

# DISCUSSION PAPER ON PROPOSED CONSTITUTION OF SCOTLAND

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## PREAMBLE

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

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

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

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

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

## CONSTITUTION

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

### Article 1: General Provisions

1. Scotland is a free, independent and sovereign commonwealth. Its form of government is a parliamentary democracy based on the sovereignty of the people, social justice and respect for human rights.
2. This Constitution is the supreme and fundamental law of Scotland: all existing domestic laws shall continue in force on and after the commencement of this Constitution and all laws which have not been brought into force by the date of the commencement of this Constitution may, be brought into force on or after its commencement, but all such laws shall, subject to this Article, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.
3. The land, territorial waters and airspace of Scotland are an inseparable and indivisible whole, belonging to the people of Scotland collectively as a nation, as communities and as individuals.
4. The territory of Scotland will comprise all land to the north of the land border, running as in 1707 between the Solway Firth and the mouth of the River Tweed, and the surrounding sea and air space areas to a limit of 200 nautical miles or the relevant median lines, from Shetland in the North to Rockall in the West, or to such further limits as may in future be set or allowed by international law.

## 5. Citizenship:

- a) All persons born in Scotland with a parent of Scots nationality will have the right to be citizens of Scotland.
- b) All persons with at least one parent of Scots nationality, although they themselves not having been born in Scotland, shall have the automatic right to apply for citizenship as per clause 4d.
- c) All persons, resident, and on the electoral register, when Scotland resumes sovereign status, will have the right to be citizens of Scotland.
- d) Parliament will enact laws to regulate the acquisition of Scottish citizenship by adoption, marriage, descent, or naturalisation, and to specify the manner in which citizenship may be lost or renounced.
- e) Parliament will specify the circumstances and conditions under which dual citizenship with other states may be held.
- f) Laws concerning the acquisition or renunciation of citizenship must not unfairly discriminate on the grounds of gender, ethnicity, religion, beliefs, disability, personal status or sexual orientation.

6. All citizens of Scotland, resident, and on the electoral register, will be entitled to vote in all referendums and elections on reaching the Statutory Age of Maturity of 16 years, except for persons under guardianship due to severe mental incapacity as defined by a specific medical or judicial certification.

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

8. Only laws published in the prescribed manner may be enforced.

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

1. **These rights and freedoms** will be part of the fundamental law of Scotland, and may be amended only in accordance with the amendment provisions of this Constitution.

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

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

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

5. **The right to life** will be protected as proscribed by law. All persons have the right to die with dignity and to request assistance to end their lives, in accordance with Scots law.

6. **All citizens have the right to:**

**liberty**, other than by lawful arrest and detention.

**freedom of religion**, provided it is practiced within Scots law.

**freedom of expression**, within the law.

**freedom of information** in relation to all public organisations and public bodies, as provided for under data protection legislation.

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

**free, quality healthcare** at the point of need, subject to available resources.

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

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

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

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

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

**enter and to remain in Scotland**, and to leave the country unless subject to a court order.

7. **All citizens in Scotland enjoy the right to free education to university level**. Education is compulsory to the age set by Parliament.

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

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

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

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

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

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

- 1 The office of the Head of State will be vested in the Monarch as currently provided for in Scot's law.
- 2 The Monarch will be crowned in Scotland as 'His (or Her) Grace, King (or Queen) of Scots', and will be bound by a Coronation Oath, as prescribed by Schedule 1(a), to uphold, defend and obey the Constitution and laws of Scotland.
- 3 The Head of State will be remunerated as determined by law. The Head of State accounts will be open to scrutiny by Parliament, and reviewed as per law.
- 4 The Monarch will be deemed to be a servant of the state, and will therefore be considered to be the Chief Executive of the Civil Service, and therefore impartial to all matters politic. The Monarch will not have voting rights at national, regional or local elections.
- 4 The Head of State will possess only such powers as are expressly vested in him or her by this Constitution, and will exercise those powers with the advice and consent of the responsible constitutional authorities as follows:
  - a) Dissolving Parliament on the advice of the Presiding Officer in accordance with the provisions of Sections 3, 7, 8 and 9 of Article 4.
  - b) Confirming assent to legislation, in accordance with the provisions of Sections 18(d), 19 and 21 of Article 4.
  - c) Appointing the First Minister, in accordance with the provisions of Sections 2,3 and 4 of Article 5.
  - d) Awarding civic honours in recognition of public services, as prescribed by law.
  - e) Accrediting and receiving ambassadors, and performing other associated duties, as directed by the Scottish Government.
5. During the absence of the Head of State from Scotland, or inability to perform his or her duties, the constitutional powers and functions of the Head of State stated in Section (3) of this article may be delegated to a designated Commissioner. The Commissioner will be appointed by the First minister, on the nomination of the Parliamentary Bureau. No serving Member of Parliament, or Minister, may serve as the Commissioner.
6. Should the people of Scotland decide to replace the Monarch with an elected Head of State, an amendment to the Constitution will set out the duties, authorities and responsibilities of the elected Head of State. Such amendment will also include the procedures for the selection and election of the Head of State.

