

Senedd Cymru

Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus

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# Llawlyfr y Cabinet a Chod y Gweinidogion

Ymatebion i'r ymgynghoriad

Medi 2024

Welsh Parliament

Public Accounts and Public Administration Committee

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# Cabinet Manuals and The Ministerial Code

Consultation Responses

September 2024



## Cynnws | Contents

\* Saesneg yn unig | English only

\*\* Cymraeg yn unig | Welsh only

<b>Rhif   Number</b>	<b>Sefylliad</b>	<b>Organisation</b>
CMMC01	Arthro Pedr ap Llwyd FLSW	Professor Pedr ap Llwyd FLSW
CMMC02	Institute for Government*	Institute for Government
CMMC03	Dr Helen Foster*	Dr Helen Foster
CMMC04	Transparency International UK	Transparency International UK

## **CMMC01 Professor Pedr ap Llwyd FLSW**

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[Llawlyfr y Cabinet a Chod y Gweinidogion](#) | [The Cabinet manual and the Ministerial code](#)

Ymateb gan: Professor Pedr ap Llwyd FLSW | Evidence from: Arthro Pedr ap Llwyd FLSW

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**Please see below in English and Welsh my comments on this subject:**

### **1. Acknowledge the Importance of Transparency**

Transparency in government is crucial for public trust. While some internal documents, such as the Welsh Government's Cabinet Handbook, are restricted, transparency about processes and principles guiding such areas as unauthorised disclosures is important. A balance must be struck between confidentiality on sensitive government matters and the public's right to know how government operations are managed.

### **2. Limited Accessibility of Guidance on Leaks**

The Welsh Government's confirmation that its Cabinet Handbook does not include specific guidance on unauthorised disclosures and that they instead rely on UK Government Cabinet Office guidance, which is also unpublished, raises concerns about accessibility. Without access to these documents, it's difficult for the public to understand how such cases are handled. While it is understandable that certain guidance may need to remain internal to ensure effective operations, greater transparency on the general principles and safeguards in place would enhance public confidence.

### **3. Need for Published Policies or Frameworks**

The publication of at least a high-level overview or framework of the processes for investigating leaks would be beneficial. This would provide clarity to the public on how the government ensures accountability and prevents unauthorised disclosures without revealing operational details that could hinder investigations.

### **4. Contrast with the UK Government's Practices**

While the Welsh Government follows the UK Government Cabinet Office guidance, which is also unpublished, it has to be asked to what extent does this practice align with or diverges from broader trends toward transparency in governance. If the UK and Welsh Governments are not releasing these documents, it raises a question about whether more could be done across all levels of government to demystify the handling of sensitive issues like leaks, even if only through the release of summary documents.

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### **5. Public Assurance on Internal Safeguards**

I would argue that even if the guidance itself remains unpublished, the government could do more to reassure the public that robust mechanisms are in place to handle unauthorised disclosures fairly and thoroughly. This could involve periodic reporting or summaries of how such cases are resolved, as long as individual confidentiality is maintained.

### **6. Ethical Implications**

Unaudited or untransparent systems may inadvertently create opportunities for inconsistent application of guidelines. Publishing information about investigative processes (even in general terms) would signal a commitment to fairness, consistency, and accountability.

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## CMMC01 Professor Pedr ap Llwyd FLSW

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[Llawlyfr y Cabinet a Chod y Gweinidogion](#) | [The Cabinet manual and the Ministerial code](#)

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### 1. Cydnabod pwysigrwydd tryloywder

Mae tryloywder mewn llywodraeth yn hanfodol i sicrhau ymddiriedaeth y cyhoedd. Er bod rhai dogfennau mewnol, fel Llawlyfr Cabinet Llywodraeth Cymru, yn gyfyngedig, mae tryloywder ynghylch prosesau ac egwyddorion sy'n arwain meysydd fel datgeliadau anawdurdodedig yn bwysig. Rhaid sicrhau cydbwysedd rhwng cyfrinachedd ar faterion sensitif y llywodraeth a hawl y cyhoedd i wybod sut mae gweithrediadau'r llywodraeth yn cael eu rheoli.

### 2. Hygyrchedd Cyfyngedig Canllawiau ar Ollyngiadau

Mae cadarnhad Llywodraeth Cymru nad yw ei Llawlyfr Cabinet yn cynnwys canllawiau penodol ar ddatgeliadau anawdurdodedig a'u bod yn hytrach yn dibynnu ar ganllawiau Swyddfa Gabinet Llywodraeth y DU, sydd hefyd heb eu cyhoeddi, yn codi pryderon ynghylch hygyrchedd. Heb fynediad i'r dogfennau hyn, mae'n anodd i'r cyhoedd ddeall sut mae achosion o'r fath yn cael eu trin. Er ei bod yn ddealladwy y gallai fod angen i rai canllawiau aros yn fewnol i sicrhau gweithrediadau effeithiol, byddai mwy o dryloywder ar yr egwyddorion a'r mesurau diogelu cyffredinol sydd ar waith yn gwella hyder y cyhoedd.

### 3. Angen polisiâu neu fframweithiau cyhoeddedig

Byddai cyhoeddi trosolwg neu fframwaith lefel uchel o leiaf o'r prosesau ar gyfer ymchwilio i ollyngiadau yn fuddiol. Byddai hyn yn rhoi eglurder i'r cyhoedd o ran sut mae'r llywodraeth yn sicrhau atebolrwydd ac yn atal datgeliadau heb eu hawdurdodi heb ddatgelu manylion gweithredol a allai rwystro ymchwiliadau.

