

A DRAFT CONSTITUTION FOR SCOTLAND
INTRODUCTORY AND EXPLANATORY NOTES

Background

- 1 The “constitutional” debate in Scotland has focused mainly on the relationship between Scotland and the rest of the UK. Little serious thought has so far been given to the design of a future Scottish Constitution in the event of a “Yes” vote in a referendum on independence.
- 2 Having had no experience of democracy under a written Constitution, Scotland is “constitutionally illiterate”, not just at mass level but also amongst political elites.
- 3 After independence there will be many practical problems to deal with, and good constitutional design is likely to be forgotten in the rush to set up embassies etc.
- 4 Those newly-independent States which have managed to sustain civic-democratic Constitutions have flourished and prospered (Finland, Norway, Malta), while those which have not have become failed States (Pakistan, Zimbabwe). Although cultural and historical factors are also important, the role of good constitutional design in promoting and stabilizing civic-democracy should not be overlooked.
- 5 Most countries, on becoming independent from the United Kingdom, have been given an off-the-shelf Constitution of dubious quality. These tend to replicate in miniature the faults of the Westminster system – namely, excessive concentration of power in the hands of the Prime Minister and a lack of checking and balancing institutions. To become independent under such a weak Constitution would be a disaster: it would merely transfer power from an irresponsible Prime Minister in London to an irresponsible Prime Minister in Holyrood. Scotland must avoid this.
- 6 Evidence (Liphart, 1999; Strøm et al, 2000) points to the fact that the Westminster model of unconstrained majority rule, while promising “strong effective government”, in fact often leads to inferior long-term policy outcomes when compared with more *consensual*, *constrained* and *constitutional* alternatives.
 - (i) Government is *consensual* when policy-making power is broadly shared within a coalition cabinet, between cabinet and parliament, between parliament and people, and between central and local authorities.
 - (ii) Government is *constrained* when those holding public office are unable to manipulate the rules under which they operate, are subject to scrutiny and control by strong independent agencies such as ombudsmen and auditors, are bound freedom of information rules, and have restrictions on their patronage.

(iii) Government is *constitutional* when all powers are subject to a written Constitution which is enforced by an independent judiciary and can only be amended by a special majority and/or by referendum, thus protecting institutional structures and basic rights from the power of the majority.

Therefore, instead of adopting a Westminster-style Constitution, Scotland should aim to adopt a Constitution based on *consensual, constitutional* and *constrained* parliamentary democracy. A government under such a Constitution would be less likely to make hasty, ill-considered or narrowly partisan decisions and more likely to promote the public good. Decisions might take longer to make, but once made they are likely to be more effective, more widely accepted, and thus more stable.

Towards a Scottish Constitution

There is a consensus of learned opinion in Scotland opposed to the “elective dictatorship” of the Westminster style of government and in favour of greater openness, accountability and power-sharing. This is exemplified by the Scottish Claim of Right, the work of Scottish Constitutional Convention and the Scottish Consultative Steering Group, and by the institutions created by the Scotland Act.

The Devolved Parliament was intended to introduce consensual, constitutional and constrained practices into Scottish political life (proportional representation, stronger committees, parliamentary bureau, freedom of information, ombudsman, election of First Minister by Parliament). The success of these measures in the Devolved Parliament has been mixed, but it is clear that progress has been made and that there is desire in Scotland to preserve and build on these foundations rather than reverting to Westminster-style politics.

The intention in producing this draft Constitution is to advance the quality of constitutional design in Scotland, showing that viable and attractive alternatives to the Westminster model exist. The draft Constitution builds on the general principles of the SNP’s earlier (2002) proposals, but incorporates advances in comparative politics and constitutional design to correct the weaknesses of the SNP draft and to provide for a more *consensual, constitutional* and *constrained* parliamentary democracy.

(i) Head of State. Accepting that many people in Scotland retain a sense of cultural loyalty to the Crown, or at least to the present Queen, a republican solution to our constitution problems has, for the time being, been put to one side. However, within the constraints imposed by the existence of a hereditary Head of State, an attempt has been made to produce a civic and democratic Constitution which could be described as “quasi-republican” in character. Sovereignty is declared to reside in the people, and not in the Queen-in-Parliament; this sovereignty is exercised according to the terms of a written Constitution, which is superior to Acts of Parliament, and is enforceable by the Courts.

The Queen of Scots, as a ceremonial Head of State on the Swedish or Spanish model, would perform limited and clearly defined functions, largely of a symbolic nature, for which the Prime Minister, or Presiding Officer, or another constitutional authority, would be legally responsible.

(ii) Bill of Rights. The Constitution provides for a relatively expansive Bill of Rights. This incorporates the European Convention on Human Rights but is more specific in certain areas in which the European Convention is vague or silent (for example, the European Convention makes no direct provision for guaranteeing Trial by Jury).

(iii) Parliament. Parliament is unicameral and elected by proportional representation. In keeping with the SNP's 2002 draft, Parliament serves for a fixed term and may not be dissolved by the Prime Minister. This helps to encourage a more consensual style of government. Dissolution is still possible in exceptional circumstances if a Prime Minister cannot be appointed. A minority veto referendum procedure, modeled on that of Denmark, is designed to use the people as a sort of second chamber, to prevent hasty and partisan legislation.