## **Article 4: Parliament**

1. The supreme legislative power (subject to the provisions of this Constitution) will be entrusted to a unicameral Scottish Parliament.
2. The Parliament will consist of members of Parliament, elected by the registered electorate, together with an executive council of Ministers, hereafter termed the Scottish Government, elected from the members of Parliament. The Scottish Government will be supported by a civil service.
3. Parliament will sit for a statutory period of four (or six) years. It may be dissolved earlier, only if a Government cannot be agreed within thirty days, or if Parliament votes for its dissolution by a two-thirds majority.

4. Members of Parliament will be elected by secret ballot using the Mixed Member Proportional system.

(a) Voters will have two votes: one for a regional list and one for a constituency candidate.

(b) Up to 60 per cent of the members will be elected by voting in single-member constituencies. At least forty per cent will be elected from regional lists of at least seven members.

(c) The total number of seats (including constituency and regional list seats will be proportional to the share of the list seats received therein, calculated using an agreed formula.

(d) Constituency and regional boundaries will be set by law, on the advice of the Electoral Commission, having due regard for common interests, historical and geographical identities, and existing boundaries.

(e) The elections for the Parliament of Scotland will take place on the first Friday (or Saturday) in May. All Scottish citizens, resident in Scotland, aged sixteen years or over are entitled to vote in the Parliamentary elections.

(f) A maximum campaign expenditure for all prospective Parliamentary candidates will be set by Parliament.

5. Every person eligible to vote in elections for the Scottish Parliament, with proven decision-making experience, will be eligible to stand for election to Parliament. No person who holds executive, administrative, military, diplomatic or judicial office (other than Ministerial office) may be elected to Parliament unless they resign from the incompatible office.

6. The total number of Members of Parliament will be determined by law, but it will not be fewer than 120 members, or exceed 200 members, with the preferred outcome being an even balance of male and female Members.

7. Parliament will, except as stated in Sections 8, 9 and 10 of this Article, continue in office for a fixed statutory term of either four (or six) years; and the Head of State, acting on the advice of the Presiding Officer, will dissolve each Parliament on the fourth anniversary of the preceding dissolution, and issue writs for a general election to be held within the next thirty days.

8. If Parliament has failed to appoint a First Minister within the period of 30 days as specified in Section (3) of Article 5, then the Presiding Officer, after consulting the various parliamentary groups, may advise the Head of State to dissolve Parliament; writs will thereupon be issued for a general election to be held within a period of 30 days.

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

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

11. Vacancies in Parliament arising from the death, resignation or removal of a member will be filled within three months. Unless a general election is due in that time, constituency vacancies will be filled by a by-election, district vacancies by re-selection from the appropriate district list.

12. Parliament will elect from amongst its members a Presiding Officer and two Deputy Presiding

Officers to convene its sessions and enforce its rules of procedure. These officers will be elected as the first item of business after each general election, and whenever a vacancy occurs, by secret ballot and by an absolute majority. The Presiding Officer and the Deputy Presiding Officers when in the chair, must perform their duties in a strictly non-partisan manner.

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

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

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

16. All members of Parliament will be allowed:

a) Freedom of speech and debate in Parliament, subject only to Parliament's own rules of procedure (Standing Orders).

b) Freedom to vote in accordance with their conviction and electoral pledges, free from intimidation from others

c) A moderate salary, and other incidental allowances, as prescribed by law.

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

18. Subject also to any detailed provisions prescribed by Parliament's own rules of procedure, Parliament will enact laws in the following manner.