### 4. Cyferbyniad ag arferion Llywodraeth y DU

Er bod Llywodraeth Cymru yn dilyn canllawiau Swyddfa Gabinet Llywodraeth y DU, sydd hefyd heb eu cyhoeddi, mae'n rhaid gofyn i ba raddau y mae'r arfer hwn yn cydfynd â thueddiadau ehangach tuag at dryloywder mewn llywodraethu neu'n dargyfeirio oddi wrthynt. Os nad yw Llywodraethau'r DU a Chymru yn rhyddhau'r dogfennau hyn, mae'n codi cwestiwn ynghylch a ellid gwneud mwy ar draws pob lefel o lywodraeth i

symleiddio'r modd y delir â materion sensitif fel gollyngiadau, hyd yn oed os mai dim ond trwy ryddhau dogfennau cryno.

### **5. Sicrwydd Cyhoeddus ar Fesurau Diogelu Mewnol**

Byddwn i'n dadlau, hyd yn oed os na fydd y canllawiau eu hunain yn cael eu cyhoeddi, y gallai'r llywodraeth wneud mwy i sicrhau'r cyhoedd bod mecanweithiau cadarn ar waith i ymdrin â datgeliadau heb awdurdod yn deg ac yn drylwyr. Gallai hyn gynnwys adroddiadau cyfnodol neu grynodedbau o sut y caiff achosion o'r fath eu datrys, cyn belled â bod cyfrinachedd unigol yn cael ei gynnal.

### **6. Goblygiadau Moesegol**

Gall systemau heb eu harchwilio neu andryloyw greu cyfleoedd anfwriadol ar gyfer cymhwyso canllawiau yn anghyson. Byddai cyhoeddi gwybodaeth am brosesau ymchwiliol (hyd yn oed yn gyffredinol) yn arwydd o ymrwymiad i degwch, cysondeb ac atebolrwydd.

## **CMMC02 Institute for Government**

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Accounts and Public Administration Committee**

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

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## **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.<sup>1</sup>

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,<sup>2</sup> 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).<sup>3</sup>
- 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”.<sup>4</sup>
- 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.<sup>5</sup>

**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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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”.<sup>10</sup> 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.

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

<sup>2</sup> Constitutional Reform and Governance Act, sections 5, 7 and 8

<sup>3</sup> 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

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

<sup>5</sup> Government of Canada, Conflict of Interest Act 2006, Part 4

<sup>6</sup> 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>

<sup>7</sup> 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

<sup>8</sup> 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](https://www.pm.gc.ca/en/news/backgrounders/2015/11/27/open-and-accountable-government#use_of_social_media), Annex J

<sup>9</sup> 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

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<sup>10</sup> 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

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

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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.

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## 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 authority<sup>1</sup>. Accountability is a key requirement of liberal democratic representative government<sup>2</sup> and is central to most definitions of democracy<sup>3</sup>. 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 state<sup>4</sup>. Indeed, Schillemans<sup>5</sup> 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 appears<sup>6</sup>, 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<sup>7 8</sup>.

Historically the view taken was that politicians would act ‘honourably’ and within the law<sup>9</sup>. While the personal values of politicians are important, modern demands for accountability require mechanisms. Furthermore, Bentham, quoted by Hood et al<sup>10</sup> claims that the more strictly we are watched, the better we behave, capturing the necessity for accountability

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

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

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

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

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

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

<sup>7</sup> 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.

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

<sup>9</sup> 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

<sup>10</sup> 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.

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

## **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”<sup>12</sup>.

## **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”<sup>13</sup>

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

<sup>12</sup> Northern Ireland Act 1998

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

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## 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 code<sup>14</sup>. 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.

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<sup>14</sup> Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland ) 2021 S9

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## **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 International<sup>15</sup> and Institute for Government<sup>16</sup>. 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.<sup>17</sup>

## **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*

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

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

<sup>17</sup> Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011

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*Government Communication*<sup>18</sup> 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.

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

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**CMMC04 Juliet Swann, Nations and Regions Programme Manager,  
Transparency International UK**

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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: Juliet Swann, Nations and Regions Programme Manager,  
Organisation | Evidence from: Juliet Swann, Rheolwr Rhaglen y Gwledydd a'r  
Rhanbarthau, Transparency International UK

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## THE CABINET MANUAL AND THE MINISTERIAL CODE PUBLIC ACCOUNTS AND PUBLIC ADMINISTRATION COMMITTEE INQUIRY

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*Transparency International UK Submission – August 2024*

### SUMMARY

Trust in politics is perilously low. Polling shows the majority of people believe that politicians are ‘out for themselves’ and that the system of government is rigged to the advantage of the rich and powerful.<sup>1</sup>

Perceptions of undue secrecy or conflicts of interest further damage public trust in institutions as well as individuals. Research from Carnegie UK shows that democratic wellbeing is both a means to greater social, economic and environmental wellbeing and an end in itself, impacting directly on personal wellbeing.<sup>2</sup>

Recent events in Wales including donations received by the former First Minister, transparency around informal messaging app use during the Covid-19 pandemic, and the leaking of messages from a group chat, have brought into question the adequacy of current checks to protect integrity in high office.<sup>3</sup> Presently, the First Minister of the day produces a code of conduct outlining the standards expected of their colleagues, which they alone have the ability to enforce.

