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**From:** [REDACTED] **On Behalf Of** Permanent Secretary  
**Sent:** 09 January 2018 15:30  
**To:** [REDACTED]  
**Cc:** Hynd JS (James); Permanent Secretary  
**Subject:** FW: Publication of new Ministerial Code

**From:** [REDACTED] ([REDACTED]@cabinetoffice.gov.uk)  
**Sent:** 09 January 2018 14:11  
**To:** Permanent Secretary; [ps.permanentsecretary@wales.gsi.gov.uk](mailto:ps.permanentsecretary@wales.gsi.gov.uk)  
**Cc:** [REDACTED]@gov.wales; [REDACTED]  
**Subject:** Publication of new Ministerial Code

Hello,

You may have seen news that we have today published an updated Ministerial Code. Please find attached that version that will soon be available on Gov.uk.

Key changes include:

- **New wording in chapter one and chapter 5 to ensure Code properly covers inappropriate, bullying or harassing behaviour.** New wording that makes clear that as well as "maintaining the highest standards of personal conduct", Ministers must "be professional and treat all those with whom they come into contact with consideration and respect." The Code also now says "harassing, bullying or other inappropriate or discriminating behaviour wherever it takes place is not consistent with the Ministerial Code and will not be tolerated." (see additional wording at paragraphs 1.1; 1.2; 5.1)
- There is also new **wording to specifically address the requirements on Ministers to report official meetings domestically and, especially, overseas.** (Changes in para 2.3 - making clear that "Ministers should take special care in discussing issues which are the responsibility of other Ministers, consulting other ministerial colleagues as appropriate"; and an addition to para 8.14 and a new paragraph 10.5 that makes clear that if Ministers meet an external organisation or individual and find themselves discussing official business without officials present eg on a social occasion or on holiday, any significant content should be passed back to the department as soon as possible)

There are a few other minor amendments:

- Para 4.3 - slight change to wording to reinforce that all transfers of functions between Ministers must be approved by the PM.
- Para 7.25 - to clarify that former Ministers should not announce or take up a new appointment before the Advisory Committee on Business Appointments has provided its advice to them.
- Para 8.16 - clarifying that the pre-release access to statistics will be to a minimum number of people only in line with the Pre-Release Access to Official Statistics Order.

Any questions, do give me a call to discuss.

Best wishes

[Redacted]

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[Redacted]

Propriety and Ethics Team  
Cabinet Office

[Redacted]

[doc 2]

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**From:** [REDACTED]  
**Sent:** 12 January 2018 11:12  
**To:** Booth J (John); Hynd JS (James)  
**Cc:** Director Communications, Ministerial Support & Facilities; [REDACTED]  
**Subject:** RE: Ministerial Code

No, this is just in case of complaints to the regulator – the amendment simply attempts to future-proof and simplify the text of the Code, I think.

[REDACTED]

[REDACTED] | Cabinet Secretariat | Scottish Government | T [REDACTED] | M [REDACTED]  
[REDACTED] | [REDACTED] St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG

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**From:** Booth J (John)  
**Sent:** 12 January 2018 11:03  
**To:** Hynd JS (James)  
**Cc:** Director Communications, Ministerial Support & Facilities; [REDACTED]  
**Subject:** FW: Ministerial Code  
**Importance:** High

Thanks James. This looks like a reasonably straightforward revision so happy with what's proposed. I assume this doesn't include any day-to-day complaints that News might make about particular stories, on behalf of Ministers, or letters for publication drafted in their name?

John

John Booth  
Head of Communications  
Scottish Government

[REDACTED]

Find out more: [SG Communications Plan](#)

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**From:** Hynd JS (James)  
**Sent:** 12 January 2018 08:55  
**To:** Booth J (John)  
**Cc:** Director Communications, Ministerial Support & Facilities; [REDACTED]  
**Subject:** Ministerial Code  
**Importance:** High

John

As you may have seen, the UK Government has just issued a revised Ministerial Code. I am putting advice up today about whether the Scottish Code should be similarly revised.

One of the UK changes was an update to the section about Ministerial complaints about the media, to reflect the changes in press regulation. I attach the new text of the UK Code along with a suggested revised text for the Scottish Code.

Does the suggested revise to the Scottish Code cause you any difficulties?

It would be helpful to get a quick response if possible. Many thanks.



James

James Hynd  
Head of Cabinet, Parliament and Governance Division  
[REDACTED]  
St Andrew's House  
Edinburgh  
[REDACTED]

## Proposed Revision to Scottish Ministerial Code

10.17 Ministers who wish to make a complaint against a journalist or a particular section of the media to the appropriate regulator~~Press Complaints Commission, Ofcom or the BBC Trust, as appropriate,~~ must have the authority of the First Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a minute to the First Minister, copied to the Permanent Secretary, DG Organisational Development~~Strategy~~ & Operations, the Director ~~for~~ Communications~~, and~~ Ministerial Support and Facilities and the Head of Communications. Similarly, Ministers should always consult the Head of Communications before making any oral complaint to a media organisation about their handling of a story.

## New UK Code

8.13 Ministers who wish to make a complaint against a journalist or a particular section of the media to the appropriate regulator, must have the approval of the No 10 Chief Press Secretary. Paragraph 7.16 is also relevant in relation to defamation proceedings.

## Changes to UK Ministerial Code (January 2018)

– with equivalent proposals to update Scottish Ministerial Code along equivalent lines

All the changes made in the UK Ministerial Code can easily be accommodated in the text of the Scottish Ministerial Code.

Change to UK Ministerial Code	Equivalent Change to Scottish Ministerial Code	Comments
<b><i>Conduct and behaviour</i></b>		
1.1 Ministers of the Crown are expected to <u>maintain high standards of behaviour and to</u> behave in a way that upholds the highest standards of propriety.	1.1. Scottish Ministers are expected to <u>maintain high standards of behaviour and to</u> behave in a way that upholds the highest standards of propriety	Add text
1.2 [NEW] <u>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.</u>	1.2. [NEW] <u>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.</u>	New paragraph
5.1 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 and the requirements of the Constitutional Reform and Governance Act 2010. <u>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.</u>	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 and the requirements of the Constitutional Reform and Civil Governance Act 2010. <u>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.</u>	Add text

Change to UK Ministerial Code	Equivalent Change to Scottish Ministerial Code	Comments
<b>Collective responsibility</b>		
<p>2.3 The internal process through which a decision has been made, or the level of Committee by which it was taken should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasion, it may be desirable to emphasise the importance of a decision by stating specifically that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule. Ministers also have an obligation to ensure decisions agreed in Cabinet and Cabinet Committees (and in write-rounds) are implemented. <u>Ministers should take special care in discussing issues which are the responsibility of other Ministers, consulting ministerial colleagues as appropriate.</u></p>	<p>2.4 The internal processes through which a Government decision has been made should not normally be disclosed. Such decisions are, however, normally announced and explained as the decision of the Minister concerned. On occasion, it may be desirable to emphasise the importance of a decision by stating explicitly that it is the decision of the Scottish Government. This, however, is the exception rather than the rule. <u>Ministers should take special care in discussing issues which are the responsibility of other Ministers, consulting Ministerial colleagues as appropriate.</u></p>	<p>Add text</p>
<b>Ministerial meetings</b>		
<p>8.14 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. <u>Meetings on official business should normally be arranged through Ministers' departments. A private secretary or official should be present for all discussions relating to Government business. [...]</u></p>	<p>4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. <u>Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business.</u> Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.</p>	<p>Add text</p> <p>(Note: this addition sets down existing practice. In the UK context, it covered the meetings abroad arranged by Priti Patel MP without Departmental involvement.)</p>

Change to UK Ministerial Code	Equivalent Change to Scottish Ministerial Code	Comments
<p>8.14 (continued)</p> <p><u>[...] If a Minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event.</u></p> <p>Departments will publish quarterly, details of Ministers' external meetings. Meetings with newspaper and other media proprietors, editors and senior executives will be published on a quarterly basis regardless of the purpose of the meeting.</p>	<p>4.23 <del>Where discussions take place with</del> <u>If Ministers meet an</u> external organisations <u>or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content which raise</u> (such as substantive issues relating to Government decisions or contracts), <del>and where an official is not present, Ministers should inform</del> <u>should be passed back to</u> their Private Offices <u>as soon as possible after the event</u>, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.</p> <p><i>Further minor changes for consistency with terminology:</i></p> <p>9.32 Paragraphs 4.22 to 4.24, 10.18 and 10.19 of this Code provide further guidance on meetings with external <u>individuals and</u> organisations, including outside interest groups, lobbyists and the media, including those meetings where an official is not present.</p> <p>10.18 A monthly list of engagements carried out by all Ministers is published three months in arrears. Detailed arrangements for recording contacts with <u>external individuals and organisations, including</u> outside interest groups <del>and, including</del> lobbyists, <u>and including those meetings where an official is not present</u>, are set out in paragraphs 4.22 to 4.24 above. See also paragraphs 9.27 to 9.31 for further guidance on contact with commercial companies.</p>	<p>Add / amend text</p> <p>(Note that the existing Scottish Code already has some rules for meetings without officials present, unlike the UK Code.)</p>



Change to UK Ministerial Code	Equivalent Change to Scottish Ministerial Code	Comments
<p>10.5 [NEW] <u>When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or Embassy official is present. If a Minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event. Ministers should seek guidance in advance from their Permanent Secretary, who should consult the Foreign and Commonwealth Office in cases of doubt.</u></p>	<p>9.13 <del>Officials should accompany Ministers to all official visits and meetings overseas at which it is expected that official matters may be raised, When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or Embassy official is present. If Ministers meet an external organisation or individual and find themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to their Private Office as soon as possible after the event.</del> Ministers <del>and</del> should seek guidance from International Division and/or European Relations Division if there is any uncertainty about the status of such meetings or the attendance of non-officials at them. International Division and/or European Relations Division will, in turn, seek advice from the Foreign &amp; Commonwealth Office, as required.</p>	<p>(Note that the existing Scottish Code already has some text on seeking guidance in case of “uncertainty about the status of such meetings or the attendance of non-officials at them”, introduced following the Liam Fox Inquiry. There was no equivalent in the UK Code. In addition, there is no UK equivalent to the detailed requirements for “Ministerial Reports on Return from Overseas Visits” contained in paragraphs 9.14-16).</p>
<b>Other suggested minor amendments</b>		
<p><b>Approval criteria for changes in ministerial functions</b>  4.3: <i>Amended a sentence in this paragraph to reinforce the general principle of that paragraph that the Prime Minister’s approval must be sought where changes are proposed to transfer functions between Ministers.</i></p>	<p>4.4 <i>No change required.</i></p>	<p>No change required to paragraph 4.4 of the Scottish text, which is already more detailed than the UK Code equivalent.</p>

Change to UK Ministerial Code	Equivalent Change to Scottish Ministerial Code	Comments
<p><b>Acceptance of appointments after leaving ministerial office</b></p> <p>7.25: To clarify that former Ministers should not announce, or take up, a new appointment before the Advisory Committee on Business Appointments (ACoBA) has provided its advice to them we have added the following sentence:  <i>Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee has been able to provide its advice.</i></p>	<p>11.25 On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. <u>Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee has been able to provide its advice.</u> Former Ministers must abide by the advice of the Committee.</p>	<p>Add text</p>
<p><b>Complaints</b></p> <p>8.13: <i>The names of organisations to whom Ministers may wish to make complaint against a journalist or section of the media have been replaced with a reference to “the appropriate regulator”.</i></p>	<p>10.17 Replace reference to “the Press Complaints Commission, Ofcom or the BBC Trust, the Press Complaints Commission or to the BBC Trust” with “<u>the appropriate regulator</u>”.</p>	<p>Amend text</p>

Cabinet Secretariat  
17 January 2018

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**From:** Hynd JS (James)

**Sent:** 17 January 2018 16:57

**To:** First Minister

**Cc:** Permanent Secretary; DG Constitution and External Affairs; Rogers DA (David) (Strategy and Constitution Director); [REDACTED] Lloyd E (Elizabeth); [REDACTED] Director Communications, Ministerial Support & Facilities; Richards N (Nicola)

**Subject:** Scottish Ministerial Code

Top copy First Minister

3 page covering minute



Response to the  
UK Ministerial...

[doc 6]

45 page attachment



Scottish  
Ministerial Code...

