

(Provisional) Constitution of Scotland

Chapter I. The State and Nation

1. Foundations of the State

- (1) Scotland is an independent Commonwealth Realm.
- (2) The form of government in Scotland is a parliamentary democracy.
- (3) In Scotland the people are sovereign and have the sovereign right to self-determination and to choose freely the form in which their State is to be constituted and how they are to be governed.
- (4) The sovereign will of the people is most fully expressed in this Constitution, which is the supreme law of Scotland, and therefore any Act of Parliament, treaty, regulation, order, or other law, which is inconsistent with this Constitution shall be null and void to the extent of the inconsistency.

2. Territory

- (1) In accordance with international law, the territory of Scotland continues to consist of all the land, islands, internal waters and territorial sea that formed the territory of Scotland immediately before Independence Day.
- (2) Scotland asserts its claim to its exclusive economic zone as recognised by international law.

3. Citizenship

- (1) The following people automatically hold Scottish citizenship, namely –
 - (a) all those who, immediately before Independence Day, hold British citizenship and either –
 - (i) are habitually resident in Scotland at that time, or
 - (ii) are not habitually resident in Scotland at that time but were born in Scotland,
 - (b) any person born in Scotland on after Independence Day if either of the person's parent, at the time of the person's birth –
 - (i) holds Scottish citizenship, or
 - (ii) has indefinite leave to remain in Scotland, and
 - (c) any person born outside Scotland on or after Independence Day if –
 - (i) either of the person's parents, at the time of the person's birth, hold Scottish citizenship, and
 - (ii) the person's birth is registered in Scotland.
- (2) The following people are entitled to claim Scottish citizenship according to the prescribed procedures, namely –
 - (a) any person born in Scotland on or after Independence Day if either of the person's parents meets the prescribed requirements,
 - (b) any person with –

(i) a prescribed connection by descent with a person holding Scottish citizenship, or

(ii) any other prescribed connection with Scotland.

(3) A person holding Scottish citizenship may also hold other nationalities or citizenships at the same time.

(4) Further provision about entitlement to Scottish citizenship is to be made by Act of the Scottish Parliament, and 'prescribed' means prescribed by or under such an Act. Such an Act may, in particular, include provision supplementing, qualifying or modifying the provisions in this Section.

4. Electoral Franchise

(1) Subject to sub-section (2) of this Section, all citizens, having reached eighteen years of age, shall be entitled to vote in national referendums and in the election of members of Parliament and local authorities.

(2) The following persons may be excluded from the franchise by Act of Parliament:

(a) persons under legal guardianship for severe mental incapacity, and

(b) persons serving a custodial sentence for a criminal offence or released on parole.

(3) Provision may be made by Act of Parliament for resident non-citizens, after a qualifying period of residence, to vote in local elections of the area in which they reside on the same terms as citizens.

5. National Symbols

(1) The national flag is the cross of St Andrew, blazoned: *azure, a saltire argent*.

(2) The national anthem shall be determined by Act of Parliament.

(3) The national motto is '*Nemo me impune lacessit*'.

6. Capital and Seat of Government

(1) The City of Edinburgh shall be the capital of Scotland.

(2) The seat of government may be moved to another place by a decision of the Council of Minister in the event of war, disaster or unrest.

Chapter II. Fundamental Rights and Freedoms

7. General Provisions

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

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

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

(4) None of the rights guaranteed in this Chapter 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.

8. Right to Life

(1) Every person has the right to life.

(2) No person shall be condemned to death or executed.

(3) If any person's death occurs as a result of a lawful act of war, or of another person's acting in a manner which is permitted by law and which is no more than necessary to defend a person or persons from unlawful violence, or to effect a lawful arrest or to prevent the escape of a person lawfully detained, the action so taken shall not be rendered unlawful by the fact that death has resulted from it.

(4) This Section shall not be construed as invalidating any law made for the purpose of:

(a) permitting the voluntary medical termination of pregnancy in cases of rape, severe fetal abnormality, or serious risk to the mental or physical health of the mother; or

(b) permitting voluntary euthanasia or assisted suicide in cases where a patient suffers a chronic painful or debilitating condition without realistic prospect of amelioration.

(5) Sub-section (4) shall not be construed as conferring any right to medical termination of pregnancy or to voluntary euthanasia or assisted suicide.

9. Prohibition of Torture

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

10. Prohibition of Slavery and Forced Labour

(1) No person shall be held in slavery or servitude, nor shall any person be required to perform forced or compulsory labour.

(2) For the purposes of this Section, 'forced or compulsory labour' shall not include: -

(a) Any work, not of a hazardous, degrading or profit-making nature, required to be done in the ordinary course of detention imposed according to the provisions of Section 11 of this Constitution, or during conditional release from such detention;

(b) Any service of a military character or, in case of conscientious objectors, service exacted instead of military service;

(c) Any service lawfully exacted in case of an emergency or calamity threatening the life or well-being of the community; or

(d) Any work or service which forms part of normal civic obligations.

11. Personal Liberty

(1) Every person has the right to personal liberty and security, and accordingly no person shall be deprived of liberty save in the following cases and in accordance with the procedures prescribed by the law of Scotland: -

(a) In the case of his or her lawful detention in accordance with the sentence passed by a competent Court upon his or her conviction of an offence;

(b) In the case of his or her lawful arrest or detention for non-compliance with the lawful order of a court;

(c) In the case of his or her lawful arrest or detention upon reasonable suspicion of having committed, or being engaged in the commission of, or being about to commit, a criminal offence under the law of Scotland;

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

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

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

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

(3) Every person who is arrested or detained in accordance with sub-section (1)(c) of Section 11 of this Constitution shall, wherever it is practicable to do so, be brought before a competent court not later than the first lawful day after being taken into custody, such day not being a public or local holiday: failing which, he or she shall be brought before a competent court as soon as is possible thereafter.

(4) Every person who is arrested or detained in accordance with sub-section (1)(c) of Section 11 of this Constitution shall be brought to trial as soon as is possible; no person who has been committed for trial of any offence shall be detained in custody for more than 140 days from the date of such committal, except in so far as the High Court of Justiciary may grant lawful extensions.

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

12. Right to Fair Trial

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

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

(a) The protection of national security;

(b) The prevention of disorder in court;

- (c) The protection of children or young people, or other vulnerable persons;
- (d) The protection of the personal privacy of both parties; or
- (e) In the interests of justice, in circumstances in which publicity would inevitably cause serious prejudice to the fair determination of an issue.

