2).

(5) Nothing in this Act or in the Charter of Autonomy shall prevent any person from being appointed to the House of Lords solely on the grounds that such person was born in, or is ordinarily resident in, Scotland.

#### **4. Constitution of Scotland**

The Charter of Autonomy set out in the Schedule to this Act (herein referred to as ‘the Charter’) shall from the commencement of this Act be adopted and recognised as the supreme constitutional law of Scotland.

#### **5. External affairs and defence**

(1) Nothing in this Act or in the Charter shall affect the continuing responsibilities of Her Majesty in right of the United Kingdom for the external affairs and defence of Scotland, those responsibilities being discharged after consultation by the Prime Minister of the United Kingdom with the First Minister of Scotland.

(2) Nothing in this Act or in the Charter shall affect the United Kingdom’s continued obligations under international law or its membership of any inter-governmental or supranational organisation.

#### **6. British nationality and citizenship**

Nothing in this Act or in the Charter shall affect the status of any person as a British citizen.

#### **7. Commencement**

This Act shall come into force on a date to be appointed by the Secretary of State for Scotland, being within ninety days of the passing of this Act.

### **SCHEDULE:**

## **CHARTER OF AUTONOMY FOR SCOTLAND**

### **Chapter 1. Scottish Sovereignty**

#### **1. Sovereignty**

(1) In Scotland, the people have the sovereign right to self-determination and to choose freely the form in which their institutions are to be constituted and how they are governed.

(2) All State power and authority in Scotland accordingly derives from, and is subject to, the sovereign will of the people, and those exercising State power and authority are accountable for it to the people.

(3) The sovereign will of the people is expressed in this Charter and, in accordance with the Charter and the laws made under it, through the people’s elected representatives, at referendums and by other means provided by law.

(4) Scotland, in the free exercise of its sovereign rights, hereby expresses its determination to remain within the United Kingdom, and to be governed as an autonomous jurisdiction of the United Kingdom in accordance with this Charter, subject to the following provisions-

(a) It is for the people of Scotland alone to exercise their right of self-determination to bring about an independent Scotland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Scotland in a referendum held in accordance with Section 97 of this Charter; and

(b) While a substantial section of the people in Scotland have a legitimate wish for independence, the present wish of a majority of the people of Scotland, freely exercised and legitimate in the referendum held on 18 September 2014, is to maintain the Union and accordingly, that Scotland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Scotland save with the consent of a majority of its people;

(c) If in the future, the people of Scotland exercise their right of self-determination on the basis set out in paragraphs (a) and (b) above to bring about an independent Scotland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation and other measures to give effect to that wish.

## **2. Supreme Law**

(1) This Charter is the supreme law of Scotland.

(2) If any Act of the UK Parliament, Act of the Parliament of Scotland, treaty, regulation, order-in-council, or other law, is inconsistent with this Charter, it shall be null and void to the extent of the inconsistency.

## **Chapter 2. Fundamental Rights and Freedoms**

### **3. General Provisions**

(1) The following provisions shall have effect for the purpose of guaranteeing the fundamental rights and freedoms of all persons in Scotland or subject to the jurisdiction of Scottish Courts.

(2) The rights and freedoms hereby guaranteed shall be enjoyed by all persons without discrimination on grounds such as sex, race, colour, religion, personal beliefs, abilities, status or sexuality.

(3) There shall be no limitation upon their exercise save such as is necessary to prevent or penalise acts by any person or group of persons calculated to infringe or destroy the rights and liberties of other persons or groups, or forcibly to subvert the constitutional order which establishes and guarantees those rights and liberties.

(4) Subject to the qualification mentioned in sub-section (3) no law may be passed which abrogates or derogates from guaranteed rights and liberties, unless passed by way of an amendment to this Charter in accordance with Section 94 of this Charter.

(5) Every person shall be granted by a competent court a full and adequate and speedy remedy for any infringement whatsoever of his or her guaranteed rights and freedoms.

(6) None of the rights guaranteed in this Chapter of the Charter shall be subjected to any restriction or limitation other than as expressly provided, nor shall any such restriction or limitation be applied for any purpose other than that expressly prescribed.

#### **4. Right to Life**

- (1) Every person has the right to life.
- (2) No person shall be condemned to death or executed.
- (3) If any person's death occurs as a result of a lawful act of war, or of another person's acting in a manner which is permitted by law and which is no more than necessary to defend a person or persons from unlawful violence, or to effect a lawful arrest or to prevent the escape of a person lawfully detained, the action so taken shall not be rendered unlawful by the fact that death has result from it.
- (4) This Section shall not be construed as prohibiting voluntary euthanasia or the medical termination of pregnancy in accordance with such laws regulating these practices as the Parliament may enact.

#### **5. Prohibition of Torture**

No person shall be subjected to torture, or to inhuman or degrading treatment or punishment.

#### **6. Prohibition of Slavery and Forced Labour**

- (1). No person shall be held in slavery or servitude, nor shall any person be required to perform forced or compulsory labour.
- (2) For the purposes of this Section, 'forced or compulsory labour' shall not include: -
  - (a) Any work, not of a hazardous, degrading or profit-making nature, required to be done in the ordinary course of detention imposed according to the provisions of Section 7 of this Charter, or during conditional release from such detention;
  - (b) Any service of a military character or, in case of conscientious objectors, service exacted instead of military service;
  - (c) Any service lawfully exacted in case of an emergency or calamity threatening the life or well-being of the community; or
  - (d) Any work or service which forms part of normal civic obligations.

#### **7. Personal Liberty**

- (1) Every person has the right to personal liberty and security, and accordingly no person shall be deprived of liberty save in the following cases and in accordance with the procedures prescribed by the law of Scotland: -
  - (a) In the case of his or her lawful detention in accordance with the sentence passed by a competent Court upon his or her conviction of an offence;
  - (b) In the case of his or her lawful arrest or detention for non-compliance with the lawful order of a court;
  - (c) In the case of his or her lawful arrest or detention upon reasonable suspicion of having committed, or being engaged in the commission of, or being about to commit, a criminal offence under the law of Scotland;

(d) In the case of detention of a person under the age of 16 years by lawful order for the purpose of his or her educational supervision or personal welfare;

(e) In case of the lawful detention of a person who is of unsound mind and danger to themselves or others;

(f) In the case of the lawful arrest of a person to prevent his or her unlawfully entering Scotland, or of a person against whom lawful action is being taken with a view to deportation or extradition.

(2) Every person who is arrested or detained shall be informed, as soon as is possible in the circumstances of the case, in a language which he or she understands, of the reason for his or her arrest or detention and of any charge which is to be laid against him or her; he or she shall be entitled to inform a member of his or her family of his or her whereabouts and of the stated reason for his or her detention, and shall be entitled as soon as possible to consult a legal practitioner.

(3) Every person who is arrested or detained in accordance with Section 7, sub-section(1)(c) of this Charter shall, wherever it is practicable to do so, be brought before a competent court not later than the first lawful day after being taken into custody, such day not being a public or local holiday: failing which, he or she shall be brought before a competent court as soon as is possible thereafter.

(4) Every person who is arrested or detained in accordance with Section 7, sub-section (1)(c) of this Article shall be brought to trial as soon as is possible; no person who has been committed for trial of any offence shall be detained in custody for more than 140 days from the date of such committal, except in so far as the High Court of Justiciary may grant lawful extensions.

(5) Every person who has been deprived of liberty by arrest or detention has the right to petition the Court of Session or High Court of Justiciary for liberation, and shall be liberated by order of the Court as soon as is practicable in the circumstances of the case unless such deprivation of liberty is proven to be lawful; if a person so deprived of liberty is for any reason unable to take proceedings on his or her own behalf any other person who can show good cause for so doing may petition the Court in his or her name to test the lawfulness of any such detention.

## **8. Right to Fair Trial**

(1) Every person has the right to fair and impartial judicial proceedings to determine any question raised by process of law concerning his or her legal rights or obligations, or any criminal charge against him or her.

(2) Every such question or charge shall be heard and determined by the competent court or tribunal established by law. Trials shall be conducted in public and judgment shall be pronounced publicly, except in so far as the law permits a court or tribunal to exclude members of the public from part of such proceedings or to prohibit publication of reports concerning part of such proceedings on all or any of the following grounds:

(a) The protection of national security;

(b) The prevention of disorder in court;

(c) The protection of children or young people, or other vulnerable persons;

(d) The protection of the personal privacy of both parties; or

(e) In the interests of justice, in circumstances in which publicity would inevitably cause serious prejudice to the fair determination of an issue.

(2) Every person charged with a criminal offence shall be presumed innocent until proven guilty according to law.

(3) Every person charged with a criminal offence has the following rights:

(a) To be informed in detail, as soon as is possible in the circumstances of the case, and in a language which he or she understands, of the charge which is made against him or her;

(b) To have adequate time and facilities for preparing a defence;

(c) To defend himself or herself in person or through a legal practitioner of his or her own choosing;

(d) To such financial assistance as is necessary in the light of his or her means to secure adequate legal assistance if desired;

(e) To examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf in the same conditions as witnesses against him or her;

(f) To have all proceedings in court connected with the charge against him or her translated by a competent interpreter into the language which he or she best understands, if that language is not the language of the Court; and

(g) To be informed in a language which he or she understands of his or her rights under this Sections 7 and 8 of this Charter.

(4) No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted in accordance with the laws of Scotland.

Provided, that this provision shall not prevent the reopening of the case in accordance with the law and penal procedure of Scotland, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

(5) The right to trial by jury, as such right existed under the law of Scotland at the time of the coming into effect of Charter shall not be suspended, restricted or abridged.

## **9. Right to Appeal**

(1) Everyone convicted of a criminal offence by a court or tribunal shall have the right to have his or her conviction or sentence reviewed by a higher court or tribunal.

(2) The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

(3) This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

## **10. No Punishment without Law**

(1) No person shall be convicted of any criminal offence save in respect of an act or omission which, at the date of its commission, constituted a criminal offence under the law of Scotland or the law of nations.

(2) No penalty shall be imposed which is heavier than the maximum permitted under the law of Scotland at the date of the commission of the offense.

## **11. Protection of Private and Family Life**

(1) Everyone has the right to respect for privacy in his or her personal affairs, family life, home, and correspondence.

(2) There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

(3) Every person who suffers unlawful interference with his or her personal privacy shall be entitled to an adequate civil remedy therefore.

(4) Provision shall be made by law for the safeguarding of personal data and information, and in particular to preserve the privacy and security of all communications and transactions conducted by electronic media.

