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Kenneth Gibson MSP  
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20 December 2022

Dear Kenneth,

I welcomed the opportunity to meet with the Committee on 22 November to discuss the updates to the procedure for handling complaints made by civil servants about a current or former Minister's behaviour.

The discussion highlighted different views in the Committee on the publication of outcomes not upheld. The proposal brought forward was that the Minister/former Minister's name and the outcome of the complaint will be published for a limited publication period of six months after the external, independent process, including any appeals, is finished. I am grateful to the Committee for the discussion on this aspect of our proposals. After a period of reflection in which I considered the Committee's points, I have concluded that the publication plans for outcomes not upheld will be enacted as originally proposed. I believe this strikes a careful balance between the need for fairness and the need for transparency in relation to Ministers as public figures.

The period of reflection on the updates to the procedure has concluded and there are no further changes following engagement with the Committee, staff, expert groups and trade unions. There is of course a procedure in place from February 2022 as scrutinised by the Committee in January and I am pleased to say that the updates will come into effect in the week commencing 19 December 2022.

The final version of the updated procedure is attached in Annex A. Figures on ongoing cases under investigation using the procedure will be published for the first time on the Scottish Government website before Christmas recess. These figures will be updated on a six-monthly basis thereafter.

I undertook to providing you with the Scottish Government's definition of bullying and further information on standards of behaviour as set out in the Ministerial Code, these are attached in Annex B.

**JOHN SWINNEY**

## ANNEX A

### PROCEDURE FOR MAKING A FORMAL COMPLAINT ABOUT A MINISTER'S OR FORMER MINISTER'S BEHAVIOUR, DECEMBER 2022

#### Procedure aims

The policy aim of this procedure, in line with our general commitment to staff to creating a workplace free from bullying, harassment and discrimination, is to ensure that formal complaints raised about current or former ministers in respect of unacceptable behaviour towards civil servants are handled sensitively, fairly and timeously and in doing so all parties are treated with respect and dignity.

The procedure provides for the handling of formal complaints made by civil servants about the behaviour (including bullying, harassment, discrimination, or any other unwanted conduct affecting the dignity of staff – for definitions see Standards of Behaviour) of a Minister or former Minister, in the course of discharging their duties as civil servants in their employment by the Scottish Government ('SG'). This includes addressing related issues within such complaints, such as the action of the SG in preventing or addressing the alleged behaviour.

The procedure does not provide for any decision on the conduct of a Minister or former Minister. The First Minister has responsibility to judge the standards of behaviour expected of a Minister, including in their interactions with civil servants, and of the appropriate consequences of a breach of those standards.

#### Procedure principles

A complaint of this nature is a grievance. The procedure provides for grievances within scope to be addressed and, where possible, resolved, in line with [statutory guidance](#).

The procedure will not be used to deal with issues arising from the application of other SG policies or procedures, for example informal resolution and mediation, without the express consent of the complainer. Similarly, the procedure will not be used to deal with complaints made under the Civil Service Code which relate or refer to the behaviour of a Minister or former Minister without the express consent of the complainer.

The expectation is that a formal complaint will be raised without unreasonable delay. There is no time limit for making a complaint of harassment. There is a time limit of six months for making a complaint of bullying or other unwanted conduct. Such complaints will normally only be taken forward using this procedure if made within six months of the alleged behaviour or within six months of any informal dispute resolution processes concluding (including mediation).

If a complaint of bullying or other unwanted conduct is made outwith the time limit, there will be a consideration of available information before a decision is made on whether it would be equitable to take forward the complaint using this procedure notwithstanding that a complaint is made outwith the time limit. It may be the case that a complaint made may not be taken forward under this procedure if it is no longer possible to investigate it fairly and effectively because of the passage of time.

All parties involved in the process are expected to be respectful and engage positively with the process to resolve the complaint, and to maintain confidentiality at all times – including when the process has concluded.

The need to maintain confidentiality does not affect the right of any member of staff to be protected from detriment because they have made a qualifying disclosure (sometimes called whistleblowing) within the meaning of the Public Interest Disclosure Act 1998 (PIDA). Details of SG's policy on raising a concern under the Civil Service Code and whistleblowing can be found [here](#).