Transparency International UK welcomes the Public Accounts and Public Administration Committee Inquiry into the Ministerial Code. To rebuild trust and ensure consistent upholding of the standards of integrity in public office, we recommend that the Ministerial Code:

- Be placed on a statutory footing.
- Include an explicit commitment to the seven Principles of Public Life (the Nolan principles) in a First Minister’s foreword.
- Allow for the appointment of an Independent Adviser on Ministerial Interests with the ability to initiate and set the terms of investigations into breaches of the code without needing the explicit consent of the First Minister.
- Provide enhanced transparency over ministerial activities by committing to publishing ministerial meetings on a monthly basis and affirm that meetings which occur in a social setting which discuss official business should also be declared publicly.
- Extend the requirement to record meetings to Special Advisers in order to better understand the full range of influence on Ministers.

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<sup>1</sup> Polling undertaken on behalf of the UK Anti-Corruption Coalition in September 2023

<https://www.ukanticorruptioncoalition.org/work/report-reflections-trust-politics>

<sup>2</sup> Democratic wellbeing is one of the four domains identified by Carnegie UK as contributing to collective wellbeing, the others being social, economic and environmental wellbeing. <https://carnegieuktrust.org.uk/publications/gdwe-a-spotlight-on-democratic-wellbeing/>

<sup>3</sup> <https://www.transparency.org.uk/vaughan-getting-imessage-leak-row-must-now-be-investigated>

# TI-UK'S RESPONSE TO THE TERMS OF REFERENCE OF THE INQUIRY

## 1. STRENGTHENING THE MINISTERIAL CODE

We have several long-standing recommendations to strengthen the Ministerial Code and improve the transparency of ministerial accountability.

### 1.1 PLACING THE MINISTERIAL CODE ON A STATUTORY FOOTING

Transparency International UK recommend all Ministerial Codes be placed on a statutory footing. This law requiring the publication of a Ministerial Code of Conduct would include that in setting the rules of conduct, the Nolan Principles should be used as a guide. While the protections of statute have their limits, they provide a much stronger set of defences than the existing arrangements. Putting the Ministerial Code on a statutory footing would ensure a First Minister was unable to choose not to adopt a Ministerial Code of Conduct. This statutory protection should also be viewed in-light of parallel and sometimes overlapping arrangements for ensuring integrity in high-office, including lobbying transparency.<sup>4</sup>

### 1.2 A COMMITMENT TO THE NOLAN PRINCIPLES

To further embed the Nolan Principles at the heart of the Ministerial Code, we recommend that the Code include a foreword from the First Minister and for that foreword to explicitly commit Ministers to these principles of public life.

### 1.3 THE APPOINTMENT OF AN INDEPENDENT ADVISER

Unlike in the UK and Scottish Governments, Wales lacks an independent adviser, relying instead on the Permanent Secretary. However, even with an independent adviser, instigating an inquiry and the parameters of the work in these jurisdictions remains in the gift of the Prime Minister or the First Minister of Scotland. There is no formal recruitment process and no official role for Parliament. The patronage this endows on the PM and the FM of Scotland creates an unacceptable risk of jeopardising the adviser's independence.

Transparency International UK recommends the Welsh Government appoint an independent adviser on ministerial interests with that appointment being undertaken through a transparent process, removed from the First Minister.

The role will require the resources and powers necessary to deliver on its objectives. Without these it will inevitably fall short of the task at hand. Establishing sufficient, independent and sustainable resourcing to support this role is crucial to protecting it from being hobbled by political interference. In order to establish the facts of each case, the independent adviser should have the power to obtain relevant documents, data and details in a timely manner. Giving them this power and meaningful penalties for those who do not comply, would help to ensure they can collect all relevant facts and conduct their role properly.

In adopting this model, Wales could set a precedent within the UK of ensuring operational autonomy for the office that monitors and enforces adherence to the Ministerial Code.

### 1.4 REPORTING OF MINISTERIAL MEETINGS AND ENGAGEMENTS

Across the UK, reporting of ministerial engagements is ineffective and provides little insight for the public into what is being discussed in meetings with stakeholders. The lag in reporting these

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<sup>4</sup> Transparency International UK submitted written evidence to the Senedd Standards of Conduct Committee Inquiry into lobbying transparency in 2022 <https://www.transparency.org.uk/publications/submission-welsh-senedd-standards-conduct-committee-lobbying-inquiry>

meetings also diminishes its value and makes it harder to see where meetings might be influencing decision making. We recommend publishing ministerial meetings and engagements on a monthly basis. Analysis from Canada in 2021 shows it takes an average of 28 days from the day of a communication to publish similar information with almost one in ten of these disclosures released within five days of the communication taking place. In the EU, publication of meetings with European Commissioners is required within two weeks of them taking place.

We also expect the ministerial code to determine that meetings which occur in a social setting which discuss official business should also be declared publicly.

In Wales we specifically see a lack of transparency in that only the 'who' of a meeting not the 'what' is reported. This is less information than either the Scottish or UK governments provide. We would recommend a short summary of the discussion outlining any public interest it served and including any specific outcomes.

We would also urge the separation of the English and Welsh language submissions, rather than the two being in the same spreadsheet cell as this makes analysing the data difficult. Per Data Cymru, "open data is data that is published in a way that allows anyone to freely and easily access and use it".<sup>5</sup> As they are currently formatted, the Welsh Ministerial Meetings and Engagements datasets do not meet this definition.

## 1.5 SPECIAL ADVISERS

Special Advisers (SpAds) are appointed by and responsible to Ministers so should be covered by the same principles of accountability in order that the influence on and actions of any Minister can be fully understood. In acting as a direct link between stakeholders and Ministers the external meetings SpAds undertake should be recorded and reported so it is possible to better understand any influence had on Ministers.