## **12. Freedom of Thought, Conscience and Religion**

(1) Every person has the right to freedom of thought and of conscience and to the free confession and practice of religion.

(2) This right includes freedom to change his or her religion or belief and freedom (either alone or in community with others and in public or private) to manifest his or her religion or belief in worship, teaching, practice and observance.

(3) This right also includes freedom not to believe or participate in any religion.

(4) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, or for the protection of public order, health or morals.

(5) Nothing in this Charter shall affect the existing status, freedom or liberties of the Church of Scotland, as recognized by the Church of Scotland Act 1921 and by the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual.

(6) Nothing in this Charter shall have the effect of invalidating any provision made by law for the state funding of denominational schools.

## **13. Freedom of Expression**

(1) Every person has the right to freedom of speech, writing and publication, and of the expression of opinion, including the right to impart and receive information and ideas freely to and from any other person or persons whatsoever.

(2) The law may prohibit abuses of this right, to the extent necessary in a democratic society –

- (a) In the interests of national security or public safety;
- (b) For the prevention of disorder or crime;
- (c) For the protection of health or morals;
- (d) For the protection of the reputation or rights of others;
- (e) For preventing the unlawful disclosure of personal or private information received in confidence; or
- (f) For maintaining the authority and impartiality of the judiciary.

(3) The foregoing provisions shall not be interpreted as invalidating laws regulating the licensing of broadcast transmissions or cinemas, theatres and other like places of public resort.

#### **14. Freedom of Assembly and Association**

(1) Every person has the right to freedom of peaceful assembly and to freedom of association with others for all lawful purposes.

(2) This right shall include, but not be limited to, the freedom to freely form and to join political parties and trade unions.

(3) The right to freedom of assembly and of association shall be subject only to such restrictions as are prescribed by law and are necessary in a democratic society –

- (a) For the protection of national security or public safety;
- (b) For the prevention of disorder or crime; or
- (c) For the protection of the rights of others.

#### **15. Freedom of Movement**

(1) Subject to sub-section (2) of this Section, everyone lawfully within the territory of Scotland shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence, and shall have the freedom to leave the country at will.

(2) No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society: -

- (a) In the interests of national security or public safety;
- (b) For the prevention of disorder or crime;
- (c) For the protection of public health or the environment; or
- (d) For the protection of the rights and freedoms of others.

(3) Everyone in Scotland has the right of free access to hills, mountains, waterways and open country, except in cases in which unrestricted access is likely to cause substantial interference with agriculture,

forestry or fishing, and subject to any provisions of the law restricting this right under sub-section (2) of this Section.

#### **16. No Imprisonment for Debt**

No one shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

#### **17. Familial Rights**

(1) Men and women of marriageable age have the right to marry and to found a family in accordance with the laws governing the exercise of this right.

(2) The extent to which rights under this Section shall extend to same-sex couples shall be determined by law.

#### **18. Property Rights**

(1) Every person has the right to hold private property, and to the peaceful enjoyment of his or her property.

(2) Parliament may, however, enact laws that control or restrict the use or acquisition of property in the general interest, in cases where Parliament determines that the needs of the community require to be given precedence over the rights of individuals.

(3) All laws which sanction measures of expropriation shall make provision for fair compensation.

(4) Nothing in this Section shall have the effect of invalidating any tax, duty or custom levied in accordance with the law, or the lawful collection of any service charge or administrative fee, or the lawful imposition of a criminal penalty of fine or forfeiture.

#### **19. Freedom of Information**

(1) Every person shall have the right of access to governmental information, including on request all documents, files and other records pertaining to them or to government policy.

(2) The right of access to official information can only be restricted by law to the extent necessary, in a democratic society: -

(a) For the protection of national security;

(b) For the purpose of protecting personal privacy or commercial confidentiality;

(c) For the prevention of crime; or

(d) For ensuring the due process of judicial proceedings.

(3) It shall be the duty of the Parliament of Scotland to ensure by law that, so far as possible, in such sound and television broadcasting services as may be provided in Scotland, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.

## Chapter 3. Social and Economic Provisions

### 20. Status of Directive Principles

- (1) The provisions of this Chapter shall not be enforceable in any court, but it is the responsibility of Parliament to give effect to these provisions by law. Parliament shall have regard to these principles in the passage of legislation.
- (2) A Minister presenting a bill to Parliament concerning social or economic affairs make a statement to the effect that the bill is, in the Minister's judgment, compatible with the provisions of this Chapter.
- (3) A Social and Economic Rights Committee shall be established by Parliament, to be convened by a member of the opposition, which shall:
  - (a) Review all legislative bills concerning social and economic affairs, and report to Parliament on the compatibility of such bills with the provisions of this Chapter.
  - (b) Produce an annual report on the compliance of the state with the provisions of this Chapter.

### 21. Employment Rights

- (1) Every person has the right to work and to pursue freely any profession or vocation subject only to such requirements as to minimum qualifications as may be prescribed by or in accordance with the law.
- (2) Every person has the right to conditions of work which are fair, healthy, and which respect the dignity of the person.
- (3) In particular, Parliament shall ensure by means of appropriate legislation that every worker has the following rights, which may not be renounced by any contractual provision –
  - (a) Safe and healthy conditions of work;
  - (b) An adequate minimum wage as determined by law;
  - (c) Protection against arbitrary or unfair dismissal;
  - (d) Maximum working hours, and minimum entitlements to days of rest and holidays, sufficient to maintain health and to meet obligations of family life;
  - (e) The right to bargain collectively and to enforce collective bargains through strike action, except in the armed forces, police and essential public services;
  - (f) Freedom from harassment, intimidation, humiliation or abuse in the workplace.

### 22. Social and Environmental Rights

- (1) Every person who is unable to work by reason of physical or mental disability or infirmity, or by reason of family commitments, or because suitable employment is presently unavailable in their community, has a right to be provided with benefit payments or other social assistance as determined in accordance with the law.

(2) Parliament shall be responsible for ensuring by legislation that all persons who have reached the age of retirement fixed by law are entitled to pensions adequate for their dignity and well-being.

(3) Parliament shall ensure that health services are properly regulated and maintained, and that a system of universal publicly-funded health care, to the highest practicable standards of medical practice, is available to all.

(4) Parliament shall ensure that adequate provision is made for universal primary and secondary education, and that qualified students are entitled to publicly funded tuition and other means of financial support at institutions of higher learning, technical training and research.

(5) Parliament shall be responsible for the sustainable stewardship of Scotland's natural environment, including, but not limited to –

(a) Ensuring sustainable management and conservation of the environment and natural resources, and ensuring the equitable sharing of the accruing benefits;

(b) Promoting tree cover and preventing soil erosion;

(c) Protecting wildlife and biodiversity;

(d) Protecting the commons, in particular clean air, water and common land;

(e) Eliminating, so far as it is practicable to do so, processes and activities that are likely to endanger the environment;

(f) Promoting the beauty and harmony of the built environment;

(g) Encouraging permaculture and promoting local food security; and

(h) Investing in sources of clean renewable energy.

## Chapter 4. The Queen's Commissioner

### **23. Head of State**

(1) Her Majesty, Elizabeth Windsor, and her heirs and successors according to law, acting in right of the United Kingdom, shall be Scotland's Head of State.

(2) The Head of State shall perform such constitutional, civic and ceremonial functions, for and on behalf of Scotland, as are vested in the Head of State by or in accordance with this Charter.

### **24. The Queen's Commissioner in Scotland**

(1) The Queen's Commissioner is the official representative of the Head of State.

(2) The Queen's Commissioner shall perform his or her duties in accordance with this Charter.

### **25. Appointment and Tenure of Queen's Commissioner**

(1) The Queen's Commissioner shall be appointed by Her Majesty.

(2) No person shall be appointed as the Queen's Commissioner unless he or she is domiciled in Scotland and is eligible to vote in elections for the Parliament of Scotland.

(3) No member of the Parliament of Scotland, nor any person who has within a period of five years immediately prior to his or her appointment held any Ministerial office in Scotland, may be appointed as the Queen's Commissioner.

(4) Subject to sub-section (5) of this Section, the Queen's Commissioner shall hold office for a period of five years, and may from time to time be reappointed.

(5) The Queen's Commissioner may at any time tender his or her resignation to Her Majesty, and shall do so if a vote of censure in the Queen's Commissioner is passed by a two-thirds majority of the members of Parliament on grounds of incapacity or misconduct.

(6) The Queen's Commissioner shall before assuming the functions of his or her office, take and subscribe before the Lord President of the Court of Session the following oath:

I,....., swear that I will be faithful and bear true allegiance to Her (or His) Majesty [name of the Head of State], her (or his) heirs and successors, according to law, and that I will uphold the dignity of the office of Queen's Commissioner in Scotland, and will justly and faithfully carry out my duties in the administration of Scotland in accordance with the Charter and the law.

## **26. Information to Queen's Commissioner**

It shall be the duty of the First Minister –

(a) To arrange for the circulation to the Queen's Commissioner of the copies of the agenda and minutes of Cabinet and all other papers laid before Cabinet at the time when they are circulated to Ministers; and

(b) To furnish such information relating to the affairs of Scotland and proposals for legislation as the Queen's Commissioner may call for.

## **27. Queen's Commissioner to Act on Advice**

(1) In the exercise of his or her functions under this Charter or any other law, the Queen's Commissioner shall act in accordance with the advice of the Cabinet or of a Scottish Minister acting under the general authority of the Cabinet, except in cases where he or she is required by this Charter to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or is permitted to act according to his or her own deliberate judgment.

(2) Where the Queen's Commissioner is required by this Charter to exercise any function after consultation with any person or authority other than the Cabinet, he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the Queen's Commissioner is required by this Charter to act in accordance with the advice of, or after consultation with, any person or authority, the question of whether he or she has in any matter so acted shall not be called in question in any court.

# **Chapter 5. Scottish Government**

## **28. Executive authority**

(1) The executive authority of Scotland shall be vested in the Scottish Government.

(2) Nothing in this section shall preclude persons or authorities other than the Scottish Government from exercising such functions as may be conferred upon them by law.

### **29. Composition of the Government**

The Scottish Government shall consist of the First Minister, the Deputy First Minister, and the other Ministers appointed and holding office in accordance with this Charter.

### **30. Election and Appointment of First Minister**

(1) The First Minister shall be nominated as such by the members of Parliament from amongst their number, and shall be formally appointed by the Queen's Commissioner.

