

# *A MODEL CONSTITUTION FOR AN INDEPENDENT SCOTLAND*

## Article I – Preliminaries

- (1) Scotland is a free, sovereign and independent Commonwealth. Its form of government is a parliamentary democracy based upon the sovereignty of the people, social justice, solidarity and respect for human rights.
- (2) This Constitution is the supreme and fundamental law of Scotland: all Acts of Parliament, treaties, regulations, and other laws, that are incompatible with this Constitution, are void.
- (3) The territory of Scotland comprises all the mainland and islands of Scotland, plus its territorial waters as recognised by international law.
- (4) All persons who were British subjects immediately prior to independence, and were born in Scotland, or were resident in Scotland at independence, shall become citizens of Scotland.
  - a. Parliament shall enact laws to regulate the future acquisition of Scottish citizenship by birth, marriage, or naturalisation, and to specify the manner in which citizenship may be lost or renounced.
  - b. Parliament shall specify the circumstances and conditions under which dual citizenship with other countries may be held.
  - c. 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.
  - d. Adopted children shall for purposes of citizenship be treated as though they had been actually born to their adoptive parents.
- (5) Subject only to such further requirements as to residence as may be prescribed by law, and to such reasonable restrictions as may be imposed by law with respect to those persons who are under guardianship due to severe mental incapacity, or who are serving a custodial sentence for a serious criminal offence, all citizens of Scotland, who are at least 18 years of age, shall be entitled to vote in all referendums and elections.

## Article II – The Head of State

- (1) The office of Head of State shall be vested in Elizabeth Windsor, and shall be hereditary in her heirs and successors, according to the laws of succession, regency and exclusion enacted by Scotland's Parliament.
- (2) The Head of State shall be crowned in Scotland as 'His (or Her) Grace, King (or Queen) of Scots', and shall 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 shall be paid a Civil List, as determined by law, from which the expenses of the Royal Household in Scotland shall be defrayed. The royal accounts shall be open to scrutiny by Parliament.
- (4) The Head of State shall possess only such powers and functions as are expressly vested in him/her by this Constitution, and shall, where so stated, exercise these powers and functions solely with the advice and consent of the responsible constitutional authorities, as follows:
- a. Representing the liberty, independence and integrity of the Scottish nation, presiding over public ceremonies, and addressing the people on civic occasions and at times of crisis or emergency.
  - b. Dissolving Parliament on the advice of the Presiding Officer in accordance with the provisions of Sections (5) to (8) of Article III.
  - c. Granting or withholding assent to legislation, in accordance with the provisions of Section (17) of Article III.
  - d. Appointing and dismissing the Prime Minister, in accordance with the provisions of Sections (2) to (6) of Article IV.
  - e. Appointing members of the judiciary in accordance with the provisions of Section (3) of Article V.
  - f. Granting pardons on the advice of the Minister of Justice in accordance with the provisions of Section (11) of Article V.
  - g. Appointing certain members of Independent Commissions in accordance with the provisions of Section (5) of Article VIII.
  - h. Acting as Sovereign of the Order of the Thistle, and awarding civic honours, according to law, in recognition of public services.
  - i. Serving as the ceremonial Commander-in-Chief of the Armed Forces, accrediting and receiving ambassadors, and performing other associated duties, as directed by the Council of Ministers.
  - j. Appointing officers of the Royal Household and Great Officers of State whose appointment is not otherwise provided for by this Constitution or by law.
  - k. Attending the General Assembly of the Church of Scotland, in recognition of its legal status as a national church.
- (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 (4) of this Article may be delegated by letters patent to a 'Lord High Commissioner', who shall act as the official representative of the Head of State. Subject to any provisions prescribed by law, the Lord High Commissioner shall be appointed by the Head of State, on the joint nomination of the Prime Minister and the Leader of the Opposition, and shall hold office during the Head of State's pleasure. No Member of Parliament, nor Minister, may serve as Lord High Commissioner.

## Article III – Parliament

- (1) The supreme legislative power (subject to the provisions of this Constitution) shall be entrusted to a unicameral Scottish Parliament.
- (2) Parliament shall be elected by secret ballot using the Mixed Member Proportional system:
  - a. Voters shall have two votes: one for a regional list and one for a constituency candidate.
  - b. Up to 60 per cent of the members shall be elected by plurality voting in single-member constituencies. At least 40 per cent shall be elected from regions of at least six members.
  - c. The total number of seats (including constituency and regional list seats) to be allocated to each party in a region shall be proportional to the share of the list votes received therein, calculated using the D'Hondt formula.
  - d. No artificial threshold for the distribution of regional list seats exceeding four per cent nationally shall be applied.
  - e. Constituency and regional boundaries shall be set by law, on the advice of the Electoral Commission, on the principle of equal population, having due regard for common interests, historical and geographical identities, and existing boundaries.
- (3) Every person eligible to vote in elections for the Scottish Parliament, who is at least 21 years of age, subject to such residency rules as may be prescribed by law, shall be eligible for election to Parliament. Provided, however, that 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.
- (4) The total number of members of Parliament shall be determined by law, but it shall not be fewer than 120 members, nor exceed 200 members.
- (5) Parliament shall, except as stated in Sections (6), (7) and (8) of this Article, continue in office for a fixed term of four years; and the Head of State, acting on the advice of the Presiding Officer, shall 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.
- (6) If Parliament has failed to elect a Prime Minister within the period of 30 days as specified in Section (3) of Article IV, then the Presiding Officer, after consulting the various parliamentary parties, may advise the Head of State to dissolve Parliament; writs shall thereupon be issued for a general election to be held within a period of 40 days.
- (7) 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 shall advise the Head of State to