## 1.6 SANCTIONS

The Ministerial Code should provide clarity on the range of sanctions available should a breach be found to have occurred. This will both instil confidence that there are sanctions available which seem proportionate, with the most egregious breaches subject to more serious sanctions. This should also act as a deterrence to wrongdoing and aid any determination process as there would be a clear expected sanction.<sup>6</sup>

## 2. THE CABINET MANUAL

In order for the public to adequately understand the application of rules and how Ministers are held to account, it is necessary for them to be able to view the guidance that relates to those accountability mechanisms.

Being clear on how something happens, for instance, how a decision made using a messaging app is transferred to the official record, is important to engender public trust in the system. Trust has to be demonstrated not simply stated.

To provide for this scrutiny, we recommend that the Welsh Government Cabinet Handbook be published,<sup>7</sup> alongside any other relevant guidance, including around how emails and informal communications are recorded.

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<sup>5</sup> <https://www.data.cymru/open-data>

<sup>6</sup> Further detail on our recommendations for complaints procedures can be found at [4 below](#).

<sup>7</sup> It may be necessary for some elements to be withheld from publication for security reasons, but the principle of proactive publication remains.

### 3. MINISTERIAL CODES IN THE UK<sup>8</sup>

Whilst ministerial codes across the UK are broadly similar in content and how they are enforced there are some notable exceptions.

#### 3.1 STATUTORY FOOTING

The Northern Ireland Executive Ministerial Code (“NIE Ministerial Code”) is required by the Northern Ireland Act 1998 (as amended). It is the only Ministerial Code in the UK that has a statutory basis. Section 28A of the Northern Ireland Act 1998 provides that there must be a Ministerial Code and that it can only be changed with cross-community agreement in the Northern Ireland Assembly. We recommend the Ministerial Code be placed on a statutory footing.

#### 3.2 INDEPENDENT ADVISERS

As noted above, Wales is unique in not having an independent adviser on the ministerial code. We note that on a previous occasion the independent adviser in Scotland undertook an investigation on behalf of the First Minister of Wales. A shared role would provide an opportunity to pool resources.

Transparency International UK recommends that all Ministerial Codes across the UK apply the recommendations we have provided in this consultation response, albeit the different parliamentary institutions will have to decide routes for enforcement based on their own structures.

### 4. COMPLAINTS UNDER THE MINISTERIAL CODE AND THE ROLE OF INDEPENDENT ADVISERS

As noted at [1.3](#) above, we recommend that genuinely independent advisers be appointed and provided with adequate resource and powers to investigate any alleged breaches of the code.

Whilst the decision of who should take on Ministerial roles will always be for the First Minister, we recommend a ‘back-stop’ process should there be a case where the First Minister fails to take action on the results of any independent investigation.

This procedure could follow the model of the current process undertaken by the Senedd Commissioner for Standards, with decisions on sanctions being taken by the Standards of Conduct Committee and debated by the full Senedd.

Regardless, to avoid political capture of the committee process, we recommend that the Senedd follow the example set by the Committee on Standards at Westminster and appoint lay members. These lay members should always be involved in consideration of complaints and sanctions, of both Members of the Senedd and if the process is applied to them, Ministers.

### 5. THE ROLE OF CIVIL SERVANTS IN APPLYING THE MINISTERIAL CODE

Experience from Scotland suggests that civil servants, whilst available for advice, should not be charged with investigation of alleged breaches of the ministerial code. The process should be at arms-length from the operations of government as the relationships between Ministers and civil servants could be perceived to present a conflict of interest.

This would both serve to ensure that the investigation was *seen* to be independent as well as *being* independent of government. It would also serve to protect the civil service who should not be at risk of being considered to have made any partial decisions about the investigation based on their responsibilities to the government of the day.

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<sup>8</sup> The Scottish Parliament Information Centre (SPICe) produced a briefing on Ministerial Codes of Conduct in the UK to inform the Citizen Participation and Public Petitions Committee consideration of PE1935 which offers a helpful overview <https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/spice-briefings/spice-follow-up-briefing-for-petition-pe1935.pdf>

## 6. ELECTRONIC MESSAGING APPS AND THE MINISTERIAL CODE

The deletion of electronic messages since the ubiquitous use by those in government of applications such as WhatsApp has posed serious challenges for Freedom of Information and subsequent inquiries into the Covid-19 pandemic. To avoid this recurring, we recommend:

### 6.1 RETENTION OF INFORMATION

Policies for information retention should be revised to reflect digital-first modes of communication and administration and should be included in the Ministerial Code of Conduct with clarity on how communications using mobile devices or apps should be transferred to the historical record and made public.

### 6.2 DISCLOSING OF INFORMATION

Publicly disclosing information which Ministers have failed to record in line with the Code of Conduct should be treated as an act of whistleblowing with the associated protections. Any investigation to determine if the disclosure was in the public interest should be conducted by an independent investigator and the findings made public, including lessons learned for future record keeping.

## WHO WE ARE

Transparency International UK is the UK-based chapter of Transparency International, the world's leading non-governmental anti-corruption organisation. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise. We base our advocacy on robust research, and, as a registered charity, are independent and non-political. We support the Open Government Partnership and the principles it espouses and are a member of the UK Open Government Network and co-chair the Open Government Scotland Steering Group.

