

Briefing for the Citizen Participation and Public Petitions Committee on [petition PE2093: Review and update the Scottish Ministerial Code](#), lodged by Benjamin Harrop

Brief overview of issues raised by the petition

- The petitioner is calling for the Scottish Ministerial Code to be reviewed and given a statutory basis. The petition also calls for sanctions to be set out in the Code and for Ministers to make a public oath to abide by the Code. The petitioner also calls for changes to the remit of the independent advisers which would:
 - enable the independent advisers to initiate investigations
 - require the First Minister to make a statement to Parliament if they decide to go against the independent advisers' advice
 - allow independent advisers to make recommendations for changes to the Code
 - restate the independent advisers' position to make it clear there is no judicial involvement.
- 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 has no statutory basis, and a new version of the Ministerial Code can be issued at any time. Previous updates to the Ministerial Code have been issued [following Scottish Parliament elections](#) and [a change of First Minister](#).
 - The [Northern Ireland Executive Ministerial Code](#) is the only ministerial code of conduct 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 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).

- Scottish Ministers are accountable to the Scottish Parliament. This is reflected in the Ministerial Code with the inclusion of a duty to “*be held to account*” by the Scottish Parliament.
- 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 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 Ministerial Code is explicit in Paragraph 1.4 that it is not for Scottish Government officials to enforce the Ministerial Code.
- 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.
- 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 Ministerial Code states that “*Where a complaint against the First Minister is upheld the Deputy First Minister may refer the matter to the independent advisers*” and that “*The Scottish Government will publish information about concluded formal complaints about a Minister’s behaviour, including the name of the Minister*”.

Scottish Parliament Action

The Citizen Participation and Public Petitions Committee considered a similar petition, [PE1935 Create an Independent Committee to judge whether Scottish Ministers have broken the Ministerial Code](#), between 3 May 2022 and 23 March 2023. The Committee closed the petition on the basis that a system of independent advisers on the Ministerial Code is already in operation.

SPICe prepared a follow-up briefing for the Committee during its consideration of PE1935 on the [Ministerial codes of conduct in the governments of the United Kingdom](#). The briefing sets out the main provisions of the respective Ministerial codes of conduct and how they interact with independent advisors or standards bodies (where applicable), which may be of interest to the Committee in its consideration of PE2093.

Courtney Aitken
10 May 2024

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

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