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

(b) Legislative bills submitted will be subjected to deliberation and process by an appropriate parliamentary committee before they are debated in Parliament. An assessment of the impact of legislation will accompany legislative bills.

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

evidence, under oath.

(d) The committee will report on the bill to Parliament, and will recommend such amendments as they deem necessary or expedient. The committee will ensure the bill is fit for purpose and the financial costs of implementation are fully evaluated. Parliament will vote on the recommended amendments.

(e) Parliament will vote upon the bill in the form agreed in the previous stage. The bill will be deemed to have passed if approved by a simple majority of Members of Parliament.

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

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

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

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

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

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

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

28. The Members of Parliament may elect a member who will be designated by the Presiding Officer as the Leader of the Opposition.

29. Members of Parliament will swear an oath of allegiance to serve and respect the people of Scotland, to uphold the laws of Scotland; and to act on behalf of the people of the constituency represented.

30. Parliament will have the authority to initiate a vote of no-confidence in an individual Minister, the Scottish Government as a whole, or an individual Member of Parliament.

31. Members of the electorate may initiate a petition to the Presiding Officer for a vote of no-confidence in an individual Member of Parliament. Provided that two-fifths or more of the electorate of a constituency, consider that the Member of Parliament has failed to perform his or her duties on grounds of negligence, corruption, criminal conviction or other gross misconduct.

32. A petition signed by 500,000 or more registered voters within six months, calling for a popular vote on an issue of concern to the people, will be referred to Parliament. A Public Petitions Committee will decide on a course of action regarding petitions submitted by individuals, community groups and organisations. If the issue or concern cannot be resolved by Parliament then it will be put to a referendum. A referendum held under this provision will be consultative, and not legally binding.

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

1. The Executive power will be invested in the Scottish Government, which will consist of a First Minister, a Deputy First Minister, and such other Ministers as may be required to conduct the government of the state. The Scottish Government will collectively be responsible to Parliament.
2. The First Minister will be elected by Parliament from amongst its numbers, by open ballot and a simple majority vote.
3. A First Minister will be elected and appointed within thirty (30) days after each General Election, and within thirty (30) days after the death, resignation, or removal, of the former First Minister. If a First Minister has not been elected during this time, Parliament may be dissolved in accordance with the provisions of Sections 3,7,8 and 9 of Article 4.
4. The incumbent First Minister and cabinet will continue in office in a caretaker capacity, following a General Election, until a successor is appointed. Following the death, resignation or removal of a First Minister, and until the appointment of a successor, the Scottish Government will act in a caretaker capacity.
4. The First Minister will be responsible to Parliament and will be removed from office if a vote of no-confidence is passed by Parliament by an absolute majority vote.
5. All other Ministers will be nominated by the First Minister, and voted in by a simple majority of Parliament. Individual Ministers may be removed by a vote of no-confidence passed by an absolute majority vote of Parliament.
6. The Ministers will be appointed from amongst the members of Parliament.
7. The Scottish Government, subject to the Constitution and the law, will determine all matters of foreign and domestic policy. It will direct the administration, conduct foreign relations and manage monetary and fiscal policies. It may prepare draft legislation, and other business, to lay before Parliament. A majority of Ministers must be present at the meetings when such decisions are made.
8. The administrative officials, subordinate to the Scottish Government, will be organised as a permanent, professional and non-partisan Civil Service, and will be regulated by the Public Service Commission.
9. Authority over the Armed Forces, subject to the Constitution and law, will be vested in the Scottish Government. No declaration of war made be made, or overseas deployment of troops undertaken, except with the prior consent of a two-thirds majority of Parliament. If Scotland is under actual, or imminent, enemy attack, the Scottish Government will undertake all necessary defensive action.
10. No treaty or international agreement of any kind will come into effect unless it is ratified by Parliament, either by a majority resolution or, to the extent that it concerns domestic laws, by enabling legislation. Treaties delegating sovereignty powers (legislative, administrative, judicial, military, fiscal or territorial) to a confederation, union, alliance or international body will take effect only if ratified by a referendum achieving a majority vote followed by a two-thirds majority of Parliament.
11. Ministers will be required to provide an informed response to any significant or emergency situation when Parliament is not in session.
12. Non-government organisations will operate under the direct authority of the office of the responsible Minister.

