



Creating a modern constitution for an independent Scotland

BUILDING A NEW
SCOTLAND



Summary

Introduction

This fourth paper in the 'Building a New Scotland' series sets out:

- how people in Scotland can shape how a newly independent country would work
- how independence could radically shift where power lies, by replacing Westminster sovereignty with the sovereignty of the people who live in Scotland
- how a written constitution could put rights and equality at its heart, including by protecting the right to strike and giving constitutional recognition to the NHS in Scotland
- how a permanent written constitution could be developed by the people in Scotland and their elected parliament, giving Scotland a constitution ready to take on the challenges of the future

The [full publication](#) provides more details on these proposals, an analysis of the evidence that informs them, as well as references to sources.

Why Scotland needs a written constitution

A constitution is a set of rules that guides how a country works. It includes:

- the principles setting out how the country must be governed
- what institutions the country will have (like parliament, government and the law courts) and the relations between them
- how powers are managed by those institutions
- key rights of, and, in the best instances, equality protections for, the people in the country

Unlike most countries, the United Kingdom does not have a single constitutional document. Instead, it has a range of laws, conventions, precedents and court judgments. The concept of 'Westminster parliamentary sovereignty', where ultimate authority rests with 'the Crown-in-Parliament', underpins the UK constitution.

The effect of UK parliamentary sovereignty is that Westminster can, at any time, by ministerial action or a simple majority in each House of Parliament, change the powers of the Scottish Parliament or Government. Laws made in Scotland by the Scottish Parliament, elected by the people of Scotland, can be overturned by the Westminster Parliament. Indeed, even devolution itself could be overturned by the Westminster Parliament, which could pass a law to repeal the Scotland Act and abolish the Scottish Parliament.

Independence would be an opportunity for people in Scotland to create a permanent, modern, written constitution for Scotland.

A single written document would establish the framework for Scotland as a modern, democratic state. It would set out and protect people's rights.

The Scottish Government is committed to extending and protecting human rights and equality safeguards for people in Scotland. However, its ability to do so is limited by the devolution settlement. Independence would help Scotland to secure rights and further embed equality by putting them at the heart of its constitution.

A constitution for an independent Scotland would mark the end of Westminster parliamentary sovereignty in Scotland.

How to create a modern constitution

The Scottish Government believes that the constitution of an independent Scotland should be based on the sovereignty of the people and reflect Scotland's values as a modern, democratic, European nation.

To achieve this, the Scottish Government proposes:

- an interim constitution, which would take effect on the day of independence
- a permanent constitution created by the people through a legally-mandated Constitutional Convention
- a referendum to enable people in Scotland to decide the permanent constitution

An interim constitution

The interim constitution for Scotland would be developed through consultation and conversation with people in Scotland and would build on the strong foundations of government already in place. It would take effect on the day Scotland becomes an independent country, providing stability and clarity while a permanent constitution is developed.

The interim constitution would describe the type of state that Scotland would be: at the point of independence we would be a country with a constitutional monarchy and a parliamentary democracy. It would establish the sovereignty of the people and set out the key institutions of the state, as well as its democratic processes and independent regulatory and oversight bodies. This would ensure that institutions like the Scottish

Government and the Scottish Parliament are accountable to the people. It would provide constitutional recognition of the NHS in Scotland. The Scottish Government also proposes that an interim constitution for Scotland should place a duty on the post-independence Scottish Government to pursue nuclear disarmament.

The interim constitution would embed human rights set out in the European Convention on Human Rights (ECHR), as well as the core international human rights treaties relating to economic, social and cultural rights and the rights of children, women, minority ethnic communities, disabled people and refugees, and the right to a healthy environment. The interim constitution would include a right to access a system of health care free at the point of need, and protect workers' rights, including the right to strike. It would also embed equality safeguards and include a duty to advance equality of opportunity for all.

With independence, these rights would cover both issues that are currently devolved and those that are reserved. Devolved areas are those where the Scottish Parliament has the power to make laws, like health and justice; currently reserved matters are those where the Westminster Parliament has the power to make laws, including foreign affairs, employment law and immigration. With independence any laws that are incompatible with these rights across reserved areas could then be struck down.

The interim constitution would also place a duty on the Scottish Parliament to establish a Constitutional Convention, post-independence, to draft a permanent written constitution for Scotland.

A permanent constitution

Drafting the permanent constitution should be a shared national endeavour. It should be an inclusive and an expansive process, reaching out to all the people in Scotland. Members of a Constitutional Convention for Scotland should be recruited from across Scotland, ensuring that a wide range of people, communities and organisations, including experts and representatives of different groups across society, are involved in the shared national endeavour of creating a constitution.

It would be for the Constitutional Convention to present their permanent constitution to the Scottish Parliament, recognising that any modern constitution would need to be democratically and legally sound.

The draft permanent constitution would be considered by the Scottish Parliament, then put to the people in Scotland for them to endorse in a referendum. If approved, it would become the permanent, written constitution for Scotland.

In the Scottish Government's view, the permanent constitution should be a living document, capable of evolving over time in order to stay relevant. It should, however, also include constitutional safeguards that cannot be changed by a government with a simple parliamentary majority, but which can be amended when necessary.

The permanent constitution would be the basis on which all parliamentary and governmental activity takes place in an independent Scotland.

Protecting rights and equality

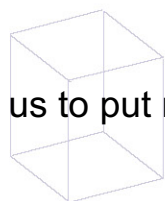
The Scottish Government is committed to fostering a strong human rights culture in Scotland, ensuring that constitutional human rights and equality protections are effectively implemented, monitored and reported on and that accessible remedies are available.

The Scottish Government would consider itself bound by the same international treaties and have, as a starting point, the same international human rights obligations as the UK has at the time of independence. Independence would also provide an opportunity for Scotland to consider the ratification of further international human rights treaties.

Conclusion

Independence would allow the people in Scotland to create a constitution that sets out how our country would work.

A new constitution would allow us to put rights and equality at the heart of Scotland's democracy.



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