



House of Commons
Public Administration Select
Committee

**Business Appointment
Rules: Government
Response to the
Committee's Third
Report of Session
2012–13**

First Special Report of Session 2014–15

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The Public Administration Select Committee (PASC)

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pasc

Committee staff

The current staff of the Committee are Catherine Tyack and Sian Woodward (Joint Clerks), Rebecca Short (Second Clerk), Sarah Taylor (Committee Specialist), Sarah Hawkwood (Senior Committee Assistant) and Jonathan Olivier-Wright (Web and Publications Assistant).

Contacts

All correspondence should be addressed to the Clerks of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5730; the Committee's email address is pasc@parliament.uk

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First Special Report

1. The Public Administration Select Committee reported to the House on *Business Appointment Rules* in its Third Report of Session 2012-13, published on 25 July 2012. The Government Response was received on 10 July 2014 and is published in this Report as an Appendix. The Committee's original conclusions and recommendations are included in ***bold italics***. The Government's revised Business Appointment Rules for civil servants are also published in this Report as an Annex.

Appendix: Government response

2. The Government is grateful to the Committee for its examination of the operation and effectiveness of the Business Appointment Rules and the Advisory Committee on Business Appointments.

3. Following the publication of the Committee's report, the Cabinet Office has undertaken a comprehensive review of the Business Appointment Rules in consultation with departments, and has agreed a number of revisions to the current Rules for Crown servants, some of which reflect recommendations set out in the Committee's report. These are detailed in the individual responses to the recommendations below. The revised Rules are annexed to this response.

4. The Advisory Committee on Business Appointments will shortly undergo a Triennial Review, and the Committee's report, and the Government's response, will form an important contribution to the Review's considerations.

Benefits and risks associated with interchange

5. ***The potential benefits, and the risks, associated with widespread interchange between the public and private or third sectors are clear. We share the view that interchange between sectors is in the public interest but, if public confidence in public servants is to be maintained, the risks associated with interchange must be openly acknowledged and seen to be managed effectively. Any organisation or system which is put in place to manage those risks must command the public's respect and confidence if its decisions are to be trusted.*** (Paragraph 17)

6. The Government agrees with the Committee that interchange between sectors is in the public interest, and it is long-standing government policy that those with experience in government should be able to move into business or other areas of public life. It is also the case that there may be propriety risks associated with such interchange, and that these need to be managed effectively and transparently in a way that maintains public confidence and trust. It is equally important to ensure that arrangements to manage risks are proportionate and fair on individuals.

Impact of the Big Society and Civil Service reforms

7. The extent of interchange between the public and other sectors seems certain to rise as Government reforms to the Civil Service and public service delivery are implemented. If the Civil Service is to continue to attract the brightest and ablest individuals, it is crucial that such people are not penalised for working in the public sector. Any restrictions applying to their subsequent employment must be proportionate to the risk of impropriety, taking into account their skills and expertise; their role(s) in the public sector; and the need to uphold public confidence in the probity of those in public office. (Paragraph 24)

8. The Government agrees with the Committee's view that interchange between the public and other sectors is likely to increase as Government reforms to the Civil Service and public service delivery are implemented. Increasingly, the Government needs to be able to attract the brightest and ablest individuals, not only into the Civil Service, but also into the public sector more widely. The Government agrees with the Committee that any restrictions applying to their subsequent employment must be proportionate to the risk of impropriety, and should not act as a deterrent in attracting excellent recruits.

Proportionate coverage

9. Reliance on reputational damage as a deterrent to improper behaviour is predicated on the wider public being able to reach a properly informed judgement about the behaviour in question, yet the "court of public opinion" is neither impartial nor objective. Full and fair information about each case must be put into the public domain to reduce the potential for misleading reporting, and to assist those involved in replying to accusations and defending their reputation. We support the recent efforts by ACoBA to increase the information made available on its website, and recommend that all government departments publish similar information about the advice given to their former civil servants, and the restrictions (if any) imposed upon them. The information published should explain and justify the advice given and any action taken. (Paragraph 30)

10. The Government agrees with the Committee that increased transparency will help increase public understanding of, and confidence in, the purpose and operation of the Business Appointment Rules. Like the Committee, the Government welcomes the initiative by the Advisory Committee on Business Appointments to make more information available on its website about the circumstances of an individual case, and its advice and recommendations once the appointment has been taken up or announced.