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

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

- (a) To be informed in detail, as soon as is possible in the circumstances of the case, and in a language which he or she understands, of the charge which is made against him or her;
- (b) To have adequate time and facilities for preparing a defence;
- (c) To defend himself or herself in person or through a legal practitioner of his or her own choosing;
- (d) To such financial assistance as is necessary in the light of his or her means to secure adequate legal assistance if desired;
- (e) To examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf in the same conditions as witnesses against him or her;
- (f) To have all proceedings in court connected with the charge against him or her translated by a competent interpreter into the language which he or she best understands, if that language is not the language of the Court; and
- (g) To be informed in a language which he or she understands of his or her rights under this Sections 11, 12, 13, 14 and 15 of this Constitution.

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

13. No Double Jeopardy

(1) 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.

(2) Provided, that this Section 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.

14. Right to Appeal

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

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

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

15. No Punishment without Law

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

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

16. Protection of Private and Family Life

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

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

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

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

17. Freedom of Thought, Conscience and Religion

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

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

(3) 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.

(4) Nothing in this Constitution shall affect:

(a) 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 Constitutional Platform of the Church of Scotland in Matters Spiritual, or

(b) any provision made by law for the state funding of denominational schools.

18. Freedom of Expression

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

- (2) The law may prohibit abuses of this right, to the extent necessary in a democratic society –
- (a) In the interests of national security or public safety;
 - (b) For the prevention of disorder or crime;
 - (c) For the protection of health or morals;
 - (d) For the protection of the reputation or rights of others;
 - (e) For preventing the unlawful disclosure of personal or private information received in confidence; or
 - (f) For maintaining the authority and impartiality of the judiciary.

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

19. Freedom of Assembly and Association

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

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

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

20. Freedom of Movement

(1) Subject to sub-section (2) of this Section, 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.

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

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

(3) Everyone in Scotland has the right of free access to hills, mountains, waterways and open country, except in cases in which unrestricted access is likely to cause substantial interference with agriculture, forestry or fishing, and subject to any provisions of the law restricting this right under sub-section (2) of this Section.

21. No Imprisonment for Debt

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

22. Familial Rights

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

(2) Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This provision shall not prevent the State from taking such measures as are necessary in the interests of the children.

23. Property Rights

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

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

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

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

24. Freedom of Information

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

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

(a) For the protection of national security;

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

(c) For the prevention of crime; or

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

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

25. Prohibition of arbitrary expulsion

(1) No citizen of Scotland shall be expelled, by means either of an individual or of a collective measure, from the territory of Scotland, nor deprived of the right to enter the territory thereof.

(2) Collective expulsion of aliens (that is, persons who are not citizens) is prohibited.

(3) An alien lawfully resident in Scotland shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his or her expulsion;
- (b) to have his or her case reviewed; and
- (iii) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

(4) An alien may be expelled before the exercise of his or her rights under this Section when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

26. Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

27. Social, Economic and Cultural Rights

(1) In addition to the rights enumerated in Sections 7 to 26 of this Constitution, Parliament may provide by law for the recognition and realisation of additional social, economic and cultural rights.

(2) These may include, but shall not be limited to, the following:

- (a) The right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;
- (b) The right to equal pay for equal work without any discrimination;
- (c) The right to just and favourable remuneration ensuring for himself or herself and his or her family an existence worthy of human dignity – supplemented, if necessary, by other means of social protection;
- (d) The right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay;
- (e) The right to a standard of living adequate for the health and well-being of himself or herself and of his or her family, including food, clothing, housing and medical care and necessary social services;
- (f) The right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his or her control;
- (g) The right to education, to participate in the cultural life of the community, and to enjoy the arts and to share in scientific advancement and its benefits.

(3) The rights recognised under this Section shall not be directly enforceable or justiciable in any court, except in the manner and to the extent provided by Acts of Parliament.

28. Restriction of Rights During Emergencies

- (1) If the Head of State or Queen's Commissioner, acting on the advice of the Prime Minister, is satisfied that a grave public emergency exists whereby the security of Scotland is threatened he or she may, by public proclamation, declare that a state of emergency exists.
- (2) Before tendering such advice to the Queen's Commissioner, the Prime Minister shall, so far as it is reasonably practicable to do so, consult with the Presiding Officer and the Leader of the Opposition.
- (3) A declaration of a state of emergency lapses –
 - (a) If the declaration is made when Parliament is sitting, at the expiration of seven days after the date of publication of the declaration; or
 - (b) in any other case, at the expiration of fourteen days after the date of the declaration, unless it has in the meantime been approved by a resolution of Parliament approved by an absolute majority of the members of Parliament.
- (4) The Head of State or Queen's Commissioner shall revoke a declaration of emergency –
 - (a) If so advised by the Prime Minister; or
 - (b) If Parliament passes a resolution declaring that there is no longer sufficient reason to keep the state of emergency in effect and that keeping the state of emergency in effect is not in the public interest.
- (5) A declaration of emergency that has been approved by a resolution of Parliament under sub-section (3) of this Section remains in force, subject to the provisions of sub-section (4), for three months or such shorter period as is specified in the resolution.
- (6) A state of emergency that has lapsed or is about to lapse under sub-section (5) may be renewed for a further period of up to three months, if the circumstances so require, by means of a resolution of Parliament passed by a two-thirds majority vote of the members thereof.
- (7) During the period during which a state of emergency is in force, the Scottish Government, or any Minister or officer thereof to whom such authority may be delegated by the Prime Minister, may make such orders, having the force of law, as are reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.
- (8) An order made under sub-section (7) of this Section may impose additional limits or restrictions on the rights guaranteed by Sections 11, 16, 19 and 20 to the extent necessitated by the emergency.
- (9) An order made under sub-section (7) of this Section shall cease to have when the state of emergency lapses or is revoked, unless:
 - (a) the order is sooner repealed by the authority which issued the order;
 - (b) the order is sooner revoked by a resolution of Parliament.

Chapter III. Head of State

29. Head of State

- (1) Her Grace Elizabeth Windsor Queen of Scots, and her heirs and successors according to law, shall be Scotland's Head of State.

(2) Parliament may by law make provision for:

- (a) The order of succession to the office of the Head of State, having regard to the principles of the Perth Agreement 2011;
- (b) The appointment of a regent during the minority or incapacity of the Head of State;
- (c) Royal titles;
- (d) The Civil List; and
- (e) The regulation of the Royal Household in Scotland.

30. The Queen's Commissioner in Scotland

(1) There shall be an official representative and deputy of the Head of State in Scotland, to be styled the Queen's (or King's) Commissioner.

(2) The Queen's Commissioner shall be appointed by the Head of State on advice of the Cabinet, given after having consulted the Presiding Officer of Parliament and the Leader of the Opposition.

(3) No person shall be appointed as the Queen's Commissioner unless he or she is a citizen of Scotland.

