

Briefing for the Public Petitions Committee

Petition Number: [PE01781](#)

Main Petitioner: Denis Agnew

Subject: A written constitution for Scotland

Calls on the Parliament to urge the Scottish Government to consider a written constitution for Scotland.

Background

There is no written constitution in the UK. The constitution has evolved meaning that there are numerous statutes (laws passed by parliament), conventions (unwritten practices developed over time) and judicial decisions (those made by the courts) which together make the constitution.

In some countries, there is one single legal document which sets out the fundamental rules about how the state works, the relationship between the institutions of the state and their relationship to citizens, as well as the rights and responsibilities of citizens.

The [Scotland Act 1998](#) sets out the powers and responsibilities of the Scottish Parliament and the Scottish Government.

The issue of a written constitution for Scotland was widely debated in the independence referendum campaign of 2014.

The argument often used in favour of a written constitution is that it provides clarity. From citizens' rights to the checks and balances in place between the legislature (parliament); the executive (government) and the judiciary (courts). Those who favour leaving the constitution as it is often argue that its unwritten nature provides greater flexibility.

The Scottish Conservative party proposed a Constitution, Democracy and Rights Commission in its [2019 manifesto](#) "to look at the broader aspects of our constitution."

Scottish Government Action

In November 2013, the Scottish Government's white paper on independence, [Scotland's Future](#), stated that an independent Scotland would have "a *modern, written constitution*." The constitution would enshrine "the

fundamental rights and values that underpin our society and [be] based on the principle of the sovereignty of the people of Scotland”.

The white paper explained that a constitutional convention would be used to “ensure a participative and inclusive process by which the people of Scotland, as well as politicians, civic society organisations, business interests, trade unions, local authorities and others, can have a direct role in shaping the constitution.”

The Scottish Government did set out core elements it believed to be important for a written constitution, including embedding the European Convention on Human Rights; a constitutional ban on nuclear weapons being based in Scotland; and certain social and economic rights, such as the right to education, and the right to healthcare.

On 16 June 2014, the Scottish Government launched a consultation on the draft [Scottish Independence Bill: a consultation on an interim constitution for Scotland](#).

The [Scottish Independence Bill](#) would have been introduced in the Scottish Parliament in the event of a ‘yes’ vote at the 2014 referendum on independence. The draft Bill set out the interim constitutional basis for government in Scotland from Independence Day.

The draft Bill provided for, amongst other things, an interim Scottish constitution and for a written constitution to be drawn up by a constitutional convention. The Scottish Government stated that the Bill would be accompanied by a renewed Scotland Act.

The [Citizens’ Assembly of Scotland](#) has been convened to discuss what kind of country Scotland is seeking to be. The Assembly has been considering [constitutional matters as part of its deliberations](#).

Scottish Parliament Action

The issue of a written constitution has been raised a number of times in the Parliament, in particular in the run up to the 2014 independence referendum. Some examples of the are highlighted below.

On 19 June 2014, Annabelle Ewing MSP, asked [a question on a written constitution](#) at First Minister’s Questions.

The Local Government and Regeneration Committee of Session 4 considered the issue of a written constitution for local government as part of its work on Strengthening Local Democracy in Scotland and an [evidence session on 4 December 2013](#). The Committee’s inquiry ‘Flexibility and Autonomy in Local Government’ also discussed the matter and the [relevant evidence session](#) was held on 14 May 2014.

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16/01/2020

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