(2) The nomination of the First Minister shall take place –

(a) At the first meeting of Parliament following a general election; and

(b) Whenever there is a vacancy in the office of First Minister.

(3) A list specifying all candidates proposed and their respective proposers shall be submitted by or by direction of the Presiding officer to each member of Parliament.

(4) All members shall be eligible for candidature, but no member shall be a candidate unless he or she is proposed as such by four other members, and no member may propose more than one candidate.

(5) A candidate may withdraw his or her candidature at any time before the conclusion of the election.

(6) If, at any stage of the election, a candidate dies or in the opinion of the Presiding Officer is seriously incapacitated, or if for any other reason the election in the opinion of the Presiding officer cannot or is unlikely to be successfully completed in accordance with this Section, the Presiding Officer may either –

(a) Countermand the election in which case the electoral procedure shall be commenced *de novo*; or

(b) Suspend the election proceedings until some later time or day.

(7) The election shall be by open and public ballot.

(8) Each member shall have only one vote at the first and at any subsequent ballot.

(9) If any candidate should at any ballot receive an absolute majority of votes he shall thereby be deemed to have been nominated as First Minister.

(10) If no candidate should receive an absolute majority of votes at the first round of voting a second round of voting shall be held wherein only the two candidates who received the highest and second highest number of votes in the first round may participate. In this second round the candidate who receives the greater number of votes shall be elected as First Minister.

(11) If the second ballot conducted in accordance with the preceding sub-section results in a tie between the two candidates, one further ballot shall be conducted to decide the election between these two candidates and if there is a tie between them again, the Presiding Officer shall countermand the election and the election procedure shall be commenced *de novo*.

(12) When the count has been completed in any round of voting the Presiding Officer shall forthwith announce to Parliament the number of votes received by each candidate and, where any candidate has been elected, shall declare such candidate to be nominated as First Minister.

(13) The person so nominated by Parliament shall without delay be appointed and sworn into office as First Minister by the Queen's Commissioner.

(14) Any dispute arising out of or in connection with the calling or conduct of any election meeting or the election of the First Minister shall be determined by the Presiding Officer, whose determination of the matter in dispute shall be final and conclusive and shall not be questioned in any court whatsoever.

### **31. Tenure of Office of First Minister**

(1) If a resolution of no confidence in the First Minister is passed by Parliament by an absolute majority vote of the members thereof, the Queen's Commissioner shall remove the First Minister from office, whereupon the members of Parliament shall meet as soon as possible to elect a new First Minister in accordance with the provisions of Section 30 of this Charter.

(2) A motion for a resolution of no confidence in the First Minister shall not be passed by Parliament unless notice of the motion has been given to the Presiding Officer at least three clear days before it is introduced.

(3) The office of First Minister shall also become vacant –

(a) When, after a general election, the members of Parliament meet to elect a First Minister in accordance with the provisions of Section 30 of this Charter;

(b) If he or she ceases to be a member of Parliament for any reason other than a dissolution of Parliament;

(c) If he or she is elected as Presiding Officer or Deputy Presiding Officer, or is appointed as Queen's Commissioner; or

(d) If he or she resigns such office by writing under his or her hand addressed to the Queen's Commissioner.

(4) During any period when the office of First Minister is vacant, the person who held that office immediately before the vacancy arose shall continue to perform the functions of First Minister until a person is elected to the office of First Minister according to the provisions of Section 30 of this Charter. Provided, that if the person holding the office of First Minister dies, the Queen's Commissioner shall, acting on the advice of the Cabinet, appoint the Deputy First Minister or, in the absence or incapacity thereof, one of the other Ministers, to perform the functions of First Minister until a person duly is elected to that office.

### **32. Deputy First Minister and Other Ministers**

(1) The Queen's Commissioner, on the advice of the First Minister, shall appoint the Deputy First Minister and other Ministers from among the members of the Parliament. Provided that if occasion arises for making a Ministerial appointment while Parliament is dissolved a person who was a member of Parliament immediately before the dissolution may be appointed.

(2) A Minister appointed under this section—

(a) May at any time be removed from office by the Queen's Commissioner on the advice of the First Minister;

(b) Shall be removed from office by the Queen's Commissioner if Parliament by an absolute majority passes a vote of no-confidence in the Minister;

(c) May at any time offer his or her resignation to the Queen's Commissioner, which the Queen's Commissioner shall accept or reject on the advice of the First Minister.

(3) A Minister shall cease to hold if he or she ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

### **33. Assignment of responsibilities to Ministers**

Subject to any provisions specified by law, the First Minister may, by direction in writing under his or her hand charge any Minister with the responsibility for any Department or subject, and may revoke or vary any direction given.

### **34. Procedure of Cabinet Meetings**

(1) Cabinet meetings are formal meetings of Ministers for the purpose of determining and resolving the policy of the Scottish Government.

(2) Cabinet meetings shall be summoned and presided over by the First Minister, or in his or her absence by the Deputy First Minister.

(3) No business except that of adjournment shall be transacted in the Cabinet if objection is taken by any member present that there are present less than a majority of the members for the time being of the Scottish Government.

(4) Subject to the preceding subsection, the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and any proceedings of the Cabinet shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

### **35. Absence or Illness of First Minister**

(1) Whenever the First Minister is unable, by reason of illness or absence from Scotland, to perform the functions conferred on him by this Charter, those functions shall be performed by the Deputy First Minister or, if he or she is also unable to do so, the Queen's Commissioner may, by directions in writing, authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his or her authority is revoked by the Queen's Commissioner.

(2) The powers of the Queen's Commissioner under this section shall be exercised by him or her in accordance with the advice of the First Minister: Provided that if the Queen's Commissioner, acting in his own deliberate judgement, considers that it is impracticable to obtain the advice of the First Minister owing to the First Minister's illness or absence, the Queen's Commissioner may exercise those powers without that advice and in his own deliberate judgement.

### **36. Secretary to Cabinet**

(1) There shall be a Secretary to the Cabinet, who shall be appointed by the First Minister from amongst the Public Service of Scotland, after consultation with the Public Service Commission.

(2) The Secretary to the Cabinet shall have charge of the office of the Cabinet and shall be responsible, in accordance with such instructions as may be given to him or her by the First Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the First Minister may direct.

(3) The First Minister, after consultation with the Public Service Commission, may remove the Secretary to the Cabinet from office on grounds of misconduct or incapacity.

### **37. Law Officers**

(1) The Lord Advocate and the Solicitor General for Scotland shall be appointed by the Queen's Commissioner on the advice of the First Minister.

(2) The First Minister shall tender such advice only after consultation with the Judicial Service Commission.

(3) The Lord Advocate and the Solicitor General for Scotland shall be appointed for a term of four years, and may not be removed from office before the expiry of that term, except by a resolution of Parliament, on the grounds of misconduct, incapacity, or other due cause.

(4) The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that they no longer enjoys the confidence of the Parliament.

(5) Where the Lord Advocate resigns in consequence of such a resolution, he shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted, but only for the purpose of exercising his retained functions.

(6) Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him or her independently of any other person.

(7) The Lord Advocate and the Solicitor General for Scotland shall not be members of Parliament.

## **Chapter 6. The Parliament of Scotland**

### **PART ONE - ELECTION AND COMPOSITION**

#### **38. Establishment of Parliament**

There shall be a Parliament for Scotland, which shall serve as the national representative, deliberative and legislative assembly of Scotland in accordance with the provisions of this Charter.

#### **39. Composition of Parliament**

(1) Parliament shall be composed of a single chamber, which shall consist of 129 members, or such greater number of members, not exceeding two hundred members, as may hereafter be prescribed by an Act of the Parliament of Scotland.

(2) The members of Parliament shall be directly elected by the registered electors of Scotland, by secret ballot, according to a system of proportional representation that ensures –

(a) The representation of political parties or groups in Parliament according to the overall share of the vote received by each party, group or list of candidates; and

(b) The representation of geographical constituencies according to population.

(3) Provided that a quorum is present, the validity of any proceedings of the Parliament is not affected by any vacancy in its membership.

(4) Until and unless otherwise provided by an Act of the Parliament of Scotland, the mode of electing members, the distribution of constituency and regional members, the procedure for calculating the allocation of seats, the procedure for filling vacancies, and all other matters incidental to the holding of elections for the Parliament of Scotland shall continue to be the same as those hitherto applied for the election of members of the devolved Scottish Parliament under the Scotland Act 1998.

#### **40. Qualifications of Electors**

(1) Subject to the provisions of Section 41 of this Charter, a citizen of the United Kingdom or a person holding British National status shall be qualified to be registered as a voter for the election of members of the Parliament of Scotland if, and shall not be qualified to be so registered unless, he or she is lawfully resident in Scotland and has been domiciled in Scotland for a continuous period of six months immediately prior to the date of registration.

(2) A person who is ordinarily resident in Scotland but has not been resident in Scotland as required by sub-section (1), by reason of service furth of Scotland in the public service or as a member of Her Majesty's Armed Forces or diplomatic service, shall not be disqualified from registering to vote on account of such absence.

#### **41. Disqualification of Electors**

No person shall be qualified to be registered as a voter for the election of members of the Parliament of Scotland if: -

(a) He or she had not attained sixteen years of age;

(b) He or she is interdicted or incapacitated for any mental infirmity by a court in Scotland or is otherwise lawfully determined in Scotland to be of unsound mind;

(c) He or she is serving a sentence of imprisonment exceeding twelve months, imposed on him or her by such Scottish court; or

(d) He or she is disqualified for registration as a voter by or under any law for the time being in force in Scotland by reason of his or her having been convicted of any offence connected with the election of members of Parliament.

#### **42. Ordinary General Elections**

(1) The first ordinary general election for the Parliament of Scotland under this Charter shall be held on the first Thursday in May of the year 2016.

(2) Thereafter, ordinary general elections shall be held on the first Thursday in May the of fourth calendar year following that in which the previous ordinary general election was held, unless the day of the poll is determined by a proclamation under sub-section (4).

(3) If the poll is to be held on the first Thursday in May, the Parliament—

(a) Is dissolved by virtue of this Section on the second Friday in April; and

(b) Shall meet within the period of seven days beginning immediately after the day of the poll.

(4) If the Presiding Officer, after consultation with the First Minister and the Leader of the Opposition, proposes a day for the holding of the poll which is not more than one month earlier, nor more than one month later, than the first Thursday in May, then the Queen's Commissioner shall by proclamation—

(a) Dissolve the Parliament on the day proposed;

(b) Require the poll at the election to be held on the day proposed; and

(c) Require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.