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

(5) The Queen's Commissioner shall before assuming the functions of his or her office, take and subscribe the following oath:-

I,....., swear that I will be faithful and bear true allegiance to Her (or His) Grace [specify the name of the Head of State], her (or his) heirs and successors, according to law, and that I will justly and faithfully carry out my duties in the administration of Scotland in accordance with the Constitution and the law.

31. Tenure, Resignation and Removal

(1) Subject to sub-sections (2) and (3) of this Section, the Queen's Commissioner shall hold office for a period of five years, and may from time to time be reappointed.

(2) The Queen's Commissioner may at any time tender his or her resignation to the Head of State.

(3) The Queen's Commissioner shall be deemed to have been removed from office if a vote of censure against the Queen's Commissioner is passed by a two-thirds majority of the members of Parliament, on grounds of incapacity, neglect of duty or gross misconduct.

32. Exercise of Powers by Head of State or Queen's Commissioner

(1) Where a power or function is vested by this Constitution in the Head of State or Queen's Commissioner, such power or function shall be exercised, in accordance with this Constitution –

- (a) if the Head of State is present in Scotland for official purposes and wishes to exercise that function in person, by the Head of State; or
- (b) in all other circumstances, by the Queen's Commissioner in the name and on behalf of the Head of State.

(2) The Head of State, or the Queen's Commissioner on his or her behalf, shall perform only such constitutional, civic and ceremonial functions as are vested in their offices in accordance with this Constitution.

(3) In the exercise of his or her functions under this Constitution or any other law, the Head of State, or Queen's Commissioner on behalf of the Head of State, shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet, except in cases where:

(a) He or she is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet; or

(b) He or she is permitted by this Constitution to act in his or her own deliberate judgment.

33. Information to Head of State or Queen's Commissioner

It shall be the duty of the Prime Minister –

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

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

Chapter IV. The Scottish Government

34. Executive Authority

(1) The executive authority of the State shall be vested in the Scottish Government, herein known generally as 'The Government'.

(2) Subject to the Constitution and the law, the Government shall determine all matters of foreign and domestic policy, direct the administration, conduct foreign relations, manage public finances, and ensure that the laws are duly implemented and enforced.

(3) The Government may prepare bills, resolutions, and other measures, to lay before Parliament.

35. Composition of the Government

(1) The Government shall consist of:

(a) the Prime Minister, the Deputy Prime Minister, and the Ministers responsible for the principal government departments, who collectively constitute the Cabinet.

(b) any Junior Ministers, State Secretaries, and Ministers without Portfolio, who shall not be members of the Cabinet, but may attend Cabinet sessions when invited.

(2) The total number of persons holding ministerial office (including both Cabinet ministers and any Junior Ministers, State Secretaries and Ministers without Portfolio not in the Cabinet) shall not at any time exceed one-fifth of the membership of Parliament.

36. Appointment of the Prime Minister

Whenever a Prime Minister is to be appointed, the Head of State or Queen's Commissioner, acting on the advice and with the countersignature of the Presiding Officer of Parliament, shall appoint as Prime Minister the member of Parliament who is nominated to that office by a vote of Parliament.

37. Appointment of other Ministers

The Ministers other than the Prime Minister (including the Deputy Prime Minister, and any Junior Ministers, State Secretaries and Ministers without Portfolio) shall be appointed and dismissed by the Head of State or Queen's Commissioner acting on the advice and with the countersignature of the Prime Minister.

38. Ministers to be Members of Parliament

(1) Subject to the provisions of sub-sections (2) and (3) of this Section, no person shall hold or be appointed to any Ministerial office unless that person is a member of Parliament.

(2) If an occasion arises for the appointment of a person to ministerial office while Parliament is dissolved, a person who was a member of Parliament immediately before the dissolution may be appointed to Ministerial office.

(3) A Minister who was a member of Parliament immediately before the most recent dissolution of Parliament may continue in office for a period of no more than forty days after the first meeting of Parliament following the said dissolution.

39. Conduct of Government Business

(1) The Prime Minister shall be the Head of Government, shall preside over meetings of the Cabinet, and shall co-ordinate Government policy and oversee its implementation.

(2) If the Prime Minister is unable, due to illness or absence, to perform the functions of his or her office, the Head of State or Queen's Commissioner shall authorise the Deputy Prime Minister to perform those functions.

(3) If the Deputy Prime Minister is unable to deputise for the Prime Minister in accordance with sub-section (2), the Head of State or Queen's Commissioner shall authorise another Minister to perform those functions, acting in accordance with the advice of the Prime Minister, or, if it is impracticable to obtain the advice of the Prime Minister, acting in his or her discretion after consulting the Cabinet.

(4) The Prime Minister shall, by directions in writing charge any Minister with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government including responsibility for the administration of any department, agency or programme.

(5) All orders, regulations, writs, and other instruments, issued by or on the authority of the Government, shall be signed by the Minister who is responsible for their execution.

40. Responsibility and Resignation of the Government

(1) The Government shall be collectively responsible to Parliament for its general conduct, policy and administration.

(2) Each Minister shall be individually responsible for the administration of the department or agencies under his or her charge, and for his or her personal conduct in office.

(3) If Parliament, by an absolute majority vote, passes a vote of no-confidence in the Prime Minister or in the Government, the Prime Minister shall submit the Government's resignation to the Head of State or Queen's Commissioner. The Head of State or Queen's Commissioner shall accept such resignation and Parliament shall then proceed to nominate a Prime Minister in accordance with Section 36.

(4) If Parliament by an absolute majority vote passes a motion of censure against a particular Minister (other than the Prime Minister), the said Minister shall within three days submit his or her resignation to the Prime Minister, and the Prime Minister accept such resignation and shall nominate another person to take his or her place.

41. Caretaker Governments

(1) Following a general election, or the resignation or removal of the Government, the incumbent Ministers shall continue to serve in a caretaker capacity until a new Government is appointed.

(2) If the Prime Minister dies in office, or is incapacitated, the other Ministers shall continue in a caretaker capacity, led by the Deputy Prime Minister, until a new Prime Minister is appointed.

(3) A Government serving in a caretaker capacity should usually:

(a) perform only such routine or emergency operations as are necessary to maintain the proper functioning of the state; and

(ii) consult with the opposition before undertaking any necessary departure from existing policy.

(4) Nothing in this Section shall affect the validity of any act undertaken in a caretaker capacity.

42. Ministerial Salaries

(1) Subject to sub-sections (2) and (3) of this Section, the members of the Government shall receive such salaries as may be prescribed by law.

(2) A bill for a law to increase or diminish the salaries of members of the Government shall not be introduced to Parliament except upon the recommendation of the Public Service Commission, which shall from time to time conduct an independent review of such salaries.

(3) No law to increase or diminish the salaries of members of the Government shall come into effect except after an intervening general election.