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

14. Ministers are required to provide Parliament with a yearly report outlining an account of matters falling under their authority.

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

16. On appointment of a ministerial post, all shares or investments in commercial organisations owned by the appointee will be held in escrow for the duration of the service as a minister, and for a further period of six months after leaving office.

## **Article 6: Public Finances**

### **6.1. The National Currency and Bank Regulation.**

6.1.1. The National Currency of Scotland shall be Constitutional Money guaranteed by the State under the Constitution. It shall be the sole legal tender and circulating medium of exchange comprising cash and credit instruments. It will be issued free of debt by the Constitutional Monetary Authority. The origination or placing into circulation of any other money or money substitute shall be an act of counterfeit.

6.1.2. The primary executive arm of the CMA shall be The Central Bank of Scotland which will originate the currency and regulate its distribution through the Full Reserve banking system.

6.1.3. The new currency of Scotland shall be called the Scotmerk and be divided into one hundred pence.

6.1.4. Other than during the transition from Sterling to the new National Currency or in times of National Emergency, no new debt-free Constitutional Money may be created other than as direct payment for the creation of Fixed Public Investment defined here as –

*“investment in fixed capital assets in State or community ownership i.e. tangible capital goods or buildings, infrastructure or their replacement after having been scrapped. It is specifically not to finance employment, consumables or associated expenditures which are defined as charges against public revenues.”*

For this purpose the CMA shall create a further executive arm – The Scottish Investment Bank. In this capacity The CMA shall be further bound before approving such public investment

(a) To recognize National employment statistics and ensures no adverse impact upon inflation or the productive economy.

(b) To take into consideration any adverse impact upon the National Balance of Payments.

(c) To act at all times to ensure the integrity and stability of the currency.

6.1.5. In the exercise and function of its jurisdiction, the Constitutional Monetary Authority will be independent of the legislative and executive branches of the Government. Its members will be nominated by a Public Appointments Commission, and appointed by Parliament by a simple majority vote in a secret ballot. The CMA shall be funded by making its own requisition upon the normal revenues of the State.

## **6.2 Government Finances & Taxation**

Parliament is required to set a balanced budget for the full anticipated term of its administration. On each anniversary the Public Auditor will be required to provide interim accounts and should these indicate a potential deficit the government will be obligated to make a public bond issue for that amount with a one year maturity and make provision for this repayment by an immediate and matching increase in taxation.

6.3 A percentage of all Government revenues will be allocated to a National Sustainability Fund. The interest earned by the fund will be treated as Government income.

6.4 In order to promote cost-effectiveness, there will be a single national system for the collection of all public revenues, and the collection of all public revenues will be the responsibility of a national revenue collection service. Each Region will have a public revenue office, staffed by persons trained to a national standard of competency.

6.5. Following negotiation with the Regional and City revenue offices the Finance Minister will set the percentage of the general public revenues collected to be remitted to the Treasury.

6.6. Regional and City Councils will adopt a balanced Budget for a period extending across the full term of the Council. The Budget will be reviewed each year and adjusted for inflation and for exceptional expenditure variations. The Regional and City Councils will provide to the general public, a summary of the budget proposals, and yearly accounts outlining public revenues and expenditures, including particulars relative to Common Good Funds within their area of jurisdiction.

6.7. Regional and City Councils will have the authority to seek funding to finance major infrastructure projects, as provided for under 6.1.4.

6.8. Regional and City Councils will provide the funding and resources required by the Burgh Councils within their area of responsibility. The funding and resources allocated will be sufficient to enable the Burgh Councils to effectively fulfil the duties, services and responsibilities required of them by law.

6.9. All contracts awarded by Regional, City and Burgh Councils, with a value of five hundred thousand pounds (£500,000) or more, will be available on Council websites. (note 5)

6.10. All Government departments and non-government organisations will operate a standardised, benchmarked and consistent system of accounting and administration of public revenues and expenditures.

## **Article 7: The Judiciary**

1. The Constitution will establish that, in the exercise and function of its jurisdiction, the Judiciary is independent of the legislative and executive branches of government.

2. The judicial powers of Scotland will be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

3. The Supreme Court will consist of seven members. It will have final appellate jurisdiction over all questions: (i) concerning the validity of Acts of Parliament, treaties, and other laws, under the terms of this Constitution, and (ii) concerning the interpretation of this Constitution. Nothing in Section (...) of Article ... will restrict the ordinary process of constitutional judicial review under this section.