#### **43. Extraordinary General Elections**

(1) The Presiding Officer shall propose a day for the holding of a poll if—

(a) The Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of members of the Parliament; or

(b) Parliament has failed to nominate a First Minister within a period of thirty days elapses following a general election, or following the death in office, resignation or removal of the former incumbent First Minister.

(2) If the Presiding Officer makes such a proposal, the Queen's Commissioner shall by proclamation:-

(a) Dissolve the Parliament and require an extraordinary general election to be held;

(b) Require the poll at the election to be held on the day proposed; and

(c) Require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.

(3) This Section does not affect the year in which the next ordinary general election is to be held.

#### **44. Meetings of Parliament**

(1) The first meeting of the Parliament following a general election shall be held on the day and at the time determined by the Presiding Officer in accordance with Section 43. The Presiding Officer shall notify members of the date and time of that meeting.

(2) The Parliament shall decide, on a motion of the Parliamentary Bureau, the date and time for any other meeting of the Parliament, or, until the Parliament has so determined, the Presiding Officer shall appoint such dates and times.

(3) Parliament shall meet for at least ninety sitting days during each parliamentary year.

(4) The Presiding Officer may convene the Parliament on other dates or at other times in an emergency.

(4) In calculating any period of days for the purposes of this Section, Section 42(3)(b) or (4)(c) or Section 43, Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning shall be disregarded.

#### **45. Term of office of members**

The term of office of a member of the Parliament begins on the day on which the member is declared to be returned and ends with the dissolution of the Parliament.

#### **46. Resignation of members**

(1) A member of the Parliament may at any time resign his or her seat by giving notice in writing to the Presiding Officer.

(2) The resignation shall come into effect when the Presiding Officer reads the letter of resignation to Parliament, which shall be within thirty days of receipt of the letter. Until the letter is read, the member may revoke his or her resignation. After it has been read, resignation is irrevocable.

#### **47. Disqualification from membership of the Parliament**

(1) No person shall be qualified for election as a member of Parliament who –

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(b) Holds, or is acting in, any judicial office, military office, diplomatic office, or other public office which is by any law for the time being in force in Scotland declared to be incompatible with membership of Parliament;

(c) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in Scotland;

(d) Is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Scotland;

(e) Is under sentence of imprisonment (by whatever name called) for a term of, or exceeding, six months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(f) Is disqualified from membership of Parliament or from registration as an elector or from voting at elections under any law for the time being in force in Scotland relating to offences connected with elections; or

(g) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election to Parliament or the compilation or revision of any electoral register for that purpose.

(2) If a person who is disqualified from being a member of the Parliament or from being a member for a particular constituency or region is returned as a member of the Parliament or (as the case may be) as a member for the constituency or region, his or her return shall be void and his or her seat vacant.

(3) If a member of the Parliament becomes disqualified from being a member of the Parliament or from being a member for the particular constituency or region for which he or she is sitting, he or she shall cease to be a member of the Parliament (so that his seat is vacant).

#### **48. Judicial proceedings concerning disqualification**

(1) Any person who claims that a person purporting to be a member of the Parliament is disqualified or has been disqualified at any time since being returned may apply to the Court of Session for a declarator to that effect.

(2) An application in respect of any person may be made whether the grounds on which it is made are alleged to have subsisted when the person was returned or to have arisen subsequently.

(3) No declarator shall be made on grounds which subsisted when the person was returned, if an election petition is pending or has been tried in which the disqualification on those grounds of the person concerned is or was in issue.

(4) The person in respect of whom an application is made shall be the defender.

(5) The applicant shall give such caution for the expenses of the proceedings as the Court of Session may direct; but any such caution shall not exceed £5,000 or such other sum as may be specified by law.

(6) The decision of the court on an application under this section shall be final.

(7) In this section “disqualified” means disqualified from being a member of the Parliament or from being a member for the constituency or region for which the person concerned purports to sit.

### **PART 2 - PARLIAMENTARY PROCEDURE**

#### **49. Presiding Officer**

(1) The Parliament shall, at its first meeting following a general election, and before proceeding to nominate a First Minister, shall elect from among its members a Presiding Officer and two deputies.

(2) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under sub-section (1) unless he or she-

(a) resigns from office by giving notice to that effect to the Parliamentary Bureau;

(b) ceases to be a member of the Parliament otherwise than by virtue of a dissolution; or

(c) is removed from office by resolution of the Parliament.

(3) If the Presiding Officer or a deputy ceases to hold office before the Parliament is dissolved, the Parliament shall elect another from among its members to fill his place.

(4) The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.

(5) The Presiding Officer may (subject to standing orders) authorise any deputy to exercise functions on his behalf.

(6) Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Parliament.

(7) The validity of any act of the Presiding Officer or a deputy is not affected by any defect in his or her election.

(8) The Presiding Officer shall perform his or her duties in a non-partisan manner, and shall, on election as Presiding Officer, forthwith resign from membership of any political party.

## **50. Clerk of the Parliament**

(1) There shall be a Clerk of the Parliament, who shall be appointed by the Scottish Parliamentary Corporate Body.

(2) The Clerk's functions may be exercised by any Assistant Clerk if the office of Clerk is vacant or the Clerk is for any reason unable to act.

(3) The Clerk may authorise any Assistant Clerk or other member of the staff of the Parliament to exercise functions on his or her behalf.

## **51. Scottish Parliamentary Corporate Body**

(1) There shall be a body corporate to be known as "The Scottish Parliamentary Corporate Body" (referred to in this Charter as the 'Corporate Body') to perform the functions conferred on the corporation by virtue of this Act or any other enactment.

(2) The members of the corporation shall be—

(a) The Presiding Officer; and

(b) Four members of the Parliament appointed in accordance with standing orders, of which no more than two shall be members of the governing party or coalition, and at least one shall be a member of the official opposition.

(3) The Corporate Body shall provide the Parliament, or ensure that the Parliament is provided, with the property, staff and services required for the Parliament's purposes.

(4) The Parliament may give special or general directions to the Corporate Body for the purpose of or in connection with the exercise of the corporation's functions.

(5) Any property or liabilities acquired or incurred in relation to matters within the general responsibility of the corporation to which (apart from this sub-section) the Parliament would be entitled or subject shall be treated for all purposes as property or (as the case may be) liabilities of the corporation.

(6) Any expenses of the Corporate Body shall be payable out of the Scottish Consolidated Fund.

(7) Any sums received by the corporation shall be paid into that Fund, subject to any provision made by or under an Act of the Parliament of Scotland for the disposal of or accounting for such sums.

(8) Until and unless otherwise provided by law, Schedule 2 of the Scotland Act 1998 (which makes further provision about the corporation) shall continue to have effect.

## **52. Parliamentary Bureau**

(1) There shall be a Parliamentary Bureau consisting of –

(a) The Presiding Officer; and

(b) A Business Manager nominated by each party or parliamentary group having at least five members of Parliament.

(2) The Parliamentary Bureau, subject to this Charter and to the standing orders of Parliament adopted under Section 53, shall determine Parliament's timetable and order of business.

(3) In determining the order of business, the Parliamentary Bureau shall give precedence to business proposed by the Scottish Government, but at least one-third of parliamentary time shall be reserved for opposition business and for business proposed by committees, private members, or public petitions.

(4) The Parliamentary Bureau shall as far as possible conduct its meetings by consensus, but if a vote is necessary, each Business Manager shall have a bloc vote equal to the number of members of Parliament adhering to the party or parliamentary group that he or she represents.

## **53. Standing Orders**

(1) Subject to the provisions of this Charter, Parliament shall have the authority to regulate its procedures in accordance with its own standing orders, which shall be adopted by a majority vote of the members of Parliament on the proposal of the Corporate Body.

(2) The standing orders shall include provision for preserving order in the proceedings of the Parliament, including provision for—

(a) Preventing conduct which would constitute a criminal offence or contempt of court, and

(b) A *sub judice* rule.

(3) The standing orders may include provision for excluding a member from proceedings or for withdrawing from a member of the Parliament his rights and privileges as a member.

(4) The standing orders shall include provision requiring the proceedings of the Parliament to be held in public, except in such circumstances as the standing orders may provide.

(5) The standing orders may include provision as to the conditions to be complied with by any member of the public attending the proceedings, including provision for excluding from the proceedings any member of the public who does not comply with those conditions.

(6) The standing orders shall include provision for reporting the proceedings of the Parliament and for publishing the reports.

(7) Standing orders which provide for the appointment of committees may include provision for those committees to have power to appoint sub-committees.

(8) The standing orders shall include provision for ensuring that, in appointing members to committees and sub-committees, regard is had to the balance of political parties in the Parliament.

(9) The standing orders may include provision for excluding from the proceedings of a committee or sub-committee a member of the Parliament who is not a member of the committee or sub-committee.

#### **54. Power to call for witnesses and documents**

(1) The Parliament may require any person—

(a) To attend its proceedings for the purpose of giving evidence; or

(b) To produce documents in his custody or under his control, concerning any subject for which any member of the Cabinet has general responsibility.

(2) The Parliament may not impose such a requirement on a judge of any court, or a member of any tribunal or commission in connection with the discharge by him or her of his or her functions as such.

(3) Such a requirement may be imposed by a committee or sub-committee of the Parliament only if the committee or sub-committee is expressly authorised to do so (whether by standing orders or otherwise).

(4) A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.

(5) A procurator fiscal is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate—

(a) Considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and

(b) Has authorised the procurator fiscal to decline to answer the question or produce the document on that ground.

(6) The Presiding Officer or such other person as may be authorised by standing orders may—

(a) Administer an oath to any person giving evidence in proceedings of the Parliament; and

(b) Require any such person to take the oath.

(7) Standing orders may provide for the payment of allowances and expenses to persons—

(a) Attending proceedings of the Parliament to give evidence; or

(b) Producing documents which they have been required or requested to produce.

#### **55. Conflicts of Interest**

(1) Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.

(2) Provision shall be made—

(a) Requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph;

(b) Requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph, in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.

(3) Provision made in pursuance of subsection (2) shall include any provision which the Parliament considers appropriate for preventing or restricting the participation in proceedings of the Parliament of a member with an interest defined for the purposes of subsection (2)(a) or (b) in a matter to which the proceedings relate.

(4) Provision shall be made prohibiting a member of the Parliament from—

(a) Advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or

(b) Urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means.

(5) Provision made in pursuance of subsections (2) to (4) shall include any provision which the Parliament considers appropriate for excluding from proceedings of the Parliament any member who fails to comply with, or contravenes, any provision made in pursuance of those subsections.