(iv) Executive. The executive power is vested in a Council of Ministers, headed by a Prime Minister who is formally elected by Parliament. The Council of Minister is responsible to Parliament and may be removed by a vote of no confidence.

(v) Judiciary. There is an independent judiciary appointed by the Head of State on the advice of a non-partisan Judicial Council. There would be a Supreme Court to perform judicial review of the constitutionality of Acts of Parliament and Treaties.

(vi) Local Government. The proposed Constitution makes provision for a system of local government which could facilitate a major redistribution of power from Edinburgh to the regions and cities of Scotland.

(vii) Scrutiny and Supervision. The Constitution establishes mechanisms for scrutiny and supervision, including an independent Auditor-General, Ombudsman and an Electoral Commission.

(vii) Amendments. The Constitution would be capable of being amended by a two-thirds majority vote of Parliament, supported by a referendum.

The Constitution of the Kingdom of Scotland

We, the people of Scotland, covenanting and uniting together as a civil body politic, in order to establish justice, to ensure domestic peace, to provide for the common defence, to promote the general welfare and the common good of our society, and to secure the blessings of liberty to ourselves and our posterity, do hereby establish this Constitution for the Kingdom of Scotland.

Chapter I – Foundations of the Kingdom

- (1) The Kingdom of Scotland is a free, sovereign and independent commonwealth. Its form of government is a constitutional, decentralised, representative and parliamentary democracy.
- (2) Sovereignty resides in the people of Scotland, who shall exercise their powers indirectly through the election of Parliament and local Councils, and directly through referendums.
- (3) The territory of the Kingdom shall comprise all the mainland and islands of Scotland which are subject to Scots law. Scotland also claims its territorial waters and exclusive economic zone in accordance with international law.
- (4) This Constitution is the supreme and fundamental law. Any law, order, regulation, treaty, or other instrument, which is incompatible with this Constitution is null and void.

Chapter II – Citizenship and Franchise

- (5) All persons lawfully resident within the jurisdiction of the Kingdom of Scotland on the date when this Constitution comes into force shall be citizens of the Kingdom. The rules governing the acquisition and loss of citizenship after that date, by birth, marriage, and naturalisation, shall be determined by law; provided, that no citizen shall be deprived of their citizenship, except by a voluntary act of renunciation, or by conviction for treason.
- (6) Every citizen of the Kingdom, of the full age of eighteen years (except for convicted criminals serving a custodial sentence and those who are certified as mentally incapable in accordance with the law) shall be enfranchised. As such, they shall have the right to vote in referendums and in elections for the Parliament and for County, City and Burgh Councils, to serve as jurymen and in the Armed Forces, and to hold other public offices, according to law.
- (7) All natural persons lawfully resident in Scotland who are not citizens, unless otherwise specified by law, shall enjoy all the rights, privileges and immunities of citizens, except for the rights of franchise as specified under Article 6.

Chapter III – Head of State

- (8) The office of Head of State shall be hereditary in the line of Elizabeth Windsor, Queen of Scots, according to the Act of Settlement 1701. Parliament, having regard to the principles of the Statute of Westminster 1931, may alter and amend the laws of succession in Scotland.
- (9) On ascending the throne, the Head of State shall take, in the presence of the Parliament, an oath to defend, enforce and obey the Constitution, to ensure that the Kingdom is governed with honesty and integrity, and to do equal right and justice to all citizens, according to law.
- (10) Neither the Head of State nor heir apparent may marry, nor leave the Kingdom, nor accept any foreign office or honour, except by the prior consent of the Council of Ministers.

(11) Provision shall be made by law for the appointment of a Regent to perform the duties and functions of the Head of State during the Monarch's minority or permanent incapacity, and also for the appointment of a Lord High Commissioner, or Council of State, to perform these duties and functions during Monarch's temporary incapacity or absence from Scotland.

(12) The Head of State represents the authority of the Kingdom and the unity of the people, but shall have only such powers and duties as are vested in him by this Constitution, viz:

- (i) Dissolving Parliament and issuing writs for general elections, in accordance with Articles 20 and 21.
- (ii) Granting Royal Assent to legislation in accordance with Article 38.
- (iii) Appointing the Ministers in accordance with Articles 41 to 48, and accepting their resignations or dismissing them from office in accordance such Articles.
- (iv) Sending and receiving ambassadors, signing treaties after they have been ratified, and performing other formal, diplomatic and ceremonial duties, as directed by the Council of Ministers in accordance with Article 51.
- (v) Appointing judges on the advice of the Judicial Council in accordance with Article 56, and exercising the power of pardon in accordance with Article 63.
- (vi) Awarding civic honours in accordance with Article 109.
- (vii) Appointing the Lord High Commissioner to the General Assembly of the Church of Scotland, the Lord Lyon King of Arms, and other officers of the Royal Household in Scotland, subject to any provisions prescribed by law.

(13) The Head of State shall meet regularly with the Prime Minister and the Presiding Officer of Parliament, and shall have the right to be informed and consulted by them.

(14) The Head of State's civil list shall be determined from time to time by Act of Parliament.