[doc 7]

James

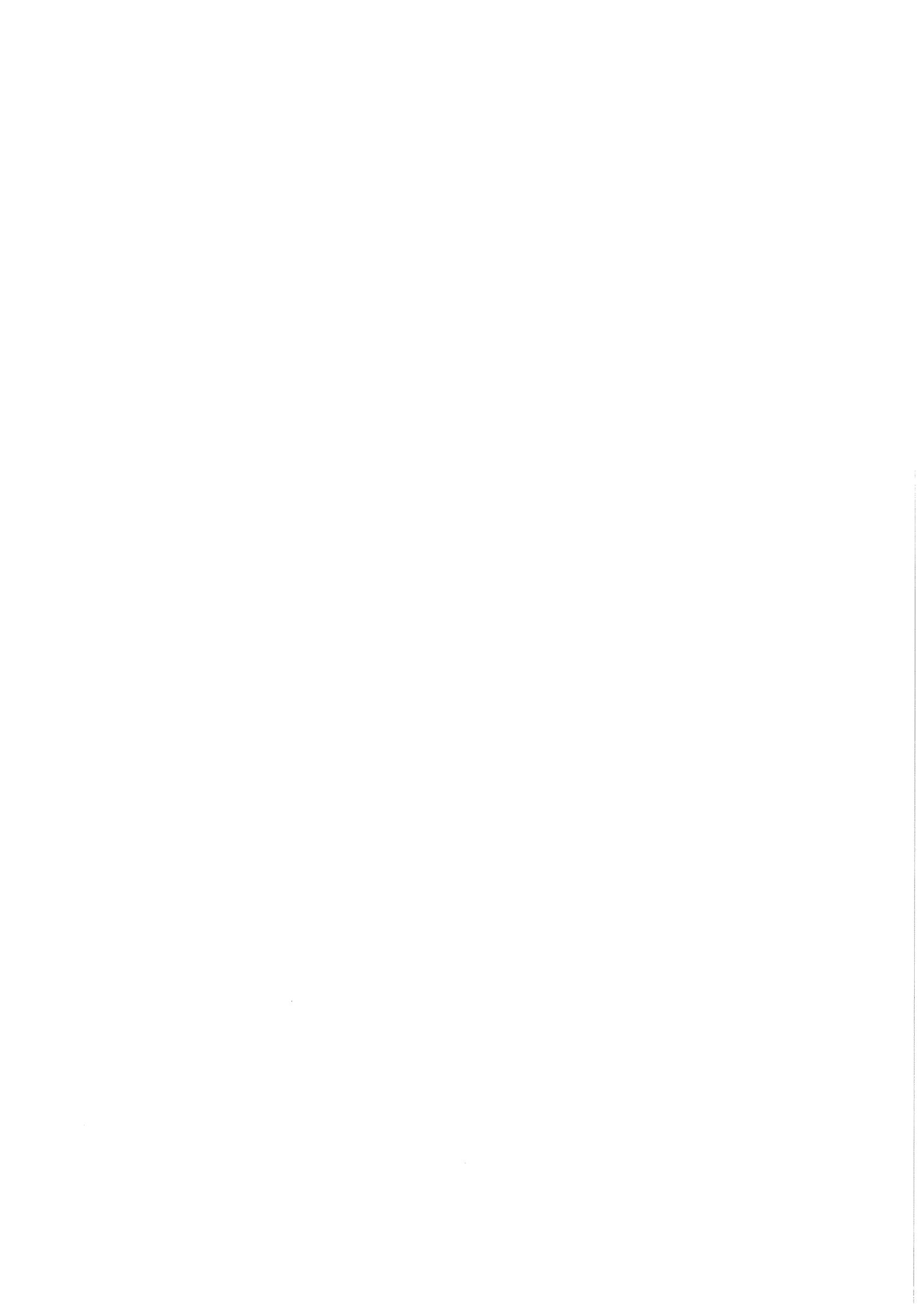
James Hynd

Head of Cabinet, Parliament and Governance Division

[REDACTED]  
St Andrew's House

Edinburgh

[REDACTED]



From: James Hynd  
Cabinet Secretariat  
17 January 2018

First Minister

## REVISIONS TO UK MINISTERIAL CODE

### Purpose

1. To invite you to consider:
  - If the recently announced changes to the UK Ministerial Code should be reflected in the Scottish Code; and
  - If you agree to a small addition to the Scottish Ministerial Code to reflect the Scottish Parliament's new statutory lobbying register.

### Priority

2. **Routine.** The timing of any amendments to the Scottish Ministerial Code are at your discretion.

### Changes to the UK Ministerial Code

3. The Prime Minister issued a new UK Ministerial Code on 9 January. The principal changes aim to address three issues:

3.1 Additional references about Ministerial standards of conduct, to address issues around sexual harassment and inappropriate behaviour;

3.2 New provisions on the back of the Priti Patel case, which, broadly, advise Ministers to:

- avoid discussing matters which are the responsibility of other Ministers;
- ensure a civil servant is present at discussions relating to Government business, including during overseas trips; and,
- to report any significant meetings to their private office where a civil servant was not present and Government business was discussed.

3.3 Clarifying that former Ministers should not announce or take up new appointments until the Advisory Committee on Business Appointments (ACOBA) has provided advice.

### Application of changes to the Scottish Code

4. A marked up version of the Scottish Ministerial Code is attached, showing in red text how the proposed UK changes could be accommodated if you were minded to follow suit. The following paragraphs consider the new provisions in more detail.

## OFFICIAL-SENSITIVE

### *Ministerial Standards of Conduct*

5. The UK changes would appear in the Scottish Code at paragraphs 1.1, new paragraph 1.2 and paragraph 6.1. The changes look to be straightforward in their purpose and application. There wouldn't be any issue in adopting them as they stand.

### *Priti Patel Provisions*

6. The UK changes would appear at in the Scottish Code at paragraphs 2.4, 4.22, 4.23, 9.13, 9.32 and 10.18. The current Scottish Code already requires Ministers to report back to their private offices if they have a meeting about Government business where there is no official support. There is probably therefore less need to mirror these changes, although incorporating them as they stand would not be problematic.

### *ACOBA Provision*

7. This change would appear at paragraph 11.25 of the Scottish Code. The ACOBA rules apply equally to Scottish Ministers. It would seem sensible therefore to accept this change to avoid any misperception that different standards apply to Scottish Ministers.

### *IPSO – Reference Change*

8. In addition to the main changes above, an update at paragraph 10.17 of the Scottish Code would replace references to the Press Complaints Commission, Ofcom and the BBC Trust with a catch-all reference to the 'appropriate regulator'. It would seem sensible to update the Scottish Code similarly.

## **Lobbying**

9. Separately from the UK proposed revisions, we could take this opportunity to include in the Scottish Code a reference to reflect the provisions of the Scottish Lobbying Act. A suggested inclusion is shown in blue text at paragraph 4.25.

## **First Minister's Foreword**

10. Given that this is not formally publication of a new Code we are not proposing to revise your existing Foreword. We could, of course, offer new text if you thought that it would be helpful to include any new messages at this time.

## **Publication and Timing**

11. If you wished to make any or all of these changes we would arrange for an updated version of the Code to be published as a routine SG publication announced by a Government Inspired Question. We need 48 hours from agreeing the final text to having the document ready for online publication. If you are content to make any changes, we will discuss with SpAds and Comms colleagues the timing of publication and the terms of a GIQ and answer for your approval.

OFFICIAL-SENSITIVE

12. Two of the main UK Civil Service Unions have criticised the changes made in the UK Code about Ministerial behaviour and conduct as lacking substance and being unlikely to provide additional protection for staff. They have also criticised the UK Government's lack of prior consultation with the Unions before the changes to the UK Code were made.

13. As you know, the SG Trade Unions are being fully involved in the wider review of the organisation's policies and processes relating to harassment which you asked the Permanent Secretary to undertake. In contrast to the UK position, our Unions have welcomed that engagement and the work that has been done so far on harassment. In order to maintain and continue that constructive dialogue, we would propose to discuss with the Unions any revisions to the Scottish Code relating to Ministerial conduct in advance of publication. More generally, we will update you in due course on the conclusions of the wider review and the position that we reach with the Trade Unions.

### **Conclusion**

14. You are invited to:

- 14.1 Indicate if you wish to make any or all of the changes to the Code as set out in Annex A; [doc 7]
- 14.2 Indicate if you are content for us to discuss relevant changes with the SG Trade Unions in advance of publication; and
- 14.3 To note that, if you wish to make any changes, we will agree with SpAds and Comms the timing of publication and the terms of a GIQ and answer for your approval.

James Hynd  
Cabinet Secretariat  
17 January 2018

**CONTENTS**

<b>Section</b>	<b>Paragraph</b>	<b>Page</b>
<b>Foreword by the First Minister</b>		
<b>1. Scottish Ministers</b>		
General Principle	1.1	1
Ministerial Conduct	1.2	1
<b>2. Ministers and the Government</b>		
General Principle	2.1	3
The Scottish Government	2.2	3
Collective Responsibility	2.4	3
Cabinet Business	2.10	4
Cabinet Correspondence	2.14	5
Ministerial Discussions below the Level of the Cabinet	2.16	5
Priority of Cabinet Meetings	2.19	6
Attendance at Meetings of Cabinet Sub-Committees	2.22	6
Publication of Policy Documents and Consultation Papers	2.25	6
Confidentiality and Security of Cabinet Documents and Other Government Papers	2.26	7
Official Papers held by Ministers Relinquishing Office	2.28	7
Access by Former Ministers to Official Papers	2.29	7
Taking Legal Advice	2.30	7
Disclosure of the Existence, Source or Content of Legal Advice	2.38	8
The Law Officers' Role in Legal Proceedings	2.42	9
<b>3. Ministers and the Scottish Parliament</b>		
General Principle	3.1	10
Key Principles of the Consultative Steering Group on the Scottish Parliament	3.2	10
Commitments to Legislate	3.3	10
Introduction of Bills	3.4	10
Parliamentary Statements and other Government Announcements	3.5	11
Supply of Publications	3.7	12
Financial Resolutions	3.8	13
Ministerial Availability	3.9	13
Membership of Cross-Party Groups	3.10	13
Appearing before a Select Committee of the UK Parliament	3.11	13
<b>4. Ministers and their Responsibilities</b>		
General Principle	4.1	14
Appointment of the First Minister	4.2	14
Ministerial Responsibilities and Titles	4.3	14
Membership of the Cabinet	4.5	14
Ministers' Availability	4.6	14
Parliamentary Liaison Officers	4.8	15



	Special Advisers	4.15	16
	Royal Commissions and Public Inquiries	4.20	16
	Contacts with <u>External Individuals and Organisations, including Outside Interest Groups, including Lobbyists Requirements of the Lobbying (Scotland) Act 2016</u>	4.22	17
		<u>4.25</u>	<u>17</u>
<b>5.</b>	<b>Ministers and Appointments</b>		
	General Principle	5.1	18
	Civil Service Appointments	5.2	18
	Selection Principles for Public Appointments	5.3	18
	The Role of the First Minister and Other Ministers with a Particular Interest	5.7	19
<b>6.</b>	<b>Ministers and Civil Servants</b>		
	General Principle	6.1	20
	Ministers and the Civil Service	6.2	20
	The Role of the Accountable Officer	6.4	20
	Civil Servants and Party Conferences	6.9	21
<b>7.</b>	<b>Ministers' Constituency and Party Interests</b>		
	General Principle	7.1	22
	Use of Government Property/Resources	7.2	22
	References for Constituents	7.4	22
	Constituency Interests	7.5	22
	Lottery Bids	7.12	23
	Scottish Public Services Ombudsman Cases	7.13	23
	Parliamentary Commissioner for Administration	7.15	24
<b>8.</b>	<b>Ministers' Engagement on Planning Matters, Including the Granting of Energy Consents</b>		
	General Principle	8.1	25
	Ministers' Interests in Specific Cases	8.2	25
	The Planning Minister	8.3	25
	Other Ministers with a Particular Interest	8.4	26
	All Ministers	8.6	26
	The First Minister	8.9	27
<b>9.</b>	<b>Travel by Ministers</b>		
	General Principle	9.1	28
	Guiding Principles for Ministerial Travel	9.2	28
	Overseas Visits	9.3	28
	Detailed Arrangements for Overseas Visits	9.5	29
	Ministerial Reports on Return from Overseas Visits	9.14	30
	Publication of Ministerial Overseas Travel	9.17	30
	Visits by Ministers from Foreign or Commonwealth Countries	9.18	<del>31</del> <b>31</b>
	Ministers Recalled from Abroad	9.19	31
	UK Visits	9.20	31
	Party Political Occasions	9.23	31
	Air Miles, Etc.	9.24	31
	Travelling Expenses of Spouses or Partners	9.25	<del>32</del> <b>32</b>
	Travelling Expenses of Special Advisers	9.26	32
	Contact with Commercial Companies	9.27	32

<b>10. Ministers and the Presentation of Policy</b>		
General Principle	10.1	<u>3433</u>
Media Interviews, Speeches, Etc.	10.2	<u>3433</u>
News Conferences/Broadcasts	10.6	<u>3433</u>
Non-Government Communications, including Press		
Articles	10.8	<u>3534</u>
Social Media	10.10	<u>3534</u>
Payment for Speeches, Media Articles, Etc.	10.12	<u>3534</u>
Books	10.13	<u>3534</u>
Surveys	10.15	<u>3534</u>
Publication of Policy Statements and Consultation Papers	10.16	<u>3635</u>
Complaints	10.17	<u>3635</u>
Meetings with External Organisations	10.18	<u>3635</u>
Meetings with the Media	10.19	<u>3635</u>
Statistics	10.20	<u>3635</u>
<b>11. Ministers' Private Interests</b>		
General Principle	11.1	<u>3736</u>
Responsibility for Avoiding a Conflict	11.2	<u>3736</u>
Procedure	11.4	<u>3736</u>
Financial Interests	11.8	<u>3837</u>
Steps to be Taken where Financial Interests are Retained	11.9	<u>3837</u>
Register of Interests of Members of the Scottish		
Parliament	11.11	<u>3837</u>
Public Appointments	11.12	<u>3837</u>
Non-Public Bodies	11.13	<u>3837</u>
Trade Unions	11.15	<u>3938</u>
Civil Legal Proceedings	11.16	<u>3938</u>
Nominations for Prizes and Awards	11.17	<u>3938</u>
Foreign Decorations	11.18	<u>3938</u>
Acceptance of Gifts and Hospitality	11.19	<u>3938</u>
Acceptance of Appointments after Leaving Government		
Office	11.25	<u>4039</u>
<b>Annex: The Seven Principles of Public Life</b>		<u>4140</u>

**Note:**

In this Code:

<b>Cabinet</b>	is the Scottish Cabinet;
<b>Government</b>	is the Scottish Government;
<b>Law Officers</b>	are the Lord Advocate and the Solicitor General for Scotland;
<b>Ministers</b>	are the Scottish Ministers (First Minister, Cabinet Secretaries and Law Officers) and junior Scottish Ministers; and
<b>Parliament</b>	is the Scottish Parliament.