11. The Government shares the Committee's view about departments making public information about the advice given to their former civil servants, and the restrictions (if any) imposed upon them. The Cabinet Office is taking forward work with departments to publish information on departmental websites for the applications they handle at SCS2 and SCS1 level (and equivalents, including special advisers of equivalent standing). These new arrangements are reflected in the revised Rules.

12. If the Government stands by its policy of encouraging interchange, it also has a moral duty robustly to defend any former Minister or public servant who is the target of unjustified criticism by the media. Arrangements should be made to ensure that

individuals who have complied with the spirit and letter of the advice given to them are protected from any unfair smear or innuendo. Any statements made should reiterate the Government's active support for interchange between the public and other sectors, acknowledge the perceived risks and explain the measures which are in place to manage any potential conflict of interest, not just simply confirm that the correct procedure has been followed. (Paragraph 31)

13. The Government welcomes the Committee's support for a robust approach to media criticism where former Ministers and public servants have complied with the business appointments process and followed the advice they have received, and for whatever reason find themselves to be the subject of unfair or unjustified public criticism. Such individuals should expect to receive full and robust defence and support from the Government as their former employer. The Government agrees with the Committee that inaccurate media reporting and criticism in individual high profile cases can cause unwarranted damage and anxiety for those directly involved, and risks bringing the business appointment system into disrepute. The Government believes that increased transparency about individual cases will help to mitigate the risk of inaccurate and unfair reporting in the future.

Clarity and consistency

14. The Rules as they stand are predominantly focussed on the process to be followed, and they are not sufficiently clear about the principles and considerations which should guide the advisory committee's decision. These principles should be made explicit, and should be consistent for all applications (whether considered by ACoBA or departments, and whether from former Ministers or civil servants). ACoBA should also publish the "norms" and precedents against which new cases will be considered, to help applicants predict the likely decision in their case. (Paragraph 38)

15. The Government believes that the Business Appointment Rules for both former ministers and former civil servants, strike an appropriate balance between explaining the propriety aims and principles that underpin them, and the practical process that applicants need to follow in submitting an application under the Rules. In the case of former civil servants, the Rules need to set out clearly the differing procedures for those at the most senior levels whose applications are considered by the Advisory Committee on Business Appointments, and those at more junior levels whose applications are handled within departments.

Retrospective applications

16. We are concerned by the low level of awareness of the Business Appointment Rules amongst relatively senior public servants. We recommend, as a minimum, that candidates applying to work in the public sector for the first time should be made explicitly aware of the Rules before they take up the post, and at appropriate intervals during their public service career, such as on promotion or when moving between departments. It is insufficient to make a single reference to the Rules in an applicant's contract or terms and conditions at the time of his or her appointment. (Paragraph 41)

17. The Government accepts the recommendation. It agrees with the Committee that it is essential that public servants are aware of the Rules and understand how they operate. The

Government agrees that more needs to be done to ensure that there is a much higher level of awareness of the Rules. The Rules are highlighted in letters of appointment and also when individuals leave public service. However, the Government agrees with the Committee that more emphasis should be placed on the Rules during the recruitment process, and that individuals need to be reminded about the Rules at regular intervals throughout their careers in the public service, including when individuals change jobs or are promoted. The Government believes that its proposals for increased transparency will also help with raising awareness of the Rules. The Rules have also been strengthened to make clear that retrospective applications will not normally be accepted.