## CONTACT

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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  
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Ymateb gan: Juliet Swann, Nations and Regions Programme Manager,  
Organisation | Evidence from: Juliet Swann, Rheolwr Rhaglen y Gwledydd a'r  
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## LLAWLYFR Y CABINET A CHÔD Y GWEINIDOGION YMCHWILIAD Y PWYLLGOR CYFRIFON CYHOEDDUS A GWEINYDDIAETH GYHOEDDUS

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*Cyflwyniad Transparency International UK – Awst 2024*

### CRYNODEB

Mae ymddiriedaeth mewn gwleidyddiaeth yn beryglus o isel. Mae arolygon barn yn dangos bod y mwyafrif o bobl yn credu bod gwleidyddion 'ynnddi er eu mantais eu hunain' a bod y system lywodraethu wedi'i rigio er budd y cyfoethog a'r pwerus.<sup>1</sup>

Mae canfyddiadau o gyfrinachedd diangen neu wrthdaro buddiannau yn niweidio ymhellach ffydd y cyhoedd mewn sefydliadau yn ogystal ag unigolion. Mae ymchwil gan Carnegie UK yn dangos bod llesiant democrataidd yn fodd i wella llesiant cymdeithasol, economaidd ac amgylcheddol ac yn ddiben ynndo'i hun, gan effeithio'n uniongyrchol ar lesiant personol.<sup>2</sup>

Mae digwyddiadau diweddar yng Nghymru, gan gynnwys rhoddion a dderbyniwyd gan y cyn Brif Weinidog, tryloywder ynghylch y defnydd o apiau negeseuon anffurfiol yn ystod pandemig Covid-19, a negeseuon yn cael eu gollwng o sgwrs grŵp, wedi codi amheuaeth ynghylch digonolrwydd y gwiriadau presennol i ddiogelu uniondeb y rhai sydd mewn swyddi uchel.<sup>3</sup> Ar hyn o bryd, mae Prif Weinidog Cymru'n llunio côd ymddygiad sy'n amlinellu'r safonau a ddisgwylir gan eu cyd-Aelodau, a nhw'n unig sydd â'r gallu i'w gorfodi.

Mae Transparency International UK yn croesawu Ymchwiliad y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus i Gôd y Gweinidogion. Er mwyn ailadeiladu ymddiriedaeth a sicrhau bod safonau uniondeb mewn swyddi cyhoeddus yn cael eu cynnal yn gyson, rydym yn argymhell bod Côt y Gweinidogion:

- Yn cael ei osod ar sail statudol.
- Yn cynnwys ymrwymiad penodol i Saith Egwyddor Bywyd Cyhoeddus (egwyddorion Nolan) mewn rhagair gan Brif Weinidog Cymru.
- Yn caniatáu ar gyfer penodi Cynghorydd Annibynnol ar Fuddiannau Gweinidogion sydd â'r gallu i gychwyn a gosod telerau ymchwiliadau i achosion o dorri'r côd heb fod angen caniatâd penodol y Prif Weinidog.
- Yn darparu mwy o dryloywder ynghylch gweithgareddau gweinidogion trwy ymrwymo i gyhoeddi cyfarfodydd gweinidogol yn fisol a chadarnhau y dylai cyfarfodydd sy'n digwydd mewn lleoliad cymdeithasol lle caiff busnes swyddogol ei drafod hefyd gael eu datgan yn gyhoeddus.
- Yn ymestyn y gofyniad i gofnodi cyfarfodydd i Gynghorwyr Arbennig er mwyn deall yn well yr ystod lawn o ddylanwad ar Weinidogion.

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<sup>1</sup> Cynhaliwyd arolwg barn ar ran Clymblaid Gwrth-lygredd y DU ym mis Medi 2023

<https://www.ukanticorruptioncoalition.org/work/report-reflections-trust-politics>

<sup>2</sup> Mae llesiant democrataidd yn un o'r pedwar maes a nodwyd gan Carnegie UK fel rhai sy'n cyfrannu at lesiant cyfunol, a'r lleill yw llesiant cymdeithasol, economaidd ac amgylcheddol.

<https://carnegieuktrust.org.uk/publications/gdwe-a-spotlight-on-democratic-wellbeing/>

<sup>3</sup> <https://www.transparency.org.uk/vaughan-getting-imessage-leak-row-must-now-be-investigated>

# YMATEB TI-UK I GYLCH GORCHWYL YR YMCHWILIAD

## 1. CRYFHAU CÔD Y GWEINIDOGION

Mae gennym nifer o argymhellion hirsefydlog ar gyfer cryfhau Côt y Gweinidogion a gwella tryloywder atebolrwydd gweinidogion.

### 1.1 GOSOD CÔD Y GWEINIDOGION AR SAIL STATUDOL

Mae Transparency International UK yn argymhell y dylid gosod pob Côt Gweinidogol ar sail statudol. Byddai'r gyfraith hon sy'n gofyn am gyhoeddi Côt Ymddygiad Gweinidogol yn cynnwys y dylid defnyddio Egwyddorion Nolan fel canllaw wrth osod y rheolau ar gyfer ymddygiad. Er bod terfynau i'r amddiffyniad a gynigir gan ddeddfau o'r fath, maent yn darparu set lawer cryfach o amddiffynfeydd na'r trefniadau presennol. Byddai gosod Côt y Gweinidogion ar sail statudol yn sicrhau na fyddai Prif Weinidog yn gallu dewis peidio â mabwysiadu Côt Ymddygiad Gweinidogol. Dylid ystyried yr amddiffyniad statudol hwn hefyd yng ngoleuni trefniadau cyfocrog sydd weithiau'n gorgyffwrdd ar gyfer sicrhau uniondeb mewn swyddi uchel, gan gynnwys tryloywder o ran lobïo.<sup>4</sup>

### 1.2 YMRWYMIAD I EGWYDDORION NOLAN

Er mwyn gwreiddio Egwyddorion Nolan ymhellach wrth galon Côt y Gweinidogion, rydym yn argymhell bod y Côt yn cynnwys rhagair gan y Prif Weinidog ac y dylai'r rhagair hwnnw ymrwymo Gweinidogion yn benodol i'r egwyddorion hyn ar gyfer bywyd cyhoeddus.