## **Foreword by the First Minister**

I am pleased to issue this new edition of the Scottish Ministerial Code.

When I accepted Parliament's nomination to serve as First Minister in May 2016, I pledged to do everything I could to ensure that this Parliament marked the beginning of a new time of national self-confidence. This ambition can only be achieved if the people of Scotland have trust and confidence in those serving in government. That is why it is essential to set and maintain the highest standards of propriety and openness for Government Ministers.

This revised Ministerial Code sets guidelines for living up to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. All Scottish Ministers, including myself, are bound by its terms.

Over this new Parliamentary term, the Scottish Parliament and Government will prepare for and assume a range of important new powers, as we take the next steps on our journey of self-government, and it is all the more important that we are guided in our mission by a clear and transparent set of principles.

I will lead by example in following the letter and spirit of this Code, and I expect that Ministers and civil servants will do likewise.

**Rt Hon Nicola Sturgeon MSP**  
First Minister of Scotland

## 1. SCOTTISH MINISTERS

### 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.

1.2.1.3. 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 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>1</sup>
- (f) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

<sup>1</sup> See [www.gov.scot/About/People/Directorates/Services-Groups/HR/HR/policies-guidance/conduct/Civil-Service-Code](http://www.gov.scot/About/People/Directorates/Services-Groups/HR/HR/policies-guidance/conduct/Civil-Service-Code)

- (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>2</sup>

~~4.3.1.4.~~ 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.

~~4.4.1.5.~~ 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>3</sup>

~~4.5.1.6.~~ 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.

~~4.6.1.7.~~ 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.

<sup>2</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>3</sup> See [www.parliament.scot/msps/code-of-conduct-for-msps.aspx](http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx)

## 2. MINISTERS AND THE GOVERNMENT

### General Principle

**2.1 The Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. Ministers are required to abide by them and defend them as necessary. The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed and advice offered within the Government should be maintained.**

### The Scottish Government and Ministerial Functions

2.2 In accordance with Section 44(1) of the Scotland Act 1998, the Scottish Government consists of the First Minister, other Scottish Ministers (Cabinet Secretaries) appointed by the First Minister under Section 47 of the Scotland Act, the Lord Advocate and the Solicitor General for Scotland. In addition, the First Minister appoints junior Scottish Ministers under Section 49 of the Scotland Act.

2.3 Most of the functions exercisable by Ministers are conferred upon the Scottish Ministers collectively. However, these functions do not require to be exercised jointly by all the Scottish Ministers. Section 52(3) of the Scotland Act provides that any member of the Government can exercise any of the functions of the Scottish Ministers, and Section 52(4) provides that any act or omission of any member of the Government is legally the act or omission of each of them.

### Collective Responsibility

2.4 The internal processes through which a Government decision has been made should not normally be disclosed. Such decisions are, however, normally announced and explained as the decision of the Minister concerned. On occasion, it may be desirable to emphasise the importance of a decision by stating explicitly that it is the decision of the Scottish Government. This, however, is the exception rather than the rule. Ministers should take special care in discussing issues which are the responsibility of other Ministers, consulting Ministerial colleagues as appropriate.

2.5 In accordance with the principle of collective responsibility, it is important that Ministers and their staff preserve the privacy of Government business and protect the security of Government documents, subject to the provisions of the Freedom of Information (Scotland) Act 2002 (see also paragraphs 2.26 and 2.27).

2.6 The issue of collective responsibility is particularly acute where the portfolio Minister is likely to take a decision that might be unpopular in the constituency or region which another Minister represents as MSP. Once a decision has been reached, the Minister who is constituency or regional MSP must be prepared to defend that decision, even if, individually, he or she might have argued against it in private, or, in the case of a constituency issue, might have made representations as a constituency or regional MSP.

2.7 Collective responsibility as defined above also applies to any junior Scottish Ministers who are appointed by the First Minister under the terms of Section 49 of the Scotland Act even though they may not be members of the Cabinet.

2.8 The only two exceptions to the doctrine of collective responsibility are: (i) statutory or other responsibilities conferred on the First Minister alone; and (ii) the Lord Advocate's retained functions, including decisions taken by the Lord Advocate in his or her capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland. In such cases, the First Minister or the Lord Advocate, respectively, acts independently of other Ministers.

2.9 Where a Minister considers that he or she cannot support a decision reached collectively by the Scottish Government and wishes publicly to dispute that decision, the Minister in question should consider whether it is appropriate to resign from his or her Ministerial role. As with adherence to the rest of the Ministerial Code, a Minister can only remain in post for so long as he or she retains the confidence of the First Minister.

### **Cabinet Business**

2.10 The Cabinet normally meets weekly. Its business consists, in the main, of questions which significantly engage the collective responsibility of the Government, either because they raise major issues of policy or because they are of critical importance to the public. When considering Cabinet business and reaching decisions collectively, it should be remembered that Cabinet members are acting in their Ministerial capacity and not in their capacity as representatives of a particular constituency or regional electorate.

2.11 Matters wholly within the responsibility of a single Minister which do not significantly engage collective responsibility need not be brought to the Cabinet unless the Minister concerned wishes to inform his or her colleagues about the matter in question or to have their advice in a full meeting of the Cabinet. It is not possible to give a precise definition of the matters which should be referred to the Cabinet for decision. As a general rule, however, Cabinet members should put before their colleagues the sorts of issues on which they themselves would wish to be consulted.

2.12 Issues should not be brought to Cabinet until there has been appropriate consultation with Ministers with a direct portfolio interest and their views have been fully reflected in the paper to be submitted for Cabinet consideration. Questions involving more than one Minister which require collective consideration by Cabinet should be examined by the officials concerned before submission to the Cabinet so that the decisions required may be clearly defined. When there is a difference between Ministers, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including discussions between the Ministers concerned. It is the responsibility of the officials concerned to ensure that proposals have been discussed with other interested officials. The outcome of these discussions should be reflected in the paper submitted for Cabinet consideration.

2.13 Members of Cabinet should take particular care when agreeing the weekly Cabinet minutes as an accurate record of discussion. The minutes of the Scottish Cabinet constitute the official record, and Ministers will be expected to adhere to the decisions which they set out.

### **Cabinet Correspondence**

2.14 Cabinet correspondence enables Cabinet to reach decisions on issues which, while requiring collective Cabinet agreement, do not necessarily require to be discussed at a Cabinet meeting. As with all Cabinet papers, Cabinet correspondence should only be issued once appropriate consultation has been undertaken among Ministers with a direct portfolio interest and once their views have been reflected fully in the correspondence paper.

2.15 Just as there is no precise definition of issues requiring Cabinet consideration, so there are no absolute rules about what should be handled through correspondence. It may, however, helpfully be used for securing clearance for the launch of a consultation paper or other significant Government publication. The Cabinet Secretariat can advise in individual cases.

### **Ministerial Discussions below the Level of the Cabinet**

2.16 Collective Ministerial discussions can take place below the level of the Cabinet. Where it is clear that a particular issue will require two or more Ministers and their officials to work together over a period, or that a matter falling within the portfolio of one Minister needs to be considered collectively, the Cabinet may decide to establish a Cabinet sub-committee, which may include both Cabinet members and other Scottish Ministers. The size, membership and length of life of sub-committees may vary significantly depending on the nature of the subject at issue. Alternatively, one or more Ministerial meetings may be arranged involving those Ministers with a direct interest to permit discussion of a particular issue. Any collective Ministerial meeting should be minuted, with decisions and any outstanding issues recorded clearly, usually with input from the Cabinet Secretariat and/or the relevant Private Office.

2.17 Collective Ministerial meetings below the level of the Cabinet have two main purposes. First, they relieve the pressure on the Cabinet itself by enabling business to be settled at a lower level, where appropriate; or, failing that, by clarifying the issues and defining any points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may not be discussed at a meeting of the Cabinet, the decision will be given full Ministerial consideration, and the final judgement reached will be sufficiently authoritative to ensure that the Government as a whole can properly be expected to accept responsibility for it.

2.18 If the Cabinet agrees to delegate an issue to a Cabinet sub-committee and a Minister is dissatisfied with the conclusions, the First Minister will entertain an appeal to the full Cabinet only after consultation with the Minister who chairs the sub-committee concerned.



## **Priority of Cabinet Meetings**

2.19 Cabinet meetings take precedence over all other Ministerial business, although it is understood that there may occasionally be exceptional circumstances (e.g. Parliamentary business, business overseas or meetings with the European Commission or with UK Ministers) which mean that a Minister may have to be absent.

2.20 Requests by Cabinet members for permission to be absent from Cabinet should be made only in such exceptional circumstances, and should be made at the earliest opportunity and by means of a personal minute to the First Minister. A minute is not necessary when the reason for absence from a Cabinet meeting is an overseas visit for which Ministerial approval has already been obtained in accordance with the detailed requirements set out in paragraphs 9.5 to 9.8 below.

2.21 Minutes seeking approval for absence from Cabinet for any reason, including overseas visits, should be copied to the Permanent Secretary and the Cabinet Secretariat. Subject to the First Minister's approval, an absent Cabinet member's interests may be represented at Cabinet by another Minister with relevant portfolio knowledge.

## **Attendance at Meetings of Cabinet Sub-Committees**

2.22 Attendance at meetings of Cabinet sub-committees should take precedence over most other Ministerial business, the principal exception being business in the Parliament where the Minister's attendance is deemed essential. Private Offices should therefore not arrange any engagements for their Minister (and nor should Ministers themselves arrange any business) which would be likely to conflict with a meeting of a committee or other official Ministerial group of which their Minister is a member.

2.23 If, after a meeting date has been fixed, a Minister finds that he or she has to withdraw from a meeting, he or she must send a personal minute to the Chair explaining the circumstances. The minute should be copied to the First Minister, the Permanent Secretary and the Cabinet Secretariat.

2.24 If, exceptionally, a Minister is unable to attend a meeting of a Cabinet sub-committee of which he or she is a member, he or she should try to arrange for another Minister with relevant portfolio knowledge to attend in his or her place (although there may be exceptions for particular meetings at the discretion of the Chair). Officials cannot attend committee meetings in place of a Minister, although they may attend to provide Ministers with advice.

## **Publication of Policy Documents and Consultation Papers**

2.25 Before publishing a Government policy document or a consultation paper, officials should consider whether it raises issues which require full collective Ministerial consideration through Cabinet or a Cabinet sub-committee. The expectation is that most such papers will need collective agreement prior to publication. Any policy document containing a major statement of Government policy should be circulated to Cabinet members and other Ministers with a portfolio interest before publication. This rule applies to papers containing major statements even when no issue requiring collective decision is required.

## **Confidentiality and Security of Cabinet Documents and Other Government Papers**

2.26 Ministers have a personal responsibility to safeguard the integrity and confidentiality of Government business. Failure to maintain good security can cause damage to the interests and reputation of the Government and may prejudice the effective conduct of official business.

2.27 Ministers should be particularly mindful of the vulnerabilities associated with telephone systems, mobile phones, BlackBerry® devices and other similar portable or tablet devices, and IT systems generally. Ministers and their Private Office staff should therefore ensure that all reasonable steps have been taken to ensure the security of Government information, in accordance with current guidance for Ministers issued by the Scottish Government Chief Information Security Officer.

### **Official Papers held by Ministers Relinquishing Office**

2.28 Ministers relinquishing office should hand back to their Private Office any Cabinet documents and/or other official papers in their possession.

### **Access by Former Ministers to Official Papers**

2.29 By convention and at the Government's discretion, former Ministers are allowed reasonable access to official papers which they saw when they were in office. Such access is provided outwith the provisions of the Freedom of Information (Scotland) Act 2002 and is limited to that Minister personally. Access is subject to compliance with the 'Radcliffe Rules' (see paragraph 10.14 below). The papers made available for inspection cannot be copied or taken away. The use made of those papers is limited by the need to ensure that the conventions about confidentiality of exchanges between Ministers, and civil servants' advice to Ministers, are not breached. Approaches in these cases should be made in the first instance to the Permanent Secretary.

