

# Political Rights

The basis of internationally recognised direct Political Rights is the International Covenant on Civil and Political Rights (Art 25) (ICCPR), recognised by the UK, including Scotland, in 1976: ***“Every citizen shall have the right and the opportunity.....to take part in the conduct of public affairs, directly or through freely chosen representatives.”***

Although Holyrood could incorporate Art 25 in legislation on devolved matters tomorrow, it has nevertheless chosen to exclude ICCPR from the scope of SNAP 2 (Scotland’s National Human Rights Action Plan (2023-2030). And you might well be tempted to say: “So what ?”

Well, apart from the right to stand for election, right now the Scottish People have no direct Political Rights on national matters such as, particularly, the right to Referendums (to accept or refuse proposed legislation) or Initiatives (to either write a new Constitution or launch proposed constitutional changes). **And, already today, that has major implications for the Scottish People who, after all, are sovereign.**

The following pages describe the use of each Direct Democracy (DD) tool and list some case-studies which may help understand why ScotGov has chosen to exclude Art 25 from SNAP 2. Together with each description, I’ve included suggested articles for a future Scottish constitution - **I hope these drafts will help readers understand how important individual direct Political Rights, properly organised, are to Scotland’s future.**

# Scottish Popular Sovereignty and Modern Direct Democracy (DD)

## Political Rights - A Draft Constitution

Scotland's Constitution is based on Popular Sovereignty, the modern evolution of the Claim of Right and the following draft Constitution extracts are therefore based on that of Switzerland which has an identical constitutional foundation. The first Swiss federal Constitution dates from 1848 so the following suggestions are based on a constitution which has evolved, using Popular Sovereignty, since then.

Switzerland votes on initiatives and referendums four times a year, so the Constitution is a living document, acting as a safety valve for the People's frustrations. Constitutional change takes place the day after the popular vote although the follow-up legislation, which must be prepared by Parliament, sometimes takes a year or two to catch up.

Some Scots I've met say "But four votes a year must be ridiculously expensive!" to which I always reply "The People and their MSPs are partners in the business of running the country. Four votes a year is a small price to pay for consulting the People compared to running a parliament with annual running costs of hundreds of millions - if not billions - of pounds...". (References below are to the Swiss constitution).

### **1. Human Rights**

#### **Art. 33**     *Right of petition*

*1 Every person has the right, without prejudice, to petition the authorities.*

*2 The authorities must acknowledge receipt of such petitions.*

#### **Art. 34**     *Political rights*

*1 Political rights are guaranteed.*

*2 The guarantee of political rights protects the freedom of the citizen to form an opinion and to give genuine expression to his or her will.*

### **2. General Provisions**

#### **Art 136**

*1 All Scottish citizens over the age of sixteen, unless they lack legal capacity due to mental illness or mental incapacity, have political rights in national matters. All citizens have the same political rights and duties.*

*2 They may participate in elections to Parliament and in national popular votes and launch or sign popular initiatives and requests for referendums in national matters.*

#### **Art. 137**     *Political parties*

*The political parties shall contribute to forming the opinion and will of the People.*

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**3. Popular Initiatives**

Popular Initiatives allow the People to amend the Swiss Constitution and because, after some 175 years, it's extremely comprehensive, there are virtually no limits to topics which can be raised. The most frequent initiative themes are healthcare, taxes, welfare, drug policy, public transport, immigration, asylum, and education. In March 2024, for example, the People voted an 8.3% increase to the state Old Age Pension. For years, MPs had been ignoring the financial wellbeing of pensioners and, finally, the People decided to say "Enough's Enough!" This Initiative was launched by the Trade Union Movement and a similar vote - this time to put a cap on health insurance premiums at 10% of taxable income and again sponsored by the Swiss TUC - is scheduled for June 2024.

*Art. 138 Popular initiative requesting a total revision of the Constitution.*

*1 Any 90,000 persons eligible to vote may, within 18 months of the official publication of their initiative, propose a total revision of the Constitution.*

*2 This proposal must be submitted to a vote of the People.*

*Art. 139 Popular initiative requesting a partial revision of the Constitution in specific terms.*

*1 Any 90,000 persons eligible to vote may, within 18 months of the official publication of their initiative, request a partial revision of the Constitution.*

*2 A popular initiative for a partial revision of the Constitution may take the form of a general proposal or of a specific draft of the provisions proposed.*

*3 If the initiative fails to comply with the requirements of consistency of form, and of subject matter, or if it infringes mandatory provisions of international law, Parliament shall declare it to be invalid in whole or in part.*

*4 If Parliament is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Regions. If Parliament rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favour, Parliament shall draft the corresponding Bill.*

*5 An initiative in the form of a specific draft shall be submitted to the vote of the People and the Regions. Parliament shall recommend whether the initiative should be adopted or rejected. It may submit a counter-proposal to the initiative.*

**Art. 139a**

*Repealed*

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**3. Popular Initiatives** (continued)

*Art. 139b Procedure applicable to an initiative and counter-proposal*

*1 The People vote on the initiative and the counter-proposal at the same time.*

*2 The People may vote in favour of both proposals. In response to the third question, they may indicate the proposal that they prefer if both are accepted.*

*3 If in response to the third question one proposal to amend the Constitution receives more votes from the People and the other more votes from the Regions, the proposal that comes into force is that which achieves the higher sum if the percentage of votes of the People and the percentage of votes of the Regions in the third question are added together.*

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### 4. Mandatory Referendum

A Mandatory Referendum is required for government-proposed constitutional amendments, accession to security and supranational entities and certain emergency legislation which must be approved by a “double majority” of the People and the Regions. A future independent Scotland could adopt such a mechanism to protect the interests of the Highlands & Islands and Orkney & Shetlands. An interesting Double Majority (DM) case-study is Brexit - which would never have happened with a UK DM Constitution, Scotland and NI being against.