(4) The salaries of members of the Government shall be a charge on the Consolidated Fund.

43. Secretary to the Cabinet

(1) There shall be a Secretary to the Cabinet, who shall be head of the Cabinet Office and who, under the direction of the Prime Minister, shall:

(a) prepare the agenda for meetings of the Cabinet, and keep and circulate minutes,

(b) act as custodian of Cabinet papers, and

(c) in general provide such administrative and secretarial support to the Cabinet as may be required.

(2) The Secretary to the Cabinet shall be appointed by the Head of State or Queen's Commissioner on the advice of the Prime Minister, given after consultation with the Public Service Commission.

(3) The Head of State or the Queen's Commissioner, on the advice of the Prime Minister given after consultation with the Public Service Commission, may remove the Secretary to the Cabinet from office on grounds of misconduct or incapacity.

44. Ministerial Code

(1) There shall be a Ministerial Code, which shall *inter alia* provide authoritative guidance on:

- (a) the procedures and practices of the Cabinet,
- (b) the duties and responsibilities of Ministers,
- (c) the relationship between Ministers and civil servants,
- (d) the relationship between Ministers and Parliament, and
- (e) the standards of conduct, behaviour and integrity expected of Ministers.

(b) The Secretary to the Cabinet, under the direction of the Prime Minister, shall from time to time revise the Ministerial Code and cause each revision to be published and presented to Parliament.

45. Law Officers

(1) There shall be two Law Officers:

- (a) a Lord Advocate, who shall be head of the Crown Office and director of the Procurator Fiscal Service;
- (b) a Solicitor-General, who shall deputise for and assist the Lord Advocate as required.

(2) The Law Officers shall be appointed by the Head of State or Queen's Commissioner on the advice of the Prime Minister, given after the Prime Minister has consulted with the Minister of Justice.

(3) The Law Officers shall not be members of Parliament or of the Government, but may be invited to attend the Cabinet, as required, to give legal advice or to consult on matters related to their duties.

(4) The Law Officers shall serve for a term of five years, which may be renewed once.

(5) During their terms of office, the Law Officers not be removed from office except for incapacity, neglect of duty or misconduct.

(6) The provisions of Section 42 shall apply, *mutatis mutandis*, to the salaries of the Law Officers.

(7) In the exercise of any powers vested in the Law Officers in relation to public prosecutions, they shall act according to their discretion and shall not be subject to the control of any other person.

(8) Unless otherwise provided by Act of Parliament, Section 27 of the Scotland Act 1998 shall apply.

Chapter V. The Parliament of Scotland

Part 1 – Election and Composition

46. Establishment of Parliament

There shall be a Parliament of Scotland, which subject to this Constitution shall be the supreme legislative, representative and deliberative assembly of Scotland.

47. Composition of Parliament

(1) Parliament shall consist of one hundred and twenty-nine members, or such greater number of members, not exceeding two hundred, as may hereafter be prescribed by an Act of Parliament.

(2) Parliament shall sit and vote as one chamber.

(3) The members of Parliament shall be directly elected by the enfranchised citizens of Scotland, by secret ballot, by means of a system of proportional representation that ensures a fair reflection of the composition of Scottish society, both in general and with particular regard to party preference and to geographical diversity.

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

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

48. Ordinary General Elections

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

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

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

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

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

(a) Dissolve the Parliament on the day proposed;

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

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

49. Postponement of Elections during War or Emergencies

(1) Notwithstanding the provisions of Section 48, Parliament may by a resolution passed in accordance with this Section extend the duration of Parliament for a period of up to one year.

(2) A resolution to extend the duration of Parliament shall be:

(a) jointly proposed by the Prime Minister and the Leader of the Opposition; and

(b) passed by a two-thirds majority of the membership of Parliament.

(3) A resolution under this Section may be proposed only:

- (a) When Scotland is at war, under enemy occupation or subject to threat of invasion;
- (b) In the event of a natural disaster or other calamity which makes the holding of a general election impracticable; or
- (c) if a state of emergency under Section 28 is in effect.

50. Extraordinary General Elections

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

- (a) The Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament; or
- (b) Parliament has failed to nominate a Prime Minister within a period of thirty days following a general election, or within thirty days after the death in office, resignation or removal of the former incumbent Prime Minister.

(2) If the Presiding Officer makes such a proposal, the Head of State or Queen's Commissioner shall by proclamation —

- (a) Dissolve the Parliament and require an extraordinary general election to be held;
- (b) Require the poll at the election to be held on the day proposed; and
- (c) Require the Parliament to meet within the period of fourteen days beginning immediately after the day of the poll.

(3) If a poll is held under this Section within the period of twelve months ending with the day on which the poll at the next ordinary general election would be held (disregarding sub-section (3) of Section 48), that ordinary general election shall not be held. This provision shall not affect the year in which the subsequent ordinary general election is to be held.

51. Meetings of Parliament

(1) The first meeting of the Parliament following a general election shall be held on the day and at the time determined by the Presiding Officer, such day being no later than fourteen days after the dates of the general election. The Presiding Officer shall notify members of the date and time of that meeting.

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

(3) Parliament shall meet for at least one hundred and eighty sitting days in each parliamentary year.

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

52. Term of office of members

(1) The term of office of a member of Parliament begins on the day on which the member is declared to be returned.

(2) The term of office of a member of Parliament ends with the dissolution of the Parliament, unless the member –

(a) resigns his or her seat in accordance with sub-section (3) of this Section, or

(b) is disqualified in accordance with Section 53.

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

53. Qualification and Disqualification of Members

(1) Subject to sub-section (2) of this Section, and to rules of residency and nomination as may be prescribed by law, every citizen who is eligible to vote in parliamentary elections, who is at least twenty-one years of age, shall be eligible for election as a member of Parliament.

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

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

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

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

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

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

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

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

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

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

54. Judicial proceedings concerning disqualification

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

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

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

(4) The person in respect of whom an application is made shall be the defender. (5) The applicant shall give such caution for the expenses of the proceedings as the Court of Session may direct; but any such caution shall not exceed £5,000 or such other sum as the Cabinet may by order specify.

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

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

Part 2 – Parliamentary Organisation, Procedure and Privileges

55. Presiding Officer

(1) The Parliament shall, following a general election, elect from among its members a Presiding Officer and two deputies.

(2) The Parliament must do so—

(a) before it conducts any other proceedings, except the taking by its members of the oath of office, and

(b) in any event, within the period of 21 days beginning immediately after the day of the poll at the election.

(3) The Parliament may, at any time, elect from among its members one or more additional deputies.

(4) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under sub-sections (1) and (2) unless he or she previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

(5) Standing orders may make provision for additional deputies to hold office for a shorter time than provided by sub-section (4).

