

RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Introduction

1. It is in the public interest that people with experience of public administration should be able to move into business or other bodies, and that such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former Crown servant takes up an outside appointment there should be no cause for any suspicion of impropriety.

2. The Business Appointment Rules provide for the scrutiny of appointments which former Crown servants propose to take up in the first two years after they leave the service. To provide an independent element in the process of scrutiny, the Advisory Committee on Business Appointments is appointed by the Prime Minister, comprising people with experience of the relationships between the Civil Service and the private sector. The Committee gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.

3. The aim of the rules is to maintain public trust in the Crown services and in the people who work in them, and in particular:

a. to avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or

b. to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of their official duties, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

4. Most applications submitted under the rules are approved without condition. In some cases approval may be given subject to a waiting period or other conditions. The imposition of conditions does not imply anything improper in a Crown servant's relationship with the prospective employer. Rather, it is an indication that an immediate move from Crown service to the employer, or one without conditions, might be open to criticism or misinterpretation. Experience has shown that employers generally are content to accept such constraints as being reasonable in an open society which places a high premium on the integrity and impartiality of its civil and military services.

5. This version of the rules applies to the Home Civil Service. There are corresponding requirements for other Crown servants including the Armed Forces, the Diplomatic Service, and certain office holders. There are different requirements and different procedures for staff at different levels.

Who must apply?

6. Within two years of leaving Crown employment, and in the circumstances set out in the following paragraph, civil servants must obtain Government approval before taking any form of full, part-time or fee-paid employment:

a. in the United Kingdom; or

b. overseas in a public or private company or in the service of a foreign government or its agencies.

7. Applications for approval must be made by civil servants:

- if they are in the Senior Civil Service in salary band 4 or above and in a post attracting a minimum JESP score of 13; or if they are specialists or Special Advisers of equivalent standing; or
- if they have had any official dealings with their prospective employer during the last two years of Crown employment; or
- if they have had official dealings of a continued or repeated nature with their prospective employer at any time during their period of Crown employment; or
- if they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
- if their official duties during the last two years of Crown employment have involved advice or decisions benefitting their prospective employer, for which the offer of employment could be interpreted as reward, or have involved developing policy, knowledge of which might be of benefit to the prospective employer; or
- if they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.

8. The rules do not apply to:

- a.** unpaid appointments in non-commercial organisations;
- b.** appointments in the gift of Ministers; or
- c.** in the case of part-time staff, appointments held with their department's or agency's agreement while they were civil servants.

9. Approval is required for:

- a.** the initial appointment; and
- b.** any further appointment within two years of leaving Crown employment.

10. Staff on secondment from the Civil Service to other organisations are subject to the rules in the same way as other civil servants.

11. Staff on secondment to the Civil Service from other organisations are also subject to the rules in the same way as civil servants unless they return to their seconding organisation at the end of their secondment and remain there for two years.

12. Special Advisers are subject to the rules in the same way as other civil servants unless they are offered a post by the same employer which they left on being appointed as advisers and remain there for two years. The rules do not apply to Special Advisers appointed before 1

April 1996 on terms exempting them from the rules, unless they have volunteered to be subject to them.

Reporting offers of employment

13. Departments and agencies must require staff considering any approach from an outside employer offering employment for which approval would be required under the rules (or which seems likely to lead to such an offer) to report the approach as follows:

- Heads of Department: inform the Minister in charge of the Department;
- Other members of the Senior Civil Service (or their equivalents): inform the Head of the Department or his or her deputy as appropriate;
- Other staff: inform a senior member of staff in the reporting chain.

14. Staff in sections concerned with procurement or contract work should report any such approach, particularly where it emanates from an outside employer with whom they or their staff have had official dealings, whether or not they are considering taking it up.

Applications

15. Departments and agencies must ensure that application forms are completed for all requests for approval for appointments under the rules. For this purpose:

- a. the applicant must be asked to supply:
 - full details of the proposed employment;
 - details of any official dealings with a prospective employer or with any other organisation, including any competitors of the prospective employer; and
- b. departments must ensure that they seek the comments of a countersigning officer who can verify, as far as possible, the information supplied by the applicant.

Departments are strongly recommended to adopt the Cabinet Office model form for applicants.

Terms of approval

16. Applications under these rules will be approved either:

- a. unconditionally; or
- b. subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate. Conditions may include:
 - a waiting period before taking up the appointment¹;
 - an absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government;

¹ if the Advisory Committee believes that the appointment is unsuitable, it may add that advice to its recommendation that the application be subject to a waiting period of two years, and that advice will be available for publication.