The Scottish National Congress Steering Committee (SNC) is currently contesting the Victims, Witnesses and Justice Reform Bill (VWJR) because two aspects - to introduce Juryless Trials and drop the Not Proven verdict - change Scotland’s ancient Constitution. SNC has therefore formally requested a Mandatory Referendum. However, for the moment, MSPs are ignoring this. VWJR will progress through Stages 2 & 3 of parliamentary process over the coming months and it is to be expected that MSPs will soon be put under pressure to recognise the validity of the referendum request.

On 3<sup>rd</sup> May 2024 the UN Human Rights Committee published its 8<sup>th</sup> Periodic Report on UK compliance with its Human Rights commitments described in the International Covenant on Civil and Political Rights 1976 and the Committee repeated the following comment from previous reports dating back to at least 2008 and probably before: “*The Committee remains concerned that not all the rights enshrined in the Covenant are adequately incorporated into the domestic legal system...*”. This is directly applicable to each Scottish citizen’s direct Political Right to referendums, as in the case of the VWJR Bill so, during the coming months, MSPs will have to choose between recognising the Human / Political Rights of the Scottish People or, instead, opting for the conflictual alternative of continuing to ignore the SNC and other citizens’ referendum requests. The Scottish Human Rights Commission, Scotland’s National Human Rights Action Plan (SNAP 2) Leadership Panel and the international Human Rights community will almost certainly be watching with interest.

#### **Art. 140** *Mandatory referendum*

*1 The following must be put to the vote of the People and the Regions:*

- a. amendments to the Constitution;*
- b. accession to organisations for collective security or to supranational communities;*
- c. emergency acts of Parliament that are not based on a provision of the Constitution and whose term of validity exceeds one year; such acts must be put to the vote within one year of being passed by Parliament.*

*2 The following are submitted to a vote of the People:*

- a. popular initiatives for a total revision of the Constitution;*
- b. popular initiatives for a partial revision of the Constitution in the form of a general proposal that have been rejected by Parliament.*

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### 5. Optional Referendum

Optional Referendums come into play when Government and Parliament propose what's known as "Bad legislation" - controversial legislation for which there is little or no public support - and 1% of the electorate sign up to launch a national Referendum contesting the Bill concerned before enactment.

Recently, such a referendum could have prevented, for example, either the Hate Crime Act or the GRR Bill but there are numerous other examples where well-thought out referendums - or where even only the possibility that the People could launch a referendum - could have prevented unpopular political or administrative decisions such as: imposition of "green" freeports; sale of Scotland's main ports to private companies; imposing higher electricity standing charges compared with England when we produce most of the renewable energy; cabling billions of pounds worth of our renewable energy to England without compensation; the potential sell-off of Scotland's health service; stationing nuclear weapons (and now maybe a new nuclear power station...) against our will; dumping nuclear waste in our seas and on our land; undue influence from south of the border in the governance of Scottish universities and cultural institutions. The list seems endless.

One particularly interesting Bill will shortly be published by ScotGov - *The Local Governance Review - Democracy Matters*. This Bill will be interesting because it will almost certainly not comply with the Popular Sovereignty / Decentralised Direct Democracy (DDD) principle of Subsidiarity whereby "*Under the principle of subsidiarity, nothing that can be done at a lower political level should be done at a higher level. If, for example, a community is unable to deal with a certain task, the next higher political entity, i.e. the region, has a duty to provide support.*"

Personally, I'm willing to bet that in the Bill soon to be proposed by ScotGov, Central Government will still be pulling too many strings (the big ones being finance and taxation) and I'm hopeful that this Bill will be another case where, like SNC and the VWJR Bill mentioned previously, a Referendum will be requested by groupings of communities or local authorities.

I'm already on record as having contested one very dubious statement in ScotGov's Policy Memorandum on the VWJR Bill (and ScotGov has ignored my e-mails on the subject) so I'm looking forward to reading the government's Consultation Analysis and Policy Memorandum on the forthcoming Local Governance Bill. **I hope community and local authority office bearers and officials will be doing the same. At the same time, I hope they'll be asking themselves the question as to whether Decentralised Direct Democracy (DDD) would or would not have produced a better result. If the answer is "It would", I hope they'll be requesting a referendum during the Call for Views and pushing MSPs to support them.**

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**5. Optional Referendum** (continued)

*Art. 141*    *Optional referendum*

*If within 100 days of the official publication of the enactment any 45,000 persons eligible to vote or any three Regions request it, the following shall be submitted to a vote of the People:*

- a. acts of Parliament*
- b. emergency acts of Parliament whose term of validity exceeds one year;*
- c. Statutory Instruments, provided the Constitution or an act so requires;*
- d. international treaties that:*
  - 1. are of unlimited duration and may not be terminated,*
  - 2. provide for accession to an international organisation,*
  - 3. contain important legislative provisions or whose implementation requires the enactment of legislation.*

*Art. 141a*    *Implementation of international treaties*

*1 If the decision on ratification of an international treaty is subject to a mandatory referendum Parliament may incorporate in the decision on ratification the amendments to the Constitution that provide for the implementation of the treaty.*

*2 If the decision on ratification of an international treaty is subject to an optional referendum, Parliament may incorporate in the decision on ratification the amendments to the law that provide for the implementation of the treaty.*

*Art. 142*    *Required majorities*

*1 Proposals that are submitted to the vote of the People are accepted if a majority of those who vote approve them.*

*2 Proposals that are submitted to the vote of the People and Regions are accepted if a majority of those who vote and a majority of the Regions approve them.*

*3 The result of a popular vote in a Region determines the vote of the Region.*