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

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

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

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

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

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

56. Clerk of the Parliament

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

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

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

57. Scottish Parliamentary Corporate Body

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

(2) The members of the corporation shall be—

(a) The Presiding Officer; and

(b) At least four members of the Parliament appointed in accordance with standing orders.

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

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

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

(6) Any expenses of the Corporate Body shall be payable out of the Scottish Consolidated Fund. Any sums received by the corporation shall be paid into that Fund, subject to any provision made by or under an Act of the Parliament of Scotland for the disposal of or accounting for such sums.

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

58. Parliamentary Bureau

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

(a) The Presiding Officer; and

(b) One member of Parliament nominated by each parliamentary party having at least five members of Parliament.

(2) Independent members and members of Parliament belonging to any party having less than five members of Parliament may unite into a 'Mixed Group' which shall be entitled to representation in the Parliamentary Bureau if in total it has at least five members of Parliament.

(3) The Parliamentary Bureau, subject to this Constitution and to the standing orders of Parliament, shall determine Parliament's timetable and order of business.

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

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

59. Standing Orders

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

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

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

(b) A *sub judice* rule.

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

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

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

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

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

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

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

60. Power to call for witnesses and documents

(1) The Parliament may require any person—

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

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

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

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

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

(5) A procurator fiscal is not obliged under this section to answer any question or produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate considers that answering the question or producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and has authorised the procurator fiscal to decline to answer the question or produce the document on that ground.

(6) The Presiding Officer or such other person as may be authorised by standing orders may administer an oath to any person giving evidence in proceedings of the Parliament and may require such oath to be taken.

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

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

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

61. Conflicts of Interest

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

(2) Provision shall be made—

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

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

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

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

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

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

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

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

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

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

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

62. Privileges and Immunities of Members

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

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

63. Remuneration of Members of Parliament

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

(2) The Parliament may make provision for the payment of allowances to members of the Parliament for the purposes of:

(a) Travel and accommodation;

(b) Office expenses; and

(c) Secretarial and research support.

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

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

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

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

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

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

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

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

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

64. Leader of the Opposition

(1) The member of Parliament who is the leader of the largest opposition party shall be designated by the Presiding Officer as Leader of the Opposition.

(2) The Leader of the Opposition shall, in addition to the other duties and privileges vested in his or her office by this Constitution or by law or custom, shall be entitled to a salary equivalent to that of a Minister and shall rank immediately after the Prime Minister in the order of precedence.

(3) The term ‘opposition party’ in this Section means a party which does not form the government, is not in coalition with the government, and does not have a ‘confidence and supply’ or any other such agreement to support the government.

Part 3 – Legislative Procedure

65. Power to make laws

(1) Subject to the provisions of this Constitution, Parliament may enact, amend and repeal all laws for the peace, order and good government of Scotland.

(2) The laws referred to in this section shall take the form of bills passed by Parliament. When a bill has been passed by Parliament it shall be presented to the Head of State or Queen’s Commissioner for assent, and when such assent is given the Bill shall become law.

(3) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Be it enacted by the Parliament of Scotland, as follows: - ”

66. Introduction of Bills

(1) Subject to sub-section (2) of this Section, any member of Parliament or parliamentary committee may, in accordance with Standing Orders, propose and introduce a bill.

(2) Except on the recommendation of the Head of State or Queen’s Commissioner signified by a Minister, Parliament shall not –

(a) Proceed upon any bill (including any amendment to a bill) which, in the opinion of the Presiding Officer, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the Consolidated Fund or other funds of Scotland, or for

altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Scotland;

(b) Proceed upon any motion (including any amendment to a motion) which would, in the opinion of the Presiding Officer, if carried, require the introduction of such a Bill as is referred to in paragraph (a) to give effect to the motion; or

(c) Receive any petition which, in the opinion of the Presiding Officer, requests that provision be made for any of the purposes aforesaid.

67. Consideration of Bills

(1) Subject to any further provisions specified by Parliament's Standing Orders, bills shall be considered by Parliament in three stages, including:

(a) Consideration of the general principles of the bill by one or more parliamentary committees, and a debate and decision on these by the Parliament;

(b) Detailed consideration of the bill by committee, with the facility to propose amendments;

(c) Final consideration of the bill by the Parliament and a decision whether it should be passed or rejected.

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

68. Submission of Bills for Royal Assent

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

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

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

(b) Subject to the provisions of sub-sections (3) and (4), withhold assent.

(3) The Head of State or Queen's Commissioner shall not withhold assent to any bill unless he or she is of the view that:

(a) The bill is repugnant to this Constitution;

(b) The bill is incompatible with Scotland's obligations under international law; or

(c) The bill has not in fact been passed by Parliament owing to a procedural defect.

(4) The powers conferred by sub-section (3) shall be exercised by Head of State or Queen's Commissioner at his or her personal discretion, but only after having sought the opinion of –

(a) in the case of a withholding of assent under paragraphs (a) or (b) of sub-section (3) of this Section, the Lord Advocate; or

(b) in the case of a withholding of assent under paragraph (c) of sub-section (3) of this Section, the Presiding Officer.

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

(6) If the Head of State or Queen's Commissioner withholds assent to a bill, the bill shall be returned to Parliament for reconsideration; and if after such reconsideration the bill is passed by Parliament, with or without amendment, by an absolute majority of the total membership of Parliament, the Head of State or Queen's Commissioner shall without any further delay grant assent to the bill.

69. Delegation of Legislative Power

(1) Acts of Parliament may delegate the authority to make regulations having the force of law to Ministers and other public authorities.

(2) Except as otherwise provided by law, regulations shall be laid before Parliament for at least thirty days before coming into effect, and during this time any proposed regulation may be vetoed by a resolution of Parliament.

(3) Parliament may not delegate legislative authority concerning:

- (a) the levying of taxation,
- (b) the creation of new criminal offences,
- (c) the personal rights of citizens, or the principles of civil or criminal law.

(4) No regulation shall ever amend, repeal, or suspend, an Act of Parliament.

70. Referendums

(1) Parliament may make provision by law for the holding of a national referendum to ascertain the views of the people on:

- (a) any proposed legislative bill, other than a money bill; or
- (b) any question of policy of national importance, as set out in a White Paper.

(2) Referendums held on the approval of a bill to amend the Constitution, or on the adoption of a new Constitution, shall be binding. All other referendums shall be advisory and not legally binding.

Chapter VI. Judiciary

71. Judicial Authority

(1) The judicial authority of Scotland shall comprise –

- (a) Court of Session and the High Court of Justiciary, as the supreme courts of Scotland for civil and criminal matters respectively; and
- (b) The Sheriff Courts, and such other Courts and Tribunals as may from time to time be established by Act of Parliament.