- a ban on the involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer;
- in the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature, or from named employers.

17. In view of their access to policy issues at the highest levels, all applications from Permanent Secretaries, including second Permanent Secretaries, and their direct equivalents which are referred to the Advisory Committee are subject to an automatic minimum waiting period of three months between leaving Crown employment and taking up an outside appointment, unless they have been appointed from outside the Civil Service on a limited period contract. The Advisory Committee has the discretion to recommend waiving the minimum waiting period if, in the Committee's view, the appointment is one which is entirely unconnected with the applicant's official knowledge and no questions of propriety arise. Although applicants serving on limited period contracts will not be required to serve the automatic waiting period, approval of applications may be subject to waiting periods or other conditions in the same way as any other application.

18. Appointments approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments which are subsequently taken up may be the subject of a public announcement. Staff at those levels are required to confirm to their department (or former department) their intentions to take up any appointment for which an application has been considered by the Committee. The new employer may wish to include a reference to the Prime Minister's approval in their own announcement of the appointment, and applicants should discuss with the department and the new employer the terms of the statement; in other cases, the Government reserves the right to publish the terms of the Prime Minister's decision. A consolidated record of all appointments taken up will be included in the Advisory Committee's annual report.

Procedures for Departments and Agencies

Making staff aware of the rules

19. Departments and agencies must:

- a.** draw the attention of staff to the existence of the rules in letters of appointment. Departments and agencies are advised to take special care to explain to staff recruited from outside the Crown service either on secondment or on a limited period contract their position under the rules on appointment;
- b.** include a copy of the rules in departmental and agency staff handbooks;
- c.** issue regular reminders to staff at all levels about the rules and the circumstances in which they apply, concentrating on particular areas as necessary;
- d.** require members of the Senior Civil Service in signing their contracts of employment to acknowledge in writing that they have seen and are conversant with the rules - and ask them to provide a further, similar acknowledgement on retirement or resignation from the Crown Service or at the end of a period appointment;
- e.** remind all staff of the rules:
 - on retirement;
 - on resignation;
 - at the end of a limited period appointment.

(In the case of staff who resign or come to the end of a limited period appointment this should normally take the form of providing them with a copy of the rules and an application form. The Cabinet Office model application form incorporates the relevant extracts from the rules for this purpose.)

20. Departments and agencies are advised:

- a. to take all opportunities provided by letters of resignation, exit interviews and requests for references to check whether an application under the rules is necessary; and
- b. to ensure that personnel and line managers of staff working in areas which involve contact of a commercial nature with outside organisations, particularly on procurement or contract work, are issued with regular reminders to monitor resignations by staff employed in those areas to ensure that applications are made where necessary.

Approval of applications

21. Decisions on applications, other than those referred to the Prime Minister through the Advisory Committee and those by Special Advisers, rest with the Minister in charge of the Department after taking advice of the Cabinet Office as appropriate. The Minister may, however, approve arrangements under which defined categories of cases may be decided without reference to the Minister. Decisions on applications by Special Advisers taken at departmental level are the responsibility of the permanent Head of the Department after taking advice of the Cabinet Office, as appropriate, which may consult the Head of the Home Civil Service or refer the application to the Advisory Committee.

22. In cases where it is proposed to impose a waiting period or other conditions, applicants should be given the opportunity of having an interview with an appropriate departmental officer if they so choose.

23. There may be occasions when a Minister decides that the national interest is the overriding consideration, regardless of the circumstances of the case. In all such cases, the normal procedures for dealing with applications must first be followed, including reference to the Advisory Committee where that is appropriate. A decision that the national interest should override other considerations may only be taken by the Minister in charge of the department or, in the case of applications referred to the Advisory Committee, by the Prime Minister.

24. Departments and agencies must:

- a. inform prospective employers of any conditions which have been attached to the approval of an appointment;
- b. make a careful record of all decisions to approve appointments under the rules, noting in particular any conditions that were applied;
- c. submit quarterly statistical returns, including nil returns, of applications dealt with under the rules to the Cabinet Office in the form requested.

Procedure for dealing with applications

25. All Permanent Secretary posts; other posts in departments which satisfy all of the following criteria: have a JESP score of 18 or more, have a pay range within the top three pay bands, and where the post reports direct to a Permanent Secretary or is itself the Head of a Department or Agency; and specialists and Special Advisers of equivalent standing.