Staff should act in good faith when raising a complaint under this procedure and should represent the facts truthfully, and in line with our [Standards of Behaviour](#).

### Scope of procedure

The procedure applies to all SG staff who wish to make a formal complaint about a Minister's or former Minister's behaviour towards a civil servant (this may include bullying, harassment, or any other unwanted conduct affecting the dignity of staff).

The following are outwith the scope of the procedure:

- informal concerns, or concerns raised before they become a formal complaint – further advice can be found [here](#). There are a range of alternative resolutions which may be more appropriate for resolving concerns, but it is up to the member of staff which route they wish to pursue.
- complaints about a Minister or former Minister relating to matters other than behaviour towards civil servants.
- complaints where a Minister or former Minister may be involved but is not the subject of complaint.
- complaints solely about other civil servants or third parties.
- complaints made by third parties.

The procedure applies to all Scottish Government staff, including senior civil servants and civil servants working in the Scottish Government's executive agencies.

For inward secondees, the conditions of their secondment apply. This means they can raise matters informally with an appropriate manager. However, if they wish to pursue a formal complaint, this must be done through their employer's grievance procedure.

Employment agency workers are not covered by this procedure. If an agency worker has a complaint, this must be raised through the agency, who may then liaise with the Scottish Government.

## Procedure (summary)

The procedure will consist of five stages:

1. Initial contact and assessment. The complainer will set out their complaint in writing to [Propriety & Ethics](#). The SG will carry out initial checks, confirm whether the complaint can be taken forward under this procedure, and notify the relevant parties.
2. Investigation. Where a complaint is to be investigated, the SG will assign an external decision maker and an external investigator to the case. The decision maker will commission the investigator to undertake an impartial collection of facts and evidence from the relevant parties including the complainer and the subject of complaint, prepare a summary of the relevant facts, and submit a report for the decision maker.
3. Decision. The decision maker will ensure that a reasonable investigation has been carried out, notify the relevant parties of the report and share copies as appropriate. The decision maker will meet with the complainer and may also meet with the subject of complaint. The decision maker will decide whether to uphold the complaint or not and if appropriate make recommendations on what action, if any, should be taken. The decision maker will notify the complainer of their decision in writing and will also notify the subject of complaint. The decision maker will also notify the SG for the purposes of consideration by SG as the employer in line with Stage 4 of this procedure.
4. Employer Action. The SG will be responsible for ensuring that any recommendations are considered and implemented as appropriate. Where the complaint is about a current or former Minister, the SG will notify the First Minister and the appropriate Special Adviser(s). Where a complaint is about the First Minister, the SG will notify the Deputy First Minister and the appropriate Special Adviser(s).
5. Appeal. Where either the complainer or the subject of complaint are unsatisfied with the decision, they can appeal. Appeals will be considered by an external appeal decision maker.

### Where parties involved may be the victim of a crime

There may be occasions where it is the decision maker's opinion – at any stage in the process – that a criminal offence may have been committed.

At all times the complainer is free to make a complaint directly to the police.

The decision maker will alert the SG to this opinion as soon as is practical so that SG is aware of this and may take appropriate steps in line with its duties as an employer. The SG will discuss with the complainer whether they want to report it to the police and ensure that support and access to specialist advice is provided. No pressure will be put on a complainer to make any particular decision; if they do not want to tell the police, they do not have to.

The SG will, wherever possible, respect the wishes of the complainer, however there may be circumstances where the SG may have an obligation to bring the matter directly to the attention of the police. Before taking this step, the SG will discuss with the complainer, explain the reasons, and provide appropriate support.

The SG as the employer will co-operate fully with any police investigation or criminal proceedings. The SG will pause the procedure whilst awaiting the outcome of police investigation or criminal proceedings. This is to ensure that actions under this procedure do not prejudice criminal proceedings. When the procedure is resumed, a new decision maker will be assigned by the SG nominated contact.

The SG will continue to offer support throughout to the complainer.

### Record keeping

A written record will be kept at all stages of the procedure. Following conclusion, the decision maker should send copies of the documents to [Propriety & Ethics](#).

Records will be protectively marked, kept securely, and handled in line with the SG record management policy in compliance with the requirements of data protection legislation.