### **Taking Legal Advice**

2.30 Paragraph 1.2 of this Code acknowledges the overarching duty on Ministers to comply with the law. It is part of the role of the Law Officers (the Lord Advocate and the Solicitor General for Scotland) to ensure that the Government acts lawfully at all times. Ministers and officials should therefore ensure that their decisions are informed by appropriate analysis of the legal considerations and that the legal implications of any course of action are considered at the earliest opportunity. All briefing to Ministers with legal implications should be informed by appropriate advice on the legal considerations.

2.31 The Law Officers have Ministerial responsibility for the provision of legal advice to Ministers on all matters relating to the law of Scotland. However, they cannot and do not advise on every legal issue which may arise. The primary source of legal advice for the Government is the Scottish Government Legal Directorate (SGLD).

2.32 All comments or views provided in any format by a qualified legal adviser as part of their role as a lawyer are considered to be legal advice. Ministers draw on oral and written legal advice as appropriate from Law Officers, SGLD, Counsel and external solicitors. There is, however, a general principle that the Law Officers must be consulted in good time before the Government is committed to significant decisions involving legal considerations.

2.33 The following are examples of the kind of situation where the advice of the Law Officers should be sought:

- (a) The legal consequences of action by the Government might have important repercussions;
- (b) A legal adviser in the Government has doubts about the legality or constitutional propriety of proposed legislation or executive action;
- (c) Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations; or
- (d) There is a particular legal difficulty that may raise sensitive policy issues.

2.34 The provision of advice by the Law Officers may be through a formal written opinion or otherwise. The process of obtaining a written opinion of the Law Officers will normally be by way of a reference from SGLD. That may be at the request of Ministers, SGLD or the Law Officers themselves.

2.35 When advice from the Law Officers is referred to in correspondence between Ministers or in papers for Cabinet or Ministerial Committees, the conclusions may, if necessary, be summarised, but if this is done the complete text of the advice should be attached.

2.36 Submissions to Ministers raising legal considerations are copied to the Law Officers for information or awareness. Sometimes the Law Officers will comment on such submissions, but often they will simply note them. The Law Officers are not to be taken as offering a legal view on such a submission if they simply note it.

2.37 By convention, the written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding administrations.

### **Disclosure of the Existence, Source or Content of Legal Advice**

2.38 Ministers may acknowledge publicly that they have received legal advice on a particular topic, but must not divulge either who provided the advice or its contents (whether it is from the Law Officers or from anyone else). This applies to all forms of legal advice, including advice on a particular subject or advice associated with clearance of a document.

2.39 This approach is required in order to take account of the public interest in maintaining:

- (a) The right to confidentiality of communications between legal advisers and their clients (sometimes referred to as legal professional privilege);
- (b) The Law Officer Convention<sup>4</sup> that the Scottish Government, like the UK Government, does not, other than in exceptional circumstances, disclose the fact that legal advice has or has not been given to the Government by or sought from the Law Officers, or the content of any such advice.

2.40 If, in exceptional circumstances, Ministers feel that the balance of public interest lies in disclosing either the source or the contents of legal advice on a particular matter, the Law Officers must be consulted and their prior consent obtained. Such consent will only be granted where there are compelling reasons for disclosure in the particular circumstances.

2.41 The provision in paragraph 2.38 preventing Ministers from divulging whether or not Law Officers provided legal advice does not apply in relation to Bills introduced in the Parliament because it is acknowledged publicly that the Law Officers advise on the legislative competence of Government Bills (see paragraph 3.4 below). Views given by the Law Officers in their Ministerial capacity, as opposed to legal advice provided by them in their capacity as legal advisers, are also not covered by the provision in paragraph 2.38.

### **The Law Officers' Role in Legal Proceedings**

2.42 In criminal proceedings, the Law Officers act wholly independently of the Government. In civil proceedings, a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

2.43 The Law Officers' role in relation to civil proceedings in which Ministers may become engaged in their personal capacities is described in paragraph 11.16.

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<sup>4</sup> See HM Treasury and Information Commissioner, High Court [2009] EWHC 1811. See also Erskine May *Parliamentary Practice* 23<sup>rd</sup> Edition 2004, page 443.

### **3. MINISTERS AND THE SCOTTISH PARLIAMENT**

#### **General Principle**

**3.1 In all their dealings with the Parliament, Ministers should seek to uphold and promote the key principles which guided the work of the Consultative Steering Group on the Scottish Parliament.**

#### **Key Principles of the Consultative Steering Group on the Scottish Parliament**

3.2 The key principles endorsed by the Consultative Steering Group on the Scottish Parliament were as follows:<sup>5</sup>

- (a) The Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Government;
- (b) The Scottish Government should be accountable to the Scottish Parliament, and the Parliament and Government should be accountable to the people of Scotland;
- (c) The Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;
- (d) The Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all.

#### **Commitments to Legislate**

3.3 Ministers should not give undertakings either within or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet.

#### **Introduction of Bills**

3.4 Ministers responsible for Bills being introduced in the Parliament should ensure that the Bill is accompanied by clear, informative and comprehensive explanatory notes, by an appropriate policy memorandum detailing the policy objectives of the Bill and the consultation which has been undertaken on it, and by an appropriate Financial Memorandum setting out the best estimates of the administrative and compliance costs arising under the Bill, as required by the Parliament's Standing Orders. Draft Financial Memoranda must be cleared by the Cabinet Secretary for Finance and the Constitution prior to Bills being introduced. A Bill must also be accompanied by a statement, which will have been cleared with the Law Officers, that the Bill is within the legislative competence of the Scottish Parliament.

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<sup>5</sup> See [www.parliament.scot/visitandlearn/Education/18651.aspx](http://www.parliament.scot/visitandlearn/Education/18651.aspx)

## Parliamentary Statements and other Government Announcements

3.5 When the Parliament is meeting, Ministers should ensure that important announcements of Government policy are made, in the first instance, to the Parliament (see also paragraph 2.25 above).

3.6 Oral statements can only be made at full meetings of the Parliament which are normally held on a Wednesday afternoon and all day Thursday, when the Parliament is not in recess. The agenda for each day's business will normally have been agreed the previous week by the Parliament on a motion from the Parliamentary Bureau. The agreement of the Presiding Officer to interrupt business to allow an unscheduled statement to be made is required. If too many announcements are made by oral statement, Parliamentary business could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Answer to a Parliamentary Question. Ministers proposing to make an oral statement or to make an important announcement in the Parliament through another mechanism are therefore asked to conform to the following procedure:

(a) **As much notice as possible** of the intention to make an announcement should be given to (i) the First Minister; (ii) the Minister for Parliamentary Business; (iii) the Permanent Secretary; (iv) the First Minister's Communications desk; and (v) the Cabinet Secretariat. This notification should indicate: the broad content of the proposed announcement; (if necessary) why an oral statement is thought to be appropriate; and whether the policy with which it is concerned has been approved by Ministers, with references to relevant discussions in Cabinet or in other collective Ministerial meetings. If agreement is given in principle, a draft of the statement or answer should be circulated to the same recipients and all Cabinet members as soon as possible, once it has been approved in broad terms (though not necessarily in detail) by the relevant member of Cabinet and other Ministers with a portfolio interest (in urgent cases, clearance in principle and clearance of the detailed text may be secured at the same time);

(b) In the case of announcements by Written Answer to a Parliamentary Question, a press announcement must not be made before the Written Answer has been sent by e-mail to the MSP who lodged the Question. The timing of the announcement should be discussed and agreed with the Minister for Parliamentary Business and the Parliamentary Clerk's Office;

(c) Ministers should not give undertakings, either within or outside the Parliament, that an oral statement will be made to the Parliament on any subject at a specific time or within a particular period until agreement has been given by the First Minister and the Minister for Parliamentary Business to the proposed timing, and by the Ministers concerned to the terms of the statement;

- (d) Ministers should take account of the pressures of other Parliamentary business when considering the timing of statements. Where possible, the Government's intention to make a statement should be intimated in time for it to be taken into account by the Parliamentary Bureau in drawing up a business programme for the period in question. Where the need for an urgent statement emerges subsequently, early notice must be given to the Private Secretaries to the Minister for Parliamentary Business to allow the necessary request to be made to the Presiding Officer. Such requests must be submitted no later than 12 noon on the day the statement is to be made;
- (e) Copies of the final version of such announcements should be sent to the First Minister, the Minister for Parliamentary Business, the Permanent Secretary, the Cabinet Secretariat and the First Minister's Communications desk as soon as they are available;
- (f) A copy of the text of any oral statement should normally be passed to the non-Government parties one hour before it is made. For this purpose the final text must reach the office of the Minister for Parliamentary Business in the Parliament at least one and a half hours before the statement is due to be made;
- (g) The office of the Minister for Parliamentary Business will arrange for a copy of the final text of an oral statement to be sent in advance to the Presiding Officer;
- (h) Copies of any Ministerial statement made in the Parliament and of any document being published by means of the statement should be passed, via the office of the Minister for Parliamentary Business, to the Scottish Parliament Information Centre (SPICe). This affords Members an opportunity of studying the statement in advance of its publication in the Official Report;
- (i) All advance copies should be marked "*check against delivery – embargoed until [insert date]*", to indicate that Ministers can and will make changes to their statements up to and including the point of delivery; and
- (j) Every effort should be made to avoid leaving significant announcements to the last day before a recess.

## Supply of Publications

3.7 A Minister in charge of an item of business in the Parliament is responsible for supplying SPICe in advance with a list of all those papers which he or she considers relevant to consideration of the item. The Minister must ensure that a reasonable number of copies of any documents published during the previous two years which may be needed for the debate are passed to SPICe if requested. When any document is out of print, the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate, the Minister should consult the Minister for Parliamentary Business.

## **Financial Resolutions**

3.8 All motions for Financial Resolutions are lodged in the name of the Cabinet Secretary for Finance and the Constitution. However, he or she is not responsible for securing Parliamentary approval for the Resolution. This responsibility falls to the Minister responsible for the Bill to which the Financial Resolution relates.

## **Ministerial Availability**

3.9 It is expected that Ministers' commitments in Parliament will normally take precedence over other engagements, and it is each Minister's responsibility to ensure that requests for absence from Parliament are submitted and cleared in advance by the Minister for Parliamentary Business.

## **Membership of Cross-Party Groups**

3.10 In order to avoid any conflict of interest, Ministers should not take up membership of any Parliamentary Cross-Party Groups. On taking up office, they should relinquish membership of any such groups of which they are, at that time, a member.

## **Appearing before a Select Committee of the UK Parliament**

3.11 A Select Committee of the UK Parliament may invite a Scottish Minister to attend and give evidence at one of its meetings. Where possible, Scottish Ministers should normally accept such invitations and should provide the Committee with relevant information about Scottish Government policy and practice.



## **4. MINISTERS AND THEIR RESPONSIBILITIES**

### **General Principle**

**4.1 The First Minister is responsible for the overall organisation of the Government and the allocation of functions between Ministers in charge of portfolios.**

### **Appointment of the First Minister**

4.2 A First Minister must secure nomination at the start of each new Parliamentary session following a vote by MSPs, in accordance with Chapters 4 and 11 of the Standing Orders of the Scottish Parliament.<sup>6</sup> Once a member has been nominated, the Presiding Officer recommends the appointment to Her Majesty The Queen. The appointment is made by Her Majesty by Royal Warrant. The Warrant is presented to the Lord President in the Court of Session when the First Minister is sworn in.

### **Ministerial Responsibilities and Titles**

4.3 The First Minister is responsible for the overall organisation of the Government and the appointment of all Cabinet Secretaries and junior Scottish Ministers. Ministerial appointments are subject to approval by Her Majesty. Before seeking approval, the First Minister must first secure the agreement of the Parliament. The First Minister is also responsible for recommending the appointment of the Law Officers. These appointments are made by Her Majesty by Royal Warrant. The agreement of the Parliament must be obtained before a recommendation is made.

4.4 The structure and allocation of Ministerial portfolios are matters for the First Minister. The allocation of functions among Ministers is the responsibility of the First Minister, whose approval must be sought where any changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions. All Ministerial titles, and any proposed changes to them, must be approved by the First Minister.

### **Membership of the Cabinet**

4.5 Membership of the Cabinet and decisions on attendance at Cabinet meetings are matters for the First Minister.

### **Ministers' Availability**

4.6 The First Minister's office should be kept informed of Ministers' engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, the First Minister can be informed which Ministers are immediately available. As set out at paragraph 9.7, any Minister who wishes to be absent from the UK for any reason other than official business at a European Union institution must seek the approval of the Cabinet Secretary for Culture, Tourism and External Affairs.

