



National Audit Office

Report

by the Comptroller
and Auditor General

Cross-government

Investigation into government's management of the Business Appointment Rules

What this investigation is about

1 The Business Appointment Rules (the Rules) apply to all civil servants¹ who intend to take up an appointment or employment (business appointments) after leaving the civil service. The Rules state:

“... when a former civil servant takes up an outside appointment or employment there should be no cause for justified public concern, criticism or misinterpretation.”

2 The knowledge, skills and contacts that civil servants develop during public service can make them highly attractive to other organisations seeking to interact with government (for example, through contracting), particularly in the private sector. The aim of the Rules is to avoid any reasonable concerns that:

- 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;
- on leaving the civil service, a former civil servant might improperly exploit privileged access to contacts in government or sensitive information; or
- 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:
 - information relating to unannounced or proposed developments in government policy, knowledge of which may affect the prospective employer or any competitors; or
 - commercially valuable or sensitive information about any competitors.

¹ The Rules apply to all civil servants including permanent civil servants, civil servants employed on fixed-term contracts, civil servants on secondment to other organisations, and special advisers. Equivalent versions of the Rules apply to the diplomatic service, intelligence agencies and armed forces.

3 In July 2016 the Parliamentary Public Administration and Constitutional Affairs Committee (PACAC) launched an inquiry into the role and effectiveness of the Advisory Committee on Business Appointments (ACoBA)² and the Independent Adviser on Ministers' Interests. ACoBA advises the Prime Minister on the most senior civil servants (typically directors general and permanent secretaries)³ and ministers leaving public service. In April 2017, PACAC published its report *Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action*.⁴ The inquiry report found that the regulatory system for scrutinising the post-public employment of former ministers and the most senior civil servants is ineffectual and does not inspire public confidence or respect.

4 Our investigation is intended to complement this inquiry by considering other civil servants up to but not including the most senior civil servants (**Figure 1** on pages 6 and 7).⁵ Such civil servants may perform significant roles in respect of, for example, policy formation and managing commercial relationships. We investigated:

- the role of the centre of government;
- how departments are managing applications for business appointments in practice (including reporting transparency data); and
- how departments monitor individuals' compliance with the Rules.

5 We undertook our investigation between March and July 2017. Fieldwork took place between March and June. This report has been formally cleared with the Department for Business, Energy & Industrial Strategy, the Department for Digital, Culture, Media & Sport, the Department for Transport, the Department of Health, HM Revenue & Customs, the Home Office and the Ministry of Defence. We have not received any formal comments on the report from the Cabinet Office.

6 Our investigative approach and methods are set out in Appendix One.

² ACoBA is an independent, advisory, non-departmental public body sponsored by the Cabinet Office. It was established by the Prime Minister in 1975.

³ Senior civil servants of levels three and four.

⁴ HC Public Administration and Constitutional Affairs Committee, *Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action*, Thirteenth Report of Session 2016-17, HC 252, April 2017.

⁵ This investigation includes civil servants up to and including senior civil service level two.

Figure 1

Scope of this investigation in relation to the Business Appointment Rules

Our investigation covers all civil servants up to and including those at senior civil service level two (and equivalents, including special advisers of equivalent standing)

Civil servant seniority (SCS = senior civil service)	Typically known as ...	Business Appointment Rules apply for ...
SCS level four SCS level three	Permanent secretaries Directors general ³	Two years after leaving office
(Equivalent to SCS level three and above)	Special advisers	Two years after leaving the civil service
SCS level two SCS level one	Directors Deputy directors ³	Two years after the last day of paid service
(Equivalent to SCS level two and SCS level one)	Special advisers	Two years after leaving the civil service
Below senior civil service (below SCS level one)	Grade six, Grade seven, Senior executive officers, Higher executive officers, Executive officers, Administrative officers, Administrative assistants ³	One year after the last day of paid service (can be extended to two years by the department in exceptional circumstances)
(Equivalent to below SCS level one)	Special advisers	One year after leaving the civil service

Notes

- 1 See Appendix Two.
- 2 The Cabinet Office must be consulted when payment for a waiting period is proposed either by the department or the individual.
- 3 And equivalents, including special advisers of equivalent standing.
- 4 ACoBA = Advisory Committee on Business Appointments.