### 1.3 PENODI CYNGHORYDD ANNIBYNNOL

Yn wahanol i Lywodraethau'r DU a'r Alban, nid oes gan Gymru gynghorydd annibynnol, gan ddibynnu yn lle hynny ar yr Ysgrifennydd Parhaol. Fodd bynnag, hyd yn oed gyda chynghorydd annibynnol, mae cychwyn ymchwiliad a ffiniau'r gwaith yn yr awdurdodaethau hyn yn dal yn nwylo Prif Weinidog y DU neu Brif Weinidog yr Alban. Nid oes proses recriwtio ffurfiol na rôl swyddogol ar gyfer Senedd y DU na'r Alban. Mae'r nawddogaeth a ddaw i Brif Weinidogion y DU a'r Alban yn sgil hyn yn creu risg annerbyniol o beryglu annibyniaeth y cynghorydd.

Mae Transparency International UK yn argymhell bod Llywodraeth Cymru'n penodi cynghorydd annibynnol ar fuddiannau gweinidogion, gyda'r penodiad hwnnw'n cael ei wneud trwy broses dryloyw, a hynny ar wahân i'r Prif Weinidog.

Bydd y rôl yn gofyn am yr adnoddau a'r pwerau angenrheidiol i gyflawni ei hamcanion. Heb y rhain mae'n anochel y bydd yn methu â chyflawni'r dasg dan sylw. Mae sefydlu adnoddau digonol, annibynnol a chynaliadwy i gefnogi'r rôl hon yn hanfodol i'w hamddiffyn rhag cael ei llyffetheirio gan ymyrraeth wleidyddol. Er mwyn sefydlu ffeithiau pob achos, dylai fod gan y cynghorydd annibynnol y pŵer i gyrchu dogfennau, data a manylion perthnasol heb unrhyw oedi. Byddai rhoi'r pŵer hwn iddynt, yn ogystal â chosbau ystyrlon i'r rhai nad ydynt yn cydymffurfio, yn helpu i sicrhau y gallant gasglu'r holl ffeithiau perthnasol a chyflawni eu rôl yn briodol.

Wrth fabwysiadu'r model hwn, gallai Cymru osod cysail o fewn y DU i sicrhau ymreolaeth weithredol i'r swydd sy'n monitro ac yn gorfodi cydymffurfiaeth â Chôt y Gweinidogion.

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<sup>4</sup> Cyflwynodd Transparency International UK dystiolaeth ysgrifenedig i ymchwiliad Pwyllgor Safonau Ymddygiad y Senedd i dryloywder lobïo yn 2022 <https://www.transparency.org.uk/publications/submission-welsh-senedd-standards-conduct-committee-lobbying-inquiry>

## 1.4 ADRODD AM GYFARFODYDD AC YMGYSYLLTIADAU GWEINIDOGOL

Ledled y DU, mae adrodd ar gyfarfodydd ac ymgysylltiadau gweinidogol yn aneffeithiol ac nid yw'n rhoi llawer o fewnwelediad i'r cyhoedd i'r hyn sy'n cael ei drafod mewn cyfarfodydd â rhanddeiliaid. Mae'r oedi wrth adrodd ar y cyfarfodydd hyn hefyd yn lleihau ei werth ac yn ei gwneud yn anos gweld lle y gallai cyfarfodydd fod yn dylanwadu ar wneud penderfyniadau. Rydym yn argymhell cyhoeddi cyfarfodydd ac ymgysylltiadau gweinidogol yn fisol. Mae dadansoddiad o Ganada yn 2021 yn dangos ei bod yn cymryd 28 diwrnod ar gyfartaledd o ddiwrnod y cyfathrebiad i gyhoeddi gwybodaeth debyg, gyda bron i un o bob deg o'r datgeliadau hyn yn cael eu rhyddhau o fewn pum diwrnod i'r cyfathrebiad. Yn yr UE, mae angen cyhoeddi cyfarfodydd gyda Chomisiynwyr Ewropeaidd o fewn pythefnos iddynt gael eu cynnal.

Rydym hefyd yn disgwyl i'r Gôd y Gweinidogion ei gwneud yn ofynnol i gyfarfodydd sy'n digwydd mewn lleoliad cymdeithasol lle caiff busnes swyddogol ei drafod hefyd gael eu datgan yn gyhoeddus.

Yng Nghymru'n benodol rydym yn gweld diffyg tryloywder gan mai dim ond 'pwy' sy'n cymryd rhan yn y cyfarfod, ac nid y 'beth' sy'n cael ei drafod sy'n cael ei adrodd. Mae hyn yn llai o wybodaeth nag y mae llywodraethau'r Alban na'r DU yn ei darparu. Byddem yn argymhell crynodeb byr o'r drafodaeth, gan amlinellu unrhyw fudd cyhoeddus y mae'n ei wasanaethu ac yn cynnwys unrhyw ddeilliannau penodol.

