

Citizen Participation and Public Petitions Committee

4th Meeting, 2023 (Session 6), Wednesday 8
March 2023

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

Lodged on	3 May 2022
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. The Committee last considered this petition at its meeting on [29 June 2022](#). At that meeting, the Committee agreed to seek further briefing from the Scottish Parliament Information Centre on the issues raised by the petition.
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 the follow-up SPICe briefing which is set out in **Annexe C**. The new briefing is supplementary to the [initial one](#).
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 [initial SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the petition's [webpage](#).

Action

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

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

Extract from Official Report of last consideration of PE1935 on 29th June 2022

The Convener: PE1935 is to urge the Scottish Government to create a committee outside the Parliament to judge whether ministers have broken the ministerial code. The petition has been lodged by Dillon Crawford.

The petitioner considers that a committee of non-MSPs would be able to act independently because they would not be affiliated to a party. The Scottish Government's submission details the process by which ministers are held to account. Ministers are bound by the Scottish ministerial code, and a group of independent advisers currently exists to provide the First Minister with advice on which to base judgments in relation to conduct.

I think that PE1935 is an interesting petition. It is obviously motivated by current events. I wonder whether, in the first instance, we might invite the Scottish Parliament information centre to do a little bit of further work on how the various Parliaments within the UK currently process and deal with such business. I do not know where the Scottish system fits in with the systems in Northern Ireland, Wales or the rest of the UK, and I think that the petitioner and the public probably feel that there is a slight lack of transparency about how the arrangements have arisen. It would be useful for us at least to pull that work together and look at it as we consider the petition further.

Are colleagues content with that?

Members *indicated agreement.*

Annexe C

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

Citizen Participation and Public Petitions Committee (Session 6)

Ministerial Codes of Conduct in the Governments of the UK

This paper has been produced by SPICe in response to a request from the Committee for a further briefing on how the devolved governments and UK Government handle alleged breaches of Ministerial Codes of Conduct. The paper is supplementary to the [SPICe briefing on PE1935](#) which provided a brief overview of issues raised by the petition: [Create an Independent Committee to judge whether Scottish Ministers have broken the Ministerial Code](#), lodged by Dillon Crawford.

The petition raised concerns about the independence of Members of the Scottish Parliament (MSPs) and their ability to assess an alleged breach of the [Scottish Government Ministerial Code](#) (“Ministerial Code”). The Ministerial Code is the responsibility of the Scottish Government. Ministers carrying out functions of the Scottish Government are covered by the Ministerial Code. The First Minister is the only MSP that assesses and decides action for a breach of the Ministerial Code. All MSPs, including Ministers, are expected to abide by the [Scottish Parliament Code of Conduct](#). This is consistent with arrangements at a UK level and in the other devolved nations where there are separate Codes of Conduct for members of the government and members of the respective legislature.

The Ministerial Codes which apply to Ministers of the UK Government, Scottish Government and Welsh Government do not have a statutory basis and as such are not required to be laid before or approved by the legislature to take effect. The Northern Ireland Executive Ministerial Code does have a statutory basis (see section [Northern Ireland Executive](#)).

The [Seven Principles of Public Life](#) (also known as the “Nolan Principles”) are a set of ethical standards which apply to all holders of public office. The Ministerial Codes for the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive all include an “overarching duty” on Ministers to comply with the law and abide by the Nolan principles. Although there are similarities, such as the overarching duty to comply with the law and abide by the Nolan principles, there are differences between governments on how alleged breaches of the relevant Ministerial Code are dealt with, the status of the independent advisors, and the sanctions available to the Prime Minister or First Minister in relation to breaches of the relevant Ministerial Code.

Scottish Government

The [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. It also provides guidance to members of the Scottish Government on how they conduct and arrange their affairs to uphold the standards set out in the Ministerial Code. The latest version of the Ministerial Code was issued on 8 February 2018 by First Minister Nicola Sturgeon MSP.

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 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 enforcement of the Ministerial Code is set out in paragraphs 1.6 and 1.7, and states:

“1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code

to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.”

The Scottish Government’s [submission of the 23 June 2022 to the Committee](#) notes that the personal responsibility of Minister to conduct their affairs is: “*an important democratic principle that is founded on the accountability of Ministers to Parliament and, ultimately, to the electorate.*” The Ministerial Code does not set out any specific sanctions for breaches of the Code. However, the Code does indicate that Ministers who knowingly mislead the Scottish Parliament will be expected to offer their resignation to the First Minister.