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<sup>6</sup> See [www.parliament.scot/parliamentarybusiness/17797.aspx](http://www.parliament.scot/parliamentarybusiness/17797.aspx)

4.7 When a Minister will be unable to be contacted for a considerable period because of absence or illness, it may be desirable that arrangements should be made for another member of the Government to be available to cover for him or her and to represent his or her interests in discussions in Cabinet or in any other collective Ministerial meetings. The First Minister's prior approval should be sought for the arrangements for cover for an absent Minister.

### **Parliamentary Liaison Officers**

4.8 The First Minister may, on the recommendation of a Cabinet Secretary, and following consultation with the Minister for Parliamentary Business, appoint an MSP as a Parliamentary Liaison Officer (PLO) to support the Cabinet Secretary in the discharge of his or her Parliamentary duties.

4.9 No approach should be made to a potential PLO without the prior approval of the First Minister and the Minister for Parliamentary Business. Appointment as a PLO can be terminated at any time by the First Minister, following consultation with both the Cabinet Secretary whom the PLO has been appointed to assist and the Minister for Parliamentary Business.

4.10 PLOs are not members of the Scottish Government and may not stand in for Cabinet Secretaries or other Ministers at media or other events. They should also exercise discretion in any speeches or broadcasts which they may make, taking care not to make statements which appear to be made in an official or semi-official capacity. PLOs may serve on Parliamentary Committees, but they should not serve on Committees with a substantial direct link to their Cabinet Secretary's portfolio.

4.11 PLOs may be invited to attend official meetings and may be given access to Government information. Such access should be solely for the purpose of allowing PLOs to discharge their role effectively, and on a strictly confidential basis. PLOs should not, however, have access to information with a protective marking of secret or above. PLOs are required to exercise care in the use of any official information to which they have access in the course of their duties as a PLO and, in particular, should respect the confidentiality arrangements.

4.12 Although PLOs are not subject to the rules on private interests which apply to Ministers, they must ensure that no conflict arises, or appears to arise, between their role as a PLO and their private interests. They are in any case bound by the requirements of the Code of Conduct for Members of the Scottish Parliament.<sup>7</sup>

4.13 PLOs undertaking visits within the United Kingdom relating to their duties as a PLO may receive the normal Civil Service travel and subsistence allowances, as would any other MSP undertaking work for the Government.

4.14 At the beginning of each Parliamentary session, or when changes to PLO appointments are made, the Minister for Parliamentary Business will advise Parliament which MSPs have been appointed as PLOs. The Minister for Parliamentary Business will also ensure that PLO appointments are brought to the attention of Committee Conveners. PLOs must declare their appointment as a PLO on each occasion when they are participating in Parliamentary business related to the portfolio of their Cabinet Secretary.

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<sup>7</sup> See [www.parliament.scot/msps/code-of-conduct-for-msps.aspx](http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx)

## Special Advisers

4.15 Special advisers provide assistance to Ministers in the development of Scottish Government policy and its presentation. The appointment of special advisers also reinforces the political impartiality of the permanent Civil Service by providing a separate channel for political advice and assistance available to Ministers.

4.16 Under the terms of the Constitutional Reform and Governance Act 2010, the First Minister is responsible for all special adviser appointments.<sup>8</sup> If the First Minister ceases to hold office, the appointments of all special advisers appointed by him or her also end. The First Minister is responsible for deciding on the distribution of all special adviser posts within the Scottish Government, whether in support of individual Ministers or as a collective resource.

4.17 All special advisers (paid or unpaid) will be appointed by the First Minister under the terms and conditions set out in the Model Contract for Special Advisers and the Code of Conduct for Special Advisers.<sup>9</sup> Salaries for special advisers are determined either by a Special Advisers Remuneration Committee or by any alternative mechanism that may be put in place following discussion and agreement with the First Minister.

4.18 The responsibility for the management and conduct of all special advisers (paid or unpaid), including discipline, rests with the First Minister. It is open to the First Minister to terminate employment by withdrawing his or her consent to an individual appointment.

4.19 Under the terms of the Constitutional Reform and Governance Act 2010, the Scottish Government is required to prepare an annual report setting out the numbers, names and pay bands of special advisers and their overall salary cost and to lay it before the Scottish Parliament.

## Royal Commissions and Public Inquiries

4.20 The First Minister should be consulted in good time about any proposal to set up:

- (a) Royal Commissions in relation to devolved matters; and
- (b) Public inquiries into any aspect of policy on devolved matters.

4.21 Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning public appointments set out in Section 5 below.

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<sup>8</sup> See [www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/special-advisers](http://www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/special-advisers)

<sup>9</sup> See [www.gov.uk/government/publications/special-advisers-code-of-conduct](http://www.gov.uk/government/publications/special-advisers-code-of-conduct)

## Contacts with External Individuals and Organisations, including Outside Interest Groups and, including Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 ~~Where discussions take place with~~ If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – which raise substantive issues relating to Government decisions or contracts, and where an official is not present, Ministers should inform any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

4.24 See also paragraphs 9.27 to 9.31, 10.18 and 10.19, which provide guidance on contacts with commercial companies and meetings with external groups and the media, respectively.

### Requirements of the Lobbying (Scotland) Act 2016

4.25 Ministers should also have regard to the Lobbying (Scotland) Act 2016, which established the Lobbying Register overseen by the Scottish Parliament. The purpose of the Register is to increase public transparency of lobbying activity in Scotland. The requirement to register any relevant lobbying activity lies with those who lobby, and not with Ministers, the Permanent Secretary or Special Advisers or their support staff. Ministers and officials should be familiar with the duties placed on lobbyists under the 2016 Act. Lobbyists seeking guidance about whether or not any communications made during a meeting are registrable should be directed to the Lobbying Register Team in the Scottish Parliament.<sup>10</sup>

<sup>10</sup> See [www.parliament.scot/gettinginvolved/101810.aspx](http://www.parliament.scot/gettinginvolved/101810.aspx)

## 5. MINISTERS AND APPOINTMENTS

### General Principle

**5.1 Ministers have a duty to ensure that influence over Civil Service and public appointments is not abused for partisan purposes.**

### Civil Service Appointments

5.2 Civil Service appointments must be made in accordance with the requirements of the Constitutional Reform and Governance Act 2010<sup>11</sup> and the Civil Service Commissioners' Recruitment Principles.<sup>12</sup>

### Selection Principles for Public Appointments

5.3 Public appointments should be made in accordance with the requirements of the law and, where appropriate, the *Code of Practice for Ministerial Appointments to Public Bodies in Scotland* issued by the Commissioner for Ethical Standards in Public Life in Scotland.<sup>13</sup>

5.4 National devolved public bodies in Scotland operate to a greater or lesser extent at arm's length from Ministers and the Scottish Government. Details of the relevant public bodies may be found in the *National Public Bodies Directory* published by the Scottish Government.<sup>14</sup> The role of the Chair and board members of a public body, appointed by Ministers, is to provide effective leadership, direction, support and guidance to the organisation and to ensure that the Government's policies and priorities are implemented. The board is the bridge between the Minister who approves the corporate business plans and key performance targets of the body, and the Chief Executive and senior management team, who aim to ensure that plans are delivered and targets met through effective and properly controlled executive action.

5.5 In general (and subject to the constitution of the body to which the appointment is being made), public appointments to the boards of public bodies are the responsibility of Ministers. The Minister will appoint the person he or she considers to be best qualified for the position, based on specific criteria. In doing so, the Minister should have regard to public accountability, the requirements of the law and, where relevant, the Code issued by the Commissioner for Ethical Standards in Public Life in Scotland.

5.6 Appointment on merit is fundamental and applies to all Scottish public appointment procedures, irrespective of whether they are regulated by the Commissioner for Ethical Standards in Public Life in Scotland. Further information and advice on the Code issued by the Commissioner, its implications for Ministers, and Ministers' specific responsibilities are available from the Scottish Government Public Appointments Team.

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<sup>11</sup> See [www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/appointment](http://www.legislation.gov.uk/ukpga/2010/25/part/1/chapter/1/crossheading/appointment)

<sup>12</sup> See <http://civilservicecommission.independent.gov.uk/civil-service-recruitment/>

<sup>13</sup> See [www.publicappointments.org/publications/110/code-of-practice](http://www.publicappointments.org/publications/110/code-of-practice)

<sup>14</sup> See [www.gov.scot/Topics/Government/public-bodies/about/Bodies](http://www.gov.scot/Topics/Government/public-bodies/about/Bodies)

## **The Role of the First Minister and Other Ministers with a Particular Interest**

5.7 The First Minister should always be copied into any initial submission seeking commencement of a new public appointment round, or the re-appointment of, or extension of the appointment of a Chair of a public body.

5.8 Final submissions seeking a decision on the appointment of a Chair of a public body should always be sent to the appointment Minister and the First Minister. Publicising the announcement of any new Chair should not take place until the First Minister has confirmed the appointing Minister's decision.

5.9 The First Minister must be consulted about any appointment which is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations, submissions to the First Minister should be copied to the Minister for Parliamentary Business.

5.10 The Cabinet Secretary for Finance and the Constitution must approve all initial submissions for new appointments which have advertising costs. All initial submissions which have associated advertising costs must be sent to the Cabinet Secretary for Finance and the Constitution as well as to the appointing Minister. No appointment round which has associated advertising costs should commence without clearance by the Cabinet Secretary for Finance and the Constitution.

5.11 The Lord Advocate should be consulted where it is proposed to appoint a judge or legal officer (e.g. a Scottish Law Commissioner) to a Royal Commission or a public inquiry. In such cases, it may be preferable for the individuals concerned to be approached by the Lord Advocate, rather than by officials.

5.12 The Minister for Parliamentary Business should always be consulted before an MSP is approached about appointment to any office which would result in the vacation of a Parliamentary seat.

5.13 In all cases where a submission is to be put to the First Minister for approval, no commitment should be made to any individual before the First Minister has commented. In the case of Royal Commissions or public inquiries, the First Minister and the Lord Advocate should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

## 6. MINISTERS AND CIVIL SERVANTS

### 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>15</sup> and the requirements of the Constitutional Reform and Civil Governance Act 2010.<sup>16</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.

### The Role of the Accountable Officer

6.4 The Public Finance and Accountability (Scotland) Act 2000<sup>17</sup> makes provision for the appointment of the Permanent Secretary as Principal Accountable Officer (PAO) for the Scottish Administration and specifies the Permanent Secretary's functions in this capacity. These include designating Accountable Officers for such parts of the Scottish Administration as the Permanent Secretary may specify and for certain other bodies, the accounts of which are required by statute to be audited by or under the control of the Auditor General for Scotland.

6.5 The essence of the Accountable Officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she has stewardship and ensuring the economic, efficient and effective use of resources. Accountable Officers are personally answerable to the Public Audit Committee of the Parliament on these matters within the framework of Ministerial accountability to the Parliament. The PAO has overall responsibility for these matters with regard to the Government, but would normally only be expected to answer personally to the Public Audit Committee on issues affecting the Government as a whole.

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<sup>15</sup> See <https://beta.gov.scot/publications/civil-service-code/>

<sup>16</sup> See [www.legislation.gov.uk/ukpga/2010/25/contents](http://www.legislation.gov.uk/ukpga/2010/25/contents)

<sup>17</sup> See [www.legislation.gov.uk/asp/2000/1/contents](http://www.legislation.gov.uk/asp/2000/1/contents)

6.6 Accountable Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and on the economic, efficient and effective use of resources. If Ministers are contemplating a course of action which the Accountable Officer considers would breach the requirements of financial regularity or propriety, the Accountable Officer must set out in writing his or her objection to the proposal, the reasons for the objection and his or her duty to inform the Auditor General for Scotland should the advice be overruled.

6.7 If Ministers decide nonetheless to proceed, the Accountable Officer must seek written authority to take the action in question and must send the relevant papers to the Auditor General for Scotland and to the Clerk to the Public Audit Committee as soon as possible. The same procedure applies where the Accountable Officer considers that Ministers are contemplating a course of action which he or she could not defend as representing value for money within a framework of Best Value. The procedure enables the Public Audit Committee to see that the Accountable Officer does not bear personal responsibility for the actions concerned.

6.8 The role of Accountable Officers is described in greater detail in the Memorandum to Accountable Officers published in the Scottish Public Finance Manual.<sup>18</sup>

### **Civil Servants and Party Conferences**

6.9 Ministers should not ask civil servants to attend or take part in party conferences or meetings of party policy or subject groups. It is an established principle in the public service that civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. The situation is, of course, different when Ministers require officials to be in attendance at party political events in order to enable the Minister to carry out urgent official business unconnected with the event. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend party functions, including annual party conferences (but they may not speak publicly at the conference) and maintain contact with party members. Further guidance is available from the Cabinet Office.<sup>19</sup>

6.10 If a Minister wishes to have a brief for a party political occasion to explain Government policies or actions, there is no reason why this should not be provided. It cannot however contain material which could be construed as designed to promote one party's line or to anticipate criticisms from other parties.