Applications are normally approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments (apart from those from Special Advisers). All cases must be referred to the Cabinet Office which will refer them to the Advisory Committee unless the Head of the Home Civil Service agrees that such reference would be inappropriate, for example where the appointment is to a non-commercial body, such as a university. Applications from Special Advisers of equivalent standing will be approved by the Head of the Home Civil Service on the advice of the Advisory Committee.

26. Other Heads of Department; other postholders in the Senior Civil Service in salary band 4 and above and in a post attracting a minimum JESP score of 13; and specialists and Special Advisers of equivalent standing.

All applications must be referred to the Cabinet Office which will consult the Head of the Home Civil Service.

27. Other members of the Senior Civil Service; and specialists and Special Advisers of equivalent standing.

Departments and agencies must consult the Cabinet Office unless:

- the applicant has had no official dealings with the prospective employer at any time during his or her period of Crown Service and there appears to be no risk of criticism; or
- the employment is with a non-commercial organisation.

28. Staff outside the Senior Civil Service.

Departments and agencies do not need to consult the Cabinet Office where:

- the applicant has had no official dealings with the prospective employer in the previous two years, or at most dealings of a casual nature; and
- there appears to be no risk of the disclosure of commercially sensitive information; or
- the appointment is with a non-commercial organisation.

29. Departments and agencies may refer any application to the Cabinet Office for advice. Any application may be referred to the Advisory Committee if the Head of the Home Civil Service and the Departmental Minister so agree.

30. When referring cases to the Cabinet Office departments must submit:

- a. a copy of a completed and countersigned application form;
- b. a covering letter, giving their own assessment of the application, including the outcome of any consultations with competitors of the prospective employer, and their proposed or recommended course of action.

31. Guidance for departments and agencies preparing assessments of applications for submission to Cabinet Office and considering applications for departmental approval is provided in Section 4.3 Annex B.

4.3 ANNEX B: GUIDANCE FOR DEPARTMENTS AND AGENCIES ON THE RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

1. The rules are designed primarily to counter any suspicion that an appointment might be a “reward for past favours” granted by the applicant to the employer, or that a particular employer might gain an unfair advantage over its competitors by employing someone who had access to what they might legitimately regard as their own “trade secrets”.
2. An appointment might also be sensitive because of the employer’s relationship with the department and because of the nature of any information which the applicant possesses about Government policy.
3. While appointments must not only be but also be seen to be free from reproach and departments must therefore take account of public perception, departments should be prepared to defend an appointment which they were otherwise willing to approve when public concern can be shown to be unjustifiable.

The employer and the applicant

4. In most cases problems will occur only if the applicant has had some degree of contact with the prospective employer, giving rise to criticism that the post is a “reward for past favours”. Departments are asked to take the following into account:
 - a. how much of the contact was in the course of official duties;
 - b. how significant was the contact;
 - c. the nature of the proposed employment;
 - d. the connection between the new job and the applicant’s previous official duties.
5. In order to establish whether the applicant was able to exert any degree of influence over the outcome of contractual or other dealings with the prospective employers, departments are advised to establish:

- a. whether the individual was acting as a member of a team, jointly with other individuals in the department or in Government more widely, or taking sole responsibility;
- b. whether the employer benefitted substantially from such dealings;
- c. whether contact was direct;
- d. whether it was indirect (i.e. through those for whom the applicant was responsible, whether or not they normally worked for him or her).

6. Departments are advised to take into account contacts in the course of official duty which have taken place:

- a. at any time in the two years before resignation or retirement;
- b. earlier, where the association was of a continued or repeated nature.

7. Departments are advised to consider in particular whether the applicant has been:

- a. dealing with the receipt of tenders from the employer;
- b. dealing with the award of contracts to the employer;
- c. dealing with the administration or monitoring of contracts with the employer;
- d. giving professional or technical advice about such contracts whether before or after they were awarded;
- e. involved in dealings of an official but non-contractual nature with the employer (this is particularly important in the circumstances set out in paragraph 9 below).