Chapter IV – Parliament

(15) Parliament is the legislative, representative and deliberative assembly. It shall have the authority, subject to this Constitution, to enact, amend and repeal all laws for the peace, order and good government of the realm; to levy taxes and to appropriate funds; to nominate the Prime Minister and to hold all Ministers to account; to declare war; and to ratify treaties.

(16) The Parliament shall consist of at least a hundred members, elected by the enfranchised citizens of the Kingdom, by secret ballot, using the Single Transferable Vote electoral system.

(17) The Kingdom shall be divided by law into constituencies for the election of members of the Parliament, and each constituency shall return a number of members, to be determined by law in proportion to the number of enfranchised citizens resident therein. The boundaries of constituencies shall, as nearly as may be practicable, be based on those of local Councils, and on existing historical and geographical boundaries, provided that no constituency shall be so large as to elect more than eight, nor so small as to elect fewer than four, members.

(18) An independent and non-partisan Boundaries Commission shall be established by law to conduct a review of the constituencies after each decennial census, and to advise Parliament on the re-apportionment of seats between constituencies, and on the alteration of boundaries.

(19) In order to be elected to the Parliament it is necessary to be an enfranchised citizen, at least twenty-one years old, to have resided for at least one year in the constituency which he or she is to represent, and to be nominated by at least fifty enfranchised citizens. No person holding any administrative, diplomatic, military or judicial office (other than a Ministerial office), nor any person holding a place or pension at the pleasure of the Crown or Ministers, shall be eligible to Parliament; and no member of the Parliament, during the term for which he or she was elected, may be appointed to any such office, nor receive such place or pension.

(20) Subject to the provisions of Articles 21 and 22, members of Parliament shall be elected for renewable terms of four years: an ordinary general election shall take place on the first Thursday in May every fourth year; the Head of State shall dissolve Parliament no sooner than sixty days, and no later than thirty days, before the date on which the election is held.

(21) The Head of State, upon the advice of the Presiding Officer, may prematurely dissolve the Parliament, and issue writs for a general election to take place within sixty days, if the Parliament has failed to nominate a candidate for appointment as Prime Minister within thirty days after its first meeting following a general election, or within thirty days after the death in office, resignation, or removal from office, of the former Prime Minister. The Head of State likewise dissolves Parliament, and issues writs for elections to be held within sixty days, if Parliament votes for its own premature dissolution by a two-thirds majority. If a premature election is held under this Article, the next election shall, subject to this Article and Article 22, take place on the first Thursday in May after the third anniversary thereof.

(22) Parliament shall have the authority, in time of invasion, war, unrest, disaster, other emergency, to extend its term of office for up to one year, by a resolution passed by a two-thirds majority. Such extension may be repeated, once, by further two-thirds majority vote.

(23) Provision shall be made for all vacancies arising in Parliament, owing to the death, resignation or removal of any member, to be filled within three months; unless a general election is due during this time, a by-election shall be held in the appropriate constituency.

(24) Every member of Parliament shall take this oath of office:

I _____ do hereby solemnly swear that as a member of the Parliament of Scotland, I will conduct myself as a faithful representative of the people, according to the best of my judgment and abilities; and I will protect the constitutional rights, liberties and privileges of the people.

(25) The Parliament shall elect from amongst its members a Presiding Officer and a Deputy Presiding Officer, who shall summon and preside over Parliament and shall ensure that its Standing Orders are upheld. The Presiding Officer and Deputy shall be elected at the first session of the Parliament held after each general election, and whenever a vacancy in their offices occurs; they shall serve until their successors are elected, unless removed on grounds of misconduct, incapacity, or neglect of duty, by a two-thirds majority vote of the Parliament.

(26) The Parliament, by proportional representation, shall elect from amongst its members a Parliamentary Bureau, chaired by the Presiding Officer, to determine its schedule, agenda and order of business, and to advise on matters of parliamentary procedure and conduct in accordance with the Standing Orders. Parliament shall likewise elect a Corporate Body to manage its buildings, facilities, library and archives, and to appoint its clerks and other staff.

(27) The plenary sessions of Parliament shall be open to the public, except when a two-thirds majority resolve upon a closed session for the discussion of matters related to public security.

(28) Parliament shall determine the dates of its own sessions and adjournments: provided, that Parliament shall meet within thirty days after each general election, and shall continue each year in a regular session of at least ninety days' duration. The Presiding Officer, at his or her own initiative, or at the request of the Prime Minister or one-third of the members of the Parliament, shall have the authority to summon the Parliament into session in case of emergency, before the time to which it stands adjourned. The Presiding Officer may also suspend a session for up to twenty-four hours, but neither the Presiding Officer nor the Ministers shall have any power to prorogue or adjourn Parliament without its consent.

(29) No public business may be decided in Parliament except at a duly summoned and constituted meeting, at which a majority of members of the Parliament are present.

(30) Freedom of speech, debate, voting and proceedings in Parliament shall not be infringed. No member of Parliament shall be held responsible in any court or other place for comments made, or votes cast, in the Parliament, or in its committees, or in its public pronouncements.

(31) The Parliament shall adopt its own Standing Orders, governing the conduct of members and the rules of procedure; Standing Orders must be approved by a two-thirds majority vote.