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<sup>18</sup> See [www.gov.scot/Topics/Government/Finance/spfm/Accountability](http://www.gov.scot/Topics/Government/Finance/spfm/Accountability)

<sup>19</sup> See [www.gov.uk/government/publications/civil-servants-and-party-conferences-guidance](http://www.gov.uk/government/publications/civil-servants-and-party-conferences-guidance)



## 7. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

### General Principle

**7.1 Facilities provided to Ministers at Government expense to enable them to carry out their official duties should not be used for party or constituency work. Where Ministers have to take decisions which might have an impact on the constituency or region which they represent as MSP, they should take particular care to avoid any possible conflict of interest.**

### Use of Government Property / Resources

7.2 Government property should not generally be used for constituency work<sup>20</sup> or party activities. A particular exception is recognised where a building has been designated as the First Minister's official residence. Where Ministers host party or personal events in the First Minister's official residence, it should be at their own or at party expense, with no cost falling on the public purse.

7.3 Official facilities and resources may not be used for the dissemination of material which is essentially party political. The conventions governing the work of Government Communications staff are set out in the Propriety Guidance issued by the Government Communication Network.<sup>21</sup> Similar conventions apply to special advisers in their work to assist Ministers in the presentation of Scottish Government policy, as set out in the *Code of Conduct for Special Advisers* (see also paragraphs 4.15 to 4.17).<sup>22</sup>

### References for Constituents

7.4 On occasions, Ministers are asked to provide personal or job references for constituents. Ministers may only do this provided they make clear that they are doing so as an MSP and not as a Minister. Particular care must be taken, however, to avoid any conflicts of interest; in some cases, it may not be appropriate for a Minister to provide a reference, even as an MSP. For example, Ministers should not provide references for jobs in the public sector for which their portfolio is responsible.

### Constituency Interests

7.5 Where Ministers have to take decisions within their area of portfolio responsibility which might have an impact on their own constituency or region, they must take particular care to avoid any possible conflict of interest. They should advise the Permanent Secretary and, in the case of junior Scottish Ministers, the relevant Cabinet Secretary of the interest, and responsibilities should be arranged to avoid any conflict of interest.

7.6 Ministers are free to make their electorate's views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview, provided they make clear that they are acting as an MSP and not as a Minister.

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<sup>20</sup> References to constituency work also include regional MSPs' work on behalf of their electorates.

<sup>21</sup> See <https://gcs.civilservice.gov.uk/guidance/propriety/>

<sup>22</sup> See [www.gov.uk/government/publications/special-advisers-code-of-conduct](http://www.gov.uk/government/publications/special-advisers-code-of-conduct)

7.7 Ministers are advised to take particular care in cases relating to planning applications in the constituency or region which they represent, or in other similar cases. Particular care is required when expressing views on cases involving exercise of discretion by Ministers (such as school or hospital closures), where representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity.

7.8 In all such cases, it is important that Ministers should:

- (a) Make clear that the views they are putting forward are ones expressed in their capacity as the MSP representing a particular electorate;
- (b) Avoid criticism of the Government's policies; and
- (c) Confine themselves to comments which could reasonably be made by those who are not Ministers.

7.9 Once a decision has been announced, it should be accepted without question or criticism. It is important that Ministers, in expressing the views of their electorate, do so in a way that does not create difficulty for the Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments might have in their own field of portfolio responsibility.

7.10 Particular care also needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case, they should advise the Permanent Secretary and write to the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any enquiry is handled without special treatment.

7.11 Additional guidance specific to planning cases and energy consents is set out in paragraphs 8.6 to 8.8 below.

### **Lottery Bids**

7.12 In order to avoid the impression that Ministers are seeking to influence decisions on awards of Lottery money, Ministers should not normally give specific public support for individual applications for Lottery funding. Where a Minister wishes to lend support to a specific project as constituency or regional MSP for a potential Lottery application, he or she should be guided by the principles set out in paragraph 7.10. Ministers lending support to a specific project should do so on the very clear understanding that it is in their capacity as an MSP.

### **Scottish Public Services Ombudsman Cases**

7.13 The Scottish Public Services Ombudsman (SPSO) was established by the Scottish Public Services Ombudsman Act 2002 and is the final stage for complaints about most public services in Scotland. Members of the public may submit

complaints directly to the SPSO, but they may also choose to approach their MSP for assistance or ask them to act as their representative in dealing with the SPSO. When Ministers are asked by members of the public for assistance in dealing with the SPSO, they should, where possible, act no differently from MSPs who are not Ministers. Ministers should accordingly consider requests on their merits in deciding whether to refer a complaint to the SPSO, or to refer the case to the relevant Minister, or to decline to take action. Where the complainant is not from the Minister's constituency or region, the Minister may wish to refer the case to an MSP who represents the relevant constituency or region. Any Minister is minded to provide assistance in relation to a case referred to the SPSO should inform the Minister responsible for the portfolio concerned in advance.

7.14 Where a complaint is about a matter for which the Minister is responsible, the Minister may wish to investigate it personally unless he or she, or one of the other Ministers in his or her team, has already been directly involved in the case. Where a Minister has been so involved, the SPSO should be asked to investigate if the case is within the Ombudsman's jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the SPSO straight away. Ministers should decide for themselves whether or not it is appropriate for them to become involved in a case, and they should be aware that their choosing not to become involved shall in no way preclude the submission of a complaint to the SPSO.

### **Parliamentary Commissioner for Administration**

7.15 A complaint brought to the attention of a Minister may fall outwith the remit of the Scottish Public Services Ombudsman but instead lie within the remit of the Parliamentary Commissioner for Administration (PCA) (commonly known as the Parliamentary Ombudsman). Scottish Ministers do not have the power to refer such complaints directly to the PCA. Ministers should instead draw the complaint to the attention of the complainant's MP or advise the complainant to ask his or her MP to refer the complaint to the PCA.

## 8. MINISTERS' ENGAGEMENT ON PLANNING MATTERS, INCLUDING THE GRANTING OF ENERGY CONSENTS

### General Principle

**8.1 Ministers should take particular care to avoid conflicts of interest when dealing with planning matters, including the granting of energy consents.**

### Ministers' Interests in Specific Cases

8.2 The requirements of this section of the Code are especially relevant for a Minister who is either the Planning Minister or who otherwise has a particular interest in a specific case. Ministers should clearly articulate a distinction between their role as Minister and as the MSP representing a particular electorate.

### The Planning Minister

8.3 To help ensure the fairness and transparency of the planning system the Planning Minister<sup>23</sup> or any other Minister involved in the planning decision, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken. Action that might be viewed as being prejudicial includes:

**(a) Taking a decision, or being part of the decision-making process, in respect of an application which falls within the constituency or region represented by the Planning Minister or any other Minister involved in the planning decision, or expressing an opinion publicly on a particular case which is before, or may subsequently be referred to, the Minister(s) for decision.**

In order to preserve the integrity of the decision from challenge on grounds of prejudice, the Planning Minister or any other Minister involved in the decision-making process would have to debar him- or herself from any involvement in the case:

- (i) if the application fell within his or her constituency or region; or
- (ii) if the Minister had expressed a personal view on the proposal; or
- (iii) if the Minister considered that his or her impartiality might be perceived to be compromised in any other way;

**(b) Meeting the developer or objectors to discuss the proposal, but not meeting all parties with an interest in the decision.**

The Planning Minister, or any other Minister involved in the planning decision, should only hold such a meeting if it is possible to meet **all** interested parties in respect of a particular proposal or, as an absolute minimum, to offer all parties the opportunity of such a meeting; and

**(c) Commenting on decisions once they have been issued, other than in terms of what has appeared in the decision letter or, in the case of structure plan or Strategic Development Plan approvals, any accompanying explanatory annexes.**

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<sup>23</sup> The Planning Minister is the Minister responsible for taking a decision on behalf of Scottish Ministers collectively on planning cases (including planning permission, listed building consents and energy consents) that have been referred to the Scottish Government.

In the interests of certainty and stability, the legislation provides for decisions on planning cases to be final, subject only to challenge in the Courts on a point of law, or on the grounds that a decision is so unreasonable that no reasonable Minister could have arrived at it. Decision letters set out in full the grounds for decisions, and the Minister should make it clear that, in any discussion after a decision is made, he or she would be unable to add to the terms of the relevant decision letter.

### **Other Ministers with a Particular Interest**

8.4 Particular care needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case, they should write to the Permanent Secretary and the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any inquiry is dealt with rigorously and without special treatment.

8.5 Ministers with powers in relation to public bodies are required to take particular care when a body is a statutory consultee in the planning process. While Ministers are free to give general strategic guidance to those public bodies for which they have portfolio responsibility and to be reassured that this is being followed, and although Ministers are entitled to take an interest in whether public bodies are fulfilling their statutory role in the planning system, they should take care not to seek to influence the substance of the advice being given in individual cases which are subject to the planning process.

### **All Ministers**

8.6 The general guidance at 7.5 to 7.10 above also applies to planning matters, including energy consents. It is entirely legitimate for Ministers, in their capacity as a constituency or regional MSP, to make representations on behalf of their electorate on planning matters, but they must take particular care to ensure they follow this due process when doing so. Where Ministers find it unavoidable to express a view on a planning case, they should be aware of the potential sensitivities in doing so, should make it clear that they are not involved in the decision making process on the planning case, and must make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate.

8.7 Ministers can, when acting in their MSP role, represent their electorate's views on planning cases, and should act as follows:

- (a) They may write to the Minister responsible for taking a decision on a planning application, arguing against or in favour of a particular course of action. But in so doing, they should make it clear that they are representing their electorate as MSP or are acting at the request of a particular group or person;

- (b) They can express agreement with the views of a particular group or person when submitting representations in connection with a planning application, but such expressions of personal opinion should be informed by the procedures as set out in paragraph 7.8 above;
- (c) They should make no comment of their own where the determination of a planning application will lead to, or will implicitly involve, other decisions in which the Minister making representations on behalf of a particular constituency or region is involved in his or her own Ministerial capacity;
- (d) They may attend public meetings, make representations to a planning authority, argue a constituent's case at a public local inquiry and take a personal position. But their role throughout must be consistent with the restrictions set out under (a) to (c) above. They may not take a personal position in respect of cases falling under (c) above;
- (e) They may lead deputations or arrange meetings between relevant parties, ensuring that they take into account the guidance set out at paragraphs 7.6 to 7.8; and
- (f) They can make public comment, including through the media, but should be aware of the potential sensitivities in doing so.

8.8 Parliamentary Liaison Officers should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their interests as a constituency or regional MSP, they should abide by the guidance in paragraphs 7.5 to 7.10 above.

### **The First Minister**

8.9 The guidance set out in paragraphs 8.6 to 8.8 applies to the First Minister in the same way as to all other Ministers. The First Minister may act as a constituency or regional MSP on any matter, in the same way as any other Minister. However, the First Minister must take especially rigorous care to be seen to separate his or her role as an MSP and his or her potential Ministerial role in a planning decision. The First Minister must be seen to do nothing that could be perceived as prejudicial to the planning process, by making sure that other Ministers have a clear understanding that, when he or she is acting or expressing a view as a constituency or regional MSP, those actions or views are not misinterpreted as being directive.

8.10 The First Minister should avoid making any public statement about the merits of a planning application (even in his or her capacity as local MSP) that might be seen to put the Planning Minister under pressure when making a decision about a planning matter. Where the First Minister judges that the circumstances in which he or she is acting as constituency or regional MSP are particularly sensitive, he or she has the option of consulting the Permanent Secretary.

## 9. TRAVEL BY MINISTERS

### General Principle

**9.1 Ministers must ensure that they always make efficient and cost-effective travel arrangements. Ministers must be satisfied that their travel arrangements could be defended in public, consistent with Ministers' commitment to reduce emissions.**

### Guiding Principles for Ministerial Travel

9.2 In planning their official travel, Ministers should adhere to the guiding principles set out below:

- (a) **Propriety:** On Ministerial visits, whether in the UK or abroad, Ministers and officials should make sure that there is no confusion about who is and is not a member of the Ministerial party. When Ministers travel on official business, the cost should normally be met from public funds. When any expenses are not met in this way, Ministers should ensure that no undue obligation is involved. Official transport should not normally be used for travel arrangements arising from party or private business;
- (b) **Efficient Use of Resources:** The availability of some services, such as official cars, is necessarily limited, and Ministers should pay special attention to the need to use the Government Car Service efficiently. Where practicable, Ministers are encouraged to use public transport and to make use of the Government's central travel contracts wherever possible. Travel arrangements should be consistent with Ministers' commitment to reduce emissions;
- (c) **Cost Consciousness:** In using official cars and travelling by rail or air, Ministers must always make cost-effective travel arrangements. The cost of alternative arrangements should be considered before any decisions involving substantial costs are made; and
- (d) **Security:** Ministers should keep security risks in mind at all times, particularly when travelling by car. This applies both to them personally and to Ministerial papers.

### Overseas Visits

9.3 Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which they are responsible, keeping delegations as small as possible. Ministers and officials should make sure that there is no confusion about who is and is not a member of the Ministerial party.

9.4 When Ministers travel on official business, their travel expenses should be borne by the Government. Offers of free travel or accommodation should not normally be accepted. The only exception to this is in the case of an offer of transport from an overseas government, provided no undue obligation is created. If such offers are received, guidance should be sought from International Division, who will refer to the First Minister and the Permanent Secretary as required. Further advice on gifts and hospitality is set out below in paragraphs 11.19 to 11.24.