A system of independent advisers on the Ministerial Code was introduced in 2008 by the then First Minister Alex Salmond. The [system of independent advisers](#) allows the First Minister to refer matters, such as alleged breaches of the Ministerial Code, for advice on which to base their final decision on any action required in respect of ministerial conduct. The findings and reports of the independent advisers are provided to the Scottish Government and published. The current independent advisor is James Hamilton KC who has been in-post since January 2013.

The Code does not contain any special provisions for when an allegation is made that the First Minister is alleged to have breached the Ministerial Code. However, the [Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints \(“SGHHC Committee”: Session 5\) Report](#) noted there is a precedent for a First Minister to refer allegations that they have breached the Ministerial Code to the independent advisers for further investigation.

The Ministerial Code is the responsibility of the Scottish Government and is not required to be laid before, or approved by, the Scottish Parliament. However, the Scottish Government has previously adopted changes to the Ministerial Code at the request of a Scottish Parliament Committee. This occurred in 2016 when the First Minister amended the Ministerial Code to [accommodate recommendations relating to Parliamentary Liaison Officers by the Standards, Procedures and Public Appointments Committee \(Session 5\)](#).

The Ministerial Code was also discussed as part of the [SGHHC Committee Report](#). The SGHHC Committee provided the following

considerations on the Ministerial Code and the remit of the Independent Advisers:

“643. The Committee welcomes the decision of James Hamilton to clarify the remit of his work. However, the fact there was a need for clarification may point to the need to revisit paragraph 1.7 of the Ministerial Code, which sets the role of the independent advisers. This paragraph is currently very short. It may benefit from being more detailed. We have identified the following points for consideration.

644. First, the role of the advisers is to “provide advice” rather than take a view on whether a breach has occurred. This could be clearer. Second, the First Minister is not obliged to take the advice of the independent advisers when they have reported. Third, the First Minister sets the terms of the referral to the independent advisers. It is not clear whether the remit of the referral is binding or not or if the advisers are free to investigate potential breaches of the Code which have not been specifically highlighted in the referral.”

The [SGHHC Committee Report](#) made two recommendations relating to amending the Ministerial Code and the remit of the independent advisers. One of the recommendations related a review of the Scottish Government procedure for handling harassment complaints involving current or former ministers by Laura Dunlop KC. The two recommendations from paragraphs 646 and 647 of the SGHHC Committee report states:

“646. As such, we ask that the First Minister responds favourably to our request to revise and strengthen paragraph 1.7 of the Ministerial Code. In particular we recommend that in the future the independent advisers should be invited to review the referred actions against the Ministerial Code as a whole rather than being invited to consider specific sections.

647. We also note that there may be a general requirement to amend the Ministerial Code as a result of the outcome of this inquiry and the work carried out by James Hamilton and Laura Dunlop QC. We recommend that the First Minister gives consideration to a full review of the Ministerial Code with a view to considering what changes are required.”

These recommendations were addressed in the [Scottish Government's response to the SGHHC Committee Report on 21 June 2021](#). The response notes:

“The First Minister will, as is usual following an election, give consideration to the publication of a revised Code. The timing of that revision will reflect further consideration by the independent advisers proposed by Mr Hamilton. This consideration will take account of the comments made by the Committee and by Ms Dunlop.”

The response also included the following commitments from the Scottish Government:

- 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.

The [Review of the Scottish Government procedure for handling harassment complaints involving current or former ministers by Laura Dunlop QC](#) was published on 16 March 2021. The Scottish Government published its updated [procedure for handling harassment complaints involving current or former ministers](#) on 24 February 2022.

The Scottish Government has not indicated whether the First Minister is intending to publish a revised Code. However, in its submission of 23 June 2022 to the Committee, the Scottish Government indicated that there are no plans to amend the process by which an alleged breach of the Ministerial Code is decided.

UK Government

The [UK Government Ministerial Code](#) (“UKG Ministerial Code”) applies to members of the UK Government. The most recent version was published on 27 May 2022 by the then Prime Minister Boris Johnson MP. The House of Commons Library briefing on the [Ministerial Code and Independent Advisor on Ministerial Interests](#) notes that it has

become customary for a new version of the Code to be issued when there has been a change of Prime Minister.

The Prime Minister is the ultimate arbiter of standards in the UK Government (“UKG”). The UKG Ministerial Code states that Ministers can only remain in post so long as they retain the confidence of the Prime Minister. As such, the UKG Ministerial Code does not set out prescribed punishments for specific breaches of standards. Instead, it provides a range of sanctions the Prime Minister may administer if a member of the UK Government breaches the UKG Ministerial Code. Paragraph 1.7 states:

“Where the Prime Minister retains his confidence in the Minister, available sanctions include requiring some form of public apology, remedial action, or removal of ministerial salary for a period.”