## Procedure (full)

For the purposes of this procedure and associated guidance, the following terms will be used to describe the parties involved:

- **Complainer:** the person(s) making a complaint. The complaint might come from the person who experienced the behaviour, someone who witnessed it or a trade union representative supporting a member of staff.
- **Subject of complaint:** the subject(s) of the complaint. This will be the Minister or former Minister who is alleged to have behaved inappropriately during their term of office, but may include others, for example civil servants.
- **Witness:** Anyone who witnessed the alleged inappropriate behaviour, who can provide corroborating evidence to support either the complainer's or subjects of complaint's account of events or who has other information relevant to the complaint.
- **Decision maker:** the external person(s) appointed by the Scottish Government to consider the complaint and decide on appropriate action.
- **Investigator:** The external person(s) appointed by the Scottish Government to undertake an impartial collection of facts and evidence and produce a report.
- **SG nominated contact:** The person(s) in Scottish Government responsible for appointing the external decision maker and investigator, retaining a record of the complaint, and taking forward any further actions as appropriate.
- **Support contact:** The person(s) in Scottish Government responsible for provision of relevant pastoral support.
- **Trade Union representative:** If parties are a member of a trade union, they may wish to discuss with their representative who can offer appropriate advice and support.
- **Appeal decision maker:** the external person(s) appointed by the Scottish Government to consider an appeal.

### Stage 1 Initial contact and assessment

The complainer will set out their complaint in writing to [Propriety & Ethics](#), providing:

- details of the complaint, giving specific instances and details of witnesses if appropriate;
- what has been done to informally resolve the issue if appropriate, and if nothing has been done, explaining why this could not address the concerns;
- how they would like to see matters resolved.

The SG nominated contact, who will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint, will acknowledge receipt of the complaint.

The SG nominated contact will carry out initial checks in relation to whether the complaint is in scope of this procedure. Where a complaint of bullying or other unwanted conduct is made outwith the time limit this stage will include an assessment of any relevant information and whether it would be equitable to take forward the complaint using this procedure notwithstanding that a complaint is made outwith the time limit.

Where the complaint is in scope of the procedure and is capable of being investigated, the decision will be to investigate further. Once the SG nominated contact has confirmed this decision, they will inform the complainer of this.

Where the decision at stage 1 is not to investigate and not to proceed under this procedure, the SG nominated contact will arrange for a meeting with the complainer to inform them. The meeting will be arranged without unreasonable delay, giving at least five working days' notice to the complainer and informing them that they may be accompanied by a trade union representative or work colleague. The SG nominated contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

After the meeting, the SG nominated contact will notify the complainer by letter that the complaint will not be considered further under this procedure, and include the written notes of the meeting.

A support contact will be offered to the complainer who may offer support to consider alternative resolution to their issues.

Where an investigation is to be carried out, the SG nominated contact will notify the subject of complaint that a complaint has been received which will be investigated (letting the complainer know when the subject of complaint has been notified). The SG nominated contact will notify the Permanent Secretary or a delegate by providing a summary of the complaint, the initial checks carried out, and any other information relevant to the decision that the complaint will be investigated.

The SG nominated contact will establish a support contact for all parties involved in the process.

Where a complaint that will be investigated is about a current Minister, the Permanent Secretary or delegate will inform the First Minister of the name of the subject of the complaint and that a complaint has been received, providing a summary of the issues considered in the decision taken to investigate further.

Where a complaint that will be investigated is about a former Minister, the Permanent Secretary or delegate will inform the First Minister that a complaint has been received, but the name of the subject of the complaint will not be disclosed.

Where a complaint that will be investigated is about the current First Minister, the Permanent Secretary or a delegate will inform the Deputy First Minister.

### Stage 2 Investigation

The SG nominated contact will assign the complaint to an external decision maker and share the complaint, the initial checks carried out and any other information relevant to the decision that the complaint will be investigated.

The decision maker will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint.

The decision maker will commission an external investigator, appointed by the SG nominated contact, who will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint.