## Detailed Arrangements for Overseas Visits

9.5 Ministers should normally arrange overseas visits in the Parliamentary recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union (EU) or there are other compelling reasons of Government business. Ministers should also bear in mind that Cabinet meetings take precedence over all other Ministerial business, as set out in paragraph 2.20 above. A sufficient number of Ministers must also be available during recess to ensure the effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

9.6 International Division and/or European Relations Division, as appropriate, should be informed if any overseas visit is contemplated (for example, whenever an invitation is received by the Minister's Private Office). They will be responsible for consulting the Foreign & Commonwealth Office, if necessary, and feeding back any views. International Division and/or European Relations Division should thereafter be kept involved in making arrangements for all overseas visits.

9.7 Any Minister who wishes to be absent from the country for any reason other than official business at an EU institution must seek the written approval of the Cabinet Secretary for Culture, Tourism and External Affairs. In addition, the Minister for Parliamentary Business must approve any absence from Parliament. Such approval must be obtained before any commitment is given, even on an informal basis.

9.8 In the case of official visits, the minute seeking approval should be copied to the First Minister, the Cabinet Secretary for Finance and the Constitution, the Minister for Parliamentary Business, the Permanent Secretary, DG Constitution & External Affairs, the Cabinet Secretariat inbox, International Division and European Relations Division. The minute should include a statement of the objectives of the visit, its approximate cost and the names of the officials accompanying the Minister. For the avoidance of confusion, the minute should also set out clearly the names and designations of all those who are members of the Ministerial party. A template is available from the office of the Cabinet Secretary for Culture, Tourism and External Affairs.

9.9 Ministers planning visits to EU councils or other EU institution meetings should inform the Cabinet Secretary for Culture, Tourism and External Affairs in writing and should copy the minute to DG Constitution & External Affairs, the Cabinet Secretariat inbox, International Division and European Relations Division.

9.10 The First Minister's prior written approval is required for any official visit overseas by a special adviser (paid or unpaid) or where it is proposed that a Minister should be accompanied on any official visit overseas by his or her spouse or partner.

9.11 Where the First Minister proposes to be absent from the country for any reason other than official business at an EU institution, he or she must first seek Her Majesty The Queen's permission to leave the country.

9.12 When making arrangements for official Ministerial visits overseas, the diplomatic post concerned should be approached to give advice on the proposed programme, except in the case of visits arranged by Scottish Development International. International Division and/or European Relations Division, as appropriate, will provide contact details for the relevant diplomatic post.



9.13 ~~Officials should accompany Ministers to all official visits and meetings overseas at which it is expected that official matters may be raised, When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or Embassy official is present. If Ministers meet an external organisation or individual and find themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to their Private Office as soon as possible after the event. Ministers~~ should seek guidance from International Division and/or European Relations Division if there is any uncertainty about the status of such meetings or the attendance of non-officials at them. International Division and/or European Relations Division will, in turn, seek advice from the Foreign & Commonwealth Office, as required.

### **Ministerial Reports on Return from Overseas Visits**

9.14 Where a Minister has travelled overseas on official business (including visits to EU countries for the purpose of attending meetings of EU Councils or meetings at other EU institutions), the Minister's lead official should provide the Cabinet Secretary for Culture, Tourism and External Affairs and the First Minister with a brief note summarising the purpose and nature of their visit, making an initial assessment of its value in terms of the original objectives, and recording any substantive discussions held with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business. Ministers should note that this applies equally if such contacts are made while on holiday in the country concerned (and if Ministers intend making such contact, they must seek the views of the First Minister before travelling).

9.15 International Division and/or European Relations Division will ensure that a note of the salient points of any substantive discussions is passed to the Foreign & Commonwealth Office for information. In the case of EU Council meetings, a report to the Scottish Parliament on the outcomes of the Council will normally be sufficient. Ministers' reports on overseas visits must be completed within ten days of their return. Reports should be copied to DG Constitution & External Affairs, International Division and European Relations Division. A template is available from the office of the Cabinet Secretary for Culture, Tourism and External Affairs.

9.16 The Minister's Private Office must also provide the Ministerial Private Office divisional support team with details of the dates of the visit, countries visited, meetings held, and the names and designations of those who accompanied the Minister, as well as the final costs of the visit, including all flights and travel and subsistence costs. This information will be collated as a central record, ensuring that up-to-date information on such visits and their costs can be made available at short notice in the event that Ministers are asked to account for their travel arrangements.

### **Publication of Ministerial Overseas Travel**

9.17 The Scottish Government publishes quarterly details of all travel overseas by all Ministers. Ministerial Private Offices must provide the information required to compile this list to the Ministerial Private Office divisional support team as soon as each overseas visit has been completed.

## **Visits by Ministers from Foreign or Commonwealth Countries**

9.18 Ministers should consult the First Minister before extending invitations to Ministers in other national or regional governments to pay official visits to Scotland. Relevant officials should also inform International Division about all visits to Scotland which become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status, to enable International Division to inform the Foreign & Commonwealth Office. It will be for the First Minister to decide whether to consult the Foreign & Commonwealth Office before inviting Ministers from foreign or Commonwealth countries to Scotland.

## **Ministers Recalled from Abroad**

9.19 If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons – including to vote – the cost of the extra journey back and forth may be met from public funds.

## **UK Visits**

9.20 Ministers intending to make an official visit within the United Kingdom must, in all normal circumstances, inform in advance the MPs whose constituencies are to be included within the itinerary. Within Scotland, Ministers must also, again in all normal circumstances, inform the constituency and regional MSPs for the relevant area. The notification should also be copied to the chief executive of the relevant local authority. It is recognised that there will be occasions when visits are organised or the details confirmed at short notice, but where reasonably possible such notification should issue at least 48 hours in advance of the visit concerned. Ministers and officials should make sure there is no confusion about who is and is not a member of the Ministerial party.

9.21 Similar courtesies should be extended when Ministers are visiting the constituencies of members of the National Assembly for Wales or the Northern Ireland Assembly.

9.22 Ministers who are planning official visits to England, Wales or Northern Ireland which would involve a public engagement should inform the First Minister. In the case of visits in England, the appropriate Secretary of State should be informed, as should the First Minister in the case of Wales and the First Minister and Deputy First Minister in the case of Northern Ireland.

## **Party Political Occasions**

9.23 Where a visit is a mix of political and official engagements, it is important that the Government and the party each meet a proper proportion of the actual cost.

## **Air Miles, Etc.**

9.24 Air Miles-type rewards schemes and other benefits earned through travel paid for from public funds should be used only for official purposes or else forgone, other than where they are *de minimis* (for example, access to special departure lounges or booking arrangements associated with membership of regular flier clubs). If it is impracticable to use the benefits for Government travel, there is no objection to

Ministers donating them to charity if this is permissible under the terms of the relevant scheme and the charity is one chosen by the scheme operator.

### **Travelling Expenses of Spouses or Partners**

9.25 The expenses of a Minister's spouse or partner, when accompanying the Minister on the latter's official duties, may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. The written agreement of the First Minister must be obtained on each occasion before travel.

### **Travelling Expenses of Special Advisers**

9.26 If necessary, a Minister may take a special adviser on an overseas visit at the public expense, provided that it is clearly in the public interest that he or she should accompany the Minister. The First Minister's written approval must be obtained on each occasion before travel.

### **Contact with Commercial Companies**

9.27 Regardless of their responsibilities, all Ministers will come into contact with private sector businesses from time to time. Invitations to functions and events are common place and are part and parcel of Ministerial life. It is for Ministers themselves to judge whether to accept any invitation extended to them but they should satisfy themselves that doing so does not place them under any real or perceived obligation nor risks the commercial position of the Government. Ministers should be guided by the principles set out below in coming to a decision.

9.28 Ministers are free to enjoy normal hospitality provided by private sector companies in the course of their duties (further guidance on acceptance of gifts and hospitality is set out in paragraphs 11.19 to 11.24). However, Ministers should consider very carefully any repeated or serial hospitality from an individual or a company. Ministers need to be sensitive to the risk that private sector interests might occasionally attempt to use occasions to exercise improper influence and lobby the Minister.

9.29 Ministers should also avoid promoting an individual company's products or services by association. They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Procurement and Commercial. However, nothing in this Code should be taken as preventing Ministers from fulfilling their proper function of encouraging investment in economic activity to the benefit and prosperity of the people of Scotland.

9.30 Formal invitations which are sent to Ministers are usually subject to a process which allows relevant officials in the Scottish Government to brief the Minister on the appropriateness of accepting the invitation, including matters such as company performance, commercial interests the company might have with the Government, etc. Informal approaches should be treated with caution, and Private Offices should seek advice from the appropriate Directorate if the Minister is in any doubt.

9.31 Ministers should also have regard to the Code of Conduct for Members of the Scottish Parliament – Volume 2, Section 5 on Lobbying and Access to MSPs<sup>24</sup> which provides guidance on the relationship between lobbyists and MSPs (see also paragraph 4.25 of this Code on the requirements of the Lobbying (Scotland) Act 2016).

9.32 Paragraphs 4.22 to 4.24, 10.18 and 10.19 of this Code provide further guidance on meetings with external individuals and organisations, including outside interest groups, lobbyists and the media, including those meetings where an official is not present.

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<sup>24</sup> See [www.parliament.scot/msps/42778.aspx](http://www.parliament.scot/msps/42778.aspx)

## **10. MINISTERS AND THE PRESENTATION OF POLICY**

### **General Principle**

**10.1 Official facilities paid for out of public funds can be used for Government publicity and advertising but may not be used for the dissemination of material which is essentially party political.**

### **Media Interviews, Speeches, Etc.**

10.2 In order to ensure the effective presentation of Government policy, Scottish Government Media Managers co-ordinate a strategic communications process on behalf of Ministers. This requires, among other things, that all major interviews and media appearances, both print and broadcast, are the subject of prior consultation with Media Managers and, if appropriate, the First Minister and any other Minister he or she may designate for this purpose.

10.3 The presentational aspects of all major announcements, speeches and new policy initiatives should also be discussed with Media Managers in this way, and the timing, format and content of all announcements should be cleared with them. The conventions governing the work of Government Communications staff are set out in the Government Communication Service Propriety Guidance.<sup>25</sup>

10.4 In all cases other than representations on behalf of constituents (as described in paragraph 7.6), the principle of collective responsibility applies, as set out in paragraph 2.1. Ministers should ensure that their statements are consistent with collective Government policy. Ministers should take special care in referring to subjects which are the responsibility of other Ministers.

10.5 Ministers must only use official machinery for distributing texts of speeches relating to Government business. Speeches made in a party political context must be distributed through the party machinery.

### **News Conferences/Broadcasts**

10.6 As part of their general presentational duties, Ministers will be expected to speak to the news media, through television and radio interviews, through interviews with journalists and through news conferences. In all cases, the advice of Media Managers should be sought before any such events are arranged, e.g. on timing, content and handling. Support should be provided by Media Managers where this is practical. In keeping with the concept of collective responsibility, Ministers should be mindful that when responding to direct approaches from members of the media, their comments are likely to be perceived as representative of the Government. In all cases, propriety should be maintained, in accordance with Government Communication Service Propriety Guidance. Details on procedures for media handling will be provided by Media Managers.

10.7 Ministers invited to broadcast on radio, television and/or webcasts in a political or private capacity should consider if acceptance of such an invitation would have a bearing on another Minister's responsibilities, in which case they should clear the matter with the Ministerial colleague concerned before agreeing to the invitation.

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<sup>25</sup> See <https://gcs.civilservice.gov.uk/guidance/propriety>

## **Non-Government Communications, including Press Articles**

10.8 Ministers may contribute to a book, journal, newspaper (including the letters pages), blog or other similar social media, including a local newspaper in the constituency or region they represent as MSP, provided that publication will not be at variance with Ministers' obligations to Parliament or their duty to observe the principle of collective Ministerial responsibility and that it does not bring the Government into disrepute. No payment should be accepted for such contributions.

10.9 Any Minister wishing to practise regular journalism must have the prior written approval of the First Minister.

## **Social Media**

10.10 Ministers may retain personal social media accounts (e.g. Facebook, Twitter), provided that any activity on their account is not at variance with their obligations to Parliament or their duty to observe the principle of collective Ministerial responsibility. It is Ministers' personal responsibility to ensure that social media activity in their name does not breach these requirements or bring the Government into disrepute.

10.11 If Ministers wish to use social media for official policy communications, they should use an appropriate Government account.

## **Payment for Speeches, Media Articles, Etc.**

10.12 Ministers should not accept payment for speeches or media articles of an official nature or which directly draw on their responsibilities or experience as Ministers or with a view to donating the fee to charity. If the organisation in question insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

## **Books**

10.13 Ministers may not, while in office, write and publish a book on their Ministerial experiences. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position.

