Memorandum: Committee on Standards

1. This memorandum sets out the Government’s position on the relationship between the Ministerial Code and the House of Commons’ own standards system.

The constitutional basis for Government

2. The UK’s constitutional order has evolved over time and within this the roles of the Prime Minister and Cabinet are governed largely by convention, including the convention that the Prime Minister is the Sovereign’s principal adviser. This means that, in relation to the Ministerial powers that are derived from the Royal Prerogative (the residual power inherent in the person of the Sovereign), these prerogative powers are exercised mostly on the advice of the Prime Minister. It is a central constitutional principle that the Sovereign should not be drawn into party politics and that the Sovereign, by convention, is informed by and acts upon the advice of the Prime Minister.

3. The Prime Minister therefore has overall responsibility for the organisation of the Executive. It is for the Prime Minister alone to advise the Sovereign on the exercise of the Royal Prerogative powers in relation to government, such as the appointment, dismissal and acceptance of resignation of other Ministers. Ministers hold office as long as they have the confidence of the Prime Minister. He or she is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.

4. The Prime Minister holds his or her position by virtue of their ability to command the confidence of the House of Commons and, in common with all Ministers, is accountable to Parliament for the decisions and actions of the Executive. Questions about the exercise of the Prime Minister's functions and the prerogative powers, including those relating to the organisation of the Executive, should be directed to the Prime Minister in the House of Commons. Parliament does not have a role in advising the Sovereign on ministerial appointments, and to revisit these principles would represent a fundamental constitutional change.

5. The Prime Minister’s role as the Sovereign’s principal adviser means that the management of the Executive is wholly separate from the legislature. It is the Prime Minister’s responsibility to set standards of behaviour for members of the Executive, and to account for the actions of the Government. There are mechanisms to ensure Ministerial accountability to both the House of Commons and the House of Lords,

---

2 Ibid, p. 14 (2.9).
3 Cabinet Office (August 2019), Ministerial Code. Section 1.6.
including Select Committees, oral and written questions, and statements to the Houses.

6. When Ministers act in their Ministerial capacity, they do so as Ministers of the Crown, on behalf of Her Majesty's Government and in the interests of the public at large. That is clearly different from the other capacities in which they may act, most notably in the legislature, as Members of one or other of the Houses of Parliament, where they represent their constituents or - in the House of Lords - are appointed by the Queen to carry out scrutiny and revision. These separate capacities can clearly overlap, most obviously in Parliament itself. As the Cabinet Manual sets out Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies. When Ministers are speaking in Parliament, they obviously do so on behalf of Her Majesty's Government as Ministers of the Crown. Given these separate capacities, and the different responsibilities they entail, it is understandable that there should be different arrangements associated with the execution of these different roles.

7. The status and constitutional position of Ministers of the Crown means that they are not workers or employees, nor are they treated as being workers or employees, and as such have none of the rights or entitlements that are associated with being an employee. The current Ministerial and other Maternity Allowances Bill exemplifies this, since Ministers do not benefit from the maternity rights that employees would, and specific legal provision is needed in order for Ministers to take paid maternity leave. Nonetheless, common law protections apply to Ministers, including relating to their personal data, privacy, and the internal workings of their offices.

8. As part of the Prime Minister's responsibility for the overall organisation of the Executive, he or she is also responsible for the allocation of functions between Ministers in charge of departments. The Minister in charge of a department is accountable to Parliament for the exercise of powers on which the administration of that department depends. Ministers of State and Parliamentary Secretaries are authorised to exercise the day-to-day administration of a defined range of subjects of departmental functions, answerable to the Minister in charge. The Permanent Secretary has responsibility for the organisation and discipline of the department and the duty to advise on matters of policy.

9. The Civil Service Code, which has a statutory basis in the Constitutional Reform and Governance Act 2010, sets out the standards of behaviour that civil servants must adhere to when acting on behalf of Ministers. Civil servants are accountable to Ministers, and the core values ensure that the Civil Service can support the Government of the day in effectively developing and implementing its policies, and delivering public services.