Membership

18. We are not persuaded that the appointment of political nominees to ACoBA is necessary purely because of its role in "providing advice direct to former Ministers": the membership of ACoBA included three political nominees from its inception in 1975, twenty years before it was given responsibility for considering applications by former Ministers in 1995. Moreover, the majority of applications considered by ACoBA come from former civil servants and special advisers, not from former Ministers, yet the three political appointees make up nearly half of the Committee. The recent appointments made under the Commissioner for Public Appointments' Code of Practice are a welcome step in the right direction, but we recommend that the membership of ACoBA be reconsidered entirely, to ensure that it is able to command public trust and confidence in its decisions. Rather than appointees representing different "client groups", we recommend that a pool of people with a wide range of experience and backgrounds be appointed—after open competition and in accordance with the Commissioner for Public Appointments' Code of Practice—from which a different panel could be drawn to consider each application. This proposal would have the advantage of increasing the capacity of the Advisory Committee to deal with short-term increases in workload. (Paragraph 48)

19. The Government is not persuaded by the Committee's recommendation that a pool of individuals should be appointed from which a different panel could be drawn to consider each application. The Government believes that this proposal would have considerable resource implications given the need to recruit and manage a greater number of public appointees, and would be unnecessarily complicated and time-consuming to administer. Moreover, the Government takes the view that this proposed approach would risk creating a lack of coherence amongst the membership and a consequent loss of shared knowledge and consistency in the consideration and treatment of applications. The Government believes that this is an important and necessary strength of the current arrangements.

20. However, the Government is committed to ensuring that the membership of the Advisory Committee on Business Appointments is balanced and representative, and that, collectively, the members bring an extensive range of skills and experience from a wide variety of different sectors. The Government is also committed to ensuring that the appointments of the Chairman and independent members on the Advisory Committee are made in accordance with the requirements of the Commissioner for Public Appointments, as has been the case with more recent appointments to the Advisory Committee. In terms of the appointment of political nominees to the Advisory Committee, the forthcoming

Triennial Review will look at governance issues, including the issue of political appointments.

Resources

21. *We were not impressed by ACoBA's record of processing "over half of applications" in 2010-11 within its published deadlines, although it is somewhat reassuring that more flexible staffing arrangements are now in place, and that the Government recognises that ACoBA may need more resources in future. It is disappointing that ACoBA and the Cabinet Office failed to anticipate the entirely foreseeable rise in applications following both the General Election and reductions in Civil Service numbers in the subsequent Spending Review. This potential problem was foreseen by the Committee on Standards in Public Life as long ago as 1995, and failure to heed its advice has led to a year of sub-standard service which has had a direct impact on applicants.* (Paragraph 56)

22. The Government agrees that it is important that the Advisory Committee on Business Appointments is appropriately resourced to enable it to deal with applications in an efficient and timely manner. The Government believes that the changes that have been implemented over the past couple of years, and that have been welcomed by the Committee in its report, are having a positive impact on performance, and the Government welcomes the Advisory Committee's efforts in this area. These include the publication of targets for the handling of applications received by the Advisory Committee, and the move to more flexible staffing by the sharing of secretariat resource with the Civil Service Commission which will enable the Advisory Committee to deal more effectively with peaks and troughs in workload. The Advisory Committee's most recent annual report covering the 2012/13 financial year shows that 87% of applications from officials were dealt with within the Advisory Committee's published target of 20 days and 85% of applications from former Ministers were dealt with within the Advisory Committee's published target of 15 days. This was despite a significant increase in the overall number of applications received. The forthcoming Triennial Review of the Advisory Committee will provide a timely opportunity to examine how being part of a larger Secretariat is helping the staff respond better to fluctuations in workload, and how the administrative and governance structures might be further improved going forward, including ensuring that departments play their part.

Compliance and enforcement

23. *We consider that it is an unfit reward for public service for individuals to be left by Government without any means of financial support for a period of up to two years. This would not occur in the private sector, and we agree with the Government that, in exceptional circumstances, it may be appropriate to continue to pay former public servants who are required to observe a waiting period before taking up another. Allowing former public servants to take paid "gardening leave" before beginning in their new roles does, however, mean that they may remain on the public payroll for a significant period after they have left public service. The cost to the public purse of extended paid "gardening leave" has to be proportionate to the real risk of hardship to the individual, and the avoided risk of impropriety from letting an individual take up alternative paid employment.* (Paragraph 61)

24. The Government acknowledges that it may be appropriate to continue to pay former Crown servants, including special advisers, who are required to observe a waiting period before taking up an external role. Such payment would be subject to the particular circumstances of the individual case, and it would be important to ensure that decisions take account of all relevant factors including, for example, whether there was a reasonable expectation of a waiting period under the Rules.

