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**Subject:** Devolution Act 1998 Abolished the Rule of Law in Scotland

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FAO Prime Minister Rt Hon Rishi Sunak MP

Dear Prime Minister,

## 1. Summary

**Unconstitutionally and unlawfully the Scotland Act 1998 abolished the rule of law in Scotland. It also unconstitutionally removed the separation of the powers. This made it impossible for Scotland to have a lawful, constitutional, or functioning justice system. This should be guaranteed to be the biggest failure in Scottish and UK legal history.**

Inter alia, the Act unlawfully transferred what must be independent judicial processes (criminal prosecutions, the investigation of deaths, private prosecutions)

over to the control of the Scottish Government. The Act produced a political and unlawfully party-controlled justice system, an unlawfully government-controlled police force, and an unlawful government-dependent judiciary.

With the Scottish Government as the prosecutor, the Act created a government outside the constraints of the law (sections 44 and 48). The government cannot enforce the law against itself, or prosecute itself. The rule of law vanished in Scotland on the First of July 1999.

## **2. Substance**

The Scotland Act 1998 remarkably abolished the rule of law in Scotland. In the totality this has extremely serious consequences for Scotland but it also places the UK in breach, and with it further international implications. <https://www.legislation.gov.uk/ukpga/1998/46/contents>

The first and main requirement of the Rule of Law is that no-one can be outside the law, and especially not a government. The Scotland Act 1998 made the Scottish Government the prosecutor and the investigator of deaths, and thereby unconstrained by, or answerable to the law.

### ***Section 44 The Scottish Government***

*(1) There shall be a Scottish Government, whose members shall be—*

*(a) the First Minister,*

*(b) such Ministers as the First Minister may appoint under section 47, and*

*(c) the Lord Advocate and the Solicitor General for Scotland.*

### ***48 The Scottish Law Officers***

*(5) Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.*

48(5) confirms that the Scottish Government ministers the law officers run the judicial processes of prosecutions and deaths. They are always the government. The second half point to the constant offences by the law officers who act on the advice and information from the Scottish Government's ministerial-led department the COPFS, which is even staffed by government officers. The roles of being both the head of prosecutions and the head of the investigation of deaths in any case contain a conflict of interests and must be separate.

These two sections of the 1998 Act remove the separation of the powers and abolish the rule of law. As the prosecutor the government cannot prosecute itself (this is an extreme case of *nemo iudex in causa sui*). Governments are prohibited from being the prosecutor by a whole raft of constitutional and human right law (ECHR, HRA, Constitutional Reform Act 2005, and in Scotland additionally the Judiciary and Courts (Scotland) Act 2008, and by common law).

### **3. Scottish Government Unaccountable to the Law**

The Scottish Government being the prosecutor is unlawfully unaccountable to the law. This also applies to its direct ministerial reports NHS Scotland, the Scottish Prison Service, and other associated bodies. One part of the Scottish Government cannot prosecute another part of itself. The governance of the government minister the Lord Advocate and their COPFS and all these bodies is the same – they lie with the Scottish First Minister. It is entirely the SNP Government. The Scottish First Minister is unlawfully also outside the law. The government would be both the prosecutor and the prosecuted. It would be the government's prosecutor Lord Advocate Bain vs the SNP government's legal representative Lord Advocate Bain. Question 'How can the Scottish Government and its Ministers be prosecuted?' Answer 'Currently unlawfully they cannot be.' So the SNP Government and its bodies ignore the law with impunity. Major cases are on patient safety and the related 2,000 deaths a year. They and the Health and Safety Executive in Scotland also ignored the UK-wide law on dangerous pathogens. That resulted in the Scottish Government's approach to infection control (sic) via the Scottish-dominated Four Nations IPC Cell adopting Scotland's homicidal National Infection Prevention Control Manual (NIPCM). This being catastrophically imposed all the UK. That can be guaranteed to be responsible for many thousands of Covid-19 deaths across the UK.

### **4. Cause**

The Scotland Act 1998 has a number of major errors, the removal of the rule of law and the separation of the powers are fatal 'schoolboy' errors. The unlawful Act (Bill) was created by the Scotland Office and presumably by its law officers the then Lord Advocate and Solicitor General. They decided that they wanted to be ministers as well as prosecutors. The Bill was rushed through Westminster without the requisite scrutiny when creating a new Parliament and system of government (Hansard shows warnings of creating 'a Titanic' but these were ignored). Current Deputy Speaker Dame Eleanor Laing DBE MP was Shadow Secretary of State for Scotland at the time. She (and colleagues in the House of Lords) voiced concerns, and may wish to comment).

## 5. Consequences

Westminster exceeded its powers by removing the rule of law. It gave the control of what must be independent judicial processes such as prosecutions and the investigation of deaths over to the government of the day. It removed the separation of the powers. It produced unlawful judicial processes, an unlawful government-dependent judiciary (the government decides what cases the judges get or do not get (aka 'enemies get prosecuted, friends go free'), and an unlawful government-controlled system of policing (see below).

## 6. Scottish Legal Profession

The Scottish legal profession has long known of the fatal errors in the Scotland Act 1998. They would have known right from the start in 1999 that it was unlawful, unconstitutional, dysfunctional, and corrupt for the Scottish Government to control the justice system. The senior judges of the Court of Session made a representation to the Calman Commission (ten years of devolution) but nothing happened. The judges and the justice system continued on their unlawful way, until now. Nothing has happened on Scotland's unlawful justice system and so we now have an extreme example of 'boiled frog syndrome.'