Source: National Audit Office analysis of the Cabinet Office's Business Appointment Rules

	Is an application compulsory under the Rules?		Consultation ²		Decision made by...	In scope of investigation?
	Yes	Only in certain circumstances ¹	ACoBA advice	Secretary of State		
For any new appointment or employment that individuals wish to take up during the two-year period after leaving office			✓		Prime Minister	No
	✓		✓		Permanent secretary	No
		✓		✓ for the most sensitive applications	Department	Yes
	✓				Permanent secretary	Yes
		✓			Department	Yes
	✓				Permanent secretary	Yes

Summary

1 The government considers that 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.

2 Risks associated with individuals moving from public administration to other sectors include:

- **abuse of office:** an official might use his or her power while in office to shape a policy or decision in favour of a certain company, with a view to opening up opportunities to future employment;
- **undue influence:** a former official now employed by a private company might influence his or her former colleagues to make a decision that favours the company;
- **profiteering:** an individual might profit from public office by drawing on information, knowledge or stature derived from his or her public role to profit financially; and
- **switching sides:** an individual might leave public office to take up employment with a private sector organisation in a role that requires him or her to oppose the government's position on an issue, which he or she had previously represented. This can be problematic because they may have had access to privileged information.

3 To mitigate these risks there are Business Appointment Rules (the Rules), which apply to all civil servants who intend to take up business appointments after leaving the civil service. The Rules are designed to uphold the core values of the civil service: integrity, honesty, objectivity and impartiality.

4 In July, the Parliamentary Public Administration and Constitutional Affairs Committee (PACAC) launched an inquiry into the role and effectiveness of the Advisory Committee on Business Appointments (ACoBA)⁶ and the Independent Adviser on Ministers' Interests in response to "...increasing concern that the present system is completely failing to address, and subsequently allay, public concern about what has been described as 'the revolving door' – people rotating between employment in the public and private sectors." It found increased numbers of public servants moving between the public and private sectors, and declining public confidence in a system that was set up to command trust by mitigating breaches of the Rules.

⁶ ACoBA is an independent, advisory, non-departmental public body sponsored by the Cabinet Office. It was established by the Prime Minister in 1975. ACoBA advises the Prime Minister on the most senior civil servants of levels three and four (typically directors general and permanent secretaries) and ministers leaving public service.

Responsibilities in respect of the Rules

5 The Rules are developed and owned by the Cabinet Office, and approved by the Prime Minister. They are contained within the Cabinet Office's Civil Service Management Code (the Code), which applies to all civil servants. The Code sets out regulations and instructions related to civil servants' terms and conditions of service for government departments and agencies (including in respect of leaving the civil service).

6 The **Cabinet Office** has the right to inspect and monitor observance of the Code in departments. It is responsible for publishing guidelines for departments on how to administer the Rules for civil servants.

7 **Departments** are responsible for defining the standards of conduct they require of their staff, and for ensuring that these reflect the Code (which contains the Rules). They are also responsible for enforcing compliance. Departments assess applications (made under the Rules), make decisions,⁷ and notify applicants of the outcome of applications (and prospective employers of any conditions imposed).

8 **Civil servants** are responsible for not disclosing official information without authority, including after they have left public service. All civil servants (including former civil servants) must consider whether they need to make an application under the Rules before accepting a new appointment or employment (business appointments). An individual must only make an application to their department in certain circumstances.⁸

Key findings

9 **The Business Appointment Rules form part of the Cabinet Office's Civil Service Management Code, and are legally binding as part of the terms and conditions of civil servants' employment contracts.** The Code is issued under the authority of the Constitutional Reform and Governance Act 2010. The Cabinet Office owns the Rules, and produces guidance for departments on how to administer and apply the Rules. The Code requires departments to incorporate the Rules into their staff terms and conditions, and to make these available to staff, for example in department or agency handbooks (paragraphs 1.4 and 1.5).