---

5 Ibid, p. 40 (5.6).
6 Ibid, p. 3 (12).
7 Cabinet Office, Ministerial Code, S. 4.1.
8 Ibid, S. 4.8.
9 Ibid.
**The Ministerial Code**

10. The Ministerial Code is the responsibility of the Prime Minister and customarily updated and issued upon their assuming or returning to office.\(^{11}\) The Code sets out the standards of conduct expected by the Prime Minister of all who serve in Government. It provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards and lists the principles which may apply in particular situations.

11. It was initially published in 1992 as *Questions of Procedure for Ministers*, although it had been in existence as a confidential internal circular since at least the Second World War. In 1997 it was renamed *The Ministerial Code* and published by then Prime Minister Tony Blair. Since then it has been through several iterations, and each Prime Minister since has published their own version.

12. The Code applies to all Government Ministers, and sections of it also apply to Parliamentary Private Secretaries. The Code itself is clear that it is not the role of the Cabinet Secretary or other officials to enforce the Code.\(^{12}\) Rather, Ministers themselves are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public.\(^{13}\)

13. However, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. Commensurate with the Prime Minister’s overall responsibility for the organisation of the Executive, and for advising the Sovereign on the exercise of the Royal Prerogative powers relating to the appointment, dismissal and acceptance of resignation of other ministers, the Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.

**Provisions of the Ministerial Code**

14. The Ministerial Code sets out the standards of behaviour expected from all those who serve in Government. It contains a mixture of broad standards, core principles, and more technical and prescriptive rules or guidance dealing with aspects of Government procedure. Some of these are explained in more detail below.

15. **Procedural matters:** The Ministerial Code contains a mixture of principles and expectations around conduct, but it also contains information on procedural matters, guidance and rules. For instance, the Code sets out matters as wide ranging as the rules around collective responsibility and the procedures that should be followed when Ministers undertake overseas visits.

\(^{10}\) Civil Service (March 2015), *The Civil Service code*.

\(^{11}\) Cabinet Office, *Cabinet Manual* , P. 26 (3.46).


\(^{13}\) *Ibid*, S. 1.6.
16. **Conduct:** The Code explains that Ministers can only remain in office for so long as they retain the confidence of the Prime Minister. It sets out that: *If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he may ask the Cabinet Office to investigate the facts of the case and/or refer the matter to the independent adviser on Ministers’ interests (1.4).* The Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and of the consequences of a breach of those standards.

17. **Declaring and managing outside interests:** As set out in paragraph 6 above, those who are appointed to Government act as Ministers of the Crown on behalf of Her Majesty's Government. They will also act in other capacities and hold other interests - for example constituency interests, Party interests and private interests. Indeed, the Ministerial Code reflects this in the way it is organised and structured.

18. The process for assessing and managing potential conflicts of interest as a Minister of the Crown is set out in the Ministerial Code. The Government, in recognition of its Executive role, has a more in depth and context-specific process over and above the House of Commons registration requirements, to ensure no conflict arises between the duties of a Minister, accountable to Parliament and the public, and their private interests. The process is set out in Section 7 of the Code, which explains the role of the Permanent Secretary of the Minister's department, and separately the Independent Adviser on Ministers’ Interests, in ensuring no conflict arises. The involvement of the Permanent Secretary, who will have an expert grasp of the nature of the department's work and remit, ensures that appropriate advice is given and appropriate mitigations taken where necessary.

19. The Independent Adviser on Ministers’ Interests exists to provide independent advice to Ministers on the arrangement of their affairs so as to avoid conflicts of interest, together with advice received from the relevant Permanent Secretary. The Independent Adviser’s role is defined and set out in the Ministerial Code. They are appointed by the Prime Minister, who is accountable to Parliament.

