

Citizen Participation and Public Petitions Committee
Wednesday 21 May 2025
9th Meeting, 2025 (Session 6)

PE2093: Review and update the Scottish Ministerial Code

Introduction

Petitioner Benjamin Harrop

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to review and update the Scottish Ministerial Code to:

- put the Code under statute
- enable the independent advisers (IAs) to initiate investigations, and if the First Minister decides to go against the IAs advice a statement should be provided to Parliament
- set out the sanctions for breaches other than misleading Parliament
- allow IAs to make recommendations for changes to the Code
- renaming the IA position to make it clear there is no judicial involvement
- require Ministers to make a public oath or commitment to abide by the Code.

Webpage <https://petitions.parliament.scot/petitions/PE2093>

1. [The Committee last considered this petition at its meeting on 26 June 2024.](#) At that meeting, the Committee agreed to write to the First Minister.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the First Minister and the Petitioner, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.](#)
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 18 April 2024.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 10 signatures have been received on this petition.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
May 2025

Annexe A: Summary of petition

PE2093: Review and update the Scottish Ministerial Code

Petitioner

Benjamin Harrop

Date Lodged

9 April 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review and update the Scottish Ministerial Code to:

- put the Code under statute
- enable the independent advisers (IAs) to initiate investigations, and if the First Minister decides to go against the IAs advice a statement should be provided to Parliament
- set out the sanctions for breaches other than misleading Parliament
- allow IAs to make recommendations for changes to the Code
- renaming the IA position to make it clear there is no judicial involvement
- require Ministers to make a public oath or commitment to abide by the Code.

Background information

I think the changes set out above would strengthen public standards in Scotland.

Through a statutory code (which Northern Ireland and partly Canada has), a First Minister (FM) would be unable to not have a Code.

Through self-initiated investigations by the IA, a FM could not block such investigations.

A statement in Parliament would enable an explanation as to why a FM has not taken the IAs advice.

The IAs should be able to offer their views on any potential short-comings of the Code itself so to improve it.

The IAs title gives an impression of judicial involvement which is misleading.

Ministers making public oaths would improve public confidence in adhering to it.

I also recommend the following reports which are useful reading:

- [Upholding Standards in Public Life – Published Report](#)
- [Institute for Government | Updating the ministerial code](#)
- [UK Governance Project – final report](#)

Annexe B: Extract from Official Report of last consideration of PE2093 on 26 June 2024

The Convener: That brings us to PE2093, on the Scottish ministerial code. In summarising the petition, I may make reference to active cases about which we should be circumspect about making any further comment.

The petition, which was lodged by Benjamin Harrop, calls on the Scottish Parliament to urge the Scottish Government to review and update the Scottish ministerial code; to put the code under statute; to enable the independent advisers to initiate investigations; and, if the First Minister decides to go against the IAs' advice, to ensure that a statement is provided to Parliament. The petition also calls for the code to set out the sanctions for breaches other than misleading Parliament and to allow IAs to make recommendations for changes to the code. It further calls for a renaming of the IA position to make it clear there is no judicial involvement and seeks to require ministers to make a public oath or commitment to abide by the code.

The petitioner believes that updating the ministerial code by making such changes would strengthen standards and improve public confidence.

Members will be aware that, as is noted in the SPICe briefing, new versions of the ministerial code can be issued at any time and that previous updates have been issued following Scottish Parliament elections and changes of First Minister.

In its response, the Scottish Government highlights the fact that the ministerial code was most recently updated in July 2023 to further strengthen transparency and propriety and states that there are no current plans to update the code during the remainder of this session of Parliament. It might be worth noting that the Scottish Government's response was provided prior to John Swinney being appointed as First Minister.

We have also received two written submissions from the petitioner, which set out in more detail how he believes that the ministerial code should be updated to improve public trust and transparency when applying the code or investigating potential breaches of it.

Do members have any comments or suggestions for action???

David Torrance: I think that the committee should consider writing to the First Minister to highlight the petitioner's submissions, to seek clarification on what consideration the First Minister has given to updating the ministerial code since taking office and to ask him to set out the process for appointing the independent advisers on the ministerial code, including whether any consideration is given to how long they should remain in post.

The Convener: Are members content to keep the petition open and to write to the First Minister in the terms suggested by Mr Torrance?