25. Where a waiting period is required, departments should seek to redeploy individuals for the duration of the period. Where there is no alternative suitable employment available, the department can consider whether there is a case for the individual to be compensated for serving a waiting period. The Cabinet Office must be consulted when payment is proposed either by the Department or the individual.

The way forward

26. We recommend that the Government take the opportunity afforded by its proposed legislation on the statutory registration of lobbyists also to establish clear, statutory, conflict of interest and business appointment rules for former Ministers, civil servants and special advisers. The legislation should impose clear duties on all current and former public servants to minimise the possibility of real, apparent or potential conflicts of interest between their new employment and their most recent responsibilities within the public service. It should also impose clear duties not to take improper advantage of public office, nor to disclose "insider information" which was gained through the public office and is not available to the wider public. (Paragraph 77)

27. The Rules for civil servants derive their authority from the *Civil Service Management Code* and the Rules for former Ministers from the *Ministerial Code*, and the principles outlined by the Committee are already incorporated into these documents. The Government does not believe that a statutory approach to this issue is necessary. The Codes and Business Appointment Rules already make clear the duty of former Ministers, civil servants and special advisers with regard to subsequent employment, and the Government believes that some of the criticisms of the existing regulations will be mitigated by the plans for increased transparency.

28. We recommend that all public servants should be subject to broadly similar post-public employment restrictions, preventing them from taking up employment with any organisation with which they had "significant official dealings" within the year immediately prior to leaving office. A lobbying ban should also apply. (Paragraph 78)

29. Under the current Rules, departments and the Advisory Committee on Business Appointments already consider whether individuals might have been involved in developing policy affecting their prospective employer, or where they have had access to commercially sensitive information of competitors of the prospective employer. This already covers a wider range of issues than those covered by the Committee's recommendation. Therefore, to accept the recommendation would narrow the scope of this consideration, which the Government does not consider appropriate. The Government agrees with the Committee, but believes that its recommendation does not go far enough.

30. *We recommend that, unless varied in individual cases, the prohibitions above should apply for two years to former Ministers, special advisers, and senior civil servants, and for at least one year for civil servants at lower grades. Appropriate civil sanctions should be available for contraventions of the legislation, and should include the possibility of sanctions against employers who hire former public servants in contravention of the rules (for example, exclusion from eligibility to bid for Government contracts). Permanent Secretaries should be accountable to Parliament for compliance with the legislation by staff from their department.* (Paragraph 79)

31. The Government agrees with the Committee's proposal to simplify the existing Rules as they apply to civil servants below Senior Civil Service level by reducing the period for which prohibitions would normally apply to one year, and this change has been reflected in the revised Rules. The Government believes that such an approach should apply to equivalent grades below the Senior Civil Service, including special advisers of equivalent standing. Departments will however have discretion to apply the Rules for up to two years for specific roles below SCS1 level (and equivalents) where there is an exceptional case for doing so. There is already a good level of compliance with the voluntary arrangements, and as part of the consideration of individual applications, departments routinely consult the potential new employer and competitors. The new transparency arrangements will ensure greater awareness of the Rules and requirements already in place.

32. *Alongside the introduction of statutory ethics regulation, we recommend that the existing Advisory Committee on Business Appointments be abolished and replaced by a new, statutory, Conflicts of Interest and Ethics Commissioner following the Canadian model. The Commissioner should be politically neutral, not a former politician or career civil servant, and should be made an Officer of Parliament. The Commissioner should also have his or her own budget, and powers to employ his or her own staff, in order to ensure the independence of the office from Government.* (Paragraph 80)

33. The Government believes that the existing Advisory Committee on Business Appointments does an effective job in advising the Prime Minister, Foreign Secretary, Defence Secretary, First Ministers in the Devolved Administrations in Scotland and Wales, and Permanent Secretaries on applications made to it under the Rules, and under separate arrangements in advising former Ministers direct on proposals to take up any employment or appointments. The Government does not believe that the introduction of a Commissioner on the Canadian model would provide a tangible increase in compliance. There is already a good level of compliance, and proposals to increase transparency would mitigate many of the other problems identified with the current arrangements.