The UKG Ministerial Code also indicates that a Minister is expected to provide their resignation if they are found to have knowingly misled the UK Parliament.

The [Independent Advisor on Minister’s Interests](#) also has a role in enforcement of the UKG Ministerial Code. The current Independent Adviser, Lord Geidt, was appointed by then Prime Minister Boris Johnson MP on 28 April 2021. The Independent Advisor provides the Prime Minister with impartial advice on matters relating to the UKG Ministerial Code. The role is supported by a [Terms of Reference](#) which indicates the Independent Advisor is also responsible for compiling the [List of Minister’s Interests](#), producing an [Annual Report](#), and investigating breaches of the UKG Ministerial Code. Paragraph 1.4 of the UKG Ministerial Code sets out how the Independent Advisor may investigate alleged breaches, and states:

1.4 It is not the role of the Cabinet Secretary or other officials to enforce the Code. The Prime Minister’s Independent Adviser has a role, set out in Terms of Reference published by the Prime Minister, in advising the Prime Minister and Ministers about adherence to the Code. Ministers are expected to provide the Independent Adviser with all information reasonably necessary for the discharge of his role. Investigations into adherence to the Ministerial Code may occur:

a. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he may ask the

Cabinet Office to investigate the facts of the case and/or refer the matter to the Independent Adviser on Ministers' interests.

b. Where the Independent Adviser believes that an alleged breach of the Code warrants further investigation and that matter has not already been referred to him, he may initiate an investigation. Before doing so, the Independent Adviser will consult the Prime Minister who will normally give his consent. However, where there are public interest reasons for doing so, the Prime Minister may raise concerns about a proposed investigation such that the Independent Adviser does not proceed. In such an event, the Independent Adviser may still require that the reasons for an investigation not proceeding be made public unless this would undermine the grounds that have led to the investigation not proceeding."

The Terms of Reference also states:

"The Prime Minister may ask the Independent Adviser for recommendations about the appropriate sanction where the Prime Minister judges there to have been a breach of those standards. These recommendations will remain confidential."

A similar petition to PE1935 on the enforcement of the UKG Ministerial Code is under consideration at the UK Parliament. The UK Parliament petition, "[Introduce independent body to enforce the ministerial code on ministers](#)", received a response from the UK Government on 15 June 2022. The response outlines the UK Government position on why the Prime Minister has the final decision on sanctions for a breach of the Ministerial Code. The response states:

"The Prime Minister's constitutional role as Head of the Executive means that he has sole responsibility for the organisation of Her Majesty's Government. This includes the recommendation of the appointment, dismissal and acceptance of resignation of other Ministers. Ministers hold office for as long as they hold the confidence of the Prime Minister. The Prime Minister is accountable to both Parliament and the public in the exercise of his powers as head of the Executive."

The response to the petition also states some of the recent changes to the role of the Independent Adviser that are reflected in the current

version of the UKG Ministerial Code. The UK Government response to the petition states:

“On 27 May 2022 the Government announced changes to strengthen the role of the Independent Adviser on Ministers’ Interests, which have been incorporated into an updated Ministerial Code. The changes include: an enhanced process for the Independent Adviser to initiate investigations; a more explicit duty on Ministers to provide the Independent Adviser with all information reasonably necessary for the discharge of his role; new detail on proportionate sanctions for a breach of the Code; that the Independent Adviser will in future be consulted about revisions to the Code, and enhancement of the independence of the Independent Adviser’s office.”

Welsh Government

The [Welsh Government Ministerial Code](#) (“WG Ministerial Code”) was issued by Mark Drakeford MS on 5 August 2021 following elections to the Senedd and his reappointment as First Minister of Wales. The enforcement of the WG Ministerial Code is the responsibility of the First Minister (of Wales). Paragraph 1.5 of the WG Ministerial Code states:

“Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions and conduct in the Senedd and to the public. The First Minister is the ultimate judge of the standards of behaviour expected of a minister and the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, ministers can only remain in office for so long as they retain the confidence of the First Minister. The outcome of any substantiated breach of the Code will depend on the nature of the breach.”

The WG Ministerial Code does not set out any specific sanctions for breaches of the Code. However, Welsh Government Ministers who knowingly mislead the Senedd will be expected to offer their resignation to the First Minister.