(32) The members of Parliament shall enjoy immunity from arrest and prosecution during the sessions of the Parliament; this immunity may be waived only by a two-thirds majority.

(33) The Parliament shall have the authority to judge the election and qualifications of its own members, and to expel a member for gross misbehaviour; but no person's membership shall be invalidated, nor any member expelled, except with the concurrence of a two-thirds majority of the members of the Parliament, given after thorough independent investigation by a Committee of Inquiry, consisting of eight members selected by lot, chaired by a Judge.

(34) The Parliament shall establish Select Committees to scrutinise legislation and to advise and oversee the Council of Ministers. The Select Committees shall be chosen by proportional representation from amongst the members of Parliament, but members holding a Ministerial office may not be elected to Select Committees. Select Committees shall have the authority to question Ministers and senior Civil Servants on any matter relating to their departments, and to summon files, documents, witnesses and such other evidence as they deem necessary.

Chapter V – Legislation

(35) Legislative initiative rests with the Council of Ministers and with the members of the Parliament; provided always that Money Bills must be proposed by a responsible Minister. Every bill shall be confined to one theme or subject unless it is a bill codifying, revising, or repealing existing laws. Money Bills shall be strictly limited to taxation, expenditures and financial matters only. The question of whether or not a bill is a Money Bill shall be decided by the Presiding Officer, subject to appeal by the bill's sponsor to the Parliamentary Bureau.

(36) No bill may be enacted unless it has been approved three times, on three separate days, by a majority of the members of Parliament present and voting. Unless the bill is certified as urgent by a two-thirds majority of the members of Parliament, it shall be referred to a Select Committee for scrutiny and amendment, and referred to the Convention of Estates for their advice, recommendations and amendments, before being finally voted on by the Parliament.

(37) Every bill passed by Parliament (except for Money Bills and bills declared to be urgent in accordance with Article 36), shall be laid before Parliament for ten working days before being presented for royal assent by the Presiding Officer. During this time, any two-fifths of the members of Parliament, by means of a signed order presented to the Presiding Officer, may suspend the bill. A suspended bill shall not be presented for royal assent unless it is reconfirmed by Parliament, by an absolute majority vote, after a delay of eighteen months from the date of suspension, or after a general election, whichever is sooner. Provided, that the Council of Ministers shall have the authority to submit any suspended bill to the people in a referendum, to be held at any time before the period of suspension expires: if the bill is approved by a simple majority of those voting in the referendum, it shall be deemed to have been passed, and shall be presented for assent; if the bill is rejected by the people, it lapses.

(38) Every bill which has been passed by Parliament, or by the people, under the terms of Articles 36 and 37, shall become law on receiving royal assent, which shall be granted by the Head of State on the advice of the Presiding Officer. Provided, that if the Presiding Officer has any doubt as to the constitutionality of the bill, he or she shall refer it to the Supreme Court for advice. The Supreme Court shall report within thirty days: if the Court advises that the bill is constitutional, the Head of State must grant assent to the bill without delay; if the Court advises that the bill is unconstitutional, the Head of State shall withhold royal assent, and the Presiding Officer shall return the bill to Parliament with a statement of the Supreme Court's objections. Nothing in this Article shall be deemed to restrict the ability of the Supreme Court to determine the constitutionality of any law after it has received assent.

(39) Acts of Parliament may delegate the authority to enact regulations, having the force of law, to the Council of Ministers. All such regulations shall be laid before Parliament for at least forty days before coming into effect, during which time they may be suspended by an appropriate committee and referred to a plenary session of the Parliament for approval or rejection; provided, that in cases of urgency, such period may be curtailed by the consent of Parliament. Regulations shall be limited to matters of a minor, technical or administrative nature; the power to create criminal offences, to impose penalties, to levy taxes, charges or duties, or to amend the laws relating to the civil rights of persons, may never be delegated.

Chapter VI – Council of Ministers

(40) The executive authority of the Kingdom shall be entrusted to the Council of Ministers, which shall include the Prime Minister and such other Ministers as may be required by law.

(41) The Prime Minister shall be appointed by the Head of State upon the nomination of the Parliament, which shall be made by means of a resolution passed by a simple majority vote.

(42) The nomination and appointment of a Prime Minister shall take place within thirty days after the first meeting of Parliament following a general election, and within thirty days of the death, resignation, or removal from office, of the former incumbent Prime Minister. If a Prime Minister has not been appointed during this time, the Head of State, on the advice of the Presiding Officer, may dissolve Parliament and call a general election under Article 21.

(43) The Ministers other than the Prime Minister shall be appointed by the Head of State on the nomination of the Prime Minister, and shall be dismissed on the Prime Ministers' advice.

(44) The Prime Minister and a majority of the other Ministers, including the Minister responsible for finance, must be appointed from amongst the members of Parliament; the remainder of the Ministers may be chosen from outside of the Parliament, but, if so chosen, they shall have an *ex-officio* right to sit and to speak in Parliament, but not to vote therein.

(45) The total number of persons holding Ministerial office at any time, including the Prime Minister, shall not be fewer than five nor more than fifteen; in addition, up to twenty Deputy Ministers may be appointed, in the same manner as Ministers, to assist them in their duties.

