



# STIRLING DIRECTIVE

**on behalf of the Scottish electorate**

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## Directive

The Sovereignty of the People of Scotland over their government, whether at Westminster or Holyrood, is a fact of the Constitutional Settlement of the Union. (See Appendix I.) The right of a people to self-determination is both a fact of international law and a human right.

The Scottish Government has been repeatedly elected by the People of Scotland on the mandate of an independence referendum, a clear expression of the will of the People.

The Westminster Government has legitimate authority over its executive arm in Scotland, the Scottish Parliament. It has no such lawful authority over the Scottish People. The Scottish Government, however, has wrongfully deferred to Westminster sovereignty over the expressed will of the People of Scotland.

We the People now expect and direct the Scottish Government, and all our representatives, to honour the law of Scotland and the Constitutional Settlement, agreed as a condition of the Union, by:

1. Informing the Westminster Government that its asserted sovereignty in Scotland is unlawful and all supporting interpretations, rulings and statutes, (including the Internal Market Act 2020), are null and void.
2. Complying with the pre-eminent law of the Constitutional Settlement by either:
  - announcing a referendum on Scottish Independence, as specified and only as specified in Appendix II, and passing the relevant legislation at the beginning of the next parliamentary session

or

  - Taking immediate steps for a plebiscitary election on independence, beginning with a National Convention, of elected representatives and the wider civic community, with the task of building a coalition of single issue, independence candidates

We seek and expect the restoration of our sovereign and human rights under both domestic and international law. To this end, we shall continue to take whatever action is required including, if necessary, referring the matter to the European Court of Human Rights.

## I: Sovereignty, the Law and the People of Scotland

### Part 1: What is Popular Sovereignty

Scottish popular sovereignty is first recorded in the Declaration of the Clergy and People of 1309/10 and then the Declaration of Arbroath of 1320. It is demonstrated by the practice of Salvo (1592) and the Act of Salvo in 1663, which made Parliament answerable to the people.

Scottish popular sovereignty is *not* social contract sovereignty, developed from the 17th century, where the People surrender sovereignty in return for law and security and elected representatives become the 'custodians' of that sovereignty.

Instead, in Scotland, As Canon Kenyon Wright remarked:

“Either the Parliament ... is sovereign or the people of Scotland are sovereign. *It cannot be both.*”

This is because the sovereignty of the Scottish people derives from the institution of our Scottish Crown, vested in the whole Community of the Realm, the nation and people of Scotland, and not, like that of England, in the monarch.

It cannot be transferred, loaned or devolved. Only the power to govern is transferred, loaned or devolved from the People.

The sovereignty of the People of Scotland is made explicit in the Claim of Right Act of 1689 which ensures that it *remains* the constitutional prerogative of the People:

to remove and replace a government

to assert their rights over the authority of government or court and

to seek redress for legitimate grievances *under their own authority.*

**On this basis only is power lawfully devolved by the People of Scotland to any government.**

## Part 2: The Permanence and Scope of Scottish Popular Sovereignty

The United Kingdoms of Great Britain were established by Treaty in 1706, ratified in the Acts of Union in 1706 and 1707 by the Parliaments of the independent nations of England and Scotland.

The Treaty of Union, as ratified, is the international agreement which:

- a. Created the United Kingdoms of Great Britain as a legal and political entity
- b. Established the constitutional settlement of the United Kingdoms

The Constitutional Settlement includes clear distinctions in the limits and jurisdiction of the civil power in the nations of England and Scotland.

Specifically, the distinction between the locus of political and legal sovereignty in each nation, the Parliament in England and the Community of the Realm, the People, in Scotland, is secured by the ratification of the Scottish Claim of Right Act of 1689 as a binding and permanent condition of the Treaty and Union.

The Act affirms the sovereignty of the People of Scotland as the supreme authority of that nation. It asserts their right to remove bad governments, to annul bad rulings - even those of the highest court in the land – and to choose the form of government best suited to their needs. (As reaffirmed by Scotland's Claim of Right in **1989**.)

As a permanent provision of the Constitutional Settlement:

- It may not be revoked
- No Court, even the Supreme Court of the United Kingdoms, is competent to change or remove the requirements it imposes on government
- Its violation represents a breach of the constitutional basis of the Union potentially invalidating and annulling the Union itself. (This is certainly why the parliamentary debate of 2018, which asserted the sovereignty of the Scottish people, passed without division.)

## **In Summary**

Popular sovereignty is much more than the right to vote. It means that a people can act on their own authority because they *are* the ultimate authority.

By invoking the authority that is inherently ours, the Scottish People will empower our representatives to acknowledge a higher, lawful authority than that of Westminster, to defer to that lawful authority and to act on the express will of the electorate.

This not only opens the door to independence but necessitates the kind of political reform which will enable Scotland to reflect its own political values and constitutional provisions rather than those presently in place, which are those of England.

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## **Appendix II: A True, Constitutional Referendum**

- A proper constitutional referendum must be binary. There can be only two options.
- The options must be discrete, defined and deliverable. That is to say, they must be two quite different options and not merely two variations on the same thing. Both options must be tightly defined at the outset and may not change in the course of the referendum campaign. What is voted on must be what has initially been proposed.
- Both options must be deliverable in the sense that the winning option and the actions which ensue from it must be implementable immediately and without further process.
- To satisfy the previous criteria, the referendum must be on the question of whether to end the Union with England-as-Britain.
- The legislation authorising and regulating the referendum must be determinative and self-executing
- The outcome must be acknowledged by all involved as an expression of the democratic will of the sovereign people of Scotland and therefore binding on all parties.
- It should also be understood and acknowledged that the outcome of one constitutional referendum cannot preclude future campaigning for other constitutional change even where such change would alter or obviate the prior choice.
- The referendum process must be impeccably democratic. The franchise must be as wide as possible and based on strict criteria for residency within Scotland. Registering a vote must be made as easy as possible but with due regard for security and confidentiality.

- The referendum must be held under the auspices of the Scottish Parliament with oversight and services provided exclusively by Scottish institutions and agencies. Every effort must be made to eliminate or at least minimise external interference.
- For the purposes of a proper constitutional referendum on the question of the Union, the British state shall be classified as an external (foreign) power.
- For the purposes of a proper constitutional referendum on the question of the Union, political parties registered as such and headquartered other than in Scotland shall be regarded as agencies of the country where they are registered and headquartered.

## **Summary**

A true constitutional referendum is binary, with options which are discrete, defined and deliverable.

It must be entirely made and managed in Scotland by Scotland's democratic institutions.

It must produce a clear decision and not merely a result.

The authorising and regulating legislation must be determinative and self-executing.

It must meet internationally recognised standards for a democratic event.

It is the formal exercise by the people of Scotland of our right of self-determination.

The outcome is the expressed will of the sovereign people of Scotland which none may deny.

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## **Appendix III: Self Determination and International Law**

Self-determination under international law is the right of a people to make their own decisions about their future within the international community and is one of modern international law's core binding principles.

Self-determination is also recognised as a general principle of law and is enshrined in several international treaties. For example, self-determination is protected within the United Nations Charter and in Article 1 of the International Covenant on Civil and Political Rights as a right of "all peoples."

Likewise, Article 1 of the International Covenant on Economic, Social and Cultural Rights states:

### Article 1

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

It is also protected as part of the UN decolonisation process by the General Assembly in 1960 adopting the Declaration on the Granting of Independence to Colonial Countries and Peoples.

## **Interpretation**

Generally, the term "self-determination" can also refer to the free choice of one's own acts without external compulsion.

Nowadays, the term has evolved to be seen as either internal or external self-determination.

### **Internal self-determination**

This can refer to various political and social rights within a state.

### **External self-determination**

This refers to full legal independence / secession for the given 'people' from the larger politico-legal state.