(6) Any member of the Parliament who takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision made in pursuance of sub-section (2) or (3), or who contravenes any provision under sub-section (4), is guilty of an offence.

(7) A person guilty of an offence under sub-section (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) Provisions made under this Section shall be made by standing orders or by Act of the Parliament of Scotland.

(9) The Parliament of Scotland shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.

## **56. Privileges and Immunities of Members**

(1) No civil or criminal proceedings may be instituted against any member of Parliament for words spoken before, or written in a report to, Parliament or a committee thereof or by reason of any matter brought by him therein by petition, bill, motion or otherwise.

(2) Members of Parliament shall enjoy immunity from arrest and criminal prosecution during sittings of Parliament, unless such immunity is waived by the Presiding Officer.

## PART THREE - LEGISLATION

### **57. Power to make laws**

- (1) Subject to the provisions of this Charter, the Parliament of Scotland may enact, amend and repeal all laws for the peace, order and good government of Scotland.
- (2) The laws referred to in this section shall take the form of Bills passed by the Parliament of Scotland; and when a Bill has been passed by Parliament it shall be presented to the Queen's Commissioner for assent, and when such assent is given the Bill shall become law.
- (3) All laws made by the Parliament of Scotland shall be styled "Acts of the Parliament of Scotland" and the words of enactment shall be "Be it enacted by the Parliament of Scotland, as follows -"
- (4) The Parliament of Scotland shall not make laws in relation to the subjects reserved for the exclusive competence of the UK Parliament under sub-section (1) of Section 84.
- (5) The Parliament of Scotland may make laws in relation to the subjects of concurrent competence under sub-sections (2) or (3) of Section 84, provided such laws are not repugnant to UK legislation.

### **58. Introduction of Bills**

Except on the recommendation of the Queen's Commissioner signified by a Minister, Parliament shall not –

- (a) Proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the Presiding Officer, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the Consolidated Fund or other funds of Scotland, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Scotland;
- (b) Proceed upon any motion (including any amendment to a motion) which would, in the opinion of the Presiding Officer, if the motion were carried, require the introduction of such a Bill as is referred to in paragraph (a) to give effect to the motion; or
- (c) Receive any petition which, in the opinion of the Presiding Officer, requests that provision be made for any of the purposes aforesaid.

### **59. Consideration of Bills**

- (1) Subject to any further provisions specified by Parliament's standing orders, bills shall be considered by Parliament in three stages, including:
  - (a) Consideration of the general principles of the bill by one or more parliamentary committees, and a debate and decision on these by the Parliament;
  - (b) Detailed consideration of the bill by committee, with the facility to propose amendments;
  - (c) Final consideration of the bill by the Parliament and a decision whether it should be passed or rejected.

(2) Committees may conduct hearings on bills, to which representations may be made by or on behalf of all persons or groups interested in the subject matter of the bill.

(3) Prior to introducing government bills, the Ministers should usually, except in matters of urgent or routine legislation, conduct consultations with experts, practitioners, civic groups and members of the public with knowledge and experience of the subject matter of the bill, or who are likely to be affected by or interested in the bill.

#### **60. Submission of Bills for Royal Assent**

(1) The Presiding Officer shall submit bills passed by Parliament to the Queen's Commissioner for Royal Assent.

(2) The Queen's Commissioner, on receipt of a bill presented for Royal Assent, shall within twenty-eight days from the day on which the bill was presented to him, either:

(a) Grant assent, and thereby enact the bill as an Act of Parliament; or

(b) Withhold assent, and return the bill to Parliament for reconsideration.

(3) The Queen's Commissioner shall not withhold assent under sub-section (2)(b) to any bill unless:

(a) The Queen's Commissioner, after consultation with the Lord Advocate or the Solicitor General, has referred the bill to the Court of Session for an advisory ruling on its compliance with this Charter;

(b) The Court of Session advises that the bill contains provisions that are repugnant to the provisions of this Charter.

(4) The Queen's Commissioner shall perform his functions under this Section acting in accordance with his or her own personal discretion.

(5) If after the elapse of the period of twenty-eight days specified in sub-section (2) of this Section, the Queen's Commissioner has not withheld Royal Assent in accordance with sub-sections (2)(b) and (3), the bill shall be deemed to have received Royal Assent.

## **Chapter 7. Judiciary**

#### **61. Judicial Authority**

(1) The judicial authority of Scotland shall comprise –

(a) Court of Session and the High Court of Justiciary, as the supreme courts of Scotland for civil and criminal matters respectively; and

(b) The Sheriff Courts, and such other Courts and Tribunals as may from time to time be established by Act of Parliament.

(2) The Court of Session, High Court of Justiciary, Sheriff Courts, and other Courts and Tribunals shall have such jurisdiction, powers and authority as may be conferred upon those Courts respectively by this Charter or any other law.

#### **62. Appointment of Judges**

(1) The judges of the Court of Session and High Court of Justiciary, Sheriffs, and all other members of the judiciary, with the exception of Justices of the Peace, shall be appointed in the name of Her Majesty by the Queen's Commissioner, acting on the advice of the Judicial Appointments Council.

(2) The Judicial Appointments Council shall consist of the following members –

- (a) The Minister of Justice, as convenor;
- (b) The Lord Advocate, as deputy-convenor;
- (c) Two Senators of the College of Justice elected by their peers;
- (d) A representative of the Faculty of Advocates; and
- (e) Four lay representatives of the public, not being members of the judiciary or the legal profession, elected by Parliament, by proportional representation and secret ballot, for four-year terms.

(3) No person shall be appointed to the Court of Session, High Court of Justiciary, nor Sheriff Court, unless such person is learned in the laws of Scotland and meets the other criteria to be prescribed by law.

(4) In making nominations for judicial appointments, the Judicial Appointments Council shall have regard to the following characteristics:-

- (a) Legal ability (professional qualifications and experience; knowledge of the law and its application; extensive practice of law before the courts or wide applied knowledge of the law in other branches of legal practice; overall excellence as a lawyer);
- (b) Qualities of character (personal honesty and integrity; impartiality, open mindedness and good judgment; patience, social sensitivity and common sense; ability to work);
- (c) Personal technical skills (oral communication skills with lay people as well as lawyers; the ability to absorb and analyse complex and competing factual and legal material; listening and communication skills; mental agility; management and leadership skills; acceptance of public scrutiny);
- (d) Reflection of society (awareness and sensitivity to the diversity of the community; knowledge of cultural, class and gender issues).

### **63. Tenure of Office**

(1) Subject to the provisions of this Section and Section 64, judges of the Court of Session, High Court of Justiciary, and Sheriff Courts, shall continue in office for life.

(2) Members of the judiciary shall retire on reaching the retirement age prescribed by law.

(3) Early retirement may be granted by the Judicial Appointments Council on the grounds of illness or infirmity.

### **64. Removal from Office**

(1) Judges of the Court of Session, High Court of Justiciary and Sheriff Courts may be removed from office by a motion of Parliament on the grounds of misconduct, neglect of duty, or incapacity, in accordance with the provisions of this Section.

(2) A motion for the removal of any judge under this Section shall be introduced by the Minister for Justice, acting after having consulted the Judicial Appointments Council.

(3) A motion for the removal of any judge under this Section shall have effect only if it is passed by a two-thirds majority of the members of Parliament present and voting.

(4) The Judicial Appointments Council shall have the authority to suspend a judge, on full pay, for a period of up to three months, pending investigation of alleged misconduct, neglect of duty, or incapacity. If at the conclusion of such period Parliament has not passed a motion for the removal of the said judge in accordance with the provisions of this Section, the judge shall be reinstated without any loss of pay, honour or seniority.

## **65. Judicial Independence**

(1) Judges shall be independent in the performance of their duties.

(2) Judges shall not:

(a) hold any popularly elected public office;

(b) be members of any political party; or

(c) undertake business or commercial activities, or other paid employment, that may compromise their independence, impartiality, or integrity.

## **66. Appeals on Constitutional Matters**

(1) The Court of Session shall have final appellate jurisdiction over all questions concerning –

(a) The validity of Acts of Parliament, treaties, and other laws, under the terms of this Charter; and

(ii) The interpretation of this Charter.

(2) The reference of a bill to the Supreme Court for an advisory ruling under Section (60) shall in no way restrict the right of any person to appeal to the Court of Session under this Section.

## **67. Prerogative of mercy**

(1) The Queen's Commissioner may –

(a) Grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;

(b) Grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(c) Substitute a less severe form of punishment for any punishment imposed on any person for any offence; or

(d) Remit the whole or any part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) The powers of the Queen's Commissioner under sub-section (1) shall be exercised in accordance with the advice of the Minister for Justice, given after the Minister for Justice has consulted the Advisory Committee on the Prerogative of Mercy.

(3) The Advisory Committee on the Prerogative of Mercy shall consist of four members, or such greater number of members as may be prescribed by any law in force in Scotland, of which –

(a) At least one shall be a serving or former Minister;

(b) At least one shall be a social worker entitled to practice in Scotland;

(c) At least one shall be a person qualified to practice law in Scotland; and

(d) At least one shall be a serving or former Probation Officer.

(4) The members of the Advisory Committee on the Prerogative of Mercy established under sub-section (3) shall be appointed by the Queen's Commissioner, acting on the advice of the First Minister, given after he has consulted the Public Service Commission.

(5) Subject to the provisions of sub-section (6), the members of the Advisory Committee shall hold office for a period of five years from the date of their appointment.

(6) A member of the Advisory Committee may be removed from office by the Queen's Commissioner by the Queen's Commissioner, on the grounds of misconduct, incapacity, or other due cause, acting on the advice of the First Minister given after he has consulted the Public Service Commission.

## Chapter 8. Finance

### **68. Consolidated Fund for Scotland**

All revenues or other moneys raised or received for the purposes of the Scottish Government (not being revenues or other moneys that are payable by or under any Act into some other fund established for a specific purpose or that may by or under any such law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund for Scotland ('the Consolidated Fund').

### **69. Withdrawals from the Consolidated Fund or other Public Funds**

(1) No moneys shall be withdrawn from the Consolidated Fund except –

(a) To meet expenditure that is charged upon the Fund by this Charter or by any other law in force in Scotland; or

(b) Where the issue of those moneys has been authorised by an appropriation law or in such manner, and subject to such conditions, as may be prescribed in pursuance of Section 71.

(2) No moneys shall be withdrawn from any public fund of Scotland other than the Consolidated Fund unless the issue of those moneys has been authorised by or under an Act of the Parliament of Scotland.