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

72. Appointment of Judges

(1) The judges of the Court of Session and High Court of Justiciary, Sheriffs Principal, Sheriffs, and all other members of the judiciary, with the exception of Justices of the Peace, shall be appointed by the Head of State or Queen's Commissioner, acting on the advice of the Judicial Appointments Board.

(2) The Judicial Appointments Board shall be constituted in accordance with Schedule 1 of the Judiciary and Courts (Scotland Act) 2008.

(3) Where the Judicial Appointments Board is selecting an individual to be recommended for appointment:

(a) Selection must be solely on merit, which shall include knowledge of the law and skills and competence in the interpretation and application of the law;

(b) The Board may select an individual only if it is satisfied that the individual is of good character.

(4) Subject to the provisions of sub-section (3), the Board in carrying out its functions, must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office.

73. Tenure of Office

(1) Subject to the provisions of this Section and Section 74, judges of the Court of Session, High Court of Justiciary, and Sheriff Courts, shall continue in office for life.

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

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

74. Removal of Judges

(1) A judge may be removed from office only by the Head of State or Queen's Commissioner acting upon a resolution of Parliament praying for their removal on the grounds of inability, neglect of duty or misbehaviour.

(2) A tribunal to investigate and report on whether a person holding a judicial office is unfit to hold the office by reason of inability, neglect of duty or misbehaviour:

(a) must be constituted when so requested by the Lord President, and

(b) may be constituted in such other circumstances as the Prime Minister thinks fit.

(3) A tribunal under sub-section (2) of this Section shall consist of:

(a) two individuals who hold, or have held, high judicial office ("judicial members"),

(b) one individual who is, and has been for at least 10 years, an advocate or solicitor, and

(c) one individual who does not hold (and has never held) high judicial office and is not (and never has been) an advocate or solicitor.

(4) A resolution for the removal of any judge under sub-section (1) of this Section:

(a) may be proposed only on the basis of a written report issued by a tribunal constituted under sub-section (2) of this Section, concluding that the individual in question is unfit for office by reason of inability, neglect of duty or misbehaviour, and giving reasons for that conclusion; and

(b) shall have effect only if it is passed by a two-thirds majority of the members of Parliament present and voting.

(5) A judge may be suspended from office in accordance with the law when a tribunal under sub-section (2) of this Section has been appointed, but suspension of an individual from judicial office under this sub-section does not affect any remuneration payable to, or in respect of, the individual in respect of the period of suspension.

75. Judicial Independence

(1) The following persons must uphold the continued independence of the judiciary—

- (a) the Prime Minister,
- (b) the Lord Advocate,
- (c) persons holding Ministerial office,
- (d) members of Parliament, and
- (e) all other persons with responsibility for matters relating to—
 - (i) the judiciary, or
 - (ii) the administration of justice.

(2) In particular, the Prime Minister, the Lord Advocate and persons holding Ministerial office —

- (a) must not seek to influence particular judicial decisions through any special access to the judiciary, and
- (b) must have regard to the need for the judiciary to have the support necessary to enable them to carry out their functions.

76. Appeals on Constitutional Matters

The Court of Session shall have final appellate jurisdiction over all questions concerning —

- (a) The validity of Acts of Parliament, treaties, and other laws, under the terms of this Constitution; and
- (b) The interpretation of this Constitution.

77. Prerogative of mercy

The Head of State or Queen's Commissioner, acting on the advice of the Minister for Justice, and subject to any provisions or procedures prescribed by law, may —

- (a) Grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;
- (b) Grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

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

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

Chapter VII. External Relations and Defence

78. Treaties and International Agreements

(1) Subject to the provisions of sub-sections (2) and (3) of this Section, the Government may enter into relations with other states, and may negotiate treaties and other agreements with foreign states and with international organisations.

(2) An enabling Act of Parliament shall be required to authorise the ratification of any treaty or international agreement which shall affect –

(a) the domestic law of Scotland,

(b) the rights or duties of Scottish citizens,

(c) the territorial claims of Scotland,

(d) the public finances or revenues of Scotland,

(e) the membership of Scotland in any Union, confederation, or other international organisation, or any substantial change in the terms of membership of such Union, confederation, or international organisation.

(3) Treaties and international agreements to which sub-section (2) does not apply may be ratified if –

(a) the Government has laid a copy of the treaty or agreement before Parliament, and

(b) Parliament has approved the treaty or agreement in accordance with such procedures as the Parliament may determine.

(4) Sub-sections (2) and (3) do not apply to any treaty or international agreement ratified in relation to Scotland before Independence Day and by which Scotland, as an independent State, continues to be bound on or after Independence Day in accordance with international law.

79. International Co-operation and Euro-Atlantic Integration

It shall be incumbent upon the Scottish Government to pursue Scotland's admission as a member state to –

(a) The North Atlantic Treaty Organisation,

(b) The Commonwealth of Nations,

(c) The Council of Europe,

(d) Either: (i) The European Union, or

(ii) The European Free Trade Association and the Customs Union.

- (e) The United Nations,
- (f) The Organisation for Security and Co-Operation in Europe,
- (g) The British-Irish Council, and
- (h) The Nordic Council.

80. Shared Service Agreements

(1) Provision may be made by agreement between the Scottish Government and the United Kingdom Government for:

- (a) the continued provision of services in Scotland or to citizens of Scotland by the United Kingdom Government or any agency or department thereof;
- (b) enhanced bilateral co-operation in defence, border security, cross-border transportation, postage and telecommunications communications, culture and heritage, broadcasting, macro-economic management, quarantine, protection of the environment, research and higher education, or other areas of common interest or concern.

(2) Agreements under this Section, in so far as they affect the domestic law or finances of Scotland, shall come into effect only after enabling legislation has been enacted by the Parliament of Scotland.

81. Armed Forces

(1) The armed forces of Scotland shall consist of:

- (a) The Royal Scottish Navy, and
- (b) The Royal Scottish Army.

(2) Subject to this Constitution and any other provisions prescribed by law, the Royal Scottish Navy and Royal Scottish Army shall be under the supreme command of the Scottish Government, acting through the Minister of Defence.

(3) Parliament shall provide by law for the regulation, order, discipline, funding, recruitment, and administration, of the Royal Scottish Navy and Royal Scottish Army.

82. Parliamentary Supervision of Armed Forces

(1) Subject to the provisions of sub-sections (2) and (3) of this Section, no war may be declared, nor the armed forces deployed outside of the territory of Scotland on active service, except with the previous authorisation of Parliament. Such authorisation shall be given by means of a resolution, passed by an absolute majority of the members of Parliament, on the proposal of the Government.

