



National Audit Office

Report

by the Comptroller
and Auditor General

Cross-government

Investigation into government's management of the Business Appointment Rules

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Investigation into government's management of the Business Appointment Rules

Report by the Comptroller and Auditor General

Ordered by the House of Commons
to be printed on 18 July 2017

This report has been prepared under Section 6 of the
National Audit Act 1983 for presentation to the House of
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

14 July 2017

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, but when doing so there should be no cause for justified public concern, criticism or misinterpretation.

Investigations

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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).

Part One

The Business Appointment Rules

1.1 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.

1.2 The Business Appointment Rules (the Rules) exist to mitigate the risk 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.

1.3 The Rules are developed and owned by the Cabinet Office, and approved by the Prime Minister. They are designed to uphold the core values of the civil service: integrity, honesty, objectivity and impartiality.

Legal framework of the Rules

1.4 The Rules are contained within the Cabinet Office's Civil Service Management Code (the Code), which applies to all civil servants.¹¹ 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). The Code is issued under the authority of the Constitutional Reform and Governance Act 2010.

¹¹ 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.

1.5 The Civil Service (Management Functions) Act 1992 allows the Minister for the Civil Service (the Prime Minister) to delegate their powers to manage civil servants to departments. Departments are responsible for ensuring that the standards of conduct they require of their staff reflect the Code, defining clearly the terms and conditions of service of their staff, which include the Rules. Departments must make these available to staff, for example in department or agency handbooks. Incorporating the Rules within the terms and conditions of civil servants' employment makes them a contractual obligation, and therefore legally binding.

Responsibilities in respect of the Rules

1.6 The **Cabinet Office** publishes and updates the Code, which contains the Rules. It is also responsible for issuing guidance to departments on how it expects departments should administer the Rules for civil servants. The Cabinet Office has the right to inspect and monitor observance of the Code in departments.

1.7 **Departments** are responsible for defining the standards of conduct they require of their staff, and for ensuring that these standards reflect the Code (which contains the Rules). Departments are also responsible for enforcing compliance.

1.8 **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 an application under the Rules is required before accepting any new appointment or employment (business appointments).

How the Rules work

1.9 Before accepting any new business appointment that they intend to take up after leaving the civil service (whether in the UK or overseas), individuals must consider whether they need to make an application under the Rules.¹² The Rules identify the civil service principles and the values they are designed to uphold, and (**Figure 2** on pages 14 to 16):