34. *In deciding applications, the Commissioner should be supported by a pool of panel members, appointed on merit in accordance with the Commissioner for Public Appointments' Code of Practice. Each application should be decided by the Commissioner and a small number of panellists, selected from the pool.* (Paragraph 81)

35. The Government refers the Committee to the response to recommendation 7, and reminds the Committee that member appointments to the Advisory Committee on Business Appointments are already made in accordance with the Commissioner for Public Appointments' Code of Practice.

36. *The Commissioner should have discretion to order that former public servants continue to be paid a proportion of their salary from the public purse during any enforced waiting period. He or she should also have discretion to waive, reduce or increase the statutory waiting periods up to a maximum of five years if it seems proportionate and fair to do so, and having regard to the risks of actual or perceived impropriety, but must publish his or her reasons for varying the waiting period in any particular case. In deciding whether to vary the waiting period, the Commissioner should be required to have regard to the same matters identified by the Canadian legislation.* (Paragraph 82)

37. The Government refers the Committee to the response to recommendation 9.

38. *To further enhance predictability for applicants, the Commissioner should be required to publish clear guidance on the procedures which he or she will follow when considering an application, and the expected timescale for each stage of the process. Target timescales should be consistent for all former public servants, regardless of whether they were Ministers, special advisers or civil servants. The Commissioner's decisions in individual cases, and his or her reasons, should also be published when the appointment is taken up. Applicants should have a corresponding duty to notify the Commissioner when they take up an appointment. The Commissioner should be required to monitor compliance with his or her decisions, and to report annually to Parliament on the cases considered during that year, any contraventions of the rules and any sanctions imposed.* (Paragraph 83)

39. The Advisory Committee on Business Appointments already publishes information on its advice and produces annual reports which are available on its website and include the advice given by the Advisory Committee on individual cases where the appointment has been taken up or announced within the period of the report. Target timescales for the processing of business appointment applications from former Ministers and officials reflect differences in the procedures for these two groups of public servants. This will be considered by the forthcoming Triennial Review of the Advisory Committee as part of its consideration of resource and governance issues.

Other powers

40. *Powers for a UK ethics regulator to provide advice to public servants on the handling of their private interests would overlap with those of the Prime Minister's Adviser on Ministers' Interests, about whom we expressed concerns in an earlier Report. We recommend, therefore, that the new Commissioner should assume this role as well, with the power to instigate investigations into breaches of the Ministerial Code on his or her own initiative.* (Paragraph 85)

41. The Government has responded to the Committee's recommendation in its report about the Prime Minister's Adviser on Ministerial Interests. As set out above, the Government does not believe the introduction of a Conflicts of Interest and Ethics Commissioner is the appropriate route to take.

42. *We recommend that the Government consider whether it may be expedient to merge the functions of the Committee on Standards in Public Life, of investigating and reporting*

on general questions of ethical conduct in public life, into those of the new Commissioner.
(Paragraph 86)

43. The Rt Hon Peter Riddell, CBE undertook a Triennial Review of the Committee on Standards in Public Life, and his report was published on 5 February 2013. The Government accepted the report's recommendations about the future operation of that Committee.

44. We do not propose that the new statutory ethical regulator should take on any of the functions currently performed by the Parliamentary Commissioner for Standards or his equivalent in the House of Lords, or of the Standards and Privileges Committee.
(Paragraph 88)

45. The Government agrees that the responsibilities and functions currently performed by the Parliamentary Commissioner for Standards or his equivalent in the House of Lords, or of the Standards and Privileges Committee, are matters for the UK Parliament.

Annex: The Government's revised Business Appointment Rules for civil servants

The following Rules cover the Civil Service. Equivalent versions of the Rules are in place for the Diplomatic Service/Intelligence Agencies/Armed Forces.