dissolve Parliament; writs shall thereupon be issued for a general election to be held within a period of 40 days.

- (8) Parliament shall 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.
- (9) Vacancies in Parliament arising from the death, resignation or removal of a member shall be filled within three months. Unless a general election is due in that time, constituency vacancies shall be filled by a by-election, regional vacancies by re-selection from the appropriate list.
- (10) Parliament shall elect from among its members a Presiding Officer and two Deputy Presiding Officers to convene its sessions and enforce its rules of procedure. These officers shall 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.
- (11) Parliament shall 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 a regular session of at least 90 days. The Presiding Officer shall summon extraordinary sessions, whenever he/she deems it necessary, or if so demanded by the Council of Ministers, or by one-third of the members of Parliament.
- (12) There shall be a Parliamentary Bureau, consisting of the Presiding Officer (as convenor) and one Member of Parliament nominated by each party or group having at least five members of Parliament. The members of the Bureau shall endeavor to reach agreement by consensus, but in the event of a matter being resolved by vote they shall cast bloc votes equal to the number of members they represent, and an absolute majority of the bloc votes cast shall be decisive. The Parliamentary Bureau shall prepare Parliament's agenda and order of business. In the arrangement of parliamentary time, due precedence shall be given to the legislative proposals and other businesses initiated by the Council of Ministers, but at least one-fourth of the parliamentary time shall be reserved for the opposition and private members' business.
- (13) There shall 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 shall manage Parliament's staff, buildings, facilities, security and budget, and shall propose the rules of procedure, which may be adopted or amended by a two-thirds majority vote of Parliament.
- (14) All members of Parliament shall enjoy:
  - a. Freedom of speech and debate in Parliament, subject only to Parliament's own rules of procedure (Standing Orders).
  - b. Exemption from the law of defamation for anything spoken or written in the course of their duties.
  - c. Freedom to vote in accordance with their consciences, free from imperative

mandates, binding pledges or intimidation.

- d. Immunity from arrest and imprisonment during sessions of Parliament.
- e. A moderate salary, and other incidental allowances, as prescribed by law.

(15) Subject also to any detailed provisions prescribed by Parliament's rules of procedure, Parliament shall enact laws in the following manner:

- a. Legislative bills may be proposed by the Council of Ministers, 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 shall be limited to matters of taxation and public finance, may only be proposed by a responsible Minister.
- b. The bill shall be debated in Parliament, and if approved by a majority of those voting, it shall be presented to the appropriate select committee of Parliament. The committee shall 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.
- c. The committee shall report on the bill to Parliament, and shall recommend such amendments as they shall deem necessary or expedient; Parliament shall vote on recommended amendments.
- d. Parliament shall vote upon the bill in the form agreed in the previous stage. The bill shall be deemed to have been passed only if approved by a majority of those present and voting.

(16) Any bill, other than a money bill or bill which is certified as urgent by the unanimous decision of the Parliamentary Bureau, may be suspended by means of a petition to the Presiding Officer:

- a. Such petition shall be signed by two-fifths of the members of Parliament, and presented within ten days of the final vote on the bill. No member of Parliament may, during the same session of Parliament, support more than three suspension petitions.
- b. The period of suspension shall be 12 months from the date of the petition, or until after the next general election, whichever is the sooner.
- c. After the period of suspension has elapsed, Parliament may reconsider the bill; and if the bill is again passed, by an absolute majority, it shall be presented to the Head of State for assent according to Section (17).
- d. Provided, however, that the Council of Ministers may, at any time before the expiry of the period of suspension, hold a referendum on the bill. If a majority of the votes cast in the referendum are in favour of the bill, the bill shall be submitted for assent under Section (17) without further delay.
- e. If a suspended bill has not been re-passed by Parliament within 18 months of the date of its suspension, or has been submitted to the people and rejected by them, the bill shall lapse, and may not be re-introduced during the same session.