(3) The deposit of any moneys forming part of the Consolidated Fund with a bank or with any other banking institution or the investment of any such moneys in such securities as may be prescribed by the Parliament of Scotland shall not be regarded as a withdrawal of those monies from the Fund for the purposes of this Section.

## **70. Authorisation of expenditure**

(1) The Minister with responsibility for finance shall cause to be prepared and laid before the Parliament, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Scotland for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Charter or any other law) shall be included in a bill, to be known as an appropriation bill, introduced into the Parliament to provide for the issue from the Consolidated Fund and other public funds of Scotland of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found –

(a) That the amount appropriated by the appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation law; or

(b) That any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation law or for a purpose for which no amount has been appropriated by the appropriation law;

then the Minister with responsibility for Finance shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Parliament and the heads of expenditure shall be included in a supplementary appropriation bill introduced in the Parliament to provide for the appropriation of those sums.

## **71. Authorisation of expenditure in advance of appropriation**

If the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister with responsibility for finance may, to such extent and subject to such conditions as may be prescribed by Parliament, authorise the withdrawal of moneys from the Consolidated Fund and other public funds of Scotland for the purpose of meeting expenditure necessary to carry on the services of the Scottish Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation law, whichever is the earlier.

## **72. Contingencies Fund**

(1) There shall be such provision as may be prescribed by Parliament for the establishment of a Contingencies Fund and for authorising the Minister with responsibility for finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Parliament, and an appropriation bill shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

### **73. Remuneration of Members of Parliament and Ministers**

(1) The Parliament shall make provision for the payment of salaries and allowances to members of the Parliament and members of the Scottish Government.

(2) The Parliament may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—

(a) Has ceased to be a member of the Parliament or the Scottish Government; or

(b) Has ceased to hold such office, employment or other post in connection with the Parliament or the Scottish Government as the Parliament may determine but continues to be a member of the Parliament or the Scottish Government.

(3) Such provision may, in particular, include provision for—

(a) Contributions or payments towards provision for such pensions, gratuities or allowances,

(b) The establishment and administration (whether by the Parliamentary corporation or otherwise) of one or more pension schemes.

(4) The salary, allowances and other benefits payable to members of Parliament or of the Scottish Government shall not be increased above the rate of inflation except if such increase is approved by a three-fourths majority of the members of Parliament.

(5) No increase in the salary, allowances and other benefits payable to members of Parliament or of the Scottish Government shall be applied to those in office at the time that the increase is approved.

(6) In this section “provision” includes provision—

(a) By an Act of the Parliament of Scotland; or

(b) By a resolution of the Parliament conferring functions on the Corporate Body.

### **74. Remuneration of Designated Officers**

(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by Parliament.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies and the remuneration shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary or remuneration payable to any person holding any office to which this section applies or to his or her terms of employment, other than allowances, that is to his or her disadvantage shall not have effect in relation to that person after his appointment unless he or she consents to its having effect.

(4) This section applies to the offices of –

(a) Queen’s Commissioner;

(b) Lord Advocate;

- (c) Solicitor-General;
- (d) Public Services Ombudsman;
- (e) Auditor-General;
- (f) All judicial offices, except for justices of the peace;
- (g) All members of the Electoral Commission;
- (h) All members of the Judicial Appointments Council;
- (i) All members of the Public Service Commission; and
- (j) All members of the Advisory Council on the Prerogative of Mercy.

## **75. Public Debt**

- (1) All debt charges for which Scotland is liable shall be a charge on the Consolidated Fund.
- (2) For the purposes of this Section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Scotland or the Consolidated Fund and the service and redemption of debt thereby created.

## **76. Auditor-General for Scotland**

- (1) There shall be an Auditor General for Scotland who shall be an individual appointed by the Queen's Commissioner on the nomination of the Parliament, such nomination having been assented to by at least two-thirds of the members present and voting.
- (2) Subject to the provisions of this sub-section (3) of this Section, the Auditor General shall hold office for a term of five years, and may be re-appointed for one subsequent term.
- (3) The Auditor General may be removed from office by the Queen's Commissioner following a motion of the Parliament praying for his removal, on the grounds of misconduct, neglect of duty, or incapacity, passed by a two-thirds majority of the members of Parliament.
- (4) The public accounts of Scotland and of all courts of law and all authorities and offices of the Scottish Government shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorised by him or her in that behalf shall have access to all books, records, reports and other documents relating to those accounts.
- (5) The Auditor-General shall annually submit and lay his or her reports before the Parliament.
- (6) In the exercise of his functions under this Charter the Auditor-General shall not be subject to the direction or control of any other person or authority.
- (7) In reporting on public expenditures, the Auditor-General may comment not only on the lawfulness and propriety of expenditures, but also on questions of good economy, efficiency and effectiveness.

## **Chapter 9. Public Service**

### **77. Public Service Commission**

(1) There shall be a Public Service Commission for Scotland consisting of five members, who shall be appointed by the Queen's Commissioner, of which -

(a) Two shall be appointed on the advice of the First Minister, from amongst those who possess relevant qualifications in public administration, human resources or a related field, and at least ten years of experience at senior levels of public-sector management;

(b) Two shall be appointed on the advice of the Presiding Officer, given after having consulted the leaders of opposition parties in the Parliament; and

(c) One shall be appointed on the advice of union representatives of public officers;

(2) Subject to the provisions of sub-section (5) of this Section, members of the Public Service Commission shall hold office for a period of five years from the date of their appointment.

(3) A person shall be disqualified for appointment as a member of the Public Service Commission if he or she is -

(a) A member of Parliament, or a candidate at any parliamentary election;

(b) A public officer; or

(c) A member of any political party.

(4) A person shall not, while he or she holds or is acting in the office of a member of the Public Service Commission or within a period of five years commencing with the date on which he or she last held or acted in that office, be eligible for appointment to or to act in any public office.

(5) The office of a member of the Public Service Commission shall become vacant -

(a) If he or she becomes disqualified for appointment under sub-section (3) of this Section;

(b) If he or she tenders his or her resignation to the Queen's Commissioner, and if the Queen's Commissioner, acting on the advice of the First Minister, given after he or she has consulted the leaders of opposition parties in Parliament, accepts such resignation.

(c) If he or she is removed from office by the Queen's Commissioner following a motion of the Parliament praying for his removal, on the grounds of misconduct, neglect of duty, or incapacity, passed by a two-thirds majority of the members of Parliament.

(6) The Queen's Commissioner, acting on the advice of the First Minister, shall designate one member of the Public Service Commission to serve as Convenor of the Commission, and shall, during the absence or incapacity of the Convenor, designate another member to serve as Deputy Convenor.

(7) If there is any vacancy in the membership of the Public Service Commission, the Queen's Commissioner shall appoint a person to fill the vacancy, acting in accordance with sub-section (1) of this Section. Provided, that until such member of the Commission is appointed, the Public Service Commission may perform its functions notwithstanding any vacancy.

(8) In the exercise of its functions under this Charter or any law the Public Service Commission shall not be subject to the direction or control of any other person or authority.

## **78. Appointment etc of Public Officers**

(1) Subject to the provisions of this Charter, and to any general rules concerning the recruitment, selection, pay, pensions, privileges, discipline and removal from office of public servants prescribed by law, the power to make and confirm appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the Public Service Commission.

(2) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.

(3) The provisions of sub-sections (1) and (2) this Section shall apply to officers of the Scottish Civil Service and, except as otherwise prescribed by this Charter or by any law in force in Scotland, to all other officers in the service of the Scottish Government or of any Scottish public body.

(4) The provisions of sub-sections (1) and (2) of this Section shall not apply to –

- (a) Officers of any local Council or other locally elected body;
- (b) Officers of Parliament and employees of the Parliamentary Corporate Body;
- (c) Judicial officers, or officers of any Court in Scotland; or
- (d) Members of the Scottish Police Authority.

## **79. Appointment of Permanent Secretaries**

Power to make appointments to the office of Permanent Secretary, and to other offices of Permanent Secretary rank, shall be vested in the Queen's Commissioner, acting on the advice of the First Minister, given after consultation with the Public Service Commission.

## **80. Royal and Household Appointments**

The Queen's Commissioner, acting according to his personal judgment and discretion, shall have the authority to appoint and dismiss –

- (a) Members of the personal staff or retinue of the Queen's Commissioner; and
- (b) Officers of the Royal Household in Scotland.

## **81. Public Services Ombudsman**

(1) There shall be a Public Services Ombudsman, whose duty it shall be to investigate complaints made against the public service or public bodies in Scotland on behalf of the public.

(2) The Public Services Ombudsman shall be appointed by the Queen's Commissioner on the nomination of the Parliament, such nomination having been assented to by at least two-thirds of the members present and voting.

(3) Subject to the provisions of this sub-section (3) of this Section, the Public Services Ombudsman shall hold office for a term of five years, and may be re-appointed for one subsequent term.

(4) The Public Services Ombudsman may be removed from office by the Queen's Commissioner following a motion of the Parliament praying for his removal, on the grounds of misconduct, neglect of duty, or incapacity, passed by a two-thirds majority of the members of Parliament.

(5) Subject to the provisions of this Charter, the Public Services Ombudsman shall have the power to –

(a) Enquire into the conduct of any person in the exercise of his office or authority, or abuse thereof; and

(b) Make recommendations to rectify complaints, to assist in the improvement of the practices and procedures of public bodies, and to eliminate arbitrary and unfair decisions.

(6) The Public Services Ombudsman shall not inquire into the decisions or actions of any Court or judicial decision, nor, until otherwise provided by Act of Parliament any matter referred to in the Fourth Schedule of the Scottish Public Services Ombudsman Act, 2002.

(7) The Public Services Ombudsman shall annually submit and lay his or her reports before the Parliament.

(8) In the exercise of his functions under this Charter or any law the Public Services Ombudsman shall not be subject to the direction or control of any other person or authority.

## Chapter 10. Local Government

### **82. Local Authorities**

(1) For the purposes of local self-government, the territory of Scotland shall be divided and sub-divided into such number of cities, regions, counties, burghs, communities, and other local authority areas as may from time to time be determined by law.

(2) Until otherwise determined by law, the existing unitary authorities, having the boundaries established by the Local Government (Scotland) Act, 1996, shall continue in being.

(3) Subject to the provisions of this Section, Parliament shall by law determine the duties, powers, responsibilities, organisation, composition and functioning of local authorities

(4) Each local authority shall be administered by a directly elected Council consisting of a least eighteen Councillors. Subject to sub-section (5), each Council shall be presided over by a Lord Provost, Provost or Convenor, who shall be elected by the Council from amongst its members.

