



The Scottish Parliament  
Pàrlamaid na h-Alba

Kenny Donnelly, Procurator Fiscal  
Crown Office and Procurator  
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Clerk/Chief Executive  
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22 January 2021

**SENT BY EMAIL AND RECORDED DELIVERY**

Dear Mr Donnelly

**NOTICE UNDER SECTION 24 OF THE SCOTLAND ACT 1998**

**REQUIREMENT UNDER SECTION 23 OF THE SCOTLAND ACT 1998 TO  
PRODUCE DOCUMENTS TO THE COMMITTEE ON THE SCOTTISH  
GOVERNMENT HANDLING OF HARRASSMENT COMPLAINTS**

**Background**

***Sections 23 and 24 of the Scotland Act 1998***

Under section 23 (1) of the Scotland Act 1998, the Parliament may require any person to produce documents in his custody or under his control, concerning any matter for which any member of the Scottish Government has general responsibility.

Under section 23(8) of the Scotland Act 1998 and Rule 12.4 of the Parliament's Standing Orders, such a requirement may be imposed by a committee of the Parliament, in this case the Committee on the Scottish Government Handling of Harassment Complaints.

The Clerk to the Parliament is authorised to impose this requirement by giving this Notice under section 24(1) of the Scotland Act 1998.

Information about the statutory provisions relevant to this requirement and the consequences of failing to comply with this Notice can be found in the Annex.

## ***Committee on the Scottish Government Handling of Harassment Complaints***

The Committee considers that the Crown Office and Procurator Fiscal Service holds material which is relevant to the Committee's remit. The requested material and the anticipated relevance of this to the Committee's work is detailed below. Having taken into account the terms of its remit, the anticipated relevance of the requested material and the correspondence with the Crown Office to date, the Committee has concluded that it is necessary for the requested material to be produced.

### **Relevance of the Documents to the Committee's work**

The Committee was established with the following remit:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's “Handling of harassment complaints involving current or former ministers” and procedure and actions in relation to the Scottish Ministerial Code.

The timeframe for the Committee to fulfil its remit and report to Parliament is limited. With elections due to take place in May, the Committee must report before the end of March when election purdah begins.

Previous correspondence between the Committee and the Crown Office and Procurator Fiscal Service sets out the difficulty for the Committee in knowing exactly what material the Crown Office and Procurator Fiscal Service holds. That said, the Committee understands that you may hold documents relevant and necessary for the Committee to fulfil its remit, in particular the documents specified below.

It has been asserted to the Committee that the documents include evidence that elements of the Scottish Government (including special advisers) used the Scottish Government's Harassment complaints procedure and complaints considered through the same to damage the reputation of Alex Salmond, former First Minister.

It is in the public interest to establish the veracity of these claims in order to allow the Committee to understand fully the actions of the Scottish Government in handling the complaints and in order to inform the conclusions of our Committee in line with its remit.

### **Documents/ Types of Documents to be produced**

As described above, this Notice seeks documents relevant to the Committee's remit in particular the following documents/ types of documents:

1. Any text or WhatsApp communications between Ms Ruddick, Chief Operating Officer of the Scottish National Party and Members of the Scottish Government, Scottish Government civil servants and Scottish Government Special Advisers during the time frame of August 2018 to January 2019 and relevant to the Committee's Inquiry, including the Judicial Review by Alex Salmond, former First Minister.
2. Documents relevant to the circumstances in which details of complaints under the Scottish Government procedure on sexual harassment complaints was leaked to the Daily Record newspaper in August 2018, following the investigation by the Scottish Government and proceeded by the judicial review by Alex Salmond.

The Committee's [statement on the handling of information and evidence](#) confirms that the Committee will treat all information in accordance with the relevant court orders and data protection law. In line with this statement the Committee does not seek any information likely to identify the complainers, including information as to the substance of the complaints. Furthermore, the Committee will not revisit the criminal trial.

#### **Date by which the Documents must be produced**

In light of the Committee's timescales referred to above you are required to produce the above documents by 5pm on **29 January 2021**.

Should you have any questions regarding the contents of this Notice please contact the Clerk to the Committee at [SGHHC@parliament.scot](mailto:SGHHC@parliament.scot).

Yours sincerely,

**DAVID McGILL**  
Clerk/Chief Executive

## **Annex**

### **Provisions relevant to the requirement to produce documents**

There are certain restrictions on the power in section 23(1) of the Scotland Act 1998.

These include:

- Section 23 (9) of the Scotland Act 1998: A person is not obliged to produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- Section 23 (10) of the Scotland Act 1998: A procurator fiscal is not obliged to produce any document concerning the operation of the system of criminal prosecution in any particular case if the Lord Advocate (a) considers that producing the document might prejudice criminal proceedings in that case or would otherwise be contrary to the public interest, and (b) has authorised the procurator fiscal to decline to produce the document on that ground.

### **Consequences of failure to produce documents**

Section 25(1) of the Scotland Act 1998 sets out offences in relation to this Notice, punishable by a fine of up to £5,000 or 3 months imprisonment:

- refusal or failure to produce any document specified in this Notice, without reasonable excuse;
- deliberately altering, suppressing, concealing or destroying any document required to produced by this Notice.

**Given the legal implications of this Notice you are advised to refer to these provisions in full and seek legal advice as necessary.**