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Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus | Public Accounts
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Llawlyfr y Cabinet a Chod y Gweinidogion | The Cabinet manual and the
Ministerial code

Ymateb gan: Dr Helen Foster | Evidence from: Dr Helen Foster

Written evidence to
Public Accounts and Public Administration Committee
Senedd Cymru

Cabinet manuals and the Ministerial Code

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Introduction

This paper is presented in response to an invitation to make a written submission relating to the Welsh Government Cabinet Handbook and the Ministerial Code.

My research interest is in the discharge of accountability with a special focus on how accountability is discharged in the public sector, principally in the devolved administrations of the UK and the different regimes that have developed over the last 25 years. This review is timely in light of recent scandals in the devolved administrations and at Westminster.

The main focus of this paper will be on the comparison of the Welsh Government compared to the Ministerial Codes in other parts of the UK.

Accountability

Our systems of government are built on a political philosophy which had given rise to democratic norms and standards founded on the rights of individuals which include checks and balances to prevent the accumulation of power and authority¹. Accountability is a key requirement of liberal democratic representative government² and is central to most definitions of democracy³. Mechanisms are required to ensure that accountability is discharged, which is part of a broader system of checks and balances against the tyranny of the state⁴. Indeed, Schillemans⁵ claims that “public accountability mechanisms are of crucial importance in democracies as they aim to ascertain appropriate behaviour and organisation performance”.

Politicians are answerable to parliament in the short term, but they are also answerable to the electorate, who can vote them out of office. However in practice this may be a less effective form of accountability than it appears⁶, others found that even when politicians had acted wrongly they were re-elected either due to their being in a safe seat or where there were local issues^{7 8}.

Historically the view taken was that politicians would act ‘honourably’ and within the law⁹. While the personal values of politicians are important, modern demands for accountability require mechanisms. Furthermore, Bentham, quoted by Hood et al¹⁰ claims that the more strictly we are watched, the better we behave, capturing the necessity for accountability

¹ Gaston (2005) *The Practice of Liberal Pluralism*. Cambridge: Cambridge University Press.

² Lindberg, S.I. (2013) Mapping accountability: core concept and subtypes. *International Review of Administrative Sciences*. 79(2), 202-206.

³ Schmitter P and Karl TL (1991) What democracy is . . . and is not. *Journal of Democracy*. 3 (1), 75-88

⁴ Barberis, P. (1998) The new public management and a new accountability. *Public Administration*, 76, 451-470.

⁵ Schillemans, T. (2016) Calibrating public sector accountability: Translating experimental findings to public sector accountability. *Public Management Review*, 18 (9), 1401-1420

⁶ David-Barrett (2022) David-Barrett, E.(2022) Shirking Self-Regulation Parliamentary Standards in the UK. *Public Integrity*, Published online 10 June 2022

⁷ Vivyan, N., Wagner, M., and Tarlov, J. (2012) Representative misconduct, voter perceptions and accountability: Evidence from the 2009 House of Commons expenses scandal. *Electoral Studies*, 31(4), 750-763.

⁸ Eggers, A. (2014) Partisanship and electoral accountability: Evidence from the UK expenses scandal. *Quarterly Journal of Political Science*, 9 (4), 441-472.

⁹ Kippin, S. and Pyper, R. (2024) Scrutiny of ministerial ethics and standards of conduct in the UK: diluted accountability?, *Public Money and Management*, 21 May 2024

¹⁰ Hood C, Oliver J, Scott C, Jones GW and Travers T (1999) *Regulation Inside Government: Waste-watchers, Quality Police, and Sleazebusters*. Oxford: Oxford University Press.

mechanisms. Formal mechanisms are “of crucial importance in democracies as they aim to ascertain appropriate behaviour and organisation performance”¹¹.

Ministerial Codes of the UK

Westminster Ministerial Code was introduced by Prime Minister Tony Blair 1997. This followed on from initiatives introduced by John Major with the publication of *Questions of Procedures for Ministers* in 1992, the establishment of the Committee on Standards in Public Life and Nolan Principles in the wake of scandals which characterized the last years of the government he led. It has been revised by subsequent governments. The devolved administrations of the UK introduced their own Ministerial Codes which appear to be built on the framework provided by the Westminster model. Scotland and Wales have developed codes which have many similarities while Northern Ireland’s code has many distinct features.

Legal Basis of Ministerial Codes

All the Ministerial Codes in the UK, with the exception of Northern Ireland, do not have a statutory basis. They are guidelines only.

The requirement for a Northern Ireland Ministerial Code is set out in the Northern Ireland Act 1998, with supplementary amendments in Northern Ireland (St Andrews Agreement) Act 2006 and Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021. Section 28A, amended, states that “a Minister shall act in accordance with the provisions of the Ministerial Code”¹².