20. In addition to the requirements under the Parliamentary Codes of Conduct, the Government publishes a range of transparency data on the activities of Ministers and other senior officials - in connection with their Government role - which goes above and beyond the provisions set out for MPs, for instance, in providing details of meetings with external organisations. Transparency declarations for gifts and hospitality received by Ministers are an important part of ensuring no conflicts arise in the performance of Government Ministers' roles. As the Code sets out, *Gifts given to Ministers in their Ministerial capacity become the property of the Government, and do not need to be declared in the Register of Members’ or Peers’ interests (7.22).*

---

14 *Ibid,* S. 1.4.
17 *Ibid,* S. 7.22.
Similar principles apply to hospitality, in that hospitality given to Ministers in their Ministerial capacity must be declared as part of Ministerial transparency returns.\textsuperscript{18}

21. The specific issues which you raised in your letter are responded to below.

22. At present, the House’s standards system has substantial independent elements: investigations into alleged breaches can only be undertaken by the independent Parliamentary Commissioner for Standards, who can open investigations on her own initiative and who has complete discretion as to whether or not to open an investigation; and the Committee on Standards itself has an effective majority of lay members. The Ministerial Code, by contrast, does not contain comparable elements of independence. Does the Government consider that this disparity between the processes for investigation and sanctioning under the Ministerial Code and the Code of Conduct for Members, particularly where there are similar provisions in those codes relating to declaring and managing conflicts of interest, has a damaging effect on public confidence in both codes? Does the Government have any plans to introduce greater elements of independence into the investigation of alleged breaches of the Ministerial Code and into arrangements for sanctioning if breaches are found to have happened?

23. The role of the Prime Minister is central to the Ministerial Code. As is set out above in paragraphs 2 - 4 and 13, this is based on the Prime Minister’s role advising on the membership of Her Majesty’s Government. The Code sets out that: Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected and the appropriate consequences of a breach of those standards\textsuperscript{(1.6).}\textsuperscript{19}

24. In relation to the initiation of an investigation, paragraph 1.4 of the Ministerial Code describes the mechanism of initiation. The Prime Minister is publicly accountable for whether or not an investigation occurs and it is for him or her to justify such a course of action to Parliament and the public.

25. The investigation process itself is independent of the Minister against whom an allegation is made. Where the Prime Minister believes there is a substantive case to answer, investigations are undertaken either by civil servants in the Cabinet Office (which is separate from other departments), who have to operate in accordance with the Civil Service Code, including the values of honesty and objectivity, which in and of itself provides a degree of independence; or by the Independent Adviser (including by civil servants under the direction of the Independent Adviser). The Government believes that this is an appropriate level of independence for the investigation (as would happen in comparable HR investigations in the Civil Service) and allows for the independent determination of free and frank advice to the Prime Minister. As recent cases show, the Independent Adviser can publish his/her advice and it is for

\textsuperscript{18} Ibid, S. 7.24.
\textsuperscript{19} Ibid, S. 1.6.
the Prime Minister to explain his or her decision, providing transparency to the approach.

26. The Government considers that the existing arrangements provide for an appropriate mechanism for upholding standards in Government that reflects the different constitutional status of the Executive and Parliament, and has no plans to revisit them. In doing so, the Government maintains the view set out in the Government response to the 2012 report on this subject by the Public Administration Committee ("The Prime Minister's adviser on Ministers' interests: independent or not?") and indeed the position of the Government before that. Introducing a new route for investigation into alleged breaches would risk undermining the role of the Prime Minister in managing the Executive as the Sovereign's principal adviser. This would represent a significant change to the current constitutional settlement.

27. Ministers who are also Members of the Commons are subject to the House of Commons rules on the registration of financial interests, including property, gifts, travel, benefits, hospitality and paid employment. They are also subject to separate registration rules as ministers. It has been suggested that could involve duplication and inconsistency between the two regimes. Thus, Ministers regularly register unremunerated interests which do not have to be registered with the House, but we have been told that they do not register events which they believe they attend solely as a Minister (such as the Brits) even though they would have to register the event as hospitality if they were a backbench member of the House. We would be grateful if you could explain the Government's understanding of these registration requirements as they presently operate. What would the Government's response be to a proposal that Ministers who are MPs should register all their Ministerial interests (e.g. gifts, benefits, or hospitality received in their Ministerial capacity) in a single place, namely with the Registrar for Members' Financial Interests, so as to prevent duplication and ensure greater consistency and transparency?