The decision maker will set the terms of reference for the investigation, for example the alleged incident(s), potential witnesses, and the format of the final report. This may include establishing if there are other staff within the SG who may have a legitimate interest in the outcome of the complaint, for example where the complainer is someone who witnessed the



alleged behaviour and the investigation and decision may be relevant to staff who directly experienced the alleged behaviour.

The decision maker will share a copy of the terms of reference with the complainer, the subject of complaint, and the SG nominated contact. The decision maker will keep the SG nominated contact informed of expected time scales, and provide updates on progress against those timescales. The decision maker will actively monitor the case to ensure that the investigation is concluded as quickly as possible and to minimise any delays.

The investigator will, in accordance with the terms of reference, undertake an impartial and objective collection of facts and evidence from the complainer, the subject of complaint and other relevant witnesses.

The investigator will establish the facts of the matter as far as is reasonably possible and appropriate. The decision maker will inform the complainer of any delays.

If the investigation is not completed after 30 working days, the case should be reviewed by the SG nominated contact. The purpose of the review is to ensure that everything possible is being done to progress the investigation, that the correct process is being followed and that all reasonable steps are being taken to avoid delays. Following review, the SG nominated contact may direct the decision maker or investigator to complete the investigation as far as is reasonably practicable.

The support contact will signpost or arrange support services to all parties involved in the investigation, including any witnesses.

The investigator will prepare a report presenting the facts and evidence gathered, whether there are any mitigating factors to consider, and any other relevant information, and submit this to the decision maker.

### Stage 3 Decision

The decision maker will ensure that a reasonable investigation has been carried out in accordance with the terms of reference. The decision maker may require the investigator to clarify points and update the report. Once satisfied, the decision maker will notify the complainer of the report and provide a copy. The SG nominated contact and the subject of complaint should also receive a copy of the report. This will usually also include any witness statements to ensure openness and transparency in the investigation process.

The decision maker will invite the complainer to a meeting without unreasonable delay, giving at least five working days' notice and informing them that they may be accompanied by a trade union representative or work colleague.

The SG nominated contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

At the meeting, the decision maker will allow the complainer to explain their complaint and how they think it should be resolved and clarify any points which are not clear. The decision maker will also offer a meeting to the subject of complaint to allow them to set out their position.

The decision maker should consider adjourning the meeting(s) if it is necessary to investigate any statements made or new facts which arise.

After the meeting(s), the decision maker will assess the evidence put forward, make findings where possible on any contested facts and decide whether to uphold the complaint or not.

This may include partially upholding the complaint (for example, if some allegations are found to be justified, and others are not).

The decision maker will have access to appropriate advice through the SG nominated contact, where they may need further guidance or support.

The decision maker will notify the complainer of their decision by letter, including the written notes of the meeting and any recommendations for action. They will also notify the outcome to the subject of complaint.

The decision maker will consider whether it would be appropriate to share the outcome with other staff within the SG who have a legitimate interest in the outcomes. This will be limited to sharing the outcome only where strictly necessary, and all parties will be expected to maintain confidentiality at all times. The decision maker will inform the complainer and the subject of complaint of who else within the SG will be told about the decision and the information they will be given.

The decision maker will share any other recommendations with the SG nominated contact, for the SG to consider with the letter and the investigation report at stage 4.

#### Stage 4 Employer Action

The SG nominated contact will share the final report, the decision letter and any other recommendations with the Permanent Secretary or delegate, provided that no appeal has been lodged by either of the parties within ten working days. The process for appeal is set out in Stage 5.

The SG nominated contact will consider the report and ensure that any recommendations are considered and implemented as appropriate. This may include arrangements to engage with the complainer on further action. Further action could include: steps to support and protect staff wellbeing, to ensure a positive working environment, and to ensure lessons are learnt for the future. For complaints which are not upheld, this could include actions to resolve remaining issues informally or other management actions.

Where there is evidence that staff have not acted in good faith when raising a complaint or not represented the facts truthfully and in line with SG's Standards of Behaviour, this may be regarded as a disciplinary issue and taken forward using the SG disciplinary procedure.

Where the complaint is about a current Minister, the Permanent Secretary or delegate will inform the First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The First Minister will be informed where a current Minister has declined to co-operate with the procedure. Where the complaint is about the current First Minister, the Permanent Secretary or delegate will inform the Deputy First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The Deputy First Minister will be informed where a current First Minister has declined to co-operate with the procedure.