(5) Nothing in this Section shall be construed to prohibit the establishment of other directly elected local offices, including directly elected Lord Provosts or Provosts, in the manner prescribed by law.

### **83. Local Elections**

(1) Elections for local Councils shall be conducted by proportional representation;

(2) Elections for local Councils shall be held at intervals not greater than four years;

(3) Every person who has the right to vote at an election for members of Parliament shall have the right to vote at an election for members of local Councils and any other locally elected offices.

## Chapter 11. Reserved Matters

### 84. Legislative Power of UK Parliament in relation to Scotland

(1) Subject to the provisions of this Charter, the UK Parliament shall have exclusive authority to make laws in and for Scotland with respect to the following matters:

- (a) The succession to the office of the Head of State;
- (b) The appointment of a regent or council of state;
- (c) Royal titles;
- (d) The civil list;
- (e) The regulation of the Royal Household;
- (f) Defence, including regulation of the armed forces and security services;
- (g) Currency, coinage, legal tender, the Bank of England and monetary policy;
- (h) Passports, citizenship, naturalisation and immigration;
- (i) Extradition and asylum; and
- (j) Foreign relations, the ratification of treaties, and diplomatic and consular services, provided that –

(i) no treaty or other international agreement shall affect the borders of Scotland, its maritime claims, its domestic law, or its financial status, unless such treaty or agreement is adopted into domestic law by an Act of the Parliament of Scotland;

(ii) provision shall be made for Ministers of the Government of Scotland to be consulted with regard to foreign policy decisions and relations with the European Union and other international organisations, on matters affecting Scottish interests; and

(iii) Scotland may engage in external relations for the purposes of promoting cultural, economic, academic and sporting exchange.

(2) Subject to the provisions of this Charter, the UK Parliament shall have authority to make laws in and for Scotland with respect to the following matters, concurrent with the right of the Parliament of Scotland to legislate in respect of such matters to the extent that such legislation is not repugnant to UK-wide legislation:

- (a) Railways between Scotland and the rest of the UK;
- (b) Air traffic control, airports, ports and UK border security;
- (c) Quarantine and the prevention and containment of epidemics;
- (d) Disaster relief, response to emergencies, and civil defence; and

(e) Meteorological, oceanographic, coastguard and navigational services.

(3) Subject to the provisions of this Charter, the UK Parliament shall have authority, for a period of ten years from the adoption of this Charter, or for such longer period as the Parliament of Scotland may by law prescribe, to make laws in and for Scotland with respect to the following matters, concurrent with the right of the Parliament of Scotland to legislate in respect of such matters to the extent that such legislation is not repugnant to UK-wide legislation:

(a) Driver and vehicle licensing;

(b) Postal services and telecommunications services; and

(c) Funding and promotion of scientific research, without prejudice to the ability of the Parliament of Scotland to make additional provision for the funding of such research.

(4) The UK Parliament shall have no authority to make laws in and for Scotland with respect to any matter except as specified in sub-sections (1), (2) or (3) of this Section.

### **85. Representation of Scotland in UK Parliament**

Scotland's delegation to the House of Commons shall consist of delegates elected by the members of the Parliament of Scotland, from amongst their peers, by proportional representation, for the duration of each session of the Parliament of Scotland, in such manner and form as the Parliament of Scotland shall determine.

### **86. Shared Services**

(1) Shared Service Agreements making provision for the delivery of public services in Scotland by the United Kingdom Government or any agency or department thereof may be adopted, provided that such Service Agreements are approved by the UK Parliament and by the Parliament of Scotland.

(2) Provision may be made by agreement between the Government of Scotland and the United Kingdom Government for the co-operation and co-ordination of the delivery of public services.

(3) Joint Ministerial Committees shall be established to promote co-operation between the Government of Scotland and the United Kingdom Government for the purposes of this Section.

### **87. Common Travel Area**

(1) Scotland continues to enjoy an open border with England.

(2) Scotland, as part of the UK, shall remain within the Common Travel Area of the UK and Ireland.

### **88. British Citizenship and Residence**

(1) There shall be a common citizenship for the UK without any distinction between persons born or resident in Scotland and persons born or resident in other parts of the UK.

(2) Persons born or resident in Scotland shall have full rights of residence in all other parts of the UK, and persons born or resident in other parts of the UK shall have full rights of residence in Scotland.

### **89. Funding Arrangements**

(1) Scotland shall have full fiscal autonomy. All taxes, charges, customs and duties arising from the residents of Scotland or from economic activity in Scotland, including revenues from off-shore resources, shall be levied by the Scottish Parliament and payable to the Scottish exchequer.

(2) Scotland shall defray the costs of the UK Government incurred on behalf of Scotland:-

(a) Scotland shall pay the UK Government for the full cost of services provided solely in and for Scotland;

(b) Scotland shall pay the UK Government a share of the cost of services provided for the UK as a whole, in proportion to its share of the overall population of the UK at the most recent census; and

(c) Scotland shall pay the UK Government a share of the cost of servicing the national debt of the UK, in proportion to its share of the overall population of the UK.

(3) Payments due in accordance with this Section shall be a charge on Scotland's Consolidated Fund.

## Chapter 12. Miscellaneous Provisions

### 90. Electoral Commission

(1) There shall be an Electoral Commission for Scotland consisting of seven members, who shall be appointed by the Queen's Commissioner, of which -

(a) Two shall be appointed on the advice of the First Minister;

(b) Two shall be appointed on the advice of the Presiding Officer, given after having consulted the leaders of opposition parties in the Parliament; and

(c) Three shall be appointed on the advice of the Public Service Commission, of which—

(i) Two shall be public officers, qualified and experienced in the conduct of elections; and

(ii) One shall be a former judge who is learned in electoral law.

(2) Subject to the provisions of sub-section (6) of this Section, members of the Electoral Commission shall hold office for a period of five years from the date of their appointment.

(3) A person shall be disqualified for appointment as a member of the Electoral Commission if he or she is –

(a) A member of Parliament, or a candidate at any parliamentary election; or

(b) The brother, sister, husband, wife, father, mother, son, daughter, nephew, niece, or first cousin, business partner, cohabitee, or of a member of Parliament or a candidate at any parliamentary election.

(4) For the purposes of sub-section (3), relations by marriage or re-marriage, and relations by adoption, shall be treated in the same way as relations by birth.

(5) A person shall not, while he or she holds (or is acting in) the office of a member of the Electoral Commission or within a period of five years commencing with the date on which he or she last held or acted in that office, be eligible for appointment to or to act in any public office, or to be a candidate for any parliamentary election.

(6) The office of a member of the Electoral Commission shall become vacant –

(a) If he or she becomes disqualified for appointment under sub-section (3);

(b) If he or she tenders his or her resignation to the Queen's Commissioner, and if the Queen's Commissioner, acting on the advice of the First Minister, given after he or she has consulted leaders of the opposition parties in Parliament, accepts the resignation;

(c) If he or she is removed from office by the Queen's Commissioner following a motion of the Parliament praying for his removal, on the grounds of misconduct, neglect of duty, or incapacity, passed by a two-thirds majority of the members of Parliament.

(7) The Queen's Commissioner, acting on the advice of the Presiding Officer, shall designate one member of the Electoral Commission to serve as Convenor of the Commission, and shall, during the absence or incapacity of the Convenor, designate another member to serve as Deputy Convenor.

(8) If there is any vacancy in the membership of the Electoral Commission, the Queen's Commissioner shall appoint a person to fill the vacancy, acting in accordance with sub-section (1) of this Section. Provided, that until such member of the Commission is appointed, the Electoral Commission may perform its functions notwithstanding any vacancy.

(9) The Electoral Commission shall be responsible, in accordance with this Charter and the law, for the direction and supervision of the registration of voters and the conduct of elections, and all matters connected therewith.

(10) The Electoral Commission shall have the authority to make recommendations to the Parliament of Scotland with respect to the suppression of corrupt practices, the funding of elections, the disclosure of political donations, and the financing of parties, referendums and election campaigns.

(11) In the exercise of its functions under this Charter or any law the Electoral Commission shall not be subject to the direction or control of any other person or authority.

## **91. Civic Honours**

(1) The Queen's Commissioner, in accordance with this Charter and any subsequent legislation, may award civic honours in the name and on behalf of the people of Scotland.

(2) Honours granted under this Section shall not be hereditary and shall not entitle the bearer to any special privileges; unless otherwise provided by law, honours shall not be accompanied by any pension or other financial reward.

(3) The Queen's Commissioner shall exercise his or her powers under this Section on the advice of an honours committee to be established by the Parliament of Scotland, in accordance with such rules or guidelines as the Parliament of Scotland shall determine by law.

## **92. States of Emergency**

(1) If the Queen's Commissioner, acting on the advice of the First Minister, is satisfied that a grave emergency exists whereby the security of Scotland is threatened he or she may, by means of a public proclamation, declare that a state of emergency exists.

(2) Before tendering such advice to the Queen's Commissioner, the First Minister shall, so far as it is practicable to do so, consult with the Presiding Officer, the Lord President of the Court of Session, and the leaders of the opposition parties in Parliament.

(3) A declaration of emergency lapses at midnight on the seventh day after the publication of the declaration, unless within that time Parliament approves the declaration by means of a resolution passed by a two-thirds majority of its members.

(4) A declaration of emergency that has been approved by a resolution of Parliament in accordance with sub-section (3) remains in force, subject to the provisions of sub-section (5), for three months from the date of the resolution, or for such shorter period as the resolution may prescribe.

(5) The Queen's Commissioner shall revoke a declaration of emergency –

(a) If so advised by the First Minister; or

(b) If, acting on his or her own personal judgment and discretion, he or she is convinced that there is no longer the need or justification for a state of emergency to be in effect.

(6) A provision of this Section that a declaration of emergency lapses or ceases to be in force at a particular time does not prevent the making of a further such declaration whether before or after that time. Provided, that a declaration of emergency shall not be renewed without the prior consent of Parliament, by means of a motion passed by a two-thirds majority of the members thereof.

(7) During the period during which a declaration of emergency is in force, the Scottish Government, or any Minister or officer thereof to whom such authority may be delegated by the First Minister, may make such orders as are reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.

(8) An order made under sub-section (7) shall have the force of law, but shall not be valid or binding if it exceeds the reasonable restrictions which may be placed on fundamental rights and freedoms in accordance with the provisions of Chapter 2 of this Charter.