4. Judges of the Supreme Court, members of the Court of Session and the High Court of Judiciary, Sheriffs, and other members of the judiciary, with the exception of the Justices of the Peace, will be appointed on the advice of the Legal Service Commission - see article 11 section 1.
5. Members of the judiciary may only be removed on the grounds of misconduct, neglect of duty, or incapacity, on the decision of the Judicial Appointments Council.
6. Judicial office will be incompatible with all other public offices and with membership of any political party. Additional incompatibilities may be prescribed by Act of Parliament.
7. The salaries, terms of employment and privileges of members of the judiciary will be determined by the Public Service Commission.
8. Subject to the provisions of this Constitution, the organisation, powers, structure, jurisdiction, privileges, and procedures of the various Courts will continue as before, unless altered or amended by law.
9. The Lord Advocate will be appointed by the Scottish Government, after consultation with the Judicial Appointments Council, for renewable four year terms. The organisation of the Crown Office, and procedures for the appointment of Procurators-Fiscal, will be determined by law.
10. The Minister for Justice will exercise the right of pardon, and of remitting punishments, following due consideration of the recommendations of an independent Pardons Board.
11. There will be a Law Commission, comprising commissioners appointed by Parliament. All permanent staff will be seconded from the Scottish government; the functions of the Law Commission will be:
  - a) To recommend to Parliament reforms to improve, simplify and update the law.
  - b) To review all legislation at the final drafting stages, and to ensure bills are fit for the specified purpose, consistent and coherent, written in plain language (providing, for technical wording to be used where applicable), compatible with the Constitution, treaty obligations and general principles of law.

## **Article 8: Constitutional Amendments**

1. Should Parliament propose legislation to amend the Constitution, the bill will be subjected to a referendum. The public vote will be required to take place at the earliest one month and at the latest three months after the passing of the bill in Parliament.

## **Article 9: Auditor-General and Ombudsman**

1. There will be an **Auditor-General**, will be to audit all public administration and public bodies on a regular basis, and for presenting reports to a Parliamentary audit committee. The audit service will be independent of Parliament and with a duty to act impartially.
2. There will be a **Ombudsman**, whose duty will be to investigate complaints of maladministration, injustice, neglect of duty, incompetence, delay, or mistake, alleged to have been committed by, or to have been caused by the negligence or mistake of, Ministers, civil servants, local Councils, public utilities, or other public authorities.
3. The Auditor-General and the Ombudsman have full powers of investigation, including access to all records and correspondence, and the right to summon and subpoena witnesses, and hear evidence on

oath. They may bring to court any matter requiring legal judgment, and may advise authorities to take disciplinary or remedial action. They will submit an annual report of their activities to Parliament, but will be independent of the Government and all other authorities in the exercise of their functions, with a duty to act impartially.

4. The auditor-General and the Ombudsman will be nominated by the Presiding Officer on the advice of the Parliamentary bureau, and will be appointed by a simple majority vote of Parliament, on a non-partisan basis. They may not simultaneously hold any other public office.

5. The Auditor-General and the Ombudsman will serve for renewable periods of six years, and may only be removed for misconduct or other cause by a majority vote of Parliament. They will have the same restrictions, privileges, salaries, and pensions, as Supreme Court judges.

## **Article 10: Local Government**

1. For the purposes of local government and administration, Scotland will be divided into Regions and Cities (based, until otherwise provided, on the existing unitary boundaries); Regions and Cities will be further sub-divided into Burghs (or Communities). (note 2)

2. Each Region, City and Burgh will be governed by a Council, consisting of a suitable number of Councillors, who shall be directly elected by the local registered electorate, by secret ballot and proportional representation, for a four year term of office. Regional, City and Burgh Councillors will be elected as non-party independents. (note 7)

3. The Regional, City and Burgh Councils will operate in accordance with written Constitutions which will set out the powers, duties and responsibilities of each Council and Councillor.

4. All persons standing as candidates for election will when elected be resident in the Region, City or Burgh represented; they will be required to present evidence of their skills, competence and their decision-making management experience to the electorate.

