

CMMC03 Institute for Government

Senedd Cymru | Welsh Parliament

**Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus | Public
Accounts and Public Administration Committee**

**Llawlyfr y Cabinet a Chod y Gweinidogion | The Cabinet manual and the
Ministerial code**

Ymateb gan: Institute for Government | Evidence from: Institute for
Government

Institute for Government submission on the Welsh government ministerial code

Summary

- The code makes a useful distinction between the ministerial code of ethics and procedural guidance for ministers – this should be maintained (paragraph 1.1)
- The code should be put in legislation, to ensure that its core principles are maintained and enforced and to bring it in line with the codes of conduct for civil servants and special advisers (paras 1.2–1.3).
- The Welsh government would benefit from introducing a standing (rather than ad hoc) independent adviser on the ministerial code, set out in legislation and with the power to initiate their own investigations into breaches of the code (para 2.16).
- The code should explain that a range of sanctions are available for breaches, as the UK ministerial code does (para 2.33).
- It should be made clear that the code applies to ministers' use of social media as well as their behaviour in person (para 3.13).
- The code should require ministers to follow guidance on the use of personal devices and non-official communication channels such as WhatsApp. This guidance should explicitly state that ministers should not use personal phones for substantive government business (para 3.23).
- The code should clarify that ministers' meetings with external groups (including via other means of communication such as phone calls) should be published on a regular basis. It should also specify that if a minister meets external groups without an official present they should ensure that they record it with their private office at the earliest opportunity (para 4.3).

1 Structure and legislation

1.1 The Welsh ministerial code has two clearly distinct sections: 1) Ministerial code of ethics; 2) Procedural guidance for ministers. This distinction makes the code easier to understand and uphold, since in most cases ethics breaches will attract a more severe sanction than a breach of procedure. The Institute for Government has argued that the UK code should adopt a similar distinction.¹

1.2 The code is not on a statutory footing, nor is the code for UK government ministers. If they wished, a first minister could choose to abolish the ministerial code altogether. By comparison, the codes of conduct for special advisers and civil servants are underpinned by the Constitutional Reform and Governance Act 2010,² which also sets out some of the provisions that must be included in those codes. The act created an obligation for the prime minister (as minister for the civil service) to publish codes of conduct for civil servants and for special advisers – they may also

publish separate codes of conduct for those serving in the Welsh or Scottish governments. The first minister for Wales must present to the Senedd any codes of conduct covering special advisers and civil servants in the Welsh government.

1.3 Recommendation: Putting the ministerial code in legislation would ensure that the core principles of the code are maintained and enforced, while still allowing the first minister to alter the code as they wish. It would also reaffirm the principle that ministers are as accountable for their behaviour as the civil servants and special advisers that serve them.

2 Investigations

2.1 Independent adviser

2.11 The code notes that the first minister will “usually refer significant complaints regarding ministerial conduct to an independent adviser for consideration and advice”. There is no standing independent adviser, unlike the UK government’s independent adviser on ministers’ interests or the Scottish government’s independent advisers on the ministerial code. The UK adviser (with the cabinet secretary) also provides advice to ministers on the handling of their private interests, whereas in the Welsh government this function is carried out solely by the permanent secretary.

2.12 Without a standing independent adviser, it is up to the first minister’s discretion whether or not to initiate an investigation into potential breaches of the code and they are not obliged to publicly explain this decision. Other jurisdictions have safeguards in place to ensure that the head of the government cannot block investigations without good reason:

- 2.13 While in the UK government it is still the prime minister’s decision whether or not to proceed with an investigation, if they choose not to proceed with an investigation then the adviser can – under the most recent terms of reference – require that the reasons behind this decision are made public (though this can be withheld if it would undermine the grounds that led to the investigation not proceeding).³
- 2.14 The commissioner for standards for the Northern Ireland assembly can initiate their own investigations if someone makes a complaint against a minister or if they believe the ministerial code has been breached – they can also choose not to investigate a complaint if they believe it is “frivolous or vexatious”.⁴
- 2.15 In Canada, the conflict of interest and ethics commissioner can also investigate breaches at their own initiative, or following a request by a member of the legislature.⁵

2.16 **Recommendation:** The Welsh government could benefit from having an independent adviser, on a statutory footing, with the power and resources to initiate their own investigations and to compel ministers to provide relevant information. This

would allow for the role to be properly independent and perceived as such by the public. The first minister would retain their ability to decide whether or not a minister should continue to serve in government – but it would provide reassurance that investigations are not simply driven by political interest.

2.2 Role of civil servants in investigations

2.21 The code says that the first minister may ask the permanent secretary to consider a complaint regarding ministerial conduct and report to them, in cases where there is an undeniable breach or no plausible case to answer. This is similar to the UK code, which mentions that the cabinet secretary may be consulted about alleged breaches.

2.22 The code mentions that concerns raised by staff about the conduct of their ministers towards them will be investigated by the permanent secretary, in consultation with the first minister. There is no equivalent clause in the UK code – the Institute for Government has argued that a clearer route to report complaints about ministers would help to address concerns before they reach the prime minister's desk, lowering the jeopardy for junior officials.⁶

2.23 There is a benefit in the person applying the code, or investigating breaches, not being a civil servant as it makes clear that the code is a political set of standards that the first minister expects their ministers to adhere to, and that it will be enforced politically rather than by officials. The Welsh and UK codes both make clear that it is not the role of civil servants to enforce the code (clauses 1.6 and 1.4 respectively).