Currency and size of Ministerial Codes

Northern Ireland

Northern Ireland has the shortest code at 20 pages, and includes a preamble and Pledge of Office, requiring a commitment to non-violence and exclusively peaceful and democratic means, and to serve all people of Northern Ireland equally. These provisions are unique and reflect a transition to democratic government from a period of violent conflict. This code is supplemented by stand-alone provisions in legislation, most notably in relation to special advisors. It is also the oldest dating from 2006, after the St Andrews Agreement, which restored the institutions at Stormont after a period of suspension. The Independent Commission for Standards had drawn attention to the need to update the code as she judged that in its current form it was “too imprecise and leads to varying interpretations”¹³

¹¹ Schillemans, T. (2016) Calibrating public sector accountability: Translating experimental findings to public sector accountability. *Public Management Review*, 18 (9), 1401-1420

¹² Northern Ireland Act 1998

¹³ <https://standardscommissionerniassembly.org/wp-content/uploads/2023/06/Commissioner-for-Standards-Annual-Report-2022-23.pdf>

House of Commons

The current code was introduced by Rishi Sunak in December 2022 and is 39 pages. This code has been updated regularly with most changes in government resulting in an updated code.

Scotland

The Scottish code was updated in July 2023 and is 49 pages.

Wales

The Welsh code is the newest of the administrations in the UK, published in June 2024 and is 50 pages. It is very similar to the Scottish code in the amount of detail included and emphasis.

Provisions of the Code

Ministerial conduct

All the codes state that Ministers must maintain high standards of behaviour and propriety and uphold the Nolan Principles. All, except Northern Ireland, include a clause requiring Ministers to be professional, considerate and respectful to all relationships. In Northern Ireland the requirement to treat everyone equally is enshrined in separate legislation, but the code provides that a Minister should ensure that department staff conduct themselves in an open and responsible way with the public.

Accountability

In Wales and Scotland Ministers have a duty to account to Senedd/Parliament and be “held to account”, while in Northern Ireland the provision is that Ministers are accountable to users of services, the community and Northern Ireland Assembly, demonstrating a different emphasis.

A requirement to provide accurate and truthful information to the house features in Wales, Scotland and House of Commons, with Northern Ireland code providing that all reasonable requests for information from NI Assembly are complied with, without explicitly stating that this information must be accurate. Scotland is the only code to state that if the Minister knowingly misled Parliament he would be expected to resign.

Personal Responsibility and Private Interests

All codes state that Ministers must ensure that there are no conflicts between public duties and private interest. Registerable interests in Northern Ireland are provided for in legislation, outside the code¹⁴. All the codes (except Northern Ireland) have significant detail on private interests. While it is generally expected that Ministers will dispose of financial interests, the codes provide for situations where the interest is retained, with processes to be put in place to prohibit access to certain papers or involvement in certain decisions. However, if this is not possible the minister may be required to cease office. In all cases, except Northern Ireland, the decision rests with the PM/FM.

¹⁴ Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 S9

Confidentiality

While all codes highlight confidentiality of documents and the requirement to return all documents when leaving office, only Scotland specifically highlights that particular attention should be paid to mobile phones and portable devices to safeguard the integrity and confidentiality of government business.

Other Provisions

Other provisions in the codes refer to travel, relations with other governments and special advisors and are excluded from this short paper.

Breaches of the Code

The ultimate judge of standards in Wales and Scotland is the First Minister and at Westminster it is the Prime Minister. In these instances, while complaints may be referred to an independent advisor there is no requirement for that advice to be taken. Advice may also be taken from the Permanent Secretary/Cabinet Secretary. This is seen as a major weakness in the mechanism. There have been many calls for change, led by Transparency International¹⁵ and Institute for Government¹⁶. The Northern Ireland Commissioner for Standards, initiates inquiries independent of the executive and reports to NI Assembly, not to Fm/DFM on a statutory basis.¹⁷

Civil Servants and the Ministerial Code

All the codes state that Ministers have a duty to uphold the political impartiality of the civil service. Furthermore, civil servants should not be involved in party political or constituency matters. While the Cabinet Secretary/Permanent Secretary may advise the FM/PM on alleged breaches of the code in the interests of perceived lack of impartiality these inquiries are best investigated by independent advisors who are and are seen to be independent.

Use of Technology and Social Media

The codes for Wales and Scotland state that official social media channels should be the primary means of communication. These codes also state that where personal social media is used great care needs to be taken, with Wales highlighting the need to have regard of the reputation and good standing of the Welsh Government and Scotland highlighting the need to ensure activity on their account is not at variance with obligations to Parliament and collective responsibility. HoC code states official machinery, including social media, should be used for distributing speeches relating to government business, and that official social media should not be used for party or constituency purposes. It does not address the use of personal social media but does reference the government *Propriety Guidance- Guidance on*

¹⁵ Transparency International (2021) "It's time for the Ministerial Code to become law" 17 March 2021

¹⁶ Durrant, Panel and Haddon (2021) Updating the Ministerial Code. IfG Analysis, 2021

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

Government Communication ¹⁸ although this document appears to be written for civil servants, rather than ministers. This is surprising as it is a recent document.

Conclusion

Having reviewed the Ministerial Codes of the HoC and of the devolved administrations of the UK I conclude that the Welsh Code is as comprehensive as other codes, if not more detailed in some respects. However, a weakness of these codes is that the decision to instigate an investigation remains with the FM/PM, except in Northern Ireland. It could therefore be concluded that the current arrangements do not result in accountability being fully discharged. Legislative change is likely to be needed to rectify this defect.

¹⁸ <https://gcs.civilservice.gov.uk/guidance/professional-standards/propriety/propriety-in-digital-and-social-media/>