- (17) The Head of State, on the advice of the Presiding Officer, shall grant royal assent to, and thus enact as law, all bills passed by Parliament according to the aforesaid provisions; provided, that if the Presiding Officer has any reasonable doubt as to the validity of a bill under the terms of this Constitution, he or she shall not present such bill for royal assent, but shall instead refer it to the Supreme Court for an advisory ruling. The Supreme Court shall examine the bill and issue its advisory ruling within a period of 30 days. If the Supreme Court rules that the bill contains unconstitutional provisions, or has not been passed by the proper constitutional procedure, assent shall be withheld, and the bill shall be returned to Parliament for further consideration; otherwise, the Presiding Officer shall advise the Head of State to grant assent.
- (18) No Act of Parliament for the levying of any form of general taxation whatsoever may remain in force for a period longer than 12 months after the date on which such Act came into force. No public funds shall be expended for any purpose, save as authorised by Act of Parliament.
- (19) For specified purposes, Parliament may delegate the authority to make regulations, having the force of law, to the Council of Ministers and other public authorities. Regulations shall be laid before Parliament for at least 30 days before they come into effect, and during this time any proposed regulation may be vetoed by a simple majority resolution, on the recommendation of an appropriate select committee. Parliament may not delegate legislative authority concerning the levying of taxation, the creation of new criminal offences, the personal rights of citizens, the principles of civil or criminal law, or the administration of justice; and no regulation shall ever amend, repeal, or suspend, an Act of Parliament.
- (20) Parliament shall have the authority to appoint select committees to inspect and oversee the government and to scrutinise legislation. They shall consist of at least 12 members, chosen by a parliamentary vote, by proportional representation.
- (21) Parliament may also appoint Royal 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 shall be specified by a parliamentary resolution.
- (22) Parliamentary committees, Royal Commissions and Board of Enquiry shall enjoy a right of general access to official documents, files and other evidence, and the power to summon Ministers and other officials.
- (23) Members of Parliament holding a ministerial office shall, by virtue of that office, be disqualified from membership of all select committees and from Parliament's Corporate Body. They may serve on Royal Commissions and Boards of Enquiry only where there is no conflict of interest.
- (24) Parliament, its committees and commissions, shall be open to the public and press, unless a closed session is authorised, by a two-thirds majority vote, on the grounds of military secrecy or diplomatic security.
- (25) The elected leader of the largest parliamentary party or group which is not participating in or supporting the Government, shall be designated by the Presiding Officer as the Leader of the Opposition.

## Article IV – The Council of Ministers

- (1) The executive power shall be vested in the Council of Ministers, which shall consist of a Prime Minister, a Deputy Prime Minister, and such other Ministers (including Junior Ministers and Ministers-without-portfolio) as may be required to conduct the Government of the State.
- (2) The Prime Minister shall be elected by Parliament from amongst its members, by open ballot and a simple majority vote. The duly elected Prime Minister-designate shall then be appointed by the Head of State.
- (3) A Prime Minister shall be elected and appointed within 30 days after each parliamentary general election, and within 30 days after the death, resignation, or removal, of the former Prime Minister; and if a Prime Minister has not been elected during this time, Parliament may be dissolved, in accordance with the provisions of Section (6) of Article III.
- (4) The incumbent Prime Minister shall continue in office, following a general election, until their successor be elected and appointed in the manner prescribed in this Article; and during the interval between the death, resignation or removal of a Prime Minister, and the appointment of a successor, the Council of Ministers shall act in a caretaker capacity.
- (5) The Prime Minister shall be responsible to Parliament and shall be removed from office by the Head of State if a vote of no-confidence is passed by Parliament by an absolute majority vote.
- (6) The Prime Minister may submit his/her resignation to the Head of State on the grounds of illness, incapacity, or other due cause, but the resignation shall become effective only when endorsed by Parliament.
- (7) All other Ministers (including the Deputy Prime Minister, Ministers-without-portfolio and Junior Ministers) shall be appointed by the Prime Minister. They serve during the Prime Minister's pleasure, but may be removed by a vote of no-confidence passed by an absolute majority.
- (8) The total number of persons holding ministerial office (including the Deputy Prime Minister, Ministers-without-portfolio and Junior Ministers) shall not at any time exceed one-fifth of the membership of Parliament. The Ministers shall be appointed from amongst the members of Parliament; provided, however, that up to one-third of the Ministers may be appointed from outside Parliament, on account of their specialist knowledge, experience, and qualifications. The Ministers appointed from outside Parliament shall have the right, ex-officio, to sit and speak (but not vote) in Parliament.
- (9) The Council of Ministers, subject to the Constitution and the laws, shall determine all matters of foreign and domestic policy: it shall direct the administration, conduct foreign relations, manage public finances, and ensure that the laws are duly implemented and enforced. It may prepare draft legislation, and other business, to lay before Parliament.
- (10) The administrative officials, subordinate to the Council of Ministers, shall be organized as a permanent, professional and non-partisan civil service, which shall

be based upon merit and shall be regulated by the Public Service Commission in accordance with the law.