2.3 Sanctions

2.31 Since it was updated in 2022, the UK code outlines a range of sanctions for breaches of the ministerial code, including “requiring some form of public apology, remedial action, or removal of ministerial salary for a period.” The Welsh code states only that “The outcome of any substantiated breach of the Code will depend on the nature of the breach.”

2.32 Following a breach of the code, the UK independent adviser on ministers' interests may recommend “in confidence” to the prime minister what sanction should be considered.⁷

2.33 **Recommendation:** The code should explain that a range of sanctions are available for breaches and outline some likely consequences. This would help to better assess each case on its details, rather than having a blanket assumption that any minister who breaches the code should leave their post. If introduced, the independent adviser should be able to recommend appropriate sanctions to the first minister.

3 Technology and social media

3.1 Social media

3.11 The code is clear on ‘public-facing’ social media – it suggests ministers should use social media so with “great care”, considering collective cabinet responsibility and the reputation of the Welsh government. The UK ministerial code contains little detail about the use of social media, only that “particular care should be taken to ensure that official social media accounts are not used for party political or constituency purposes.”

3.12 Clear guidance helps ministers understand the rules and can help avoid criticism of the way they use social media. Canada’s ‘Open and Accountable Government’ document, which outlines ministers’ roles and responsibilities, includes an extensive annex detailing how ministers should keep government and personal/partisan social media accounts separate.⁸

3.13 **Recommendation:** The code should state explicitly that the standards apply to ministers’ use of social media as well as their behaviour in person. The Welsh government could benefit from expanded social media guidance, similar to that provided to ministers in Canada, to support ministers in maintaining a division between their roles in government and as members of the Senedd.

3.2 Personal devices and non-official communication channels

3.21 The UK government’s ministerial code cites the ‘security of government business’ policy, which advises that ministers do not use personal devices, email and communication to conduct government business.⁹ There is no mention of this in the Welsh government’s code.

3.22 The UK government’s broader ‘non-corporate communication channels’ guidance outlines that significant information can be accessed via non-official channels (e.g. WhatsApp) on a government-issued device with “particular care” and “due regard for recordkeeping responsibilities”.¹⁰ Significant information should only be accessed via non-official channels on a private device in exceptional circumstances and reported to the department.

3.23 **Recommendation:** The code should introduce a section referencing guidance for ministers’ use of personal devices and non-official communication channels such as WhatsApp. This guidance should explicitly state that ministers should not use personal phones for substantive government business. It would improve officials’ ability to access records of conversations where key decisions are made and strengthen their understanding of how to implement those decisions. It would also help to avoid informal communication channels generating controversy in the future.

4 Meetings with external organisations

4.1 The code specifies that meetings with external organisations should be recorded, though it does not mention that they should be published. The code does include an obligation to publish annually a list of gifts and hospitality received by ministers valued at more than £320 and ministerial travel overseas costing more than £500.

4.2 The UK code and Scottish code both specify that details of ministers' external meetings should be published every three months. They also both mention that if a minister discusses official business at an external meeting without an official present, "any significant content should be passed back to the department as soon as possible after the event".

4.3 It is important for the public to be able to scrutinise who ministers meet, in order to understand who has access to ministers and the different inputs into the decisions made in government. This should include meetings about government business that may occur on an ad hoc basis, without civil servants present.

4.4 **Recommendation:** There should be a specified obligation in the code to publish ministers' meetings with external groups, including how regularly these records should be published. It should mention that if a minister meets external groups without an official present – for example at a social occasion or on holiday – they should ensure they inform their private office at the earliest opportunity. There should also be a clear requirement to record and publish external meetings via other means of communication (e.g. phone call), to reflect the changing ways in which ministers meet external organisations and individuals.

¹ Durrant T, Pannell J and Haddon C, *Updating the ministerial code*, Institute for Government, July 2021, <https://www.instituteforgovernment.org.uk/publication/report/updating-ministerial-code>, p. 18

² Constitutional Reform and Governance Act, sections 5, 7 and 8

³ HM Government, Independent Adviser on Ministers' Interests – Terms of Reference, 27 May 2022, <https://www.gov.uk/government/publications/terms-of-reference-for-the-independent-adviser-on-ministers-interests--2>, sub-section 2.2

⁴ Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, section 17

⁵ Government of Canada, Conflict of Interest Act 2006, Part 4

⁶ Thomas A, 'Raab's resignation should lead to reform of the complaints process against ministers', blog, Institute for Government, 21 April 2023, <https://www.instituteforgovernment.org.uk/comment/raab-resignation-complaints-process>

⁷ HM Government, Independent Adviser on Ministers' Interests – Terms of Reference, 27 May 2022, <https://www.gov.uk/government/publications/terms-of-reference-for-the-independent-adviser-on-ministers-interests--2>, sub-section 2.4

⁸ Prime Minister of Canada, *Open and Accountable Government*, 2015, https://www.pm.gc.ca/en/news/backgrounders/2015/11/27/open-and-accountable-government#use_of_social_media, Annex J

⁹ Durrant T, Lilly A and Tingay P, *WhatsApp in government: How ministers and officials should use messaging apps – and how they shouldn't*, Institute for Government, March 2022, <https://www.instituteforgovernment.org.uk/publication/whatsapp-government>, p. 17

¹⁰ Cabinet Office, 'Using non-corporate communication channels (e.g. WhatsApp, private email, SMS) for government business', 30 March 2023, <https://www.gov.uk/government/publications/non-corporate-communication-channels-for-government-business>, p. 2