

# AFTER THE REFERENDUM: A CONSTITUTION FOR AN INDEPENDENT SCOTLAND

**LOCAL (AND REGIONAL?)  
GOVERNMENT  
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# LOCAL (AND REGIONAL?) GOVERNMENT

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# 1. THE CASE FOR A LOCAL GOVERNMENT CHAPTER

1. Convention
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# THE CASE FOR A LOCAL GOVERNMENT CHAPTER

## CONVENTION

Most modern constitutions contain articles on local government (cf recent Australian exercise on constitutional “financial recognition”)

# THE CASE FOR A LOCAL GOVERNMENT CHAPTER

European Charter of Local Self-Government (1985) Art 2

“ The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.”

# THE CASE FOR A LOCAL GOVERNMENT CHAPTER

## Scottish instances

- (a) **The Treaty of Union 1706 Art 21 (rights of royal burghs)**
- (b) **A Constitution for Scotland (1964) Ch 6 – Scottish Secretariat (see also the later “Constitution for Free Scots” Arts 45-55)**
- (c) **SNP 1977 and SNP (MacCormick) “An Idea for a Scottish Constitution” in *Edinburgh Essays in Public Law* (1991) But no reference to local government.**
- (d) **A Constitution for a Free Scotland (2002) Art 4 (SNP)**
- (e) **The Constitution of the Kingdom of Scotland (2010) (Constitutional Commission)**

# Scottish Secretariat 1964

## Chapter Six LOCAL GOVERNMENT

Art 92 The national Assembly shall grant to Local Authorities certain rights and powers to make and publish local byelaws and to levy local rates and taxes and to manage their own affairs. All such rights and powers shall be safeguarded by law, but all byelaws and levies shall be subject to the scrutiny and sanction of the National Assembly.

Art 93 The areas and functions of Local Authorities shall be defined by statute in such a manner as to provide local bodies with as much power and initiative as is practicable within the Constitution.

# SNP 2002

(No LG in 1977 version)

## Article IV – Local Government

**1 Local government shall be guaranteed genuine autonomy and freedom from interference by central government (including ministers) within the areas entrusted by law to local authorities.**

**2 Parliament will have the power to legislate generally for local government, and in particular to legislate concerning the composition, areas of authority, and financial and taxing powers of local authorities, but the exercise by a local authority of any power conferred on it by law shall not be subject to direct or indirect interference or overriding by any decision of the central government.**

**3 The Islands authorities as presently constituted shall continue to enjoy all such special powers as they have at present, and legislation shall not be passed which derogates from their powers or varies their territorial jurisdiction save if this is confirmed by a majority vote**

**of the islanders within the islands concerned.**

**4 A fair system of proportional representation, similar to the system for parliamentary elections, shall apply in all local government elections.**

# CONSTITUTIONAL COMMISSION 2010

## Chapter VIII – County, City and Burgh Councils

(64) The territory of the Kingdom shall be divided by law into Counties and Cities, which shall be governed by County or City Councils. County and City Councils shall consist of at least twenty but not more than sixty members, elected by the enfranchised citizens thereof, by secret ballot, using the Single Transferable Vote system, for renewable three-year terms.

(65) Burghs may be established within the Counties. All the burghs abolished by the Local Government (Scotland) Act, 1973, are hereby restored. Other towns and communities may be granted Burgh status on application by the people of the locality according to law. The government of a Burgh shall be vested in a Burgh Council, consisting of at least twelve members elected by the enfranchised citizens thereof, by secret ballot, using the Single Transferable Vote system, for renewable three-year terms. In addition, up to one-fourth of the Burgh Councillors may be Bailies, co-opted by the elected Councillors for renewable six-year terms, to represent Chambers of Commerce and other principal interests of the town.

(66) Each County, City or Burgh Council shall elect from amongst its members a Convenor, Lord Provost, or Provost, who shall preside over the Council and represent the County, City or Burgh. Each Council shall also elect an executive committee, headed by a Leader of the Council, to prepare the business of the Council and to ensure the execution of its decisions.

Provided, however, that provision may be made by law for the direct popular election of an Executive Lord Provost in Cities, who shall combine both ceremonial and executive duties.

(67) The County, City and Burgh Councils shall possess such devolved legislative, executive, regulatory, fiscal and police powers as may be vested in them by law, or delegated to them by the Council of Ministers, in accordance with the principles of subsidiarity. They shall also possess a general competence to enact and enforce ordinances for the peace, order and good government of the County, City or Burgh, provided that these are not contrary to the laws.

(68) The County, City and Burgh Councils shall be autonomous in the use of their powers, and in the expenditure of revenues raised from their own sources, subject only to control by the Courts, and to inspection and supervision by the Ombudsman and the Auditor-General.

# PURPOSES (INSTITUTIONAL DESCRIPTION/AUTONOMY GUARANTEE), TECHNIQUES, AND DEGREES OF SPECIFICITY

With special reference to the European  
Charter and meeting current concerns

# EUROPEAN CHARTER REQUIREMENTS

Inter alia:

- ▣ Local authority powers to be a “substantial share of public affairs” Art 3(1)
- ▣ Generally to be exercised by authorities closest to the citizen Art 4(3)
- ▣ Financial resources to be “adequate” and “commensurate with responsibilities” Art 9(1)(2)

# CURRENT CONCERNS

Including:

- ▣ COSLA's Commission on Strengthening Local Democracy
- ▣ Council evidence on Public Bodies (Joint Working)(Scotland) Bill
- ▣ Sarah Boyack "Double Devolution" in *Ambitions for Scotland* (Scottish Fabians, 2013)
- ▣ *The Silent Crisis: Failure and Renewal in Local Democracy in Scotland* (Jimmy Reid Foundation, 2013)
- ▣ *Powers for a Purpose* (Interim Report of Scottish Labour Devolution Commission, 2013) Pt 5 "Reversing Centralism" and esp paras 165-168 on constitutional guarantees

# Special/Other cases

**Islands (“Our Islands – Our Future” and “Lerwick Declaration”)**

**Cities (eg “Scotland’s Cities: Delivering for Scotland” 2011; see also Report on Glasgow City Autonomy 2013)**

**Capital city**

**Regions – in general (presumably needed anyway for EU purposes) or “special status”**

# DIFFERENCES BROUGHT BY INDEPENDENCE

Contrast with:

1. COSLA's pursuit of enhanced status for local government (perhaps by giving the Charter a special status) and the SG response "Subsidiarity and local decision-making" in Consultation on the Community Empowerment Bill (Nov 2013)
2. Prospects for Codifying the Relationship between Central and Local Government (2012-13) HC 656 (on which see Himsworth [2013] PL 702). See also Cm 8623. Cf Cabinet Manual para 8.27 re compliance with Charter.

# Review of the Case for a Local Government Chapter

- ▣ Probably a strong candidate for a place in any independence constitution
- ▣ With a focus on autonomy principles rather than the specification of institutional rules (may depend on amendment rules) – but perhaps accompanying structural reform?
- ▣ Stopping short of the Liechtenstein Constitution Art 4(2):  
“Individual municipalities shall be entitled to secede from the union”