5. Each Regional, City and Burgh Council will elect from amongst its numbers a Provost or Convener to preside over the Council and to represent the Council in its external affairs. Each Region and City Council will also select a Council Chief Executive.

6. A Local Government Act will specify the proportion of administrative authority, resources and funding Regional and City Councils will apportion to Burgh Councils, in accordance with the principle of subsidiarity, in relation to matters of local concern. (note 6)

7. The services provided by all councils are required to meet national standards of quality and funding.

8. The employees of the Regional, City and Burgh Councils, will be organized as a permanent, professional and non-partisan service, which will be based upon merit and will be regulated by the Public Service Commission.

9. The Regional and City Councils will have independent budgets, for which the principles of formation and procedures will be determined by law; the Region and City Councils will be required to maintain balanced budgets; Region and City Councils will have the right, based in law, to impose and collect public revenues, to impose and collect fees and to generate loans (subject to national limits on sovereign loans).

10. The boundaries of Regions, Cities and Burghs will be set by an Independent Boundary Commission; the boundaries will reflect natural and established local communities.

11. The members of the Regional and City Councils, termed Local Councilors, will be elected for a four year term, in multiple-seat regional constituencies, by means of a single transferable vote, open list system of proportional representation. All of the registered electorate, resident within the region, are eligible to vote in the regional council elections.
12. The elections for the Regional and City Councils will take place on the first Friday in May.
13. The campaign funding expenditure for each prospective candidate for the Regional, City and Burgh Councils will be set by Parliament.
14. Regional, City and Burgh Councils will hold a vote of no confidence in an individual Councillor if two-fifths or more of the electorate of the represented ward or community, by means of a petition, consider that the Councillor has failed to perform their duties on grounds of negligence, corruption, criminal conviction or other gross misconduct.
15. There will be provision for Regional or City, citizen initiated referendums, whereby a petition signed by one fifth or more registered voters calling for a popular vote on an issue of concern to the people within the Region or City is first referred to the Regional or City Council and then put to a popular vote if the issue of concern has not been responded to by the Regional or City Council. A referendum held under this provision will be consultative, and not legally binding.
16. Local governments and their associations will be consulted in the course of the preparation of legislation concerning the affairs of local governments.
17. All Regional, City and Burgh Councillors will be remunerated as determined by law. The details of remuneration received by Councillors to be made available on Council websites.

## **Article 11: Independent Commissions**

1. There will be a **Legal Service Commission**, whose jurisdiction will extend to all officers in the Scottish Legal service. The Legal Service Commission will consist of:
  - (a) The Minister of Justice, as convener;
  - (b) The Lord Advocate, as deputy convener;
  - (c) Two Senators of the College of Justice elected by their peers;
  - (d) The chairman of the Public service Commission.
  - (e) Two lay representatives nominated by the Chairman of the Public Service commission.

Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of the Legal Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss and exercise disciplinary control over officers in the Scottish Legal Service.

2. There will be an independent, non-partisan, **Open Government Commission**, responsible for ensuring compliance with the freedom of information provisions of Section 6 of Article 2.
3. There will be an independent, non-partisan, **Electoral Commission**, which will be responsible, in accordance with the law, for: (i) ensuring the free and fair conduct of all elections and referendums; (ii) proposing changes to the boundaries of constituencies and electoral regions; (iii) overseeing the laws on campaign spending and on donations to political parties and campaigns; (v) registering political

parties and auditing their accounts according to law; and (vi) making recommendations to Parliament concerning the impartial administration of elections and referendums; (vii) determining the standards of induction training required by elected representatives for Parliament, Region, City and Burgh Councils, to provide them with the necessary skills and knowledge to carry out their duties effectively.

4. There will be an independent, non-partisan, **Public Service Commission**, responsible, in accordance with the law, for: (i) maintaining the impartiality of the civil service; (ii) supervising the recruitment, selection, training, promotion, pay and discipline of public officials; and (iii) making recommendations to the Scottish Government for senior civil service appointments and appointees to public bodies.

5. There will be an independent **Representatives Commission**, comprising members with the authority to act impartially, to determine the salaries and allowances of all Members and Ministers of Parliament, Region, City and Burgh Councils.

6. There will be an independent, non-partisan **Broadcasting Commission**, which will be responsible, for the regulation of public broadcasting services. Freedom of the press will be guaranteed, providing that there is no infringement of individuals rights as per Schedule 6 of Article 2 .