Where a complaint about a current Minister is upheld or partially upheld, it will be for the First Minister to consider whether a relevant provision of the Ministerial Code has been breached by the Minister and to decide on the appropriate response.

Where the complaint is about a former Minister, *[Deleted: a complaint about a former Minister is upheld]*, the Permanent Secretary or delegate will inform the First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The Permanent Secretary or delegate will consider steps to review practice within the Scottish Government to ensure the working environment is free from unacceptable behaviour. This may include sharing structural lessons with the First Minister in a format that ensures that confidentiality

of the complainer and any witnesses is maintained. *[Deleted: within the procedure is maintained (including that no information is shared that would reveal the identity of the complainer or the subject of the complaint).]* The First Minister may wish to consider any lessons relevant to ensuring awareness and adherence to the Ministerial Code.

## Stage 5 – Appeal

Where either the complainer or the subject of complaint are unsatisfied with the decision, they can appeal within 10 working days of being notified of the decision.

The complainer or subject of complaint should make their written appeal to [Propriety & Ethics](#). The written appeal should clearly set out the grounds for appeal, the outcome sought, and provide any supporting information and evidence.

Grounds for appeal could include (but are not limited to):

- where new evidence has come to light that may change the outcome of the decision;
- procedural errors where there is evidence the process was incorrectly followed.

The SG nominated contact will assign the appeal to an external appeal decision maker who has had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint. The SG nominated contact will notify the complainer and the subject of complaint when this has been done.

The complainer or the subject of complaint bringing the appeal will be offered a meeting with the appeal decision maker to present their case. This will be offered without unreasonable delay, giving at least five working days' notice of the meeting. Where the appeal is brought by the complainer, they will be informed that they may be accompanied at the meeting by a trade union representative or work colleague. The SG nominated contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

The appeal decision maker will offer the other party not appealing the opportunity to comment on the grounds for appeal.

Appeals should be dealt with without unreasonable delay. The complainer and subject of complaint will be informed of any delays.

Following the appeal meeting, the appeal decision maker will take into account all the information and evidence provided at the appeal stage and review the original decision. They will consider whether the procedure was applied correctly and fairly, whether there were reasonable grounds for the decision, and whether the decision was fair and appropriate.

There may be circumstances where it would be appropriate for the appeal to be conducted as a re-hearing.

If an appeal is to be conducted as a re-hearing, the appeal decision maker will inform the SG nominated contact, the complainer and the subject of the complaint.

If an appeal is to be conducted as a re-hearing, the appeal stage may be paused for further investigation and reconvene when the investigation has been carried out

with any resulting evidence provided to all appropriate parties. The further investigation will be carried out following the process described at stage 2.

Following the review or re-hearing, the appeal decision maker will notify the complainer and the subject of complaint of their decision by letter. They will also notify the outcome to the SG nominated contact.

Should any action need to be taken following the appeal, the SG nominated contact will ensure appropriate steps are taken. This may include revisiting the actions as set out at stage 4 and steps to evaluate the application of this procedure.

#### Reporting the outcome of concluded complaints

The Ministerial Code provides that the Scottish Government will publish information about concluded formal complaints about a Minister's or Former Minister's behaviour, other than where for legal reasons it is not possible to do so without prejudicing the rights of confidentiality owed to a complainer or others involved.

For complaints which are upheld or partially upheld, the following information will be published within 20 working days:

- The name of the Minister
- The outcome of the complaint (upheld or partially upheld)
- A redacted version of the decision report

For complaints which are not upheld, the following information will be published within 20 working days:

- The name of the Minister
- The outcome of the complaint (not upheld)

In the case of complaints not upheld, the information will be published for a fixed period of six months.

The identity of the complainer(s) and any witnesses will remain confidential and any information which could lead to identification of the complainer or witnesses will be redacted.