(46) The Council of Ministers shall be collectively and individually responsible to Parliament. If Parliament, by an absolute majority, passes a vote of no-confidence in the Prime Minister, he or she shall be dismissed from office, and the Parliament shall then proceed to nominate another of its members for appointment as Prime Minister. If Parliament, by an absolute majority, passes a vote of no-confidence in any Minister other than the Prime Minister, the Minister concerned shall be dismissed, and the Prime Minister shall nominate a successor.

(47) The Prime Minister may resign by submitting a letter of resignation to the Head of State; other Ministers may resign by submitting a letter of resignation to the Prime Minister.

(48) During the interval between a general election and the appointment or re-appointment of a Prime Minister under Articles 41 and 42, as also during the interval between the death, resignation or dismissal of a Prime Minister and the appointment of a successor, the Council of Ministers shall continue to perform their duties, in a caretaker capacity: but they shall not take policy decisions which are not routine, urgent, or specifically authorised by Parliament.

(49) The Prime Minister and Ministers, including Deputies, shall take this oath of office: *I _____, being appointed to the executive magistracy of the Kingdom of Scotland, do hereby solemnly swear that I will, to the best of my skill and judgment, faithfully and conscientiously execute the office of _____, according to law, without fear, favour or partiality. I also promise to defend, support and obey the Constitution of the Kingdom of Scotland, to ensure that the laws and statutes of the Kingdom be duly observed, and to protect the people of Scotland in the secure enjoyment of all their rights, liberties and privileges.*

(50) The Council of Ministers shall conduct the administration of the Kingdom shall take care that the laws be faithfully executed. They shall appoint, on merit and subject to such qualifications and disqualifications as may be enacted by law, such principal administrative officers and other officials as may be required by law. Unless otherwise stated by law, these administrative officers shall enjoy security of tenure during good behaviour, and may only be removed in cases of incapacity, neglect of duty, corruption, treason, or other such misconduct.

(51) The Council of Ministers shall conduct diplomatic relations with other States, and shall send and receive ambassadors; provided, that no treaty or international agreement shall be legally binding unless ratified by Parliament. Treaties and agreements which concern the participation of Scotland in any league, union, confederation, or alliance, or which delegate legislative, fiscal or other governing powers to any such organisation, must be approved by a two-thirds majority of the members of the Parliament, taken after a referendum held under Article 110; other treaties and agreements may be approved by an absolute majority vote.

(52) The Council of Ministers shall command and deploy the Armed Forces, and administer, regulate and discipline the Armed Forces according to law; provided, however, that no war may be declared, and no armed forces deployed on active service beyond the territory of the Kingdom, but by the consent of Parliament, by a resolution passed by an absolute majority.

(53) The Prime Minister and Ministers, including Deputy Ministers, shall receive salaries at a level to be determined by law; but these salaries shall not be increased above the prevailing rate of inflation except by the consent of a two-thirds majority of the members of Parliament.

Chapter VII – Administration of Justice

(54) The judicial authority of the Kingdom shall be entrusted to the Supreme Court, the Court of Session, High Court of Justiciary, Sheriff's Courts, and such inferior courts and tribunals (civil and criminal) as may from time to time be established by Act of Parliament.

(55) The Supreme Court shall consist of a Chief Justice and at least seven, but not more than nine, Justices. It shall have final appellate jurisdiction over all cases concerning the alleged violation of the Constitution, or the interpretation of this Constitution, or the validity of any law under this Constitution, as well as over all other cases which, prior to independence, would have come under the jurisdiction of the Supreme Court of the United Kingdom.

(56) Justices of the Supreme Court, Lords of Session, Sheriffs, and all other members of the judiciary, shall be appointed by the Head of State on the nomination of the Judicial Council.

(57) The Judicial Council shall consist of the Minister responsible for justice (as Convenor), the Chief Justice of the Supreme Court and the Lord President of the Court of Session *ex-officio*, a delegate of the Faculty of Advocates, and six members of the Parliament elected by their peers, by secret ballot and proportional representation, for renewable four-year terms.

(58) No person shall be appointed to a judicial office unless they are an enfranchised citizen, learned in the laws and qualified to practice law, and of proven integrity and good character.

(59) All members of the judiciary shall be independent in the exercise of their duties, subject only to the Constitution and law. They shall enjoy security of tenure during good behaviour, and they may be removed from office, in case of misbehaviour, by means of a vote of censure approved by a two-thirds majority of the members of Parliament. The Judicial Council may, by a two-thirds majority of its members, nevertheless suspend a member of the judiciary, on full pay, pending the investigation of their conduct by Parliament. Judicial salaries shall be determined by law, but shall not be reduced during their continuance in office.

(60) No member of the judiciary may simultaneously hold any other public office, nor be a member of any political party, nor have any other occupation or interest which is declared by the Judicial Council, acting in accordance with the law, to be incompatible with their duties.