The Lord Advocates and Solicitor Generals also knew that the justice system was fatally flawed. ASAP-NHS pointed out the obvious to Lord Advocates Mulholland, Wolffe, and Bain. All Scottish Government Ministers and First Ministers would have known that it was completely wrong and unlawful for the government to control the justice system. If they did not then they should never have even been MSPs.

## 7. Lost Democracy

Democracy requires the rule of law (and the separation of the powers). For example by the Copenhagen Criteria (and EU rules). Without the Rule of Law (or the separation of the powers) Scotland is not a democracy. So Scotland has not been a democracy since 'Devolution Day,' 01 July 1999.

Scotland is 1/12 of the population of the UK. However it has put all the UK in breach of the Rule of Law, and of international law (e.g. ECHR Articles 1, 2, and 6).

## 8. Chief Justices

The Lord President of the Court of Session is the head of Scotland's judiciary. The position is highly problematic. '[Judicial independence](#) is (supposed to be) guaranteed in law, with a legal duty on [Scottish Ministers](#), the [Lord Advocate](#) and the [Members of the Scottish Parliament](#) to uphold judicial independence, and

barring them from influencing the judges through any form of special access'. This is not true. The Lord Advocate is the SNP government minister for prosecutions and the investigation of deaths. This in a government headed by the SNP Scottish First Minister. It is the SNP Government under the SFM that says what cases the judiciary get and what they do not get. The SNP decides who gets prosecuted and who is not. The SNP decide if any deaths are investigated. There is no HM Coroner or any equivalent (it is not the government-run thirty-a-year Fatal Accident Inquiries). The government via their COPFS and the Lord Advocate control most of the evidence in the judge's courts. That is the Scottish judiciary are direct agents of the SNP government; it can never be the legally required independent judiciary. The Scottish justice system is rather obviously neither lawful nor constitutional.

It begs the question of what has the judiciary been doing? They have allowed the SNP Government to constantly interfere with the judiciary. This would appear to make them complicit in criminal offences by the Scottish Government (SFMs, Lord Advocates, Solicitor Generals, and civil servants in the ministerial-led government department COPFS). Has there been a worse failure of a judiciary in Scottish and UK legal history? How can judges countenance the absence of the rule of law in Scotland? It challenges what the five Chief Justices since devolution have been thinking. The issue is now with Lord Carloway. Anyone from outside of Scotland with even a little knowledge of the law let alone a law degree should find the 'Scottish situation' beyond belief. There has clearly been no external independent due diligence check of what the Scottish judiciary have been up to.

The Scottish judiciary is very small, it is in effect a mono-culture, operating in isolation, accountable to no-one. ASAP-NHS covers its almost total failure elsewhere. It is proving difficult to find anything at all that could be lawful. All the judiciary are dictated to, this by what the Scottish Government gives it and what it does not. The Scottish judiciary constantly acts with unlawful bias. They do not uphold the law of the land, particularly not on patient safety or dangerous pathogens as in the pandemic. This failure is responsible for tens of thousands of deaths in Scotland. The Scottish judiciary stand in opposition to the rule of law and the law on human rights (ECHR Articles 1,2, and 6). Their oath of office might as well not exist (Promissory Oaths Act 1868). There has not been a due diligence test of whether the Scottish judiciary upholds the law, delivers justice, and does so efficiently; it patently does not. It fails all the tests of being a lawful constitutional and functioning judiciary.

## **9. Rule of Law Ranking**

The international standard for the rule of law is given by the World Justice Project. Currently the UK is ranked at 18<sup>th</sup>. Scotland fails the Rule of Law tests and would be vying for bottom position in the European League.

## 10. Bingham Centre for the Rule of Law

ASAP-NHS have advised the Bingham Centre of the matters. It should be shocking that the very obvious failures of the Scottish justice system have not been addressed. The Bingham Centre could be best placed to identify the means to 'solve the Scottish situation.'

The current situation absolutely cannot continue. The Scottish justice system could collapse at any time and by tens of different ways. **It requires the UK Government acting on the reserved Scotland Act 1998, and constitutional and human rights responsibilities to mount a disaster recovery operation on the Scottish justice system.** Without it the UK will continue to be in breach of major international law. ASAP-NHS will be adding to our previous reporting on 'Scotland's Unlawful Justice System'.

Yours sincerely

Roger M Livermore

HM Inspector (8 titles) and Crown Prosecutor

Cc Dame Eleanor Laing DBE MP Deputy Speaker

Rt Hon Penny Mordaunt MP Leader of the House, Cabinet Office

Rt Hon Sir Keir Starmer KCB KC MP Leader of the Opposition

Sir Ed Davey MP Leader of the Liberal Democrats

Murray Hunt Director of the Bingham Centre for the Rule of Law.

Professor Jeff King Research Director, Bingham Centre for the Rule of Law

Rt Hon PC FRSE Lord Carloway [Lord President of the Court of Session](#)

[Lord Justice General](#)

Rt Hon Alistair Jack MP Secretary of State for Scotland

Douglas Ross MP MSP Leader Scottish Conservatives

Anas Sarwar MSP Leader Scottish Labour Party

Alex Cole-Hamilton Leader Scottish Liberal Democrats

Rt Hon Lady Paton Scottish Law Commissioner

Rt Hon Dorothy Bain KC Lord Advocate, Head of the SNP Government's  
Prosecutions Service and Investigation of Deaths

Jo Farrell Chief Constable Police Service of Scotland

Sarah Albon CEO Health and Safety Executive

Stephen Parkinson KC Director of Public Prosecutions, Crown Prosecution  
Service