

Citizen Participation and Public Petitions Committee

12th Meeting, 2022 (Session 6), Wednesday
29 June 2022

PE1935: Create an Independent Committee
to judge whether Scottish Ministers have
broken the Ministerial Code

Note by the Clerk

Petitioner	Dillon Crawford
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to create a Committee outside the Parliament to judge whether Ministers have broken the Ministerial Code.
Webpage	https://petitions.parliament.scot/petitions/PE1935

Introduction

1. This is a new petition that was lodged on 3 May 2022.
2. The petition seeks to introduce an independent committee with non-MSP membership to judge whether Ministers have broken the Ministerial Code. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected not to collect this information.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

6. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1935: Create an Independent Committee to judge whether Scottish Ministers have broken the Ministerial Code

Petitioner

Dillion Crawford

Date lodged

03/05/2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to create a Committee outside the Parliament to judge whether Ministers have broken the Ministerial Code.

Previous action

I have contacted the Scottish Government and received no response.

Background information

There should be a truly independent committee made up of non-MSPs to judge whether Ministers have broken the Ministerial Code. As MSPs are affiliated with a party, I believe they could vote in favour of a Minister and non-MSPs would not present this challenge.

Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1935](#): Create an Independent Committee to judge whether Scottish Ministers have broken the Ministerial Code, lodged by Dillon Crawford

Brief overview of issues raised by the petition

- The [Scottish Ministerial Code](#) (“Ministerial Code”) is a code of conduct for members of the Scottish Government including the First Minister, Cabinet Secretaries, Law Officers and Junior Scottish Ministers.
- The Ministerial Code includes the ‘overarching duty’ on Ministers to comply with the law and to abide by the [Seven Principles of Public Life](#) (a set of ethical standards which apply to all holders of public office).
- The enforcement of the Ministerial Code is set out in [paragraphs 1.6 and 1.7 of the Code](#). It notes that the First Minister is the ultimate arbiter of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards.
- The Ministerial Code provides for [a system of independent advisers](#). The First Minister may refer matters to the independent advisers to provide advice on which to base their judgement about any action required in respect of ministerial conduct. The findings of the independent advisers are published.
- The decision to appoint or dismiss a Minister (or other member of the Scottish Government) is a power under the discretion of

the First Minister. As such, the Code is explicit in [Paragraph 1.4](#) that it is not for Scottish Government Officials to enforce the Ministerial Code.

- The Code does not contain any special provisions for when an allegation is made that it is the First Minister who is alleged to have breached the Code. However, the [Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints \(Session 5\) Report](#) noted there is a precedent for a First Minister to refer allegations that they have breached the Code to the independent advisers for further investigation.
- The petition raises concerns about the independence of MSPs and their ability to assess an alleged breach of the Ministerial Code. However, as noted above the First Minister is the only MSP that judges and decides action for a breach of the Ministerial Code. With regards to the creation of an independent committee to assess alleged breaches of the Ministerial Code, an operational system of Independent Advisers on the Ministerial Code already exists.

Scottish Parliament Action

The [Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints \(Session 5\) Report](#) made two recommendations relating to amending the Ministerial Code and the remit of the independent advisers. These recommendations were addressed in the [Scottish Government's response to the Committee on 21 June 2021](#). The response included the following actions:

- cooperate fully with the Independent Advisers on the Ministerial Code in their proposed further considerations and keep them informed about work on the updated procedure; and
- ensure that the comments from the Committee, the Independent Advisers, and the [Review of the Scottish Government procedure for handling harassment complaints involving current or former ministers by Laura Dunlop QC](#) are considered as part of any revision to the Ministerial Code.

Courtney Aitken
Researcher
01/06/2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Scottish Government submission of 23 June 2022

PE1935/A: Create an Independent Committee to judge whether Scottish Ministers have broken the Ministerial Code

Thank you for your email of 21 June requesting a Scottish Government response to Petition PE1935, which was created by Dillon Crawford on 3 May 2022 and will be considered by the Citizen Participation and Public Petitions Committee on Wednesday, 29 June 2022.

The petition calls on the Scottish Parliament “to urge the Scottish Government to create a Committee outside the Parliament to judge whether Ministers have broken the Ministerial Code”.

In the background information to the petition the petitioner states: “There should be a truly independent committee made up of non-MSPs to judge whether Ministers have broken the Ministerial Code. As MSPs are affiliated with a party, I believe they could vote in favour of a Minister and non-MSPs would not present this challenge.”

All Scottish Government Ministers are bound by the terms of The Scottish Ministerial Code.

The Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations, drawing on past precedent, but it is not a rulebook. The Permanent Secretary may provide Ministers with advice on matters which the Code covers and will ensure procedures are in place to support compliance with the Code. In common with Ministerial Codes for the UK Government and the other devolved administrations, Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions to Parliament and the public.

This is an important democratic principle that is founded on the accountability of Ministers to Parliament and, ultimately, to the electorate.

Again, mirroring the position on the UK and other administrations' codes, the First Minister is the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Where she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide her with advice on which to base her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers are published and previously published reports can be found on the Scottish Government website.

The Code sets out the standards of conduct required of Members of the Scottish Parliament (MSPs) who are acting in their capacity as Government Ministers. Ministers must also comply at all times with the requirements the Parliament itself has laid down in relation to the accountability and responsibility of Ministers. All Ministers (both MSPs and Law Officers) are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998. All MSPs, including those who are Ministers, must also adhere to the terms of the Code of Conduct for Members of the Scottish Parliament, which provides a set of principles and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties. The MSPs' Code of Conduct is available from the Scottish Parliament's website² Complaints in relation to the conduct of Members of the Scottish Parliament under the MSPs' Code of Conduct are initially investigated by the Commissioner for Ethical Standards in Public Life in Scotland. Given the principles which underpin the Scottish Ministerial Code and the way in which it is applied, there are no plans to amend the decision making process.