- (11) High command of the Armed Forces, subject to the Constitution and laws, shall be vested in the Council of Ministers; but no declaration of war may be made, nor deployment of troops undertaken, except with the prior consent of a two-thirds majority of Parliament; provided, that if Scotland is under actual, or imminent, enemy attack, the Council of Ministers shall at once undertake all necessary defensive action.
- (12) No treaty or international agreement of any kind shall 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 legislative, administrative, judicial, military or fiscal powers to a confederation, union, alliance or international organisation shall take effect only if ratified by a two-thirds majority of Parliament.
- (13) All prerogatives, powers, rights and duties vested in the Crown or in Scottish Ministers according to the law of Scotland immediately prior to the coming into effect of this Constitution shall be transferred to the Council of Ministers herein established, except for such prerogatives, powers, rights and duties as are abolished, or transferred to other bodies, by this Constitution or by any subsequent Act of Parliament.

## Article V – Judiciary

- (1) The judicial authority shall be vested in the Supreme Court, the Court of Session, High Court of Justiciary, Sheriff Courts, and such other Courts and Tribunals as may be established by Acts of Parliament.
- (2) The Supreme Court shall consist of seven members. It shall 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 (17) of Article III shall restrict the ordinary process of constitutional judicial review under this Section.
- (3) Judges of the Supreme Court, members of the Court of Session and High Court of Justiciary, Sheriffs, and all other members of the judiciary, with the exception of Justices of the Peace, shall be appointed by the Head of State, on the advice of the Judicial Appointments Council.
- (4) The Judicial Appointments Council shall consist of the following members: (i) The Minister of Justice, as convenor; (ii) The Lord Advocate, as deputy-convenor; (iii) Two Senators of the College of Justice elected by their peers; (iv) A representative of the Faculty of Advocates; and (v) Five lay representatives of the public, not being members of the judiciary or the legal profession, elected by Parliament, by proportional representation and secret ballot, for four-year terms.
- (5) Members of the judiciary shall enjoy security of tenure during good behaviour. They may only be removed on the grounds of misconduct, neglect of duty, or incapacity, by means of a motion of censure passed by a two-thirds majority vote of Parliament, on the advice of the Judicial Appointments Council. The Judicial Appointments Council shall have the authority to suspend a judge, on full pay, for



a period of up to three months, pending the outcome of Parliament's decision in his/her case.

- (6) Judicial office shall 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 and privileges of members of the judiciary shall be determined by law, and shall not be diminished during their tenure.
- (8) Members of the judiciary shall retire, on pensions, on reaching the retirement age prescribed by law. Early retirement may be granted by the Judicial Appointments Council on the grounds of illness or infirmity.
- (9) Subject to the provisions of this Constitution, the organisation, powers, structure, jurisdiction, privileges, and procedures of the various Courts shall continue as heretofore, until altered or amended by statute.
- (10) The Lord Advocate shall be appointed by the Council of Ministers, 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, shall be determined by law.
- (11) The right of pardon, and of remitting punishments, shall be vested in the Head of State, and exercisable upon the advice of the Minister of Justice, given after he or she has considered the recommendations of an independent Pardons Board to be established according to law.

## Article VI – Local Government

- (1) For the purposes of local government and administration, Scotland shall be divided by law into Districts and Cities (based, until otherwise provided by law, on the existing unitary boundaries).
- (2) Each District and City shall be governed according to law by a Council, consisting a convenient number of councillors, who shall be directly elected by the local enfranchised citizens, by secret ballot and proportional representation, in the manner prescribed by law.
- (3) Each District and City Council shall elect from amongst its members a Lord Provost, Provost or Convenor to preside over the Council and to represent the Council in its external affairs. Each Council shall also elect a Leader to act as its executive. Provided, however, that provision may be made by law for the direct election of an 'Executive Provost' to combine these functions.
- (4) District and City Councils shall have such legislative, administrative and fiscal powers as may be devolved to them by law, in accordance with the principle of subsidiarity, in relation to: (i) economic development; (ii) housing, land use and planning; (iii) infrastructure; (iv) transport; (v) 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, museums, the arts and culture; (xi) poor relief and social services; (xii) policing and public safety; (xiii) parks, garden and allotments; (xiv) recreational facilities; and (xv)

any other matter of local concern.

- (5) Districts and Cities may be further sub-divided into Communities and Burghs, each with its own Community or Burgh Council. The boundaries, powers and organisation of the Community and Burgh Councils shall be determined, in accordance with the law, by District and City Councils.