The Rules apply to civil servants who intend to take up an appointment or employment after leaving the Civil Service.

The approval process for applications under the Rules differs depending on the applicant's seniority.

For members of the Senior Civil Service and equivalents, including special advisers of equivalent standing, the Rules continue to apply for two years after the last day of paid Civil Service employment.

For those below the Senior Civil Service and equivalents, including special advisers of equivalent standing, the Rules continue to apply for one year after leaving the Civil Service, unless, exceptionally, the role has been designated as one where a longer period of up to two years will apply.

Key Principles

1. These Rules are designed to uphold the core values in the *Civil Service Code*:

Integrity

- *You must not misuse your official position, for example by using information acquired in the course of your official duties, to further your private interests or those of others.*

Honesty

- *You must not be influenced by improper pressures from others or the prospect of personal gain.*

Objectivity

- *You must take decisions on the merits of the case.*

Impartiality

- *You must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.*

2. It is in the public interest that people with experience of public administration should be able to move into other sectors, and that such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former civil servant takes up an outside appointment or employment there should be no cause for justified public concern, criticism or misinterpretation.

3. The aim of the Rules is to avoid any reasonable concerns that:

- a) a civil servant might be influenced in carrying out his or her official duties by the hope or expectation of future employment with a particular firm or organisation, or in a specific sector; or
- b) on leaving the Civil Service, a former civil servant might improperly exploit privileged access to contacts in Government or sensitive information; or
- c) a particular firm or organisation might gain an improper advantage by employing someone who, in the course of their official duties, has had access to:
 - i. information relating to unannounced or proposed developments in Government policy, knowledge of which may affect the prospective employer or any competitors; or
 - ii. commercially valuable or sensitive information about any competitors.

Who must apply, when and how

4. **The Rules apply to all civil servants.** This includes:

- Permanent civil servants;
- Civil servants employed on fixed term contracts;
- Civil servants on secondment to other organisations; and
- Special advisers.

5. For those at SCS1 level and above (and equivalents), the Rules apply for two years after leaving the Civil Service. For those below SCS1 level (and equivalents), they normally apply for one year after leaving the Civil Service.¹ In circumstances where an individual is undertaking a role on temporary promotion immediately prior to leaving the Civil Service, it will be the temporary grade that will determine how the Rules are to be applied.

6. Before accepting any new appointment or employment, whether in the UK or overseas, which they intend to take up after they have left the Civil Service, individuals must consider whether an application under the Rules is required. If it is required, they should not accept or announce a new appointment or offer of employment before it has been approved. The model application form for this purpose is available at: <http://acoba.independent.gov.uk/media/21242/model-business-appointments-application->

¹ Departments have discretion to apply the Rules for up to two years for specific roles below SCS1 level (and equivalents) where there is an exceptional case for doing so.

[form-civil-servants.rtf](#) and on departmental intranets. This form should be used for all applications under the Rules. **Retrospective applications will not normally be accepted.**

7. The process for giving approval differs depending on the applicant's seniority.

Permanent Secretaries and SCS3 (and equivalents, including special advisers of equivalent standing)

8. An application is required for any new appointment or employment that individuals wish to take up during the **two** year period after leaving office. All applications at this level must be referred by the Department to the Advisory Committee on Business Appointments (the Advisory Committee). The Advisory Committee provides advice to the Prime Minister, who makes the final decision.^{2, 3}

9. Because of their role at the highest level of Government, and their access to a wide range of sensitive information, all Permanent Secretaries, including Second Permanent Secretaries, will be subject to a minimum waiting period of three months between leaving paid Civil Service employment and taking up an outside appointment or employment. The Advisory Committee may advise that this minimum waiting period should be waived if, in its judgement, no questions of propriety or public concern arise from the appointment or employment being taken up earlier. Equally, the Advisory Committee may consider that public concern about a particular appointment or employment could be of such a degree or character that a longer waiting period is appropriate. Taking account of the maximum waiting period of two years that may be applied, the Advisory Committee may, exceptionally, add a rider to their advice to the Prime Minister stating that they view the appointment or employment to be unsuitable.