**END**

## **ANNEX B**

### **Definition of Bullying on Scottish Government staff intranet**

#### **Bullying**

“Bullying in the workplace does not have a legal definition. It can however be viewed as any offensive, intimidating, malicious, isolating or insulting behaviour. It can also cover abuse or misuse of authority to undermine or humiliate somebody. This behaviour can relate to the actions of a single person or a group. When considering if someone has been bullied at work, the effect of the alleged bullying as well as any intent behind, should be considered; bullying can occur even where there has been no intent to bully.”

**ENDS**

### **Sections on Standards of Behaviour in the Scottish Ministerial Code 2018 Edition<sup>1</sup>**

#### **1. SCOTTISH MINISTERS [p1-2]**

##### **“General Principle**

1.1. Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.

##### **Ministerial Conduct**

1.2. Ministers should be professional in all their dealings and treat all those with whom they come into contact with consideration and respect. Working relationships, including with civil servants, Ministerial and Parliamentary colleagues and Parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour, wherever it takes place, is not consistent with the Ministerial Code and will not be tolerated.

1.3. The Ministerial Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life (set out in the Annex to this Code) and the following principles of Ministerial conduct:

- (a) The principle of collective responsibility, as defined in section 2 below, applies to all Ministers;
- (b) Ministers have a duty to the Parliament to account, and be held to account, for the policies, decisions and actions taken within their field of responsibility;
- (c) It is of paramount importance that Ministers give accurate and truthful information to the Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Parliament will be expected to offer their resignation to the First Minister;
- (d) Ministers should be as open as possible with the Parliament and the public, reflecting the aspirations set out in the Report of the Consultative Steering Group on the Scottish Parliament. They should refuse to provide information only in accordance with the Freedom of Information (Scotland) Act

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<sup>1</sup> [Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](http://www.gov.scot)

2002 and other relevant statutes;

(e) Ministers should similarly require civil servants who give evidence before Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;<sup>2</sup>

(f) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

(g) Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

(h) Ministers must keep separate their roles as Minister and as constituency or regional list Member of the Scottish Parliament (MSP);

(i) Ministers must not use public resources for party political purposes;

(j) Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010.<sup>3</sup>

1.4. This 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. It is not, however, the role of the Permanent Secretary or other officials to enforce the Code.

1.5. The Code applies to all Scottish Ministers and covers Parliamentary Liaison Officers in paragraphs 4.8 to 4.14. It 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 website.<sup>4</sup>

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

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<sup>2</sup> See <https://www.gov.scot/publications/civil-service-code>

<sup>3</sup> See [www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/codes-of-conduct](http://www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/codes-of-conduct)

<sup>4</sup> See [www.parliament.scot/msps/code-of-conduct-for-msps.aspx](http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx)

Ministerial conduct. The findings of the independent advisers will be published.”

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## **6. MINISTERS AND CIVIL SERVANTS [p20]**

### **General Principle**

“6.1 Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code<sup>5</sup> and the requirements of the Constitutional Reform and Civil Governance Act 2010.<sup>6</sup> Ministers should be professional in their working relationships with the Civil Service and treat all those with whom they come into contact with consideration and respect.

### **Ministers and the Civil Service**

6.2 Ministers have a duty to:

- (a) Give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions;
- (b) Uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;
- (c) Ensure that influence over appointments is not abused for partisan purposes; and
- (d) Observe the obligations of a good employer with regard to the terms and conditions of those who serve them.

6.3 Ministers should not ask civil servants to engage in activities likely to call into question their political impartiality or to give rise to the criticism that official resources are being used for party political purposes.

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## **ANNEX [p41]**

### **THE SEVEN PRINCIPLES OF PUBLIC LIFE<sup>7</sup>**

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

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<sup>5</sup> See <https://www.gov.scot/publications/civil-service-code/>

<sup>6</sup> See [www.legislation.gov.uk/ukpga/2010/25/contents](http://www.legislation.gov.uk/ukpga/2010/25/contents)

<sup>7</sup> The Seven Principles of Public Life were first published in the first report of the Nolan Committee on Standards in Public Life (May 1995). The accompanying narrative was revised by the Committee in Standards Matter: A review of best practice in promoting good behaviour in public life (January 2013). See: <https://www.gov.uk/government/publications/standards-matter-a-review-of-best-practice-in-promoting-good-behavior-in-public-life>

**Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty**

Holders of public office should be truthful.

**Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”

ENDS