(9) An order made under sub-section (7) of this Section lapses when the declaration of emergency lapses unless the order is sooner revoked by the authority which issued the order or by a resolution of Parliament approved by a majority of the members thereof.

### **93. Consultative Referendums**

(1) The Parliament of Scotland may, by means of a resolution proposed by the Scottish Government and passed by an absolute majority of its members, order the holding of a consultative referendum, on the date and specified in the resolution, to express the views of the people on any proposed law, treaty, or question of general policy.

(2) Referendums held in accordance with this Section shall be advisory; they are of no legal effect.

(3) No referendum shall be held in accordance with this Section unless:

(a) The Electoral Commission has certified that the question is clear, fair and reasonable; and

(b) The Court of Session has certified that the subject matter of the referendum is within the competence of the Parliament of Scotland and not repugnant to this Charter.

(4) Local authorities may, by a decision of the Council, subject to any conditions and procedures prescribed by law, hold consultative referendums on any matter of policy within their competence.

#### **94. Oaths of Office and Allegiance**

(1) Every member of Parliament on taking their seat shall be required to take the following oath of allegiance:

‘I [full name] do swear that will be faithful and bear true allegiance to the people, according to the Charter of Autonomy and the laws of Scotland. (So help me God)’

(2) Every Minister of the Scottish Government shall, on appointment, be required to take the following oath of office:

‘I [full name] solemnly swear/affirm that I will faithfully and conscientiously perform my duties as (First Minister / Minister for [department or portfolio]) in accordance with the Charter of Autonomy and the laws of Scotland, without fear or favour. (So help me God).’

(3) Every person appointed to a judicial office in Scotland shall, on appointment, be required to take the oath of allegiance specified in sub-section (1) of this Section and the following oath of office:

‘I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. (So help me God).’

(4) Every person appointed to the Advisory Committee on the Prerogative of Mercy, the Public Service Commission, the Judicial Appointments Council, Electoral Commission, or to the office of Public Service Ombudsman or Auditor-General, or as a member of the Scottish Police Authority, or to any other public office, shall be required to take, in addition to the oath of allegiance specified in sub-section (1) of this Section, such oath of office, if any, as may be required by law.

(5) Oaths may be taken with or without religious invocation.

#### **95. Principles of Public Life**

(1) This Section applies to:

(a) The Queen’s Commissioner;

(b) The First Minister, Deputy First Minister and all Ministers;

(c) Members of the Parliament of Scotland;

(d) Public officers;

(e) Persons holding an office established or recognised by this Charter, including but not limited to:

- (i) the Lord Advocate;
  - (ii) the Solicitor-General;
  - (iii) the Public Services Ombudsman;
  - (iv) the Auditor-General;
  - (v) all judges and persons exercising judicial authority;
  - (vi) all members of the Electoral Commission;
  - (vii) all members of the Judicial Appointments Council;
  - (viii) all members of the Public Service Commission; and
  - (ix) all members of the Advisory Council on the Prerogative of Mercy;
- (f) Local councillors and any other local officials, whether elected or otherwise; and
- (g) Police officers.

(2) This Section may apply to other persons holding public office or performing public functions as determined by Act of Parliament.

(3) The persons to whom this Section applies shall adhere to the following principles:

- (a) They should uphold the law and act in accordance with the law and the public trust placed in them;
- (b) They have a duty to act solely in terms of the public interest, and must not act in order to gain financial or other material benefit for themselves, family or friends;
- (c) They must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties;
- (d) They must make decisions solely on merit when carrying out public business;
- (e) They are accountable for their decisions and actions to the public, and they have a duty to consider issues on their merits, taking account of the views of others;
- (f) They must ensure that resources are used prudently and in accordance with the law;
- (g) They have a duty to be as open as possible about decisions and actions they take, giving reasons for their decisions and restricting information only when the wider public interest clearly demands;
- (h) They have a duty to act honestly, and must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

(i) They should exhibit these principles in their own behaviour, actively promoting and robustly supporting these principles and being willing to challenge poor behaviour wherever it occurs.

(4) To give effect to these and other relevant principles of good conduct:

(a) The Public Service Commission shall adopt a Code of Conduct for public officers;

(b) Parliament shall adopt:

(i) a Code of Conduct for Ministers; and

(ii) a Code of Conduct for members of Parliament;

(c) The Judicial Appointments Council shall adopt a Code of Conduct for judges; and

(d) Parliament shall have the authority to enforce observance of these codes of Conduct by means of legislation.

## Chapter 13. Transition and Amendment

### 96. Transitional Provisions

(1) The Scottish Parliament elected in May 2011 shall remain in being as the Parliament of Scotland under this Charter, and shall continue as such until it is dissolved in accordance with the provisions of this Charter; provided, that the duration of this sitting Parliament shall be five years, with the first ordinary elections due in May 2016.

(2) The rules and orders of Parliament in force immediately before the commencement of this Charter shall, to the extent that they can mutatis mutandis be applied to the business and proceedings of Parliament under this Charter, continue in force until amended or replaced as herein provided.

(3) The Scottish Government in office on the day on which the Charter comes into effect shall remain in office as the Government of Scotland under this Charter until such time as it resigns or is removed from office in accordance with the provisions thereof.

(4) All powers, rights and prerogatives vested in the Crown in Scotland, or in the Scottish Ministers, immediately before the coming into effect of this Charter shall be vested in the Government of Scotland, except to the extent that such powers, rights and prerogatives are abolished by this Charter or are transferred by this Charter to other persons or institutions. Acts of the Parliament of Scotland enacted under this Charter shall bind the Crown, unless otherwise explicitly stated, and in case of incompatibility Acts of the Parliament shall over-ride prerogative powers.

(5) A person who immediately before the commencement of this Charter held a public office in Scotland or was employed within the public sector in Scotland, shall after commencement continue in such office or employment, subject to and in accordance with the applicable laws regulating such office or employment.

(6) With the exception of any rules of law inconsistent with this Charter, every rule of law which is in force in Scotland at the date at which this Charter comes into force shall remain in force until such time, if any, as it is repealed or amended by Act of Parliament or other competent legislative act.

## **97. Power to Amend Charter of Autonomy**

(1) Subject to the provisions of this Section, the Parliament of Scotland may by Act of Parliament amend any provision of this Charter.

(2) No bill for the amendment of this Charter shall be introduced to Parliament unless such bill:

- (a) is clearly designated as a bill to amend the Charter in its short title; and
- (b) has been published in draft form for public consultation for at least 90 days prior to being introduced;

(3) No bill for the amendment of this Charter shall be deemed to have been passed by the Parliament of Scotland unless such bill is approved on its final reading –

- (a) by a two-thirds majority of the total membership of Parliament; or
- (b) by a three-fifths majority of the total membership of Parliament in two successive sessions of Parliament with a general election of members of Parliament intervening.

(4) Notwithstanding sub-section (3) of this Section, no bill for the amendment of this Charter concerning the independence of Scotland, or concerning sub-section (4) of Section 1, or Sections 84 to 88 inclusive of this Charter, shall be adopted during a period of twenty years from the adoption of this Charter, unless such amendment is approved by three-fourths of the members of Parliament.

(5) In addition, in so far as it amends –

- (a) Sections 1 to 19 inclusive;
- (b) Sections 23, 24, 25 or 27;
- (c) Sections 28 to 32 inclusive;
- (d) Sections 38 to 45 inclusive;
- (e) Sections 55, 57 and 60;
- (f) Sections 63 to 66 inclusive;
- (g) Sections 84, 85, 87 and 88; or
- (h) Sections 90, 92, 93, 95 or this Section;

a bill for the amendment of this Charter shall not be presented for Royal Assent unless it has been referred to the qualified electors in a binding national referendum and approved by a majority of the votes cast; such referendum shall take place not less than three, nor more than six months after its passage through Parliament in the manner specified in sub-section (3) of this Section.

(6) Subject to the provisions of this Charter, Parliament shall make provision by law for the process and conduct of referendums held under this Section.

## **98. Interpretation**

(1) In this Charter, unless the context otherwise requires it, or unless explicitly stated otherwise –

‘Act of Parliament’ means any law made by the Parliament of Scotland;

‘Act of the UK Parliament’ means any law made by the Parliament of the United Kingdom;

‘Charter’ means this Charter of Autonomy;

‘Consolidated Fund’ means the Consolidated Fund for Scotland established by Section 68;

‘Court’ means any court or judicial tribunal having jurisdiction in Scotland;

‘existing law’ means a law in force in Scotland immediately before this Charter comes into effect;

‘judge’ means any person holding judicial office in Scotland, including part-time or temporary appointments, but excluding justices of the peace;

‘law’ includes any instrument having the force of law and any unwritten rule of law, and ‘lawful’ and ‘lawfully’ shall be construed accordingly;

‘Parliament’ means the Parliament of Scotland;

‘Person’ means a human being;

‘Presiding Officer’ means the Presiding Officer of the Parliament of Scotland;

‘public office’ means any office of emolument in the public service;

‘public officer’ means the holder of any public office and includes any person appointed to act in any such office;

‘the public service’ means service of the Crown in a civil capacity in respect of the Scottish Government;

‘rest of the United Kingdom’ means England, Wales and Northern Ireland;

‘session’ means, in relation to Parliament, the period from the first meeting of Parliament after a general election until the dissolution of that Parliament;

‘Sheriff’ means any Sheriff Principal, Sheriff, or part-time Sheriff, including ‘resident’ and ‘floating’ Sheriffs.

‘sitting’ means, in relation to Parliament, a period during which Parliament is sitting continuously without adjournment and includes any period during which the Parliament is in committee;

‘United Kingdom Parliament’ or ‘UK Parliament’ means the Parliament of the United Kingdom;

‘United Kingdom Government’ or ‘UK Government’ means Her Majesty’s Government in the United Kingdom;

(2) For the purposes of this Charter the territory of Scotland shall compose all the areas over which the Scottish Courts have jurisdiction, and shall include the mainland and islands of Scotland, Scotland’s territorial waters, and sea, seabed and sub-seabed resources in Scotland exclusive economic zone.

(3) Any reference in this Charter to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion or transfer to that office and the

power to appoint a person to act in or perform the functions of that office during any period during which it is vacant or during which the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions.

(4) Any reference in this Charter to the holder of an office by the term designating his or her office shall be construed as including a reference to any person for the time being lawfully performing the functions of that office.

(5) For the purposes of this Charter a person shall not be considered as holding a public office by reason only of the fact that he is in receipt for a pension or other like allowance in respect of public service.