8. Departments should consider the circumstances of an applicant's departure as a component of considering each application on its merits. Staff-reduction policies will not justify reducing standards of propriety, or any weakening of the element of protection which the rules offer to third parties in respect of trade secrets. If a civil servant is asked to retire, or is offered early retirement, at relatively short notice, or is unexpectedly made redundant, any presumption that he or she had been paving the way to subsequent employment by offering favours to potential employers may largely be removed. Conversely a protracted period of uncertainty might heighten concerns that individuals were anticipating redundancy by cultivating potential employers improperly. On balance, where departments and agencies intend to reduce numbers during a relatively short period of a year or so, unexpected departures should normally be considered as a factor mitigating any concerns on grounds of rewards.

The employer and the Government

9. The relationship of the prospective employer to the Government may be a relevant factor in considering applications. Departments are advised to pay special attention to appointments where the employer:

- a. has a contractual relationship with the department;
- b. is regulated by the department;
- c. receives subsidies, loans, guarantees or other forms of financial assistance from the department;
- d. is one in which the Government is a shareholder; or

- e. is one with which departments or branches of Government or the Armed Services are, as a matter of course, in a special relationship.

Overseas employers

10. The same considerations apply to foreign publicly-owned institutions or companies as to their UK counterparts. If the prospective employer is a foreign government, departments are advised to consider whether the applicant has information that would benefit that government to the detriment of HM Government or its allies. This can arise where the person:

- a. has been giving advice to HM Government on policies affecting the foreign government; or
- b. would have been in a position to gain special knowledge of HM Government's policies and intentions concerning the foreign government.

Government policy or business

11. Many Crown servants deal with private interests on behalf of the Government. They have special knowledge of how the Government would be likely to react in particular circumstances. Departments are advised to consider whether the application could be, or could be thought to be, significantly helpful to the employer in dealing with matters where policy is developing or legislation is being prepared in a way which might disadvantage competitors of that employer. This applies in particular to specific areas where:

- a. there has been a negotiating relationship between the Department and the employer;
- b. the applicant has been involved in policy discussions within the department leading to a decision of considerable benefit to the employer;
- c. the applicant has been involved in policy discussions within the department, knowledge of which might give the employer an improper advantage over its competitors; or
- d. where there is a risk of public criticism that the applicant might have scope to exploit contacts in his or her former department for commercial purposes.

In such cases, departments are asked to consider the implications of the applicant's joining the employer, and be guided accordingly.

The employer and competitors' trade secrets

12. Appointments might be criticised on the grounds that the applicant had access to information about his or her prospective employer's competitors which they could legitimately regard as "trade secrets". Concern on this score can arise whether or not the applicant has had previous dealings with the prospective employer. Departments are strongly advised to consult competitors as a matter of course preferably using a standard letter based on the Cabinet Office model letter, to see whether they have any objections to the appointment.

Consultancies

13. Individuals who are to be employed on a consultancy basis (either for a firm of consultants or as an independent, self-employed consultant, competing for commissions in the

open market—a “brass plate” consultancy) should be treated in the same way as other applicants under the rules. Extra care is needed, however, in dealing with such applications.

14. In the case of an applicant wishing to take up a salaried appointment with a firm of consultants, the “rewards for past favours” issue will relate almost exclusively to the nature of any previous dealings between the applicant and the firm he or she is seeking to join. Departments will, however, need to consider the “trade secrets” question both from the point of view of any competitors of the consultancy firm and then, more generally from the point of view of the service which the applicant will be offering on behalf of the consultant. It may be necessary to impose conditions on the appointment to protect the “trade secrets” of firms with which the applicant or the department had dealings.

15. Where an applicant wishes to set up a “brass plate” consultancy, the question of “rewards for past favours” does not arise in the usual way. But departments will wish to keep in mind the need:

a. to counter any suspicion of impropriety that might arise if such individuals were to be given lucrative contracts by clients with which they or their former departments had dealings; and

b. to protect “trade secrets” to which such individuals may have had access. There may be circumstances in which it would be undesirable for an independent consultant to offer services to a particular client where he or she has had access to the trade secrets of a competitor of the client. The fact that the competitor might also be free to use the same consultant, but did not choose to do so would not make the information any less sensitive or negate the potential advantage which could be gained by the client.

In approving applications to set up “brass plate” consultancies departments will, therefore, need to consider carefully the imposition of conditions in cases where such considerations apply.

16. Departments will also need to consider whether to apply conditions limiting contacts between applicants proposing to work as consultants and their former departments. This may be particularly relevant in the case of staff at senior levels, where there is a risk of public criticism that they could be exploiting contacts in their former departments for commercial purposes.