(2) In the event of invasion or imminent threat of invasion, or other urgent threat to the safety and security of Scotland, the Government may take such action for the defence of the nation as the Government may see fit, including but not limited to the deployment of armed forces on active service outside the territory of Scotland.

(3) When Scotland is bound by terms of a treaty to go to the defence of another state or to commit armed forces to the collective defence of an alliance, the Government may act in accordance with such obligation without having to seek the prior authorisation of Parliament.

(4) Whenever sub-sections (2) or (3) of this Section are invoked by the Government, it shall be the duty of the Government to report the matter to Parliament as soon as the circumstances of the situation will permit, by means of a ministerial statement followed by a plenary debate.

Chapter VIII. Financial Provisions

83. Consolidated Fund

(1) All revenues or other moneys raised or received for the purposes of the Scottish Government shall be paid into and form one Consolidated Fund.

(2) Sub-section (1) of this Section shall not apply to revenues or other moneys that are payable by or under any Act of Parliament into some other fund established for a specific purpose or that may by or under any such law be retained by the authority that received them for the purposes of defraying the expenses of that authority.

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

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

(b) Where the issue of those moneys has been authorised by an appropriation law or in such manner, and subject to such conditions, as may be prescribed in pursuance of Section 84.

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

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

84. Authorisation of expenditure

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

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

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

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

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

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

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

85. Contingencies Fund

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

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

86. Remuneration of Constitutional Officers

(1) There shall be paid to the holders of the following offices such salaries and such allowances as may be prescribed by Parliament:

- (a) The Queen's Commissioner
- (b) Any judicial office, other than the office of justice of the peace
- (c) The Auditor-General
- (d) The members of the Electoral Commission
- (e) The members of the Public Service Commission
- (f) The Public Services Ombudsman

(2) The salaries and any allowances payable to the holders of the offices to which sub-section (1) applies and the remuneration and allowances shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary or remuneration payable to any person holding any office to which sub-section (1) applies or to his or her terms of office, other than allowances, that is to his or her disadvantage shall not have effect in relation to that person after his or her appointment unless he or she consents to its having effect.

87. Public Debt

(1) All debt charges for which Scotland is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this Section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Scotland or the Consolidated Fund and the service and redemption of debt thereby created.

88. Auditor-General for Scotland

(1) There shall be an Auditor General for Scotland who shall be an individual appointed by the Head of State or Queen's Commissioner on the nomination of the Parliament.

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

(3) The Auditor General may be removed from office only upon a motion of the Parliament praying for his or her removal, on the grounds of misconduct, neglect of duty, or incapacity, passed by a two-thirds majority of the members of Parliament.

(4) The public accounts of Scotland and of all courts of law and all authorities and offices of the Scottish Government shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorised by him or her in that behalf shall have access to all books, records, reports and other documents relating to those accounts.

(5) The Auditor-General shall annually submit and lay his or her reports before the Parliament.

(6) In the exercise of his functions under this Constitution the Auditor-General shall not be subject to the direction or control of any other person or authority.

(7) In reporting on public expenditures, the Auditor-General may consider not only the lawfulness and propriety of expenditures, but also questions of good economy, efficiency, effectiveness and sustainability.

Chapter IX. Administrative and Miscellaneous Provisions

89. Civil Service Impartiality

The administration of Scotland shall be organised as a permanent, professional and non-partisan civil service, the members of which shall be selected and promoted on merit and shall enjoy security of tenure during good behaviour.

90. Public Service Commission

(1) There shall be a Public Service Commission for Scotland, which shall be responsible for –

(a) supervising and monitoring the selection, promotion, pay, conditions of service, and discipline, of the civil service; and

(b) advising the Government on certain public sector appointments and in general on matters of personnel administration.

(2) The Public Service Commission shall consist of five members, who shall be appointed by the Head of State or Queen's Commissioner, acting on the advice of the Prime Minister.

(3) The Prime Minister shall tender advice under sub-section (3) only after having consulted:

(a) the Leader of the Opposition;

(b) the Secretary to the Cabinet; and

(4) A majority of the members of the Public Service Commission must be persons qualified by their knowledge of public service and their experience of senior management in the public sector.

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

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

(b) A public officer; or

(c) A member of any political party.

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

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

(8) The office of a member of the Public Service Commission shall become vacant –

(a) If he or she becomes disqualified for appointment under sub-section (5) of this Section;

(b) If he or she tenders his resignation to the Head of State or Queen's Commissioner, and if the Head of State Queen's Commissioner, acting on the advice of the Prime Minister, given after he or she has consulted the Leader of the Opposition and the Secretary to the Cabinet, accepts such resignation;

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

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

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

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

(12) All powers, duties and functions hitherto vested in the Commissioner for Ethical Standards in Public Life by or in accordance with any law in effect in Scotland shall be vested in the Public Service Commission.

91. Appointment of Public Officers

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

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

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

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

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

(5) The Head of State or Queen's Commissioner, acting on the advice of the Prime Minister, given after the Prime Minister has consulted with the Public Service Commission, shall appoint and may remove:

- (a) The Permanent Secretary of each administrative department, and other officers of Permanent Secretary rank;
- (b) Any Ambassador, High Commissioner or other principal representative of Scotland in any other country.

(6) The Queen's Commissioner, acting according to his or her personal judgment and discretion, shall have the authority to appoint and may remove –

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

92. Public Services Ombudsman

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

(2) The Public Services Ombudsman shall be appointed by the Queen's Commissioner on the nomination of the Parliament.

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

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

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

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

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

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

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

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

93. Local Government

(1) There is to continue to be local government in Scotland.

(2) Each local authority is to be administered by a Council which:

(a) shall have autonomy in the carrying out of their functions and in the exercise of the powers vested in them by or in accordance with the law, and

(b) shall represent and promote the interests of the people of the local area.

(3) The members of each local Council are to be elected in accordance with law –

(a) directly by people living within the local area,

(b) by a system of proportional representation, and

(c) at elections to be held at intervals of not more than 5 years.

(4) Nothing in this Section shall prohibit provision being made by law for the direct election of Lord Provosts, Provosts, or other executive officers of local councils.

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

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

94. Conduct of Elections

(1) Parliament shall provide by law for the suppression of all corrupt and illicit practices in relation to elections and referendum campaigns, in order to ensure that elections and referendums are free and fair.

(2) Provisions under sub-section (1) of this Section may include, but shall not be limited to:

- (a) Regulating spending on elections and referendum campaigns by parties, candidates and other organizations or individuals;
- (b) ensuring equitable access to public broadcasting media for parties, candidates and referendum campaigns;
- (c) requiring donations and other sources of funds for parties, election campaigns and referendums to be openly declared; and
- (d) prohibiting all foreign and corporate donations.