Members *indicated agreement.*

Annexe C: Written submissions

First Minister written submission, 26 July 2024

PE2093/D: Review and update the Scottish Ministerial Code

Thank you for your letter of 4 July 2024 in your role as Convener of the Citizen Participation and Public Petitions Committee, in which you shared information about petition PE2093, which calls on the Scottish Government to review and update the Scottish Ministerial Code.

In your letter you noted that the Committee had considered the above petition on 26 June 2024 and agreed to write to me to:

- highlight the Petitioner's submissions of 13 May and 14 May 2024;
- seek clarification on what consideration I have given to updating the Ministerial Code since taking office; and
- ask me to set out the process for appointing the Independent Advisers on the Ministerial Code, including whether any consideration is given to how long they should remain in post.

Thank you for updating me on the Committee's consideration of this petition. I can confirm that I do intend to publish an updated edition of the Scottish Ministerial Code in my name in the near future.

Independent Advisers on the Code are personal appointments made by the First Minister and are selected based upon their skills, experience, stature and impartiality. The length of service of Independent Advisers on the Code is a matter that is agreed between the First Minister and individual Advisers.

I would be happy to write again to the Committee with an update in respect of this petition on publication of the new Code.

JOHN SWINNEY

First Minister written submission, 4 September 2024

PE2093/E: Review and update the Scottish Ministerial Code

Further to my letter to you of 26 July 2024 in response to yours of 4 July 2024 about Petition PE2093 on the Scottish Ministerial Code, I am writing to provide you with a further update on my plans for publishing a revised Code.

This afternoon, as part of my statement to Parliament on the Scottish Government's Programme for Government, I announced a number of important changes I will be making to the Ministerial Code to significantly strengthen transparency, accountability and independent scrutiny. You may be interested to note that I have now committed to adopt some of the changes called for in the petition you are currently considering (PE2093).

For instance, the new Ministerial Code I will publish will allow my independent advisers to begin investigations into alleged breaches of the Code without a direct

referral from me. It will also make clear that I can seek advice from my independent advisers on the application of sanctions in cases where it is agreed that there has been a breach. My new Code will also invite the independent advisers to play a role in scrutinising Ministers' declarations of interests.

These changes will significantly strengthen the role of my independent advisers, whose Terms of Reference will also be published.

Collectively, the changes I have committed to today represent the most significant updates to the Scottish Ministerial Code since independent advisers to the First Minister were first introduced in June 2008. The changes demonstrate my absolute commitment, and that of my Ministers, to upholding the highest standards of integrity in public life.

I know the great care that my Ministers and I take in observing both the letter and the spirit of the Ministerial Code and of our deep commitment to public service. As Ministers, we will continue to uphold the highest standards of behaviour as we seek to deliver the best outcomes for the people of Scotland.

As I have previously committed to do, I will write again to the Committee when I publish the new Ministerial Code later this year. This will provide more detail about the changes outlined above and others that I intend to make.

I am copying this letter to Martin Whitfield MSP, Convener of the Standards, Procedures and Public Appointments Committee for any read across to the MSP Code of Conduct and the MSP Register of Interests.

JOHN SWINNEY

First Minister written submission, 17 December 2024

PE2093/F: Review and update the Scottish Ministerial Code

Further to my letters to you of 26 July 2024 and 4 September 2024 regarding Petition PE2093 on the Scottish Ministerial Code, I am pleased to write to confirm that [I have today published a new, strengthened Ministerial Code](#).

This follows the Programme for Government statement I gave to Parliament on 4 September in which I announced important changes planned for the Code to significantly strengthen transparency, accountability and independent scrutiny. It also follows [my appointment of three new independent advisers on the Code, which I announced on 6 December](#). My new advisers are:

- Claire Loftus, former Director of Public Prosecutions in the Republic of Ireland;
- Sir John Manzoni, former Cabinet Office Permanent Secretary and Chief Executive of the Civil Service; and
- Sir Ernest Ryder, former Lord Justice of Appeal and Senior President of Tribunals.

They bring a wealth of experience and expertise to the role and my new Code significantly strengthens their remit, as is set out in their [Terms of Reference that I have published](#) for the first time today.

My independent advisers can now begin investigations into alleged breaches of the Code without a referral from me. When a breach of the Code is established, my advisers can now recommend appropriate sanctions for me to consider. My new advisers will now also play a role in scrutinising the processes in place to support Ministers review their declarations of interests annually, helping to provide further assurance that potential conflicts are being avoided.