The [WG Ministerial Code was amended by the then First Minister Carwyn Jones MS in 2017](#) following calls in the Senedd (then known as the National Assembly for Wales) for a Welsh Government process, in line with the Scottish Government arrangements, of referring Ministerial

conduct matters to an independent advisor. The provisions in the WG Ministerial Code for a panel of independent advisors has since been amended. The most recent version of the WG Ministerial Code clarifies how the First Minister, Permanent Secretary, and Independent Adviser may investigate alleged breaches. Paragraph 1.7 of the WG Ministerial Code states:

“The First Minister will decide how complaints under the Code will be investigated. He or she will usually refer significant complaints regarding ministerial conduct to an Independent Adviser for consideration and advice, but he may also ask the Permanent Secretary to consider the complaint and report to him. This may be if the First Minister is satisfied that the complaints can be responded to more immediately or routinely, for example where there is an undeniable breach, or where there is no plausible case to answer or complaints are deemed vexatious or trivial in nature. The First Minister may also seek an initial scoping investigation to assist him in deciding whether to refer the complaint to an Independent Investigator. The First Minister will exercise judgement over any necessary action resulting from the advice. The findings of an Independent Adviser will be published. These arrangements shall also apply to the First Minister, who is accountable to the Senedd.”

Northern Ireland Executive

The [Northern Ireland Executive Ministerial Code](#) (“NIE Ministerial Code”) is required by the [Northern Ireland Act 1998](#) (as amended). It is the only Ministerial Code in the UK that has a statutory basis. [Section 28A of the Northern Ireland Act 1998](#) provides that there must be a Ministerial Code and that it can only be changed with cross-community agreement in the Northern Ireland Assembly.

The Ministerial Code of Conduct is set out in paragraph 1.5 of the NIE Ministerial Code and provides the standards of conduct that Northern Ireland Executive Ministers must adhere to. The Northern Ireland Executive is the only government in the UK that does not have a provision in its Ministerial Code indicating that a Minister should offer their resignation when they are found to have knowingly misled the legislature.

The First Minister and Deputy First Minister of Northern Ireland do not have full discretion in the appointment and dismissal of Ministers of the Northern Ireland Executive. The First Minister and Deputy First Minister

are [nominated by the largest and second largest political parties](#), respectively. Departmental Ministers are [nominated by political parties in the Northern Ireland Assembly according to their share of the seats](#). Departmental Ministers [can only be dismissed by the party's nominating officer and if the Presiding Officer of the Northern Ireland Assembly is notified](#). The exception to this arrangement is the [Minister of Justice which requires cross-community support](#). Ministers may also be removed and excluded from holding Ministerial office for 12 months [if the Northern Ireland Assembly resolves that they no longer have the confidence of the Assembly](#). The First Minister and Deputy First Minister [can jointly decide the appointment and dismissal of junior Ministers](#).

The [Panel for Ministerial Interests was established in March 2020](#) and is intended to provide a means by which alleged breaches of the NIE Ministerial Code can be investigated. The Panel consists of the Commissioner for Standards at the Northern Ireland Assembly and two other (unspecified) members. A guidance document on [Enforcement of the Ministerial Code of Conduct](#) indicates that when a complaint is made, a preliminary examination to determine the admissibility of the complaint is conducted. If the complaint is admissible, a further investigation is then completed. The panel reports its findings and take a view on the seriousness of any breaches found. The findings of the investigation are published. The guidance document indicates that the published findings may provide grounds upon which the Northern Ireland Assembly or the nominating officer of the Minister's party can impose sanctions.

The [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021](#) gave the [Commissioner for Standards at the Northern Ireland Assembly](#) powers to investigate alleged breaches of the NIE Ministerial Code. The [Commissioner for Standards can initiate investigations](#) if a complaint is made against a Minister, if asked to investigate by Ministers or Members of the Northern Ireland Assembly (MLAs), or if the Commissioner believes there has been a potential breach of the NIE Ministerial Code. The Act allows the Commissioner to dismiss a complaint if they believe it is frivolous or vexatious. The Commissioner's investigation reports are submitted to the Northern Ireland Assembly.

Relevant Sources and Links

- [Institute for Government Insight: Reinforcing ethical standards in government, March 2022](#)

- [The Committee on Standards in Public Life: Upholding Standards in Public Life, November 2021](#)
- [House of Commons Library Briefing Paper: The Ministerial Code and the Independent Adviser on Ministerial Interests, August 2021](#)
- [Institute for Government Analysis: Updating the Ministerial Code, July 2021](#)

Courtney Aitken, SPICe Research

31.10.2022

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