

Briefing for the Public Petitions Committee

Petition Number: [PE01765](#)

Main Petitioner: Fiona McBride

Subject: Make those in Scottish public office accountable

Calls on the Scottish Parliament and the Scottish Government to ensure that effective measures are introduced, which secure accountability of all Members of the Scottish Parliament (MSPs) and Scottish Government Agencies: for misuse and abuse of both Parliamentary privilege, and conferred authority; assigned to individuals in positions of trust.

Background

Politicians and public servants are subject to the law. In addition to the law, MSPs and those in public life are bound by specific Codes of Conduct.

There is an independent Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) who works to encourage fairness, good conduct and transparency in public life in Scotland. The [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (“the 2000 Act”) provided for the establishment of the Commissioner.

Under the 2000 Act, the Commissioner has the power to investigate complaints about the behaviour of MSPs, local authority councillors, and board members of public bodies when there has been a breach of a Code of Conduct which applies to them.

The 2000 Act requires the Scottish Ministers to lay before Parliament [a Code of Conduct for Councillors](#). This Code sets out the standards Councillors must apply when undertaking Council duties and seeks to give assurance to the public that their elected members are acting in accordance with high ethical standards.

A [Model Code for Members of Devolved Public Bodies](#) is also required under the 2000 Act. Part 2 of the 2000 Act sets out the provisions for dealing with alleged breaches of this Code of Conduct and the sanctions that are applied if the Standards Commission finds that there has been a breach of the Code.

The Commissioner can also investigate complaints about lobbyists and look into how people are appointed to the boards of public bodies in Scotland.

Decisions on the prosecution of alleged criminality are ultimately for the Crown Office and Procurator Fiscal Service (COPFS) – headed by the [Lord Advocate](#).

The Lord Advocate is a Scottish Minister and the Scottish Government's principal legal adviser. In relation to the Lord Advocate's role as head of the COPFS, however, [section 48\(5\) of the Scotland Act 1998](#) provides that decisions are taken independently of any other person. The petition suggests that:

“The Lord Advocate to be removed from the position of Scottish Minister; in order to maximise the appointed individual's capacity to ensure that the Scottish Government may be held fully accountable to the Courts and that it abides by the spirit and the letter of the law.”

Scottish Government Action

Scottish Government Ministers are subject to the [Ministerial Code](#). The 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 are bound by its terms.

Paragraph 1.3 of the Ministerial Code states that:

“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.”

Civil Servants working for the Scottish Government and its agencies are bound by the [Civil Service Code](#). The Civil Service Code applies to civil servants at all levels. The core principles of the Civil Service Code are integrity, honesty, objectivity and impartiality.

Special advisers are covered by the Civil Service Code except for the requirements of objectivity and impartiality. This exemption recognises the specific role which special advisers hold.

Scottish Parliament Action

There is a [Code of Conduct for Members of the Scottish Parliament](#) (MSPs). The Code of Conduct sets out the standards of conduct for MSPs in relation to their Parliamentary duties as an MSP.

MSPs are required to understand and comply with the rules set out in the Code. [Guidance](#) is produced to accompany the Code; the guidance is to assist MSPs in understanding their duties under the Code.

The Code of Conduct is enforceable; a breach of the Code could lead to sanctions being imposed on an MSP. Sanctions are set out in the Code of Conduct.

[The Interests of Members of the Scottish Parliament Act 2006](#) (“the 2006 Act”), for example, sets out the statutory requirements that apply to the registration and declaration of MSPs’ interests. The types of financial interest which must be registered are those which might be thought to influence a member’s actions, speeches or votes in the Parliament as well as, in some circumstances, interests which are in connection with political activities. In the case of failure to register an interest MSPs can be sanctioned by the Parliament. If a member is in breach of the 2006 Act, the Commissioner can refer the matter to the Procurator Fiscal. A member found guilty of such an offence is liable, on summary conviction, to a fine.

The Commissioner investigates most complaints relating to MSPs and the Code of Conduct for Members of the Scottish Parliament. In certain circumstances, for example in the case of complaints made about how an MSP or their staff engage with a constituent, the complaint is made to the Presiding Officer of the Scottish Parliament in the first instance.

The Code of Conduct relates only to MSPs’ in their parliamentary role. It does not cover MSPs’ private and family lives.

Parliamentary privilege

Parliamentary privilege grants certain legal immunities for MSPs.

In the Scottish Parliament, any “privilege” is conferred by or under the [Scotland Act 1998](#).

[Section 41](#) of the Scotland Act 1998 provides that for the purposes of the law of defamation, any statement made in “proceedings of the Parliament” (which includes proceedings in the committees) and the publication under the authority of the Parliament of any statement is absolutely privileged. This means that such statements cannot form the basis of an action of defamation. This protection applies to any statements made in public or private meetings of a committee and any committee reports, including written evidence published in or as an annex to a committee report.

It is important to note that the protection provided by section 41 relates only to the law of defamation. It does not shield members from the operation of the law in relation to other matters, for example incitement to racial hatred.

The [Presiding Officer issued guidance on privilege](#) in August 1999.

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