28. The distinction between a Minister of the Crown acting in a Ministerial capacity (i.e. on behalf of Her Majesty's Government) and a Member of Parliament or Peer of the Realm acting in their capacity as a member of one of the Houses of Parliament is an important principle to observe and maintain. Ministers of the Crown are members of the Executive, performing public duties on behalf of Her Majesty's Government. The Ministerial Code helps to ensure this distinction between the roles, covering only Ministers' activity when acting in their executive capacity as a Minister of the Crown. In this context, provisions are necessarily in places more strict or specific, including on interests, gifts and hospitality, as below. In places activity which may be appropriate for MPs (for instance, undertaking a second job) would not be allowed for members of the Government.

29. The Ministerial Interests process exists and is defined by virtue of the Ministerial Code. Section 1.3, f. states that: Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests.
30. As you would expect, and as is set out above, Government has an in depth and specific process to ensure no conflict arises between a Minister’s duties and their private interests. The process is set out in Section 7 of the Code, explaining the role of the Permanent Secretary of the Minister’s department, and the Independent Adviser on Ministers’ Interests, in ensuring no conflict arises.

31. The involvement of both the Permanent Secretary of the Minister’s department, who has an expert grasp of the department’s remit and so a closer understanding of the Minister’s role and interests that may be relevant, and, where necessary, the Independent Adviser on Ministers’ interests, ensures that appropriate and bespoke advice is given, taking into account departmental remits and assessing each case on its merits.

32. It is important that a set of complementary processes exist, which give confidence to the public and Parliament that Ministers are making the right declarations in relation to their Government work. Whilst there may be some duplication between the registers, it is vital that Ministers’ interests are properly assessed and publicly declared, separately.

33. You have also referred to other aspects of transparency data, in particular the requirements on Ministers to declare gifts, hospitality, travel and meetings which they have received or undertaken in their Ministerial capacity. Paragraph 20 sets out the importance of transparency data in ensuring no conflicts arise for Ministers. The Ministerial Code sets out that Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members’ and Lords’ Interests (7.23).21 The same applies to hospitality.

34. Again, the distinction between Ministerial and other capacities is maintained because there are different expectations. For example, Section 1.3g of the Code sets out that: 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.22 In accordance with this, and to uphold this principle, meetings or events attended as a Government Minister need to be declared according to the rules, and this includes gifts and hospitality received. It is also worth noting that the thresholds for Ministers’ declarations are generally lower than those for MPs, which is another reason it is important that the processes are kept separate.

35. On gifts specifically, the Code sets out: Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members’ or Peers’ Interests.23 Gifts are received on behalf of the Crown, not the individual, hence it is appropriate that there are different rules for dealing with these, and that they are declared and reported on separately.

20 Ibid, S. 1.3.
21 Ibid, S. 7.23.
22 Ibid, S. 1.3g.
23 Ibid, S. 7.22.
36. **What would the Government’s response be to a proposal that the Parliamentary Commissioner for Standards should be empowered to investigate alleged breaches of the Ministerial Code and recommend sanctions for any breaches to the Government?**

37. The Government believes that the current arrangements in place for handling alleged breaches are appropriate. As is set out above in paragraph 10, the Ministerial Code is owned by the Prime Minister who customarily updates and issues it upon assuming or returning to office, and in doing so, sets out his or her expectations on the standards of behaviour of Ministers. Due to the Prime Minister’s responsibility for the organisation of the Executive, as the Sovereign’s principal adviser, it is for the Prime Minister to judge alleged breaches of those standards.