10 **The guidelines for departments on administering the Rules have been removed from the Code.** The Cabinet Office has been preparing amended guidelines for departments to underpin the Rules since 2012, but has not yet published these. Our analysis of a sample of eight departments found a variety of different guidelines were being used (paragraphs 2.1 to 2.3).

⁷ Also referred to as 'advice' by the Rules.

⁸ See Appendix Two for further details on these criteria.

11 The Rules do not state departments can reject applications. The Rules state that departments can only approve an application unconditionally, or approve an application subject to conditions (such as a waiting period and/or a prohibition on an individual being involved in lobbying government on behalf of their new employer). No department in our sample reported that it had rejected an application. The Cabinet Office believes that departments do, however, reject applications – although it was not able to evidence this, nor that a system to record this information exists. According to the Rules, ACoBA can advise the Prime Minister that a business appointment application is unsuitable; however, ACoBA's remit means that this applies only to the most senior civil servants (paragraphs 3.2 and 3.3).⁹

12 The centre of government has no oversight of departmental compliance with the Rules. The Cabinet Office has the right to inspect and monitor observance of the Code in departments (at a level consistent with its central responsibilities). It does not exercise this right in respect of the business appointments process, and is unaware of any other organisation conducting such activities. PACAC recommended that government should nominate a departmental non-executive director on each department board to take on responsibility for oversight of the Rules (and ensure full compliance by civil servants). The Cabinet Office currently relies on departments enforcing compliance, as well as transparency and public scrutiny to promote compliance with the Rules (paragraphs 2.6 and 2.7).

13 It is not possible to know from transparency data whether all those leaving the civil service that should have made an application under the Rules did so. Since October 2014, the Rules have required departments to publish on their websites summary information on the outcomes of business appointment applications from senior civil servants of levels one and two. As at June 2017, central government departments had published 170 decisions under the Rules. Three departments have never published information, and one has published a nil return. The Cabinet Office does not consider it necessary to publish nil returns, so it is not clear whether the publicly-available transparency data are complete (paragraphs 2.8, 2.14 and 2.19).

Key findings in paragraphs 14 to 16 relate only to the eight departments in our sample

14 Departments are not consistently applying the Rules:

- **Only one department consistently informed prospective employers of conditions attached to a business appointment approval, as required by the Rules.** The remaining seven departments have attached conditions to at least 187 approvals in the past five years; however, only two departments have informed prospective employers of conditions attached to an approval, and in total only six notifications have been sent.¹⁰ One department told us that it never writes to prospective employers but it expects leavers to share the department's decision with their new employer (paragraph 3.8).

⁹ Senior civil servants of levels three and four.

¹⁰ In respect of business appointment approvals for civil servants of any grade up to and including senior civil service level two.

- **Four departments have approved retrospective business appointment applications, which the Rules state will not normally be accepted.** The Rules do not define 'retrospective'; however, ACoBA indicates that a new business appointment should not be accepted or announced before the application has been approved. Of these four, one identified that it processed a "great deal", and another "some" retrospective applications. Two departments in our sample told us they had not approved retrospective business appointment applications. A further two departments were unable to comment or could not provide a response (paragraphs 2.2, 3.6 and 3.7).

15 Only one department has set out and communicated to staff measures for dealing with non-compliance. Departments and civil servants have responsibilities in respect of the Rules in terms of applying or following a procedure and complying with any conditions imposed. However, only one of the departments in our sample has a policy or procedure for dealing with non-compliance (paragraphs 1.5, 3.1 and 3.11 to 3.13).

16 No department has assurance that former civil servants remain compliant with the Rules for up to two years after they have left public service. For senior civil servants, the Rules apply for two years after the last day of paid service. For non-senior civil servants, the Rules normally apply for one year. The majority of departments we consulted considered that the onus is on the former civil servant to comply with the Rules (including any conditions it placed on them). One department asks staff to alert it if they know about breaches of policy or if they become aware that former employees have not complied with the conditions placed on them, in part as they do not have the resources to police whether conditions they set are being complied with by former employees (paragraphs 3.9 and 3.12).