7. With the exception of the Legal Service Commission, each Commission established under this article will consist of seven members, of which:

(a) Three executive members, including the convenor, will be appointed by the Parliamentary Bureau, on merit, according to their qualifications and experience.

(b) Four non-executive members, nominated by different Region or City councils, will be elected by Parliament, by secret ballot and on a non-partisan basis, by single transferable vote, to represent the public interest;

8. The members of the Commissions established under this article will serve for non-renewable terms of six years. They may not simultaneously hold any other public office. They may only be removed for misconduct, or other due cause by a two-thirds majority vote of Parliament. Their salaries and allowances will be fixed by law and in parity to those of members of Parliament.

## **Article 12: General Statutes**

1. **National Security.** Under the oversight of the Scottish Government there will be a national agency to provide overall interactive management of all homeland security and defence matters utilising the police, intelligence agencies and the armed forces.

2. **Armed Forces.** To provide territorial defence and support in civil emergencies there will be a conventionally armed Scottish Defence Force; the law will provide for participation in humanitarian aid activities and in selected United Nations mandated peacekeeping operations.

3. **Law Enforcement.** Domestic law will be enforced by an interactive network of police divisions operating under a National Police Authority; operating within nationwide standard operating protocols and procedures. There will be national specialist teams to provide assistance when required to the regional division forces. The law will provide for participation with international law enforcement agencies.

4. **Prohibition on Death Penalty.** The Constitution will prohibit Parliament from enacting any law allowing for the imposition of the death penalty even during a time of war or armed rebellion. However laws will be amended as required to ensure the harshest of penalties to be placed on those who commit crimes such as premeditated murder, serial killings and treason. Additionally, our police and prison

officers and others serving the public will be given protection against those who do them harm by the application of severe penalties upon them.

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

**6. International Treaties.** The Government is authorised to enter into treaties, international agreements and membership of international organisations in the name of the Scottish people. Such commitments are always subject to ratification by Parliament. Where transfer of sovereignty is involved a referendum must be held, and this may be demanded in any such case under the relevant constitutional procedure as in Article 8. All such international commitments must comply with this Constitution and be revocable at any time in accordance with the sovereignty of the Scottish people.

**7. Natural Resources.** Scotland's natural resources which are not in private ownership are the common and perpetual property of the nation. No one may acquire the natural resources or their attached rights for ownership or permanent use, and they may never be sold or mortgaged.

Resources under national ownership include resources such as harvestable fish stocks, other resources of the sea, the sea shore and sea bed within Scottish jurisdiction and sources of water rights and power development rights, geothermal energy and mining rights. National ownership of resources below a certain depth from the surface of the earth may be provided for by law.

The utilisation of the resources will be guided by sustainable development and the public interest.

Government authorities, together with those who utilise the resources, are responsible for the protection of the resources. On the basis of law, government authorities may grant permits for the use or utilisation of resources or other public goods against full consideration and for a reasonable period of time. Such permits will be granted on a non-discriminatory basis and will never entail ownership or irrevocable control of the resources.

**8. Protection of animals.** The protection of animals against abuse and the protection of endangered species of animal will be provided for by law.

## **Schedule 1**

### **a) Citizen's Oath of Allegiance and Loyalty**

I....., do solemnly swear (or affirm) that I will be faithful and bear true allegiance to the people of Scotland, and that I will observe the Law of this land.

### **b) Oath as Member of Parliament**

I....., having been elected as a Member of the Parliament of Scotland, do solemnly swear (or affirm) that I will faithfully discharge my duties to the best of my ability on behalf of my constituents, that I will bear true faith and allegiance to the Sovereign People of Scotland, and that I

will preserve, protect and defend the Constitution and the Law of Scotland.

**c) Oath as Regional or Burgh Councillor**

I....., having been elected as a Councillor for the .....Region (or Burgh of ....), do solemnly swear (or affirm) that I will faithfully discharge my duties to the best of my ability, and that I will preserve, protect and defend the rights of my constituents under the Constitution and Laws of Scotland.

**d) Oath of Office for Judges**

I ....., will do right to all manner of people according to the Laws of Scotland, and will deliver a fair hearing to all, without fear or favour.