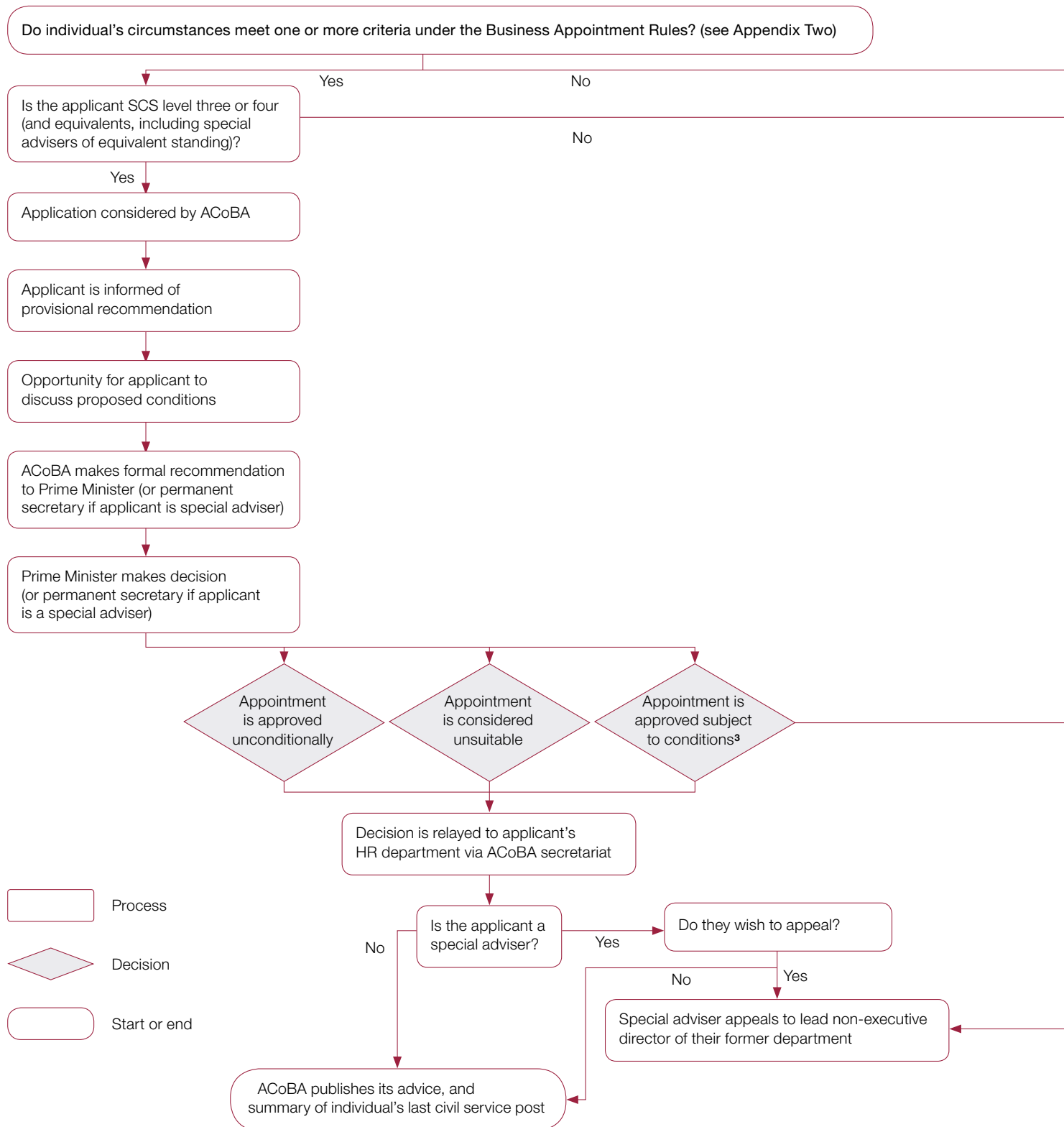
- who the Rules apply to, and who takes decisions on applications;¹³
- when and how individuals must apply for business appointments advice;
- how payment for a compulsory waiting period can be considered; and
- associated transparency reporting requirements.

¹² See Appendix Two for further details on the criteria.

¹³ Departments assess applications from civil servants up to and including those at senior civil service level two. Applications from the most senior civil servants (levels three and four: typically, directors general and permanent secretaries) are assessed by the Advisory Committee on Business Appointments (ACoBA), which provides advice to the Prime Minister on a case-by-case basis (see Figure One).

