Your letter of 2 February to Bruce Crawford invited the Government to comment on your Committee’s consultation paper about the above.

I do not consider that any of the proposals raise any implications for Ministers or impact on the content of the Ministerial Code. However, the annex to this letter sets out the Government’s responses to some of the questions in the paper. I hope these points will be helpful to the Committee during its further deliberations.

BRIAN ADAM MSP
MINISTER FOR PARLIAMENTARY BUSINESS AND CHIEF WHIP
26 MARCH 2012
CONSULTATION QUESTIONS

Q1. General

Are there any parts of section 7 which you consider are not required at all or which might be merged with others parts of the Code?

The Government has no substantive views on the precise content and structure of the Code framework, responsibility for which rests with the Parliament. However, moves such as those proposed would have merit in terms of enhancing the clarity and focus of the Code which should in turn improve the ease of its interpretation.

Q2. SPCB policies

Given the general provision, which SPCB policies need to be given specific mention in the Code? Is it sufficient for this to be a statement of principle, with detail contained in SPCB publications?

Whilst policy on most corporate matters may not be deemed relevant for specification on the face of the Code, ensuring that official stationery is not being used for party political purposes (paragraph 7.2.14) is vitally important in terms of protecting the Parliament's integrity and public image. The Government would therefore support the retention of that particular policy, which it anyway considers would be less susceptible to change, on the face of the Code.

The proposal to rely on a single statement of principle in the Code (broadly equivalent to the existing paragraph 7.2.11) and for the detail of SPCB policy to then be removed would indeed avoid the need to administer frequent revisions, but might also detract from the value of the Code as a single point of reference. However, the ease of access (e.g. via the use of weblinks) to what would become freestanding documents could ameliorate any such concern.

Do you agree that complaints about breaches of SPCB policies should generally be considered in the first instance by the SPCB? If not, which complaints should be dealt with in a different way (for example, by referral to the Parliamentary Standards Commissioner or Presiding Officer)?

Complaints about alleged breaches of SPCB policies being directed, by default, to the SPCB is sensible, and especially so where the existing Code does not currently make that option clear. The Government considers such a move would reinforce understanding of appropriate lines of responsibility and accountability within the Parliament. The subject matter or gravity of specific complaints will normally dictate whether escalation is necessary, or indeed whether they should be handled via other Parliamentary complaint processes.
Q3. Treatment of other MSPs and of other MSPs' staff

Who should consider complaints about one MSP’s treatment of another (e.g. the relevant Business Manager, the Presiding Officer or the Public Standards Commissioner)?

The subject matter and gravity of the complaint will be key. A member could interpret "treatment" as being relevant to a wide range of actions and activities. The complaint could involve an allegation that a member has breached a specific requirement of the Code, rules governing corporate matters or those relating to general conduct. The Code already confirms how such matters are to be enforced. It could also, in a worst case scenario, relate to allegations of physical assault or other criminal activity which would likely become a police matter.

The Public Standards Commissioner could feasibly receive a complaint alleging that a member had breached the general requirement that "Members must treat other MSPs.....with courtesy and respect" (paragraph 7.2.5). However, the Government considers it appropriate for such matters to be handled by the Presiding Officer. Given that an MSP is not an employee, any allegations that an MSP has been mistreated should presumably be considered by the Presiding Officer. Any allegations of this nature (e.g. a member alleging to having been bullied or verbally abused by another) would also reflect badly on the integrity of the Parliament, responsibility for which rests with the Presiding Officer as opposed to individual political parties. Such a move would also cover allegations made against independent members.

Q4. Conduct in the Chamber

Do you agree that paragraph 7.3.3 should not form part of the Code of Conduct?

As indicated in response to Question 2, removing material from the Code could detract from its value as a single point of reference. However, should the committee decide to remove the paragraph the Government considers it important to retain within the Code confirmation that the Presiding Officer has set additional rules (incorporating a relevant weblink). There should be no perception that these particular rules were any less important.

Q5. Conduct in Committee

Who should consider complaints about committee Conveners?

The Government considers reform in this area to be sensible and would support the principle of complaints made about Conveners being referred directly to the Presiding Officer. The remit of the Conveners Group is to consider strategic issues relevant to the operation of Committees within the wider Parliamentary structure. As such, it does not appear to be an appropriate forum for complaint handling. To do so would also risk complicating the Parliament’s existing complaint handling machinery.
Q7. Section 5: Lobbying

Do you consider that there are any parts of section 5 which need to be made clearer?

The reorganisation of material between certain sections of the Code would likely improve clarity and minimise the scope for confusion or ambiguity to arise.

Q8. Section 8: Engagement and Liaison with Constituents

Are there any parts of section 8 which require amendment to make them clearer or more easily enforced?

It is important that Members describe themselves accurately to the public so that the basis of their election is clear to all concerned. The current descriptions set out in paragraph 8.2.1 offer clarity and consistency which the Government considers to be beneficial to all concerned. Neither does the Government consider that the existing requirements require further clarification.

The proposal to clarify the terms of section 8.1.4 appears sensible.

Scottish Government
March 2012