38. It is therefore appropriate that the Government, rather than Parliament, should conduct investigations into breaches of the Ministerial Code. To introduce Parliament (or an agent of Parliament) into that process would, in effect, be to blur the separation between the Executive and the legislative and could undermine the Prime Minister’s constitutional role as the Sovereign’s principal adviser on Prerogative matters. It would also undermine the conventions about accountability to Parliament and access to information. As the Government stated in its Response to the Humble Address Motion submitted under Standing Order No. 24 on 9 September 2019, the Government is, of course, committed to sharing information with Parliament. When doing so however, the Government must comply with its legal obligations and be mindful of its duty to balance a commitment to transparency with the broader public interest.24

39. Furthermore, the Prime Minister already has access to the Independent Adviser on Ministers’ Interests, who is able to provide independent advice to the Prime Minister should he or she require it. There are regularly vexatious and unfounded complaints made about Ministers, so it is important that the Prime Minister can decide when it is that a claim warrants investigation.

40. There are a range of existing ways in which Parliament is able to hold Ministers to account for their actions and decisions as Ministers, including questions in the Chambers and select committee evidence sessions.

41. **The Committee notes that it is a requirement of the Ministerial Code that “Ministers must also comply with the Codes of Conduct for their respective Houses”. At present, however, the Parliamentary Commissioner for Standards cannot investigate potential breaches by a minister acting ‘in their ministerial capacity’, even though she could investigate identical behaviour by another member. What would the Government’s response be to a proposal that there be a reciprocal provision which makes it a requirement of the Code of Conduct for MPs that Ministers comply with specified provisions of the Ministerial Code**

---

24 Government Response to the Humble Address Motion submitted under Standing Order No. 24 on 9 September 2019 (CP144).
(for example, those relating to conflicts of interest), or not to commit breaches of the Ministerial Code which bring the House into disrepute?

42. It is constitutionally important to keep separate the role of Ministers of the Crown as members of Her Majesty’s Government and as members of the legislature, representing constituents or as a Peer. The Parliamentary Standards Commissioner has and does make rulings on Parliamentary matters relating to MPs, who are Ministers of the Crown, but only in their capacity as MPs.

43. The statement in the Ministerial Code that Ministers must also comply with the Codes of Conduct for their respective Houses reflects the Prime Minister's expectation that Ministers should seek to comply with the Parliamentary Codes of Conduct of each House. It does not imply that a failure to do so would be a matter which would be investigated by the arrangements set out in the Ministerial Code.

44. In theory, there could be inappropriate behaviour which breached both Codes, but such considerations would need to be individually assessed against the prevailing provisions of the two separate Codes through the separate processes. But the cross-reference at paragraph 1.7 in the Ministerial Code does not in itself mean a breach of a Parliamentary Code is a breach of the Ministerial Code, something only the Prime Minister can determine.

45. It would not be for the Parliamentary Commissioner, or any other Parliamentary body, to determine independently compliance with the Ministerial Code. Nor does the Government accept that a Parliamentary Code breach in itself would require a Ministerial Code investigation. This conflates the constitutional separation of the Executive and the legislature. Moreover, in practice to do so, would invariably encourage the proliferation of politically motivated, vexatious and unfounded complaints seeking to ‘double dip’ by submitting the same complaints to different regulatory processes for partisan advantage.

46. In any case, as is set out at paragraph 3, the Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister under the Ministerial Code and of the consequences of a breach of those standards. The Ministerial Code sets out a clear procedure for when the Prime Minister wishes to further investigate an alleged breach of the Code. It would not be for the Commissioner, or any other party, to independently determine compliance with the Ministerial Code.

47. Are there any ways, not covered above, in which the Government thinks the two Codes, and their associated arrangements for investigations and sanctions, might advantageously be more closely aligned?

48. The above clearly sets out the basis for the Ministerial Code and its constitutional significance. The current arrangements are effective for upholding the standards set out in the Code and ensuring breaches are handled properly and the Government does not believe there is a case for changing them.

---

25 Ibid, S. 1.7.