**e) Coronation oath of the King (or Queen) of Scots**

I....., do solemnly swear (or affirm) that I will faithfully execute the Highest Office of King (or Queen) of Scots, and I will, in service to the People of Scotland, defend and obey the Constitution and Laws of Scotland.

**Explanatory Notes:**

**1. Poor quality Government:** Currently Scotland has too much centralised government - by Brussels, Westminster, Holyrood and Local Authorities, yet there is a marked lack of democratic representation and accountability. The current system was set up for remote centralised control with little or no accountability to the electorate. This has resulted in poorly managed public services and quangoes where there is a significant amount of patronage, cronyism and corruption amongst senior management. In contrast, where the public sector has achieved, this has been attained through the dedication and skills of the front-line professionals in spite of the limitations being imposed by excessive administrative red tape.

Government performance is further degraded by the poor quality management capabilities of the elected representatives at Holyrood and in local government. Few elected representatives have the skills, competence or experience to provide the levels of business oversight required to adequately manage the multi-million industries they have been elected to be responsible for. One detrimental outcome has been the expansion of the consultancy culture which has generated significant abuse and misuse of taxpayers' money. This lack of in-house ability has contributed to the culture of greed and corruption which has resulted in such as the Edinburgh Tram fiasco, the over-engineered Leith Flood prevention, the majority of the £1500 million budget for the Forth Road Bridge going abroad without any offset deals for jobs in Scotland, and other similar situations across the country.

Elected representatives require to have the training necessary for them to carry out their duties competently.

**2. Devolved Government:** To improve democratic representation and accountability and move decision-making closer to the point of need we propose that state authority and responsibilities are

shared across three distinct and highly autonomous levels of government.

- a) Parliament,
- b) Regional Councils,
- c) Burgh (Local) Councils.

3. **Fiscal stability:** The use of a full parliamentary term budget will allow more efficient fiscal planning for both private and public sectors. Commercial enterprises in particular will benefit from longer periods between fiscal changes.

4. **Constitutional flexibility:** To promote flexibility, the Constitution - as the Fundamental Law - performs as the trunk of a treelike structure, with the branches being the enabling Acts of Parliament. The Acts of Parliament should contain the detailed content which can, when appropriate, be amended to suit the evolving needs of society.

5. **Public service contracts:** The default position for all public service departments should be to use local companies for public infrastructure and service contracts. All major contracts for such as hospitals, schools, bridges, etc. should be offered for tender as projects or groups of projects of a size which can be competitively tendered for by or through Scottish local or regional based companies.

The lack of commercial or technical ability within some public departments has provided an opportunity for contractual abuse, resulting in corruption and the misuse of public money. All contracts awarded by Regional, City and Burgh Councils with a value of five hundred thousand pounds and over should be made available for public scrutiny on Council websites. All contracts awarded by Councils to be subjected to a national standard of independent auditing.

6. **Local Government Devolution:** In order for the electorate to feel any ownership of the political system they must see the effects of how they can influence the decision making process. This will occur only if the electorate have the means to influence the system at local level and see the results of their input. It is therefore proposed that the Burgh Councils be re-instated with clearly defined powers, funds and assets. It is proposed that the thirty-two (32) Local Authorities and their current powers be re-organised and divided between larger Regional Councils and the local Burgh (or Community) Councils. All matters of local concern should be evaluated and divided as considered best to achieve fit for purpose outcomes.

**Matters to be considered include:**

- (i) economic development;
- ii) housing, land use and planning;
- iii) infrastructure (infrastructure classed as strategic is the responsibility of central government).
- v) transport; the upkeep of streets, roads and public spaces;
- vi) public health;
- vii) the control and recycling of waste;

- viii) education and training;
- ix) environmental protection;
- x) libraries, museum, the arts and culture;
- xi) social care and services;
- xii) engaging with police, public safety;
- xiii) parks, garden and allotments;
- xiv) recreational facilities;
- xv) local public revenues;
- xvi) civil defence planning and response;
- xvii) any other matter of local concern.

7. **Regional and Burgh Councillors:** Party politics should play no part in local government. Regional and Burgh councillors should be working for and answerable only to the electorate not remote party bosses. It is therefore proposed that all Regional and Burgh Councillors should stand as Independents

on a non party ticket. The precedent is already in position as the Community Council Handbook issued to Community Councillors clearly states that all **Councils will act as non-political bodies in the party political sense.**

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