## Article VII – Ombudsman and Auditor- General

- (1) There shall be an Ombudsman, whose duty it shall be to examine and investigate all 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.
- (2) There shall be an Auditor-General, whose duty it shall be to 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, and to make recommendations to Parliament for improving the economy of public spending, and for eliminating waste and corruption.
- (3) The Ombudsman and Auditor-General shall have such powers, related to the 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 remedial action. They shall submit an annual report of their activities to Parliament, but shall be independent of the Government and all other authorities in the exercise of their functions.
- (4) The Ombudsman and Auditor-General shall be nominated by the Presiding Officer on the advice of the Parliamentary Bureau, and shall be appointed by a two-thirds majority vote of Parliament, on a non-partisan basis. They may not simultaneously hold any other public office.
- (5) The Ombudsman and Auditor-General shall serve for renewable terms of six years, and may only be removed for misconduct or other cause by a two-thirds majority of Parliament. They shall have the same restrictions, privileges, salaries, and pensions, as Supreme Court judges.

## Article VIII – Independent Commissions

- (1) There shall be an independent, non-partisan, Open Government Commission, which shall be responsible for ensuring compliance with the freedom of information provisions of Section (17) of Article IX.
- (2) There shall be an independent, non-partisan, Electoral Commission, which shall 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 registration of voters; (iv) enforcing 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.

- (3) There shall be an independent, non-partisan, Public Service Commission, which shall be 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 Council of Ministers for senior civil service appointments and appointments to public bodies.
- (4) There shall be an independent, non-partisan Broadcasting Commission, which shall be responsible, in accordance with the law, for the regulation of public broadcasting services.
- (5) Each Commission established under this Article shall consist of seven members, of which:
  - a. Three executive members, including the Convenor, shall be appointed by the Head of State, on the joint nomination of the Prime Minister and the Leader of the Opposition, on merit, according to their qualifications and experience.
  - b. Four non-executive members shall be elected by Parliament, by secret ballot and on a non-partisan basis, by single transferable vote, to represent the public interest.
  - c. The members of the Commissions established under this Article shall 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 shall be fixed by law and in parity to those of members of Parliament.

## Article IX – Fundamental Rights and Freedoms

- (1) General provisions:
  - a. The following provisions shall have effect for the purpose of guaranteeing the fundamental rights and liberties of all Scottish citizens and all persons within the jurisdiction of Scottish Courts.
  - b. The rights and liberties guaranteed shall be enjoyed by all persons without discrimination on grounds such as sex, race, colour, religion, personal beliefs, abilities, status or sexuality.
  - c. There shall be no limitation upon their exercise save such as is necessary to prevent or penalise acts by any person or group of persons calculated to infringe or destroy the rights and liberties of other persons or groups, or forcibly to subvert the constitutional order which establishes and guarantees those rights and liberties.
  - d. Subject to the qualification mentioned in paragraph (c), no law may be passed which abrogates or derogates from guaranteed rights and liberties, unless passed by way of a constitutional amendment in accordance with Article XI of this Constitution.

- e. Every person shall be granted by a competent court a full and adequate and speedy remedy for any infringement whatsoever of his or her guaranteed rights and liberties.
- f. None of the rights guaranteed in this Article of the Constitution shall be subjected to any restriction or limitation other than as expressly provided, nor shall any such restriction or limitation be applied for any purpose other than that expressly prescribed.

(2) Right to life:

- a. Every person has the right to life. No person shall be condemned to death or executed.
- b. If any person's death occurs as a result of a lawful act of war, or of another person's acting in a manner which is permitted by law and which is no more than necessary to defend a person or persons from unlawful violence, or to effect a lawful arrest or to prevent the escape of a person lawfully detained, the action so taken shall not be rendered unlawful by the fact that death has result from it.
- c. This Section shall not prohibit voluntary euthanasia or the medical termination of pregnancy in accordance with the law.

(3) Prohibition of torture:

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

(4) Prohibition of slavery and forced labour:

- a. No person shall be held in slavery or servitude, nor shall any person be required to perform forced or compulsory labour.
- b. For the purposes of this provision, 'forced or compulsory labour' shall not include: (i) Any work, not of a hazardous or degrading nature, required to be done in the ordinary course of detention imposed according to the provisions of Section (5) of this Article, or during conditional release from such detention; (ii) Any service of a military character or, in case of conscientious objectors, service exacted instead of military service; (iii) Any service lawfully exacted in case of an emergency or calamity threatening the life or well-being of the community; (iv) Any work or service which forms part of normal civic obligations.

(5) Personal liberty:

- a. Every person has the right to personal liberty and security, and accordingly no person shall be deprived of liberty save in the following cases and in accordance with the procedures prescribed by the law of Scotland: (i) In the case of his or her lawful detention in accordance with the sentence passed by a competent Court upon his or her conviction of an offence; (ii) In the case of his or her lawful arrest or detention for non-compliance with the lawful order of a court; (iii) In the case of his or her lawful arrest or

detention upon reasonable suspicion of having committed, or being engaged in the commission of, or being about to commit, a criminal offence under the law of Scotland; (iv) In the case of detention of a person under the age of 16 years by lawful order for the purpose of his or her educational supervision or personal welfare; (v) In case of the lawful detention of a person who is of unsound mind and danger to themselves or others; (vi) In the case of the lawful arrest of a person to prevent his or her unlawfully entering Scotland, or of a person against whom lawful action is being taken with a view to deportation or extradition.