(61) Every Justice of the Supreme Court, Lord of Council and Session, Commissioner of Justiciary, Sheriff, and other judge, shall take the following oath or affirmation of office: *I _____ being appointed to judicial office in the Kingdom of Scotland, do hereby solemnly swear (or affirm) that I will be true and faithful to the Constitution; and I will exercise my judicial duties, to the best of my wisdom and learning, with honesty, integrity, and impartiality, doing equal right and justice to all citizens, according to law.*

(62) The Lord Advocate, who shall be head of the Crown Office and responsible for public prosecutions, shall be appointed by the Council of Ministers, after consultation with the Judicial Council, for renewable terms of four years. The organisation of the Crown Office, and the procedures for the appointment of Procurators-Fiscal, shall be determined by law.

(63) The right to pardon offenders after conviction, and to remit fines or reduce sentences, in the interests of justice or mercy, shall be vested in the Head of State, who shall act on the advice of a Pardons Board, consisting of the Minister of Justice, the Lord President of the Court of Session or another member of the Court of Session delegated for this purpose, and the Ombudsman. General amnesties may be granted only by virtue of a specific law.

Chapter VIII – County, City and Burgh Councils

(64) The territory of the Kingdom shall be divided by law into Counties and Cities, which shall be governed by County or City Councils. County and City Councils shall consist of at least twenty but not more than sixty members, elected by the enfranchised citizens thereof, by secret ballot, using the Single Transferable Vote system, for renewable three-year terms.

(65) Burghs may be established within the Counties. Towns and communities may be granted Burgh status on application by the people of the locality according to law. The government of a Burgh shall be vested in a Burgh Council, consisting of at least twelve members elected by the enfranchised citizens thereof, by secret ballot, using the Single Transferable Vote system, for renewable three-year terms. In addition, up to one-fourth of the Burgh Councillors may be Bailies, co-opted by the elected Councillors for renewable six-year terms, to represent Chambers of Commerce and other principal interests of the town.

(66) Each County, City or Burgh Council shall elect from amongst its members a Convenor, Lord Provost, or Provost, who shall preside over the Council and represent the County, City or Burgh. Each Council shall also elect an executive committee, headed by a Leader of the Council, to prepare the business of the Council and to ensure the execution of its decisions. Provided, however, that provision may be made by law for the direct popular election of an Executive Lord Provost in Cities, who shall combine both ceremonial and executive duties.

(67) The County, City and Burgh Councils shall possess such devolved legislative, executive, regulatory, fiscal and police powers as may be vested in them by law, or delegated to them by the Council of Ministers, in accordance with the principles of subsidiarity. They shall also possess a general competence to enact and enforce ordinances for the peace, order and good government of the County, City or Burgh, provided that these are not contrary to the laws.

(68) The County, City and Burgh Councils shall be autonomous in the use of their powers, and in the expenditure of revenues raised from their own sources, subject only to control by the Courts, and to inspection and supervision by the Ombudsman and the Auditor-General.

Chapter IX – Ombudsman and Auditor-General

(69) The Parliament, on the nomination of the Parliamentary Bureau, and by a two-thirds majority vote, shall appoint an Ombudsman and an Auditor-General. They shall serve for a renewable term of five years, during which the provisions of Articles 59 and 60 shall apply.

(70) The Ombudsman shall examine complaints of maladministration, injustice, neglect of duty, incompetence, delay, or mistake, alleged to have been committed by, or to have been caused by the negligence or mistake of, Ministers, local Councils, or other public authorities.

(71) The Auditor-General shall conduct a thorough audit of the public accounts, to ensure that all public monies are properly accounted for, and are expended only in accordance with the law. The Auditor-General shall also make recommendations to Parliament for improving the economy and efficiency of public spending, and for eliminating wastage and corruption.

(72) The Ombudsman and Auditor-General shall have such powers, related to these said functions, as may be vested in them by law. In particular, they shall possess full powers of investigation, including access to all records and correspondence, and the right to summon witnesses and hear evidence on oath. They may bring to court any matter requiring legal judgment, and may advise authorities to take disciplinary action or other remedial action.

Chapter X – Convention of Estates

(73) The Convention of Estates is the representative body of the social, economic, cultural and religious interests of the realm. It shall have the authority to examine and to give its opinion on all bills which are referred to it by Parliament under Article 36, to recommend amendments to such bills, to petition Parliament and the Council of Ministers, and to debate and pass advisory resolutions on any matter which it deems to be of general public interest.

(74) The Convention of Estates shall consist of eighty members. Forty shall be chosen by the principal economic interests, including trade unions, craft and artisan guilds, Chambers of Commerce, professional associations, and farmers. Forty shall be chosen by social, cultural and religious interests, including universities, voluntary societies, local authorities, and the churches. The manner of their election or appointment, and all other matters relating to the organisation, structure, and composition of the Convention of Estates, shall be fixed by law.

Chapter XI – Seven Principles of Public Life

(75) All members of Parliament, Ministers, Civil Servants, Judges, County, City and Burgh Councillors, and other persons holding public office, shall be morally bound to act according to the Seven Principles of Public Life:

- (i) **SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- (ii) **INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- (iii) **OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- (iv) **ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- (v) **OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- (vi) **HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- (vii) **LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

(76) An All-Party Committee on Standards in Public Life shall be created by Parliament to advise on the application of these Seven Principles. Parliament shall also have the authority to encourage and enforce the observance of these Seven Principles by appropriate legislation.