Byddem hefyd yn annog gwahanu'r cyflwyniadau Cymraeg a Saesneg, yn hytrach na bod y naill a'r llall yn yr un gell ar daenlen, gan fod hyn yn ei gwneud yn anodd dadansoddi'r data. Yn ôl Data Cymru, "data agored yw data sy'n cael ei gyhoeddi mewn ffordd sy'n caniatáu i unrhyw un gael mynediad rhwydd ato a'i ddefnyddio".<sup>5</sup> Fel y maent wedi'u fformatio ar hyn o bryd, nid yw setiau data Cyfarfodydd ac Ymgysylltiadau Gweinidogion Cymru yn bodloni'r diffiniad hwn.

## 1.5 CYNGHORWYR ARBENNIG

Penodir Cynghorwyr Arbennig (*SpAds*) gan Weinidogion ac maent yn atebol iddynt, felly dylent fod yn destun yr un egwyddorion atebolrwydd er mwyn gallu deall yn llawn ddylanwad a gweithredoedd unrhyw Weinidog. Wrth weithredu fel cyswllt uniongyrchol rhwng rhanddeiliaid a Gweinidogion, dylid cofnodi a chyflwyno adroddiadau ar y cyfarfodydd allanol y mae Cynghorwyr Arbennig yn eu cynnal fel ei bod yn bosibl deall yn well unrhyw ddylanwad a gafwyd ar Weinidogion.

## 1.6 SANCSIYNAU

Dylai Côt y Gweinidogion roi eglurder ynghylch yr ystod o sancsiynau sydd ar gael pe canfyddir bod toriad wedi digwydd. Bydd hyn yn rhoi hyder bod sancsiynau ar gael sy'n ymddangos yn gymesur, gyda'r toriadau mwyaf dybryd yn destun sancsiynau mwy difrifol. Dylai hyn hefyd atal camweddau a chynorthwyo unrhyw broses benderfynu gan y byddai cosb ddisgwyliedig glir.<sup>6</sup>

## 2. LLAWLYFR Y CABINET

Er mwyn i'r cyhoedd ddeall yn ddigonol sut mae rheolau'n cael eu gweithredu a sut y caiff Gweinidogion eu dwyn i gyfrif, mae angen iddynt allu gweld y canllawiau sy'n perthyn i'r mecanweithiau atebolrwydd hynny.

Mae bod yn glir ynghylch sut mae rhywbeth yn digwydd, er enghraifft, sut mae penderfyniad a wneir gan ddefnyddio ap anfon negeseuon yn cael ei drosglwyddo i'r cofnod swyddogol, yn bwysig

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<sup>5</sup> <https://www.data.cymru/data-agored>

<sup>6</sup> Ceir rhagor o fanylion am ein hargymhellion ar gyfer gweithdrefnau cwyno yn [4 isod](#).

er mwyn ennyn ymddiriedaeth y cyhoedd yn y system. Mae'n rhaid *dangos* ymddiriedaeth, nid dim ond ei *datgan*.

Er mwyn darparu ar gyfer y gwaith craffu hwn, rydym yn argymhell bod Llawlyfr Cabinet Llywodraeth Cymru yn cael ei gyhoeddi,<sup>7</sup> ochr-yn-ochr ag unrhyw ganllawiau perthnasol eraill, gan gynnwys ynghylch sut mae negeseuon e-bost a chyfathrebiadau anffurfiol yn cael eu cofnodi.

### 3. CODAU GWEINIDOGOL YN Y DU<sup>8</sup>

Er bod codau gweinidogol ar draws y DU yn weddol debyg o ran cynnwys a sut y cânt eu gorfodi, mae yna rai eithriadau nodedig.

#### 3.1 SYLFAEN STATUDOL

Mae Côt Gweinidogion Cyngor Gweithredol Gogledd Iwerddon yn ofynnol dan Ddeddf Gogledd Iwerddon 1998 (fel y'i diwygiwyd). Dyma'r unig Gôt Gweinidogol yn y DU sydd ag iddo sail statudol. Mae adran 28A o Ddeddf Gogledd Iwerddon 1998 yn datgan bod yn rhaid bod â Chôt Gweinidogol ac mai dim ond gyda chytundeb traws-gymunedol yng Nghynulliad Gogledd Iwerddon y gellir ei newid. Rydym yn argymhell gosod y Côt Gweinidogol ar sail statudol.

#### 3.2 CYNGHORWYR ANNIBYNNOL

Fel y nodwyd uchod, mae Cymru'n unigryw gan nad oes ganddi gynghorydd annibynnol ar gôd y gweinidogion. Nodwn fod y cynghorydd annibynnol yn yr Alban wedi cynnal ymchwiliad ar ran Prif Weinidog Cymru ar achlysur blaenorol. Byddai rôl a rennir yn rhoi cyfle i gyfuno adnoddau.

Mae Transparency International UK yn argymhell bod pob Côt Gweinidogol ar draws y DU yn gweithredu'r argymhellion a ddarparwyd gennym yn yr ymateb hwn i'r ymgynghoriad, er y bydd yn rhaid i'r gwahanol sefydliadau seneddol benderfynu ar lwybrau gorfodi ar sail eu strwythurau eu hunain.

### 4. CWYNIION O DAN Y CÔD GWEINIDOGOL A RÔL CYNGHORWYR ANNIBYNNOL

Fel y nodwyd yn [1.3](#) uchod, rydym yn argymhell y dylid penodi cynghorwyr gwirioneddol annibynnol a'u darparu ag adnoddau a phwerau digonol iddynt ymchwilio i unrhyw achosion honedig o dorri'r côd.