The Code has been restructured into three distinct sections: Ministers' Standards of Conduct; Ministers' Interests; and Ministers and the Procedures of Government. This brings ethical standards and public service values to the forefront, while ensuring that they are supported by the governing rules and procedures that underpin guidance to Ministers.

The new Code has been updated throughout to support the highest standards of transparency, integrity, accountability, and honesty. For example, the Seven Principles of Public Life have been brought into the body of the Code and updates have been made to ensure that the Code reflects existing rules, guidance and procedure on the use of corporate communication channels and on Ministerial travel and engagements.

Collectively, the changes I have made represent the most significant updates to the Scottish Ministerial Code since independent advisers to the First Minister were introduced in June 2008. The changes demonstrate my commitment to ensuring that my Ministerial team and I uphold the highest standards of integrity in public life.

My new Code raises what was already a very high bar on Ministerial standards and I welcome the scrutiny that I know the Parliament, the public and my new independent advisers will provide.

I am copying this letter to the Presiding Officer, and to Martin Whitfield MSP, Convener of the Standards, Procedures and Public Appointments Committee for any read across to the MSP Code of Conduct and the MSP Register of Interests.

JOHN SWINNEY

Petitioner written submission, 5 May 2025

PE2093/G: Review and update the Scottish Ministerial Code

I have taken the time to read the First Minister's (FM) submissions and the new ministerial code, and I would highlight several points (I will try to avoid repeating points in my previous written submissions, which remain the main background of each of the points I raised in my petition).

- **put the Code under statute**

The code, as it currently stands, still means that it is not a requirement for any government to have a code (unlike in Northern Ireland), as it is not under statute. I think this is a key weakness in the code: as any FM at any time may decide not to have a code or repeal parts of it when it suits. By putting the code under statute, these possibilities are eliminated (unless, of course, approved by parliament).

- **enable the independent advisers (IAs) to initiate investigations, and if the First Minister decides to go against the IAs advice, a statement should be provided to Parliament**

I welcome the changes to the code regarding advisors being able to self-initiate investigations and taking away this power from the FM, so I consider this point resolved! However, there is still no recourse for what happens if the FM goes against the advisor's advice. I realise, though, that political pressure at such a point would be strong enough to capture parliament's attention. I still believe that there should be an official pathway within the code for the FM to make a statement.

- **set out the sanctions for breaches other than misleading Parliament**

Having read the FM's submissions, I appreciate that the new advisors can recommend sanctions for code breaks, minus deliberately misleading parliament. However, as I said in my written submissions, these "appropriate sanctions" are not known to the public, and this is to the detriment of the code and, consequently, public trust. What range of sanctions are available to the FM for code breaks as a whole, and in what general situations (as described in my submissions) should breaks warrant? I realise that the latter of these points is hypothetical: the code cannot cover every situation, but I think even setting out several examples would be beneficial, as the sanction for deliberately misleading parliament does. For the former, to my mind, minus removal from office, the only two sanctions available would be a fine or an apology, it would be beneficial to know what the "range of sanctions" available to advisors and the FM are in preparation for any decision in such an investigation.

- **allow IAs to make recommendations for changes to the Code**

Having read the code and the FM's submissions, I am satisfied that this point is resolved!

- **renaming the IA position to make it clear there is no judicial involvement**

The new code still refers to the advisors as "independent", despite what the former Lord President said in the Court of Session ([see my previous written submission](#)) regarding this description of the advisors. The title of "Independent", to my mind, the former Lord President, and I think fair-minded observers, implies that the judiciary is involved in this process, which it very clearly is not. The role should be retitled to: "Adviser of the Scottish Ministerial Code" or similar, clarifying to rule out confusion with the judiciary.

- **require Ministers to make a public oath or commitment to abide by the Code.**

I refer to my points in my written submissions, as there is no provision within the current code for ministers to make a public oath or commitment to abide by it. As MSPs make their oaths upon entering office, I think ministers entering office should take a similar public oath or commitment, as I believe ministers in Australia do currently, as set out in Section 62 of the Commonwealth of Australia Constitution Act 1900. Having ministers make such an oath or commitment, I believe this would strengthen public trust in ministers, who, having committed in public, would be entrusted to follow the code compared to the absence of such a public commitment.

If the Committee would like me to provide further written evidence or for me to provide oral evidence, then I would be more than happy to do so.