- b. Every person who is arrested or detained shall be informed, as soon as is possible in the circumstances of the case, in a language which he or she understands, of the reason for his or her arrest or detention and of any charge which is to be laid against him or her; he or she shall be entitled to inform a member of his or her family of his or her whereabouts and of the stated reason for his or her detention, and shall be entitled as soon as possible to consult a legal practitioner.
- c. Every person who is arrested or detained in accordance with Section (5)(a)(iii) of this Article shall, wherever it is practicable to do so, be brought before a competent court not later than the first lawful day after being taken into custody, such day not being a public or local holiday: failing which, he or she shall be brought before a competent court as soon as is possible thereafter.
- d. Every person who is arrested or detained in accordance with Section (5)(a)(iii) of this Article shall be brought to trial as soon as is possible; no person who has been committed for trial of any offence shall be detained in custody for more than 140 days from the date of such committal, except in so far as the High Court of Justiciary may grant lawful extensions.
- e. Every person who has been deprived of liberty by arrest or detention has the right to petition the Court of Session or High Court of Justiciary for liberation, and shall be liberated by order of the Court as soon as is practicable in the circumstances of the case unless such deprivation of liberty is proven to be lawful; if a person so deprived of liberty is for any reason unable to take proceedings on his or her own behalf any other person who can show good cause for so doing may petition the Court in his or her name to test the lawfulness of any such detention.

(6) Right to fair trial:

- a. Every person has the right to fair and impartial judicial proceedings to determine any question raised by process of law concerning his or her legal rights or obligations, or any criminal charge against him or her.
- b. Every such question or charge shall be heard and determined by the competent court or tribunal established by law. Trials shall be conducted in public and judgment shall be pronounced publicly, except in so far as the law permits a court or tribunal to exclude members of the public from part of such proceedings or to prohibit publication of reports concerning part of such proceedings on all or any of the following grounds: (i) The protection of national security; (ii) The prevention of disorder in court; (iii) The protection of children or young people; (iv) The protection of the personal

privacy of both parties; (v) In the interests of justice, in circumstances in which publicity would inevitably cause serious prejudice to the fair determination of an issue.

- c. Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- d. Every person charged with a criminal offence has the following rights: (i) To be informed in detail, as soon as is possible in the circumstances of the case, and in a language which he or she understands, of the charge which is made against him or her; (ii) To have adequate time and facilities for preparing a defence; (iii) To defend himself or herself in person or through a legal practitioner of his or her own choosing; (iv) To such financial assistance as is necessary in the light of his or her means to secure adequate legal assistance if desired; (v) To examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf in the same conditions as witnesses against him or her; (vi) To have all proceedings in court connected with the charge against him or her translated by a competent interpreter into the language which he or she best understands, if that language is not the language of the Court; (vii) To be informed in a language which he or she understands of his or her rights under this Sections (5) and (6) of this Article, before the commencement of the trial.
- e. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.
- f. No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the laws of Scotland. Provided, that this provision shall not prevent the reopening of the case in accordance with the law and penal procedure of Scotland, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
- g. The right to trial by jury, as such right existed under the law of Scotland at the time of the ratification of this Constitution shall not be suspended, restricted or abridged.

(7) No punishment without law:

No person shall be convicted of any criminal offence save in respect of an act or omission which, at the date of its commission, constituted a criminal offence under the law of Scotland or the law of nations, nor shall any penalty be imposed which is heavier than the maximum permitted under the law of Scotland at that date.

(8) Right to respect for private and family life:

- a. Everyone has the right to respect for privacy in his or her personal affairs, family life, home, and correspondence.
- b. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- c. Every person who suffers unlawful interference with his or her personal privacy shall be entitled to an adequate civil remedy therefore.
- d. Provision shall be made by law for the safeguarding of personal data and information, and in particular to preserve the privacy and security of all communications and transactions conducted by electronic media.

(9) Freedom of thought, conscience and religion:

- a. Every person has the right to freedom of thought and of conscience and to the free confession and practice of religion. This right includes freedom to change his or her religion or belief and freedom (either alone or in community with others and in public or private) to manifest his or her religion or belief in worship, teaching, practice and observance. It also includes freedom not to believe or participate in any religion.
- b. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, or for the protection of public order, health or morals.
- c. Nothing in this Section shall affect the existing status, freedom or liberties of the Church of Scotland, as recognized by the Church of Scotland Act 1921 and by the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual.