Er mai mater i'r Prif Weinidog bob amser fydd penderfynu pwy ddylai ymgymryd â rolau Gweinidogol, rydym yn argymhell proses 'wrth gefn' pe bai achos lle mae'r Prif Weinidog yn methu â gweithredu ar ganlyniadau unrhyw ymchwiliad annibynnol.

Gallai'r weithdrefn hon ddilyn model y broses bresennol a gynhelir gan Gomisiynydd Safonau'r Senedd, gyda phenderfyniadau ar sancsiynau'n cael eu cymryd gan y Pwyllgor Safonau Ymddygiad a'u trafod gan y Senedd lawn.

Serch hynny, er mwyn osgoi sefyllfa lle mae gwleidyddion yn meddiannu proses y pwyllgor, rydym yn argymhell bod y Senedd yn dilyn yr esiampl a osodwyd gan y Pwyllgor Safonau yn San Steffan ac yn penodi aelodau lleyg. Dylai'r aelodau lleyg hyn bob amser fod yn rhan o'r gwaith o ystyried cwynion a sancsiynau yn erbyn Aelodau o'r Senedd ac, os yw'r broses yn berthnasol iddynt, Gweinidogion.

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<sup>7</sup> Efallai y bydd angen atal rhai elfennau rhag cael eu cyhoeddi am resymau diogelwch, ond erys yr egwyddor o gyhoeddi rhagweithiol.

<sup>8</sup> Cynhyrchodd Canolfan Wybodaeth Senedd yr Alban (SPICe) bapur briffio ar Godau Ymddygiad Gweinidogol yn y DU i lywio ystyriaeth y Pwyllgor Cyfranogiad Dinasyddion a Deisebau Cyhoeddus o PE1935 sy'n cynnig trosolwg defnyddiol <https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/spice-briefings/spice-follow-up-briefing-for-petition-pe1935.pdf>

## 5. RÔL GWEISION SIFIL WRTH WEITHREDU'R CÔD GWEINIDOGOL

Mae profiad o'r Alban yn awgrymu na ddylai gweision sifil, er eu bod ar gael ar gyfer rhoi cyngor, fod yn gyfrifol am ymchwilio i achosion honedig o dorri'r côd gweinidogol. Dylai'r broses fod hyd braich o weithrediadau'r llywodraeth, gan y gellid ystyried bod y berthynas rhwng Gweinidogion a gweision sifil yn creu gwrthdaro buddiannau.

Byddai hyn yn sicrhau bod yr ymchwiliad i'w *weld* i fod yn annibynnol yn ogystal â *bod* yn annibynnol ar y llywodraeth. Byddai hefyd yn amddiffyn y gwasanaeth sifil na ddylai fod mewn perygl o gael ei ystyried i fod wedi gwneud unrhyw benderfyniadau pleidiol am yr ymchwiliad yn seiliedig ar eu cyfrifoldebau i lywodraeth y dydd.

## 6. APIAU NEGESEUON ELECTRONIG A'R CÔD GWEINIDOGOL

Mae dileu negeseuon electronig ers y defnydd cyffredin gan y rhai sydd yn y llywodraeth o gymwysiadau fel WhatsApp wedi peri heriau difrifol i Ryddid Gwybodaeth ac ymchwiliadau dilynol i bandemig Covid-19. Er mwyn osgoi hyn rhag digwydd eto, rydym yn argymhell:

### 6.1 CADW GWYBODAETH

Dylid adolygu polisïau ar gyfer cadw gwybodaeth i adlewyrchu dulliau cyfathrebu a gweinyddu digidol, a dylid eu cynnwys yng Nghôd Ymddygiad y Gweinidogion gydag eglurder ynghylch sut y dylid trosglwyddo cyfathrebiadau sy'n defnyddio dyfeisiau symudol neu apiau i'r cofnod hanesyddol a'u gwneud yn gyhoeddus.

### 6.2 DATGELU GWYBODAETH

Dylid trin datgelu gwybodaeth yn gyhoeddus y mae Gweinidogion wedi methu â chofnodi yn unol â'r Côd Ymddygiad fel gweithred o chwythu'r chwiban gyda'r amddiffyniadau cysylltiedig. Dylai unrhyw ymchwiliad i benderfynu a oedd y datgeliad er budd y cyhoedd gael ei gynnal gan ymchwilydd annibynnol, a dylai'r canfyddiadau gael eu gwneud yn gyhoeddus, gan gynnwys gwersi a ddysgwyd ar gyfer cadw cofnodion yn y dyfodol.

## PWY YDYN NI

Transparency International UK yw cangen y DU o Transparency International, sef prif sefydliad gwrth-lygredd anllywodraethol y byd. Rydym yn codi ymwybyddiaeth am lygredd; yn eiriol dros ddiwygio cyfreithiol a rheoleiddiol ar lefelau cenedlaethol a rhyngwladol; yn dylunio offer ymarferol ar gyfer unigolion a chwmnïau sydd am frwydro yn erbyn llygredd; ac yn gweithredu fel canolfan flaenllaw ar gyfer arbenigedd gwrth-lygredd. Rydym yn seilio ein heiriolaeth ar ymchwil gadarn, ac, fel elusen gofrestredig, rydym yn annibynnol ac yn anwleidyddol. Rydym yn cefnogi'r Bartneriaeth Llywodraeth Agored a'r egwyddorion y mae'n eu harddel, ac rydym yn aelod o Rwydwaith Llywodraeth Agored y DU ac yn gyd-gadeirydd Grŵp Llywio Llywodraeth Agored yr Alban.

## CYSWLLT

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