10. As a general principle, there will be a two year ban on all Permanent Secretaries and SCS3 (and equivalents, including special advisers of equivalent standing) lobbying Government on behalf of their new employer after they leave the Civil Service. The two year lobbying ban may be reduced and/or modified by the Advisory Committee if they consider this to be justified by the particular circumstances of an individual application. Lobbying in the context of these Rules means that the former civil servant should not engage in communication with Government (including Ministers, special advisers and officials) with a view to influencing a Government decision or policy in relation to their own interests, or the interests of the organisation by which they are employed, or to whom they are contracted. In certain cases, due to the nature of the proposed appointment or employment, the Advisory Committee may, at its discretion, recommend that the lobbying ban need not prevent communications with Government on matters that are an integral part of the normal course of business for the organisation concerned. The model application form prompts applicants to provide the relevant details about the proposed employment or appointment that will assist with the formulation of an appropriate lobbying condition.

2 Where applications are from civil servants who serve/formerly served in the Devolved Administrations in Scotland and Wales, the Advisory Committee will provide advice to the relevant First Minister who will make the final decision.

3 Final decisions on applications from special advisers are made by the relevant Permanent Secretary.

SCS2 and SCS1 (and equivalents, including special advisers of equivalent standing)

11. For those at this level, the Rules apply for **two** years after the last day of paid service. An application for a new appointment or employment during this two year period is only required if the individual's circumstances match one or more of the triggers set out at paragraph 13 below. Decisions on applications from those at this level are made by the relevant Department.⁴

Below SCS1 (and equivalents, including special advisers of equivalent standing)

12. For these grades, the Rules normally⁵ apply for **one** year after the individual's last day of paid service. An application for a new outside appointment or employment during this one year period is only required if an individual's circumstances match one or more of the triggers set out at paragraph 13 below. Decisions on applications from staff in this category are made within the Department. Further details are set out in departmental staff handbooks/on departmental intranets.

13. As set out at paragraphs 11 and 12 above, an application under the Rules is only required from those at SCS2 and below (and equivalents) if the individual's circumstances match one or more of the following:

- i. They have been involved in developing policy affecting their prospective employer, or have had access to unannounced Government policy or other privileged information affecting their prospective employer, at any time in their last two years in the Civil Service.
- ii. They have been responsible for regulatory or any other decisions affecting their prospective employer, at any time in their last two years in the Civil Service.
- iii. They have had any official dealings with their prospective employer at any time in their last two years in the Civil Service.
- iv. They have had official dealings of a continued or repeated nature with their prospective employer at any time during their Civil Service career.
- v. They have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties.
- vi. The proposed appointment or employment would involve making representations to, or lobbying the Government on behalf of a new employer.
- vii. The proposed appointment or employment is consultancy work, either self-employed or as a member of a firm, and they have had official dealings with

4 Decisions on applications are delegated to departmental officials who should consult the Secretary of State on the most sensitive applications.

5 Departments have discretion to apply for the Rules for up to two years for specific roles below SCS1 level (and equivalents) where there is an exceptional case for doing so.

outside bodies or organisations in their last two years in the Civil Service that are involved in their proposed area of consultancy work.

In cases of doubt, departmental Human Resources functions are able to advise individuals on whether or not an application is required.

Special Advisers

14. Under the terms of their contract, special advisers are required to submit an application to the head of their former Department for a new appointment or employment they wish to take up after leaving the Civil Service.⁶ This requirement applies to special advisers of equivalent standing to the Senior Civil Service for **two** years after leaving the Civil Service, and to other special advisers for **one** year.

15. Applications from special advisers of equivalent standing to Director General and above, are referred to the Advisory Committee on Business Appointments (the Advisory Committee). The Advisory Committee provides its advice to the relevant departmental Permanent Secretary, who makes the final decision based on that advice. Applications from other special advisers are handled within the relevant Department, and the Permanent Secretary makes the decision on the application. A special adviser who is unhappy with the decision may appeal to the Lead Non- Executive Director of their former Department.