10.14 Former Ministers intending to publish their memoirs are required to submit the draft manuscript in good time before publication to the Permanent Secretary and to conform to the principles set out in the Radcliffe report of 1976.<sup>26</sup>

## **Surveys**

10.15 Ministers are sometimes asked to give interviews to persons engaged in academic research or in market opinion surveys or questionnaires. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as Ministers, and such interviews should normally be declined.

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<sup>26</sup> See Directory of Civil Service Guidance, Volume 2: Collected Guidance, page 41: Ministerial Memoirs: The Radcliffe Rules and their application:  
[www.gov.uk/government/publications/directory-of-civil-service-guidance](http://www.gov.uk/government/publications/directory-of-civil-service-guidance)

## Publication of Policy Statements and Consultation Papers

10.16 Given the need to make statements of policy to Parliament before the media, there is no procedure whereby final proof copies of policy documents can be made available under embargo to accredited correspondents a short time before publication. If a Minister wishes to depart from this general principle, Media Managers and, through them, the First Minister and whichever Minister he or she may designate for this purpose must be consulted. See also paragraph 2.25 for clearance of Government policy documents and consultation papers.

## Complaints

10.17 Ministers who wish to make a complaint against a journalist or a particular section of the media to the appropriate regulator ~~Press Complaints Commission, Ofcom or the BBC Trust, as appropriate,~~ must have the authority of the First Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a minute to the First Minister, copied to the Permanent Secretary, DG Organisational Development ~~Strategy & Operations,~~ the Director foref ~~Communications,~~ and Ministerial Support and Facilities and the Head of Communications. Similarly, Ministers should always consult the Head of Communications before making any oral complaint to a media organisation about their handling of a story.

## Meetings with External Organisations

10.18 A monthly list of engagements carried out by all Ministers is published three months in arrears. Detailed arrangements for recording contacts with external organisations and individuals, including outside interest groups ~~and, including~~ lobbyists, are set out in paragraphs 4.22 to 4.24 above. See also paragraphs 9.27 to 9.31 for further guidance on contact with commercial companies.

## Meetings with the Media

10.19 Ministers must be open about their links with the media. The monthly list of Ministerial engagements referred to in paragraph 10.18 above will include Ministers' meetings with newspaper and other media proprietors, editors and senior executives, regardless of the purpose of the meeting.

## Statistics

10.20 Ministers must be mindful of the UK Statistics Authority's Code of Practice,<sup>27</sup> which defines good practice in relation to official statistics, observance of which is a statutory requirement on all organisations that produce National Statistics in accordance with the provisions of the Statistics and Registration Service Act 2007.

10.21 Ministers must also have regard to the relevant Pre-Release Access to Official Statistics Orders,<sup>28</sup> which place strict conditions on access to official statistics in their final form, including limiting access ahead of publication and prohibits any statement or comment to the press ahead of release of the statistics.

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<sup>27</sup> See [www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html](http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html)

<sup>28</sup> See [www.statisticsauthority.gov.uk/about-the-authority/uk-statistical-system/legislation/pre-release-access/index.html](http://www.statisticsauthority.gov.uk/about-the-authority/uk-statistical-system/legislation/pre-release-access/index.html)

## **11. MINISTERS' PRIVATE INTERESTS**

### **General Principle**

**11.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.**

### **Responsibility for Avoiding a Conflict**

11.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from the Permanent Secretary.

11.3 The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government, or by securing the services of a professional adviser. Where there is a doubt, it will almost always be better to relinquish or dispose of the interest in question. In cases of serious difficulty or doubt, the matter may be referred to the First Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

### **Procedure**

11.4 On appointment to each new office, Ministers must provide the Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict in relation to their Ministerial office. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. The Permanent Secretary will also seek confirmation from Ministers, at the time of their appointment, as to whether they are aware of any close acquaintances or advisers who have a contractual relationship with the Government or are involved in policy development.

11.5 Where appropriate, the Minister will meet the Permanent Secretary to agree action on the handling of interests. Ministers must record in writing what action has been taken, and provide the Permanent Secretary with a copy of that record. Ministers will be expected to inform the Permanent Secretary at the earliest opportunity if there is any change in their interests.

11.6 The personal information which Ministers disclose to those who advise them is treated in complete confidence and may not be disclosed without their permission.

11.7 Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues and officials if they have to discuss public business which in any way affects it and the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary in relation to a Minister's previous interests.



## **Financial Interests**

11.8 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision Ministers should be guided by the advice given to them by the Permanent Secretary. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.

### **Steps to be Taken where Financial Interests are Retained**

11.9 Where, exceptionally, it is decided that a Minister can retain an interest, the Minister and the Permanent Secretary must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions relating to that interest.

11.10 In some cases, it may not be possible to devise a mechanism to avoid a conflict of interest. In any such case, the First Minister must be consulted and it may be necessary for the Minister to cease to hold the office in question.

### **Register of Interests of Members of the Scottish Parliament**

11.11 Ministers are reminded that the provisions of the Ministerial Code are additional to the requirements of the Interests of Members of the Scottish Parliament Act 2006, which apply both to Ministers who are MSPs and to the Law Officers. Guidance on the registration and declaration of Members' financial interests is set out in the Code of Conduct for Members of the Scottish Parliament.<sup>29</sup>

## **Public Appointments**

11.12 When they take up office, Ministers should give up any other public appointment they may hold. Where, exceptionally, it is proposed that such an appointment should be retained, the Permanent Secretary and the First Minister must be consulted.

## **Non-Public Bodies**

11.13 Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest.

11.14 Ministers should therefore not normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him- or herself with a charity, subject to the points above, but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those

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<sup>29</sup> See [www.parliament.scot/msps/code-of-conduct-for-msps.aspx](http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx)

to whom appeals are directed, and for this reason they should not approach individuals or companies personally for this purpose. In all such cases, the Minister should consult the Permanent Secretary and, where appropriate, the First Minister. Ministers should also exercise care in giving public support for petitions, open letters, etc.

## **Trade Unions**

11.15 There is no objection to a Minister holding trade union membership, but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence. They should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union. A nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable.

## **Civil Legal Proceedings**

11.16 Ministers occasionally become engaged in civil legal proceedings in their personal capacities but in circumstances that may have implications for them in their official positions. In all cases where Ministers become engaged in civil legal proceedings in their personal capacities, they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.

## **Nominations for Prizes and Awards**

11.17 From time to time, the personal support of Ministers is requested for nominations being made for prizes and awards. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

## **Foreign Decorations**

11.18 Ministers should not normally, while holding office, accept decorations from foreign countries.

## **Acceptance of Gifts and Hospitality**

11.19 No Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts, etc. are offered to a member of his or her family.

11.20 This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the advice of the Permanent Secretary. The following specific rules apply:

- (a) Gifts given to Ministers in their Ministerial capacity become the property of the Government;

(b) However, gifts of small value, currently up to £140, may be retained by the Minister in question. If not retained by the Minister, gifts of small value should be handed over to the Minister's Private Office for disposal;

(c) Gifts of a higher value must, **in all cases**, be reported to the Permanent Secretary. Such gifts may be purchased by the recipient at their cash value (abated by £140). If not purchased by the Minister, gifts of a higher value should be handed over to the Permanent Secretary for disposal;

(d) There is usually no customs duty or import VAT payable on the importation of official gifts received overseas. HMRC can advise on any cases of doubt. If a Minister wishes to retain a gift, he or she will be liable for any tax it may attract.

11.21 Gifts retained by Ministers that are valued at less than 0.5% of a Member's salary (rounded down to the nearest £10) do not need to be additionally declared in the Register of Interests of Members of the Scottish Parliament.

11.22 The Scottish Government will publish a quarterly list of gifts received by Ministers valued at more than £140. The list provides details of the value of the gifts and whether they were retained by the Government or purchased by the Minister. Private Offices must ensure that they maintain records of gifts received, in such a way as to be able to provide this information on a quarterly basis to the Permanent Secretary's office and Ministerial Private Office Division to allow the quarterly publication of gifts valued at more than £140.

11.23 Gifts given to Ministers in their capacity as MSPs or as members of a political party fall within the rules relating to the Register of Interest of Members of the Scottish Parliament.<sup>30</sup>

11.24 For the avoidance of doubt, if a Minister accepts hospitality in a Ministerial capacity valued at more than £140, this should be included in the quarterly publication of Ministerial gifts. In addition, hospitality valued at more than 0.5% of a Member's salary (rounded down to the nearest £10) must also be declared in the Register of Interests of Members of the Scottish Parliament.

### **Acceptance of Appointments after Leaving Government Office**

11.25 On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office.<sup>31</sup> Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee had been able to provide its advice. Former Ministers must abide by the advice of the Committee.

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<sup>30</sup> For full details, see the Code of Conduct for Members of the Scottish Parliament available at: [www.parliament.scot/msps/code-of-conduct-for-msps.aspx](http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx)

<sup>31</sup> See [www.gov.uk/government/organisations/advisory-committee-on-business-appointments](http://www.gov.uk/government/organisations/advisory-committee-on-business-appointments)

## THE SEVEN PRINCIPLES OF PUBLIC LIFE <sup>32</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.

### ***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.

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<sup>32</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: [www.gov.uk/government/publications/standards-matter-a-review-of-best-practice-in-promoting-good-behavior-in-public-life](http://www.gov.uk/government/publications/standards-matter-a-review-of-best-practice-in-promoting-good-behavior-in-public-life)

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**From:** [REDACTED] (HR)  
**Sent:** 26 January 2018 11:41  
**To:** Hynd JS (James); Richards N (Nicola); [REDACTED]  
**Subject:** RE: Scottish Ministerial Code

Hi James

We discussed.

[REDACTED] and I raised the issue at Strategic Forum with the unions earlier this week and indicated that FM was minded to make some changes to the Scottish Ministerial Code in light of the changes made to the UK Code. We discussed that we were aware of the negative union reaction in relation to the changes made on sexual harassment and that we would not expect the same criticisms here in light of the process we have in place for handling complaints against Ministers. The Unions agreed with this view. It was also useful to hear from [REDACTED] that she viewed the new process for harassment complaints as an improvement on the F@W procedure (which she had been instrumental in developing).

As I mentioned, we did not have the detailed drafting changes to talk through with the unions and I would recommend that, ahead of publication, we share the revised version with them on a for information only basis (not for comment on the merits or otherwise of any of the changes). You agreed to give that some further thought. I appreciate your concern that there are changes being made that you would not want to signal or imply a need to consult the unions on such as the changes being made in light of the Priti Patel case. However, sharing on an information only basis would not lead us to that position in my view. As the revised version is going to be in the public domain anyway, it would just be letting them have a copy in advance as a courtesy. I am also mindful that one of the criticisms at UK level from the Unions was the lack of engagement prior to publication.

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**From:** Hynd JS (James)  
**Sent:** 26 January 2018 10:56  
**To:** Richards N (Nicola); [REDACTED] (HR); [REDACTED]  
**Subject:** RE: Scottish Ministerial Code

[REDACTED]

Is there any update from your engagement with the Unions on this? Many thanks

James

James Hynd  
Head of Cabinet, Parliament and Governance Division

[REDACTED]  
St Andrew's House  
Edinburgh

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**From:** [REDACTED] **On Behalf Of** First Minister  
**Sent:** 19 January 2018 12:28  
**To:** Hynd JS (James); First Minister  
**Cc:** Permanent Secretary; DG Constitution and External Affairs; Rogers DA (David) (Strategy and Constitution Director); [REDACTED] Lloyd E (Elizabeth); [REDACTED] Director Communications, Ministerial Support & Facilities; Richards N (Nicola)  
**Subject:** RE: Scottish Ministerial Code

James,

The First Minister has thanked you for sight of this.

She has requested one slight change in paragraph 9.13 – we currently have;

“When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or Embassy official is present”

The First Minister would like this changed to;

“When holding meetings overseas with Ministers and/or officials from overseas governments, or where official business is likely to be discussed, Ministers should always ensure that a private secretary or relevant official is present”

The First Minister also agreed for talks to continue with the Unions and that there is no requirement at this stage for the foreword to be changed.

Happy to discuss further.

Thanks

[REDACTED]

[REDACTED]  
**Operations Manager and Private Secretary to the First Minister**  
**The Scottish Government**

[REDACTED] | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | T: [REDACTED] | M: [REDACTED]



Office of the First Minister of Scotland

**FirstMinister.gov.scot**

Prìomh Mhinistear na h-Alba

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**From:** Hynd JS (James)

**Sent:** 17 January 2018 16:57

**To:** First Minister

**Cc:** Permanent Secretary; DG Constitution and External Affairs; Rogers DA (David) (Strategy and Constitution Director); [REDACTED] Lloyd E (Elizabeth); [REDACTED] Director Communications, Ministerial Support & Facilities; Richards N (Nicola)

**Subject:** Scottish Ministerial Code

Top copy First Minister

3 page covering minute

<< File: Revisions to the UK Ministerial Code - January 2018 - Final.docx >>  
45 page attachment

<< File: Scottish Ministerial Code - 2018 revisions - 17 January 2018.docx >>

James

James Hynd

Head of Cabinet, Parliament and Governance Division

[REDACTED]  
St Andrew's House

Edinburgh  
[REDACTED]