Figure 2

A short guide to how the Business Appointment Rules are supposed to work



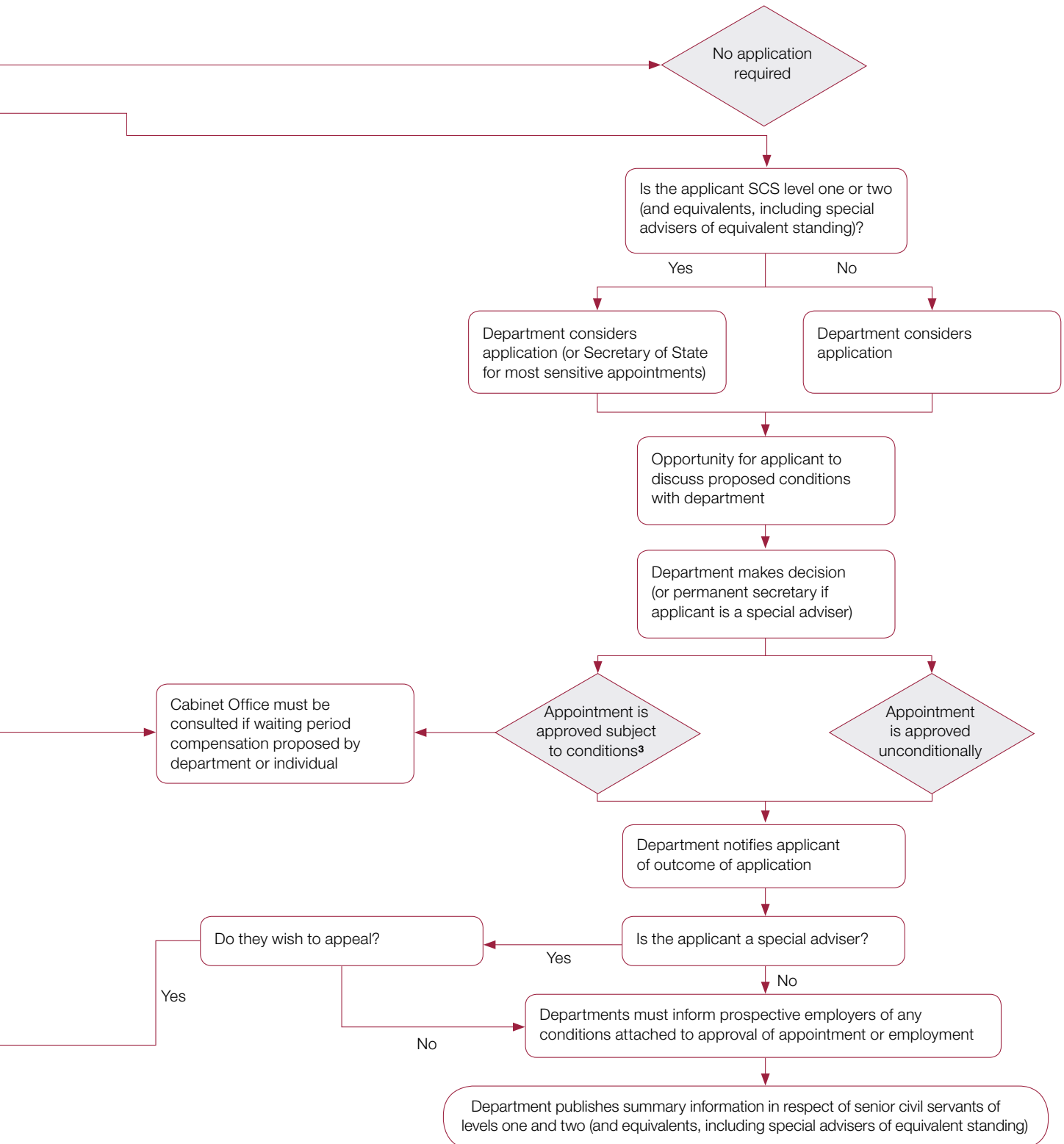


Figure 2 *continued*

A short guide to how the Business Appointment Rules are supposed to work

Notes

- 1 SCS = Senior civil service.
- 2 ACoBA = Advisory Committee on Business Appointments.
- 3 Approval may be subject to conditions that can apply for a maximum of two years. These conditions may include: a waiting period; a lobbying prohibition; a bar on certain activities (such as commercial dealings with the individual's former department) and/or a bar on working in particular areas of the new employer's business. 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.

Source: National Audit Office analysis of the Business Appointment Rules

1.10 When an individual considers that they need to make an application under the Rules, they must complete a business appointments application form. This includes details of:

- the individual's public service, and the nature of the role they are applying for, or have been accepted for; and
- whether they personally had (or have been responsible for people who have had) any direct contractual dealings with their prospective employer (or its parent company) over their last two years of service, or any significant contractual dealings before that.

1.11 Departments make an assessment and notify applicants of their decision (including any associated conditions). The Rules do not specify a timeframe within which a decision must be made. The Cabinet Office expects to make decisions within 20 working days.

Part Two

Role of the centre of government

Setting rules and guidance

2.1 The Cabinet Office is responsible for developing, publishing and updating the Business Appointment Rules (the Rules), and guidelines for departments on how to administer them. Historically, the Rules and associated guidance have been contained within the Cabinet Office's Civil Service Management Code (the Code).

2.2 Over time, the Cabinet Office has made changes to the Rules. Since 2014, the Rules have been amended to include:

- a statement that retrospective applications will not normally be accepted;
- clarification of what would and would not be considered lobbying activities; and
- a transparency requirement for departments to publish summary information in respect of some of their decisions (see paragraph 2.8).¹⁴

2.3 Since at least 2015 the Code has not contained guidelines, and guidelines are not available in any other published document. GOV.UK states that amended guidelines for departments will be published soon. However, the webpage has not been updated since 2 May 2012. The Parliamentary Public Administration and Constitutional Affairs Committee (PACAC) found that important guidance on post-employment ethics in previous versions of the Code has been lost. The Cabinet Office was unable to tell us whether extant guidance was available for departments. Our analysis of a sample of eight departments found a variety of different guidelines were being used.