95. Electoral Commission

(1) There shall be an independent and non-partisan Electoral Commission, which shall consist of –

- (a) the Chief Electoral Commissioner, and
- (b) four Electoral Commissioners.

(2) The Chief Electoral Commissioner shall be a judge of at least seven years' standing, who shall be appointed by the Head of State or Queen's Commissioner on the advice of the Judicial Appointments Board.

(3) The Electoral Commissioners shall be persons who are qualified and experienced in electoral law or electoral administration, of which:

- (a) two shall be appointed by the Head of State or Queen's Commissioner acting on the joint nomination of the Prime Minister and the Leader of the Opposition; and
- (b) two shall be appointed by the Head of State or Queen's Commissioner on the advice of the Public Service Commission.

(4) No person may be a member of the Electoral Commission who:

- (a) has during the last ten years been a member of Parliament, or a candidate for election to Parliament;
- (b) has during the last five years been a member of any political party; or
- (c) is the spouse, former spouse, parent, child, sibling, niece, nephew, uncle, aunt, cousin, or business partner, of any person who has been a member of Parliament, or a candidate for election to Parliament, in the last five years.

(5) Members of the Electoral Commission shall serve for a single, non-renewable term of six years, during which time they shall enjoy the same security of tenure enjoyed by judges

(6) Subject to this Constitution and the law, the Electoral Commission shall be responsible for ensuring the free and fair conduct of elections and referendums, including but not limited to:

- (a) conducting or overseeing the registration of voters;
- (b) supervising polling stations and ensuring the integrity of the balloting process;
- (c) enforcing regulations on political donations and expenditures, on the registration and operation of political parties, and on political broadcasting;

- (d) making recommendations to Parliament for the non-partisan revision of the boundaries of electoral regions in response to demographic changes;
- (e) advising Parliament on matters of electoral process and electoral law; and
- (f) impartially informing voters about the electoral process.

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

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

96. Civic Honours

(1) Subject to the provisions of this Constitution and the law, the Head of State or Queen's Commissioner, upon the advice of the Prime Minister, may award honours in recognition of:

- (a) military or civil valour;
- (b) public service;
- (c) contributions to the national life of Scotland; or
- (d) humanitarian service.

(2) Honours granted under this Section shall not be hereditary and shall not entitle the bearer to any special privileges. No new hereditary titles shall be created in Scotland.

(3) Unless otherwise provided by law, honours shall not be accompanied by any pension or other financial reward.

(4) Parliament shall establish an all-party committee to make recommendations, on merit, to the Prime Minister in tendering advice to the Head of State or Queen's Commission under this Section.

97. Oaths of Office

(1) All members of Parliament, members of the Government, civil servants, police, military and diplomatic officers, and judges, as well as all other persons holding a public office under this Constitution, shall take an oath or affirmation of office in the following terms:

'I do hereby solemnly swear / affirm that I will defend and uphold the Constitution of Scotland, and that I will perform my duties with honesty and integrity, to the best of my ability, in accordance with the Constitution and the law (so help me God).'

(2) The oath or affirmation of office may be validly taken with or without religious invocation.

Chapter X. Transition and Amendment

98. Power to Amend Constitution

(1) Subject to the provisions of this Section, Parliament may by Act amend this Constitution.

(2) A bill to amend the Constitution must expressly declare its intention to do so and must be designated as a Constitutional Amendment Act in its short title.

(3) A bill to amend the Constitution shall be published and circulated for public discussion for at least three months before being voted upon in Parliament.

(4) A bill to amend the Constitution shall not be deemed to have been passed by Parliament unless it is approved at its final reading by a three-fifths majority vote of the total membership of Parliament.

(5) A bill to amend the Constitution shall not be submitted to the Head of State or Queen's Commissioner for assent unless:

(a) it has been the subject of a national referendum held in accordance with a law enacted under Section 70; and

(b) a majority of the votes cast in the referendum are in favour of the bill.

99. Provisional Status of Constitution

(1) Subject to the provisions of sub-Sections (2) and (3) of this Section, this Constitution shall have provisional status for a period of 5 years from the date on which it comes into effect (the 'Provisional Period').

(2) Parliament may, by means of a resolution passed by a three-fourths majority of its members, extend the Provisional Period for up to two additional years. This extension may not be repeated.

(3) If during the provisional period a permanent Constitution for Scotland is adopted in accordance with Section 100, the provisional period shall come to an end and the permanent Constitution shall become the Constitution of Scotland.

100. Development of Permanent Constitution

(1) Parliament may make provision by law for the establishment of a Constitutional Convention, which shall be charged with the task of drafting a written permanent constitution for Scotland.

(2) An Act enacted in accordance with sub-section (1) of this Section must include provision for –

(a) the membership of the Convention to be chosen in a way that:

(i) proportionally represents the various political parties in Scotland;

(ii) reflects the geographical diversity of Scotland;

(iii) is gender balanced;

(iv) makes provision for the inclusion of ethnic, religious and linguistic minorities, young persons, and persons with disabilities.

(b) the funding of, and administrative support for, the Convention,

(c) the time by which the Convention is to complete its task, which time shall not be later than six months before the expiration of the provisional period,

(d) the procedures and processes to be followed by the Convention in carrying out its task,

(e) public education, consultation and participation.

(3) The proposed permanent Constitution drafted by the Constitutional Convention shall come into effect and replace this Constitution if before the expiration of the provisional period:

- (a) It has been approved by a two-thirds majority of the members of Parliament; and
- (b) It has been submitted to a national referendum and approved by a majority of the votes cast.

101. Failure to adopt a Permanent Constitution

If at the expiration of the Provisional Period no Permanent Constitution has been adopted and approved in accordance with Section 100, then –

- (a) this Constitution shall lose its provisional character and shall remain in effect as the permanent Constitution of Scotland, and
- (b) Sections 99 and 100 of this Constitution, and this Section, shall cease to have effect.

102. Transitional Provisions

(1) The Scottish Parliament elected in May 2016 shall continue in being as the first Parliament of Scotland under this Constitution, and shall remain as such until it is dissolved in accordance with the provisions of this Constitution; provided, that the duration of this sitting Parliament shall be five years, with the first ordinary elections due to be held in May 2021.

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

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

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

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

(6) The residual powers of the Government in Scotland at the date at which this Constitution comes into effect shall be identical with the prerogatives of the Crown existing in the United Kingdom of Great Britain and Northern Ireland according to the law of Scotland immediately prior to that time, with the exception of any right, power or liberty or immunity belonging to the prerogative of the Crown which would be inconsistent with the provisions of this Constitution. Acts of the Parliament of Scotland shall override the residual powers of the prerogative in any case of inconsistency.