Chapter XII – Fundamental Rights

(77) The enjoyment of the rights and freedoms set forth in this Chapter of the Constitution shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

(78) Everyone's right to life shall be protected by law. The death penalty is abolished and prohibited. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, in action lawfully taken for the purpose of quelling a riot or insurrection, or when such death results from a lawful act of war. This Article shall not, however, be construed to prohibit the voluntary termination of a pregnancy, or voluntary euthanasia, under such circumstances and conditions as may be prescribed by law.

(79) No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Criminals shall be treated with decency, humanity and compassion.

(80) No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour. For the purpose of this Article the term "forced or compulsory labour" shall not include: any reasonable work required to be done in the ordinary course of lawful detention, or during conditional release from such detention, any lawful military service or, in case of conscientious objectors, service exacted instead of compulsory military service; or any work or service which forms part of normal civic obligations, or which is lawfully exacted in case of an emergency or calamity threatening the life or well-being of the community.

(81) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in accordance with a procedure prescribed by law in the following circumstances:

- (i) The lawful detention of a person after conviction by a competent court.
- (ii) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.
- (iii) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (iv) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.
- (v) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants.
- (vi) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(82) Everyone who is arrested shall be informed promptly, and in any case within twenty-four hours, in a language which he understands, of the reasons for his arrest and the charge against him. Everyone arrested or detained in accordance with the provisions of paragraph (iii) of Article 81 shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. Everyone who has been the victim of arrest or detention in contravention of this Constitution shall have an enforceable right to compensation.

(83) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair within a reasonable time by an independent and impartial tribunal established by law. Court proceedings shall be public, subject to such laws as may provide, the interests of justice, for the privacy of the parties or the protection of witnesses.

(84) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law, and shall be entitled to the following minimum rights:

- (i) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (ii) To have adequate time and the facilities for the preparation of his defence;
- (iii) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (iv) To examine or have examined witnesses and other evidence against him and to obtain the attendance and examination of witnesses and evidence on his behalf under the same conditions as witnesses and evidence against him;
- (v) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

(85) The right to trial by jury in serious criminal cases, as it existed under Scots law at the time of the ratification of this Constitution, shall not be abolished, restricted or infringed.

(86) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(87) Everyone has the right to respect for his private and family life, his home and his correspondence. No person may be subject to any search or surveillance, or interception or monitoring of communication of any form, or any similar invasions of privacy, except on the lawful authority of a warrant, issued by a judge, in circumstances necessary in a democratic society for the protection of national security, public safety or the economic well-being of the country, for the prevention of crime, or for the protection of the rights and freedoms of others; and no home or other private place may be entered without the knowledge and consent of the owner or householder, except on the authority of such a warrant, or in situations where such entry is necessary to prevent the immediate commission of a violent crime or to save life.

(88) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance, subject only to such limitations as are prescribed by law and are necessary in a democratic society for the preservation of the public safety, order, health or acceptable moral standards, and for the protection of the rights and freedoms of others.

(89) No person shall be discriminated against, in employment or public services, or in the full enjoyment of their civil rights, on account of their religious belief, or lack thereof. No person shall be compelled to support, any religious institution, or to participate in any religious rite.

(90) No public money may be assigned to religious causes: public money may be assigned to support the educational and charitable activities of religious bodies, and for the upkeep of religious buildings of historical significance, provided that such funds are distributed fairly between different *bona fide* religions and denominations, and not applied to proselytisation.

(91) Nothing in Articles 88 to 90 shall be construed as affecting the status of the Church of Scotland under the terms of the Protestant Religion and Presbyterian Church Act 1707, nor as restricting the rights or liberties thereof as declared by the Church of Scotland Act 1921.

(92) Freedom of speech, expression and publication shall not be infringed, other than by such laws as are necessary and reasonable in a democratic society to prevent scandalous abuse of this right, to prevent incitement to violence, and to protect reputations and public decency.

(93) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including freedom to demonstrate and to collectively petition for the redress of grievances, and to form and join trade unions and political parties. Public assemblies may be subject to such limitations or conditions as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the prevention of disorder or crime.

(94) Men and women of marriageable age have the right to marry and to found a family, according to the laws governing the exercise of this right. The law shall protect and honour the family and the institution of marriage (or civil partnership) as the foundations of society.

(95) Everyone is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law, which must make provision for the payment of full compensation. Provided, this shall not be construed to way impair the right of Parliament to enact such laws as it deems necessary to control the use of property in accordance with the common good, nor to impair the lawful payment of taxes or other contributions or lawful penalties.

(96) Everyone lawfully within the territory of the Kingdom shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave the country. 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 in the interests of national security or public safety for the maintenance of public order, for the prevention of crime, for the protection of rights and freedoms of others.

(97) No citizen shall be expelled, by means either of an individual or of a collective measure, from the Kingdom, nor deprived of the right to enter the Kingdom. The collective expulsion of aliens is prohibited.

(98) Everyone shall enjoy free access to official information, as well as access to all personal information held about them by any public officer or institution, or by any corporation which is operating within the jurisdiction of the Kingdom. Restrictions on the free access to official information may be imposed by law, on the grounds of national security, military secrecy, or public safety, or to prevent and detect crime, to the extent necessary in a democratic society.