Inspecting and monitoring departmental approaches

2.4 The Code states that the Cabinet Office retains the right to inspect and monitor observance of the Code by departments and agencies, and that this should be kept to a minimum level consistent with its central responsibilities. The Cabinet Office can therefore decide how it chooses to exercise this power in respect of the Rules.

2.5 Until 2011, the guidelines required permanent secretaries (and equivalents) to submit an annual return to the Advisory Committee on Business Appointments (ACoBA)¹⁵ confirming that their department had complied with the Rules.

¹⁴ For senior civil servants of levels one and two.

¹⁵ ACoBA is an independent, advisory, non-departmental public body sponsored by the Cabinet Office. It was established by the Prime Minister in 1975.

2.6 Permanent secretaries are responsible and accountable for applying the Rules in their departments. The Cabinet Office does not inspect or monitor departments' observance of the Code in respect of the Rules, and is unaware of any other organisation doing so.

2.7 The Cabinet Office relies on transparency, public scrutiny and reputational risk to promote compliance with the Rules. PACAC considers that it is completely unacceptable to rely on media coverage to expose perceived or actual breaches of the Rules, and 'trial by media' only serves to further weaken public confidence. It 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).

Reporting and transparency

2.8 Since October 2014 the Rules have required departments to publish on their websites summary information about the decisions made on individuals at senior civil service levels one and two (and equivalent, including special advisers of equivalent standing) who have announced or taken up an appointment or employment. Information published on departmental websites must also include restrictions (if any) imposed upon them.¹⁶

2.9 Most departments started publishing summary information on GOV.UK in February 2016 (relating to business appointments taken up between January and December 2015).

Coordination

2.10 In February 2017, the Cabinet Office started to coordinate how departments were publishing transparency information because of differences in the way departments were publishing these data.¹⁷ Its aim is to standardise the content and timing of the information, and it has set out an approximate timetable of quarterly reporting. It asks departments to send it:

- the name of the applicant, and title of their former civil service role;
- the date the applicant left the civil service;
- the applicant's new employment or appointment; and
- a summary of the department's decision on the application, including details of any waiting period or other conditions or restrictions applied.

¹⁶ For applications from the most senior civil servants (levels three and four), ACoBA will usually publish its advice, alongside summary details of the applicant's last civil service post, once the appointment or employment has been announced or taken up by the applicant. Departments are not required to publish decisions on business appointments in respect of non-senior civil servants.

¹⁷ For example, we found data that – according to the Rules – should not have been published by departments: applications relating to appointments that were not taken up; and summary information relating to the most senior civil servants (levels three or four).

2.11 The Cabinet Office asks departments to forward these details only in respect of departmental decisions that have already been taken. Departments are to forward details of summary information of their decisions (including nil returns), highlighting anything controversial, likely to attract press interest, or involving an individual moving to a role in a very similar field to that which they left. The Prime Minister's Office intends all transparency information to be published on the same day, which it nominates.

2.12 Although the Cabinet Office conducts a stylistic review of departmental decisions it receives, it does not test completeness, nor does it compile a central repository of information.

2.13 PACAC found that data were spread across individual departmental websites, hard to find and even harder to make sense of. It recommended that Cabinet Office publish data on its website (or some other accessible location). It also recommended that these data must include data on all applications by members of the senior civil service at levels one and two, departmental decisions made on them, showing proportions approved without conditions, and, in the case of conditionality, the categories of decisions made.

Departmental reporting

2.14 Since February 2016, departments have published summary information relating to decisions on business appointments taken up by former civil servants.¹⁸ As at June 2017, central government departments have published 170 decisions. Sixty-two (36%) were published by the Ministry of Defence and the Cabinet Office. One department has published a nil return, and three have never published any summary information (see **Figure 3** overleaf). It is not clear whether those departments that have never published summary information could otherwise have published nil returns, and therefore it is not possible to know whether publicly-available transparency data are complete. The Cabinet Office considers that these data are complete.

2.15 Since February 2016, departments have published the outcome of 170 applications under the Rules, made by 145 individuals. The published data show that, of the 145 individuals who made applications, 130 made a single application and 15 made two or more applications. One individual sought advice on seven separate appointments.

2.16 Of the 170 decisions published by departments, 145 related to appointments with registered companies or charities (see **Figure 4** on page 21). For 32 applications, no conditions were attached to taking up the appointment. Of those 32 applications:

