

**Agreement between the Scottish Government and the Scottish Parliament  
Committee on the Scottish Government Handling on Harassment Complaints  
of 18 December 2020**

1. The Scottish Government and the Committee jointly agree that it is in the public interest for the Committee to see material constituting legal advice to enable it to properly discharge its functions. This agreement neither prevents the Committee from asking for further information to be made available at a later date, nor creates a precedent that further information should be made available by the Government.
2. . A reading room will be established on Tuesday 22 December 2020 (and any further dates to be agreed) within the Scottish Parliament. Within that room will be a report dated 29 December 2018 in unredacted form. The unredacted report will be provided on a confidential basis.
3. This agreement applies to all members of the committee who will see the report.
4. The Scottish Government will, in advance of the 22 December reading room session, provide the committee with a redacted version of the 29 December 2018 report along with an explanatory statement, both for publication on its website.
5. Both the Scottish Government and the Committee are clear that this action does not constitute a general waiver of the Scottish Government's legal professional privilege (LPP) in relation to the issues within the remit of the Committee's inquiry. This approach draws on the precedent for confidential access to privileged legal advice on an exceptional basis in the release of documents to a judge-led inquiry.
6. Consistent with common law principles and previous precedents with reference to legal advice on litigation, the Scottish Government continues to assert LPP over the legal advice it received in relation to the Judicial Review raised by the former First Minister during 2018. LPP applies both to the content and sources of legal advice.
7. Whilst maintaining LPP over all its legally privileged material, the Scottish Government and Scottish Parliament are agreed that the unredacted report constitutes legal advice and will be made available to members of the Committee on a confidential basis:-
8. The confidential material to be accessed is in addition to documents already provided, including the Open Record, and oral evidence already provided to the Committee, including by the Lord Advocate and former interim Director of Legal Services.
9. Controls will be established around the inspection and use of the confidential material to ensure that there is no general waiver of the Scottish Government's LPP. Named and numbered paper copies of the unredacted report (with the accompanying statement from the Scottish Government and a copy of the redacted report for comparison) will be available to a pre-approved list of Committee Members and committee staff. These will be given to the clerks to the committee who will be responsible for handing them out to, and collecting them from, members of the

Committee in the reading room. The clerks will also be responsible for returning the copies of the unredacted report to Scottish Government officials.

10. Those admitted to the room will not be permitted to remove the copies of the unredacted report from the reading room, make copies of it (including photographs or other images), or disseminate its contents in writing or verbally. Members will be able to underline or make notes on their copy of the report only.

11. In the reading room, the clerks to the committee will be permitted to take a note of the paragraph numbers of the unredacted report in relation to which the committee wishes to ask questions in its future oral evidence sessions. The clerks will pass that note to the Government, who agree to provide a paraphrased note of the Government's legal position as reflected in those paragraphs (where that is possible without a general waiver of LPP)

12. MSPs and the support team admitted to the reading room will not quote the confidential material directly to others, this includes during committee public sessions. They will, however, be allowed to describe the impact of the material with reference to evidence about the Government's legal position during the judicial review which has already been heard by the committee. The paraphrased note provided by the Government can be quoted from by members when asking questions of Scottish Government officials at future oral evidence sessions.

13. Should the committee wish to take oral evidence which would require Scottish Government witnesses to reveal the confidential parts of the report, that evidence will require to be taken in private session to protect against the general waiver of the government's LPP.

14. The Committee may, in its final report, refer to confidential material members have seen, but will not quote it. The Committee will confirm to the government before publication of its report that its report and any ancillary documents do not contain any material that this agreement would preclude making public, and will observe normal procedures in relation to discussions with Government to ensure accuracy of the report as well as its legality and compliance with this agreement.

15. The Committee agrees that the report will be treated as a confidential document and therefore is governed by the terms of rules 7.12-7.15 of the Code of Conduct for MSPs.

**ENDS**