(99) Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage fixed by law. All workers are entitled to regular days of rest, equal to at least one day in seven, and to annual holidays with pay. The maximum number of hours of work per day shall be fixed by law, so that each person is secured adequate time for rest, recreation, learning, and social and family life. Conditions of work shall be regulated by law to protect the health, safety and well-being of workers. The rights specified in this Article cannot be renounced by contract.

(100) Trade unions have the right to negotiate and enforce collective agreements, and to enforce these by strike action. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the Armed Forces, the Police Services, the administration of the State, or persons working in essential public services.

(101) Everyone shall have a right to adequate health care through a universal public health system established by law, as well as to public assistance, sufficient to maintain their health and dignity of life, in the event of accident, illness, disability, unemployment, and old age.

(102) Everyone shall have a right to primary and secondary education, and also to higher, vocational or professional education commensurate with their aptitude and ability. The responsibility for delivering publicly-funded education may be delegated by law to County, City and Burgh Councils, and also to religious and charitable bodies in accordance with the law. Public universities shall be independent in their administration, teaching and research.

(103) Everyone whose rights and freedoms as set forth in this Constitution are violated shall have an effective remedy before the Supreme Court, notwithstanding that the violation has been committed by persons acting in an official capacity.

(104) During time of war, invasion, disaster or unrest, Parliament, by a two-thirds majority vote, may declare a State of Emergency. Such State of Emergency shall continue for up to sixty days, after which it shall elapse, unless renewed, for a further period of up to sixty days, by a two-thirds majority of Parliament. During the State of Emergency, the Council of Ministers shall have the authority to issue Decrees, having the force of law, for the peace, order and safety of the Kingdom. Such Decrees may limit or restrict the rights guaranteed under this Chapter of this Constitution. Provided, that all such Decrees shall be subject to review by a panel consisting of the Presiding Officer of Parliament, the Ombudsman, and the Chief Justice of the Supreme Court, any two of whom may veto Decrees on the grounds that they are burdensome, unnecessary, or unduly repressive. Parliament shall meet as of right during the State of Emergency, and may terminate the State of Emergency at any time. All Decrees shall lapse automatically within thirty days after the expiry of a State of Emergency.

Chapter XIII – Miscellaneous Provisions

(105) Scotland adopts a mixed, social-market economy, based on partnership between private enterprise, public provision, and the voluntary sector. Parliament shall have the authority to regulate economic activities by law in order to promote the common good in accordance with the principles of social justice, subsidiarity, sustainability and solidarity.

(106) If the budget for the following financial year has not been passed within thirty days of the end of the current financial year, then the Parliament, by means of a resolution passed by a simple majority at the request of the Ministers, may adopt an interim budget, which maintains revenues and expenditures at their previous levels until a budget is passed.

(107) The Armed Forces of Scotland shall consist of the Scottish Army and Scottish Navy. In addition, there shall also be a Territorial Army and a Naval Reserve, organised as part-time volunteer reserve forces. Members of the Territorial Army and Naval Reserve shall be liable for home service only, and shall not be deployed overseas on active service. There shall be no conscription in times of peace. In times of war, or threatened invasion, conscription into the Territorial Army and Naval Reserve may be imposed by law. Provided, that no person who, for reasons of conscience, objects to bearing arms, shall be compelled to serve in a military capacity; such persons may, however, volunteer for an equivalent non-combatant service.

(108) Parliament shall enact such laws as may be necessary to guarantee the free, fair, and peaceful conduct of elections and referendums, to prevent all forms of bribery, corruption and unfair practices, to restrict financial contributions, and to ensure the financial transparency of parties and campaigns. An independent and non-partisan Electoral Commission shall be created by law to conduct the administration of elections and referendums according to law.

(109) The Head of State, on the advice of an independent and non-partisan Honours and Awards Committee to be established by Parliament, shall have the authority to award peerages, knighthoods, medals, commendations, and civic honours, for outstanding public service or achievement, in accordance with the law. Such honours shall not be hereditary.

(110) In addition to the referendums held under Articles 37, 113 and 115, Parliament may provide by law for the holding of a consultative referendum on any law or matter of policy.

(111) The flag of the Kingdom shall be blazoned: *gules, a saltire argent*. The State emblem is the thistle. The national motto is "*Nemo me impune lacessit*". The national anthem shall be determined by law. The royal style of the Head of State shall be, "King (or Queen) of Scots".

(112) English shall be the principal official language of the Kingdom. The use of Scots and Gaelic shall be recognised as co-official. Provision shall be made for promoting the use of Scots and Gaelic in Parliament and in public education, broadcasting and administration.

XIV. Ratification and Amendment

(113) This Constitution shall come into force after having been approved by the people of Scotland in a referendum.

(114) The laws of Scotland at the time of the ratification of this Constitution shall remain in force until repealed in the manner specified by this Constitution; provided, that all existing laws which are repugnant to, or incompatible with, this Constitution are hereby annulled.

(115) No subsequent amendment of this Constitution shall come into force unless proposed by a two-thirds majority vote the Parliament and then ratified, in a popular referendum, by the affirmative votes of a majority of the enfranchised citizens. Amendments may not be proposed during a State of Emergency, nor during the enemy occupation of the Kingdom.