

# 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<sup>1</sup>.

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 website<sup>2</sup> 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.

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<sup>1</sup> <https://www.gov.scot/publications/ministerial-code-advisers/>

<sup>2</sup> <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/pages/14/>