How to apply for approval

16. Applicants must approach their departmental Human Resources function as early as possible, and before any announcements or commitments are made. Human Resources will have a process in place for handling business appointment applications. This involves completion of the application form which will need to be countersigned by an appropriate person, normally someone within the line management chain.

17. Notification of decisions on applications will be made through the Department.

18. Applications may be approved unconditionally, or approved subject to conditions applying for a maximum of two years from the individual's last day of paid service. Such conditions may include a waiting period and/or a prohibition on the individual being involved in lobbying Government on behalf of their new employer. When a lobbying prohibition or other restriction is applied to an individual at any level, this information will be made available to key staff within a department. Other restrictions could include a condition that for a specified period, the former civil servant should stand aside from involvement in certain activities, for example, commercial dealings with his or her former Department, or involvement in particular areas of the new employer's business.

19. Where it is proposed that an application be approved with conditions or a waiting period, the applicant will be offered an opportunity to discuss any concerns he or she may have with an appropriate departmental officer, or for applicants at SCS3 level and above

⁶ No application is required under the Rules when a special adviser takes up a role with the Party when they leave the Civil Service. If, during the two years after leaving the Civil Service (one year in the case of more junior special advisers - see paragraph 14 above) they take up a further appointment in a different organisation, approval under the Rules is required.

(and equivalents, including special advisers of equivalent standing) with the Advisory Committee on Business Appointments (the Advisory Committee), before a final decision is made.

20. For those cases considered by the Advisory Committee, in addition to the maximum two-year waiting period, the Advisory Committee may, if they judge the propriety concerns to be substantial, add a rider to their advice saying that they also view the appointment to be unsuitable. It is for the Prime Minister (or relevant Permanent Secretary in the case of special advisers) to take the final decision on the application based on the advice received from the Advisory Committee.

Payment for Waiting Periods

21. It may be appropriate to continue to pay former civil servants, including special advisers, who are required to observe a waiting period before taking up an external role. Such a payment would be subject to the particular circumstances of the individual case, and it would be important to ensure that decisions take account of all relevant factors including, for example, whether there was a reasonable expectation of a waiting period under the Rules. Where a waiting period is required, departments should seek to redeploy individuals for the duration of the period. Where there is no alternative suitable employment available, the department can consider whether there is a case for the individual to be compensated for serving a waiting period. The Cabinet Office must be consulted when payment is proposed either by the Department or the individual.

Transparency

22. In addition to notifying the applicant of the outcome of their application, the Department must also inform prospective employers of any conditions which have been attached to the approval of the appointment or employment. For those applications considered by the Advisory Committee, their advice, alongside summary details of the applicant's last Civil Service post, will usually be made public once the appointment or employment has been taken up by the applicant or announced, and Departments will make public on their departmental websites summary information in respect of individuals at SCS2 and SCS1 level (and equivalents, including special advisers of equivalent standing), setting out the advice given to their former civil servants, and the restrictions (if any) imposed upon them. In all other respects, the business appointment process is a confidential one.⁷

Where to find out more

23. Departmental guidance and advice on the Rules is available from local Human Resources functions, and, where applicable, on local intranets. More about the operation of the Rules, including details of appointments approved and taken up by the most senior members of the Civil Service, can be found on the website of the Advisory Committee on Business Appointments (the Advisory Committee): <http://acoba.independent.gov.uk>

⁷ The Advisory Committee handles personal information provided to it in accordance with the Data Protection Act 1998. Such information may on limited occasions be published, for example, if the Committee is required to publish information in accordance with the Freedom of Information Act 2000.

24. The Advisory Committee's Secretariat is available to provide advice and support to Departments on the application of the Business Appointment Rules and the handling of individual cases at any level. Contact details are:

Office of the Advisory Committee on Business Appointments

G/08

Ground Floor

1 Horse Guards Road

London SW1A 2HQ

Tel: (020) 7271 0839

e-mail to: acoba@acoba.gsi.gov.uk

Website: <http://acoba.independent.gov.uk>