(10) Freedom of expression:

- a. Every person has the right to freedom of speech, writing and publication, and of the expression of opinion, including the right to impart and receive information and ideas freely to and from any other person or persons whatsoever.
- b. Provided, however, that the law may prohibit abuses of this right, to the extent necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the unlawful disclosure of personal or private information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- c. The foregoing provisions shall not be interpreted as invalidating laws regulating the licensing of broadcast transmissions or cinemas, theatres and other like places of public resort.

(11) Freedom of assembly and association:

- a. Every person has the right to freedom of peaceful assembly and to freedom of association with others for all lawful purposes; this right shall include, but not be limited to, the freedom to freely form and to join political parties and trade unions.
- b. The right to freedom of assembly and of association shall be subject only to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of national security, the prevention of crime or disorder, or the protection of the rights of others.

(12) Freedom of movement:

- a. Everyone lawfully within the territory of a Scotland shall, within that territory, have the right to liberty of movement and freedom to choose his residence, and shall have the freedom to leave the country at will.
- b. 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 prevention of crime or disorder, for the protection of public health, or for the protection of the rights and freedoms of others.
- c. Everyone in Scotland has the right of free access to hills, mountains, waterways and open countryside, except in cases in which unrestricted access is likely to cause substantial interference with agriculture, forestry or fishing, and subject to any provisions of the law which are necessary for the protection of national security or public safety, for the protection of public health, or for the protection of the physical environment.

(13) No imprisonment for debt:

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

(14) No compulsory expulsion:

- a. No Scottish citizen shall be expelled, by means either of an individual or of a collective measure, from the territory of Scotland.
- b. No Scottish citizen shall be deprived of the right to enter Scotland.
- c. The collective expulsion of aliens is prohibited.

(15) Familial rights:

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

(16) Property rights:

- a. Every person has the right to hold private property, and to the peaceful enjoyment of his or her property.



- b. Parliament may, however, enact laws that control or restrict the use or acquisition of property in the general interest, in cases where Parliament determines that the needs of the community require to be given precedence over the rights of individuals.
- c. All laws which sanction measures of expropriation shall make provision for fair compensation.
- d. Nothing in this Article shall have the effect of invalidating any tax, duty or custom levied in accordance with the law, or the lawful collection of any service charge or administrative fee, or the lawful imposition of a criminal penalty of fine or forfeiture.

(17) Freedom of Information:

Every person shall have the right of access to governmental information. The right of access to official information can only be restricted by law to the extent necessary, in a democratic society, for the purpose of protecting personal privacy, national security or diplomatic confidentiality, or for ensuring the due process of judicial proceedings.

(18) Economic and Social Rights:

- a. Every person has the right to work and to pursue freely any profession or vocation subject only to such requirements as to minimum qualifications as may be prescribed by or in accordance with the law.
- b. Every person has the right to conditions of work which are fair, healthy, and which respect the dignity of the person. In particular, Parliament shall ensure by means of appropriate legislation that every worker has the following rights, which may not be renounced by any contractual provision: (i) Safe and healthy conditions of work; (ii) An adequate minimum wage as determined by law; (iii) Protection against arbitrary or unfair dismissal; (iv) Maximum working hours, and minimum entitlements to days of rest and holidays, sufficient to maintain health and to meet obligations of family life; (v) The right to bargain collectively and to enforce collective bargains through strike action, except in the armed forces, police and essential public services; (vi) Freedom from harassment, intimidation, humiliation or abuse in the workplace.
- c. Every person who is unable to work by reason of physical or mental disability or infirmity, or by reason of family commitments, or because suitable employment is presently unavailable in their community, has a right to be provided with benefit payments or other social assistance as determined in accordance with the law.
- d. Parliament shall be responsible for ensuring by legislation that all persons who have reached the age of retirement fixed by law are entitled to pensions adequate for their dignity and well-being.
- e. Parliament shall be responsible for ensuring by legislation that everyone has a right to adequate health care sufficient to secure well-being and human dignity; Parliament shall ensure that health services are properly regulated

and maintained, and that a system of universal health care, to the highest practicable standards of medical practice, is available to all.

- f. Parliament shall be responsible for ensuring by legislation that everyone has a right to a good education; Parliament shall ensure that adequate provision is made for universal primary and secondary education, and that qualified students are entitled to publicly funded tuition and other means of financial support at institutions of higher learning, technical training and research.
- g. Parliament may regulate commerce for the common good, and in particular shall have the authority to enact laws protecting workers, consumers and the environment.

## Article X – Miscellaneous Provisions

- (1) All Ministers, members of Parliament, judges, and all other persons holding public office under this Constitution, shall take an oath or affirmation in the form prescribed by Schedule 1(b).
- (2) The City of Edinburgh shall be the capital of Scotland; the seat of government may be moved to another place by a decision of the Council of Ministers in the event of war, disaster or unrest.
- (3) The official languages of Scotland shall be English, Scots and Gaelic. Parliament shall be responsible for ensuring that provision is made for the use of Scots and Gaelic, in addition to English, in parliamentary proceedings, local government, administration, public broadcasting and education.
- (4) The national flag is the cross of St Andrew, blazoned azure, a saltire argent. The national anthem shall be determined by Act of Parliament.
- (5) Persons holding public office should perform their duties solely for the public interest. They should not seek financial or other material benefits for themselves, their family, or friends, nor place themselves under any financial or other obligation to individuals or organisations that might unduly influence them in the performance of their official duties. They 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. To give effect to these and other relevant principles of good conduct, the Public Service Commission shall adopt a Code of Conduct for public servants, including Ministers and those holding elective office. Parliament shall have the authority to enforce observance of the Code of Conduct by means of legislation.
- (6) In addition to binding legislative referendums held under Section (16)(d) of Article III and constitutional referendums held under Section (2) of Article XI, provision may be made by law for the holding of consultative referendums, at the initiative of Parliament or local Councils, on proposed legislation or matters of general policy within their respective areas of competency.
- (7) There shall be a Consultative Assembly to advise and assist Parliament and the Council of Ministers on matters of legislation and policy. It shall examine and give its advice on all bills and policy papers submitted to it by Parliament or the Council of Ministers. It may also submit petitions and recommendations to

Parliament and the Council of Ministers on its own initiative. The Consultative Assembly shall consist of sixty members appointed in the manner prescribed by law on a vocational and functional basis: (i) 20 shall represent trade unions and craft and artisan guilds; (ii) ten shall represent chambers of commerce and small businesses; (iii) ten shall represent academia and the learned professions; (iv) ten shall represent farmers, crofters and rural interests, and (v) ten shall represent religious and charitable organisations.

- (8) The Prime Minister may appoint a number of Special Advisors, not exceeding 12, to advise and assist the Prime Minister in the preparation and delivery of policies. Special Advisors shall serve at the pleasure of the Prime Minister. They shall not be members of the permanent civil service, nor members of Parliament, but are subject to the Code of Conduct for public servants.
- (9) The rights and privileges guaranteed to persons under this Constitution or any law extend only to human beings; the extent to which such rights and privileges may be extended to corporate bodies and other 'legal persons', on the grounds of public benefit, shall be determined by law.
- (10) In times of war or other severe public emergency the Council of Ministers may declare a State of Emergency. The State of Emergency shall lapse after seven days, unless during that time Parliament passes a resolution, by a two-thirds majority, authorising its extension for up to three months; such authorisation may be renewed at intervals of three months, so long as the emergency necessitating it continues. During a State of Emergency the Council of Ministers shall have the authority to enact decrees, having the force of law; such decrees may suspend rights guaranteed by Sections (5)(c) and (6)(g) of Article IX and may impose further restrictions on guaranteed rights according to Sections (8)(b), (10)(b), (11)(b) and (12)(b) of Article IX. All decrees shall be subject to review and veto, on the grounds that they are unconstitutional, or unnecessarily burdensome or oppressive, by a Review Committee consisting of the Presiding Officer, two Supreme Court judges, and 12 members of Parliament, not holding ministerial office, elected by their peers by proportional representation.

## Article XI – Adoption and Amendment of the Constitution

- (1) Every law in force in Scotland when this Constitution comes into effect, with the exception of provisions inconsistent with this Constitution, shall remain in force until repealed or amended by a competent legislative act. The first parliamentary elections shall take place within three months of the coming into effect of this Constitution; until such elections, the existing Scottish Parliament shall remain in being as the interim Parliament of Scotland under this Constitution.
- (2) This Constitution may be amended only if a proposal for its amendment is adopted by a two-thirds majority of the whole membership of Parliament and if the amendment is then ratified by the people in a binding nationwide referendum. The referendum shall take place on the date of the next general election. No amendment shall come into effect unless approved by a majority of all valid votes cast in the referendum. No amendment may be proposed, adopted or ratified during the occupation of the country by enemy forces, nor during a State of Emergency.

## Schedule 1 - Oaths (or affirmations)

(a) Coronation oath of the King (or Queen) of Scots:

I..... solemnly swear (or affirm) that I will faithfully execute the office and perform the functions of King (or Queen) of Scots, and that I will, to the best of my ability uphold, defend and obey the Constitution and laws of Scotland. (So help me God).

(b) Oath of office:

I ..... solemnly swear (or affirm) that I will bear true faith and allegiance to the people of Scotland, and that I will faithfully and conscientiously perform my duties as [name or title of the office to which appointed or elected] in accordance with the Constitution and the laws of Scotland, without fear or favour. (So help me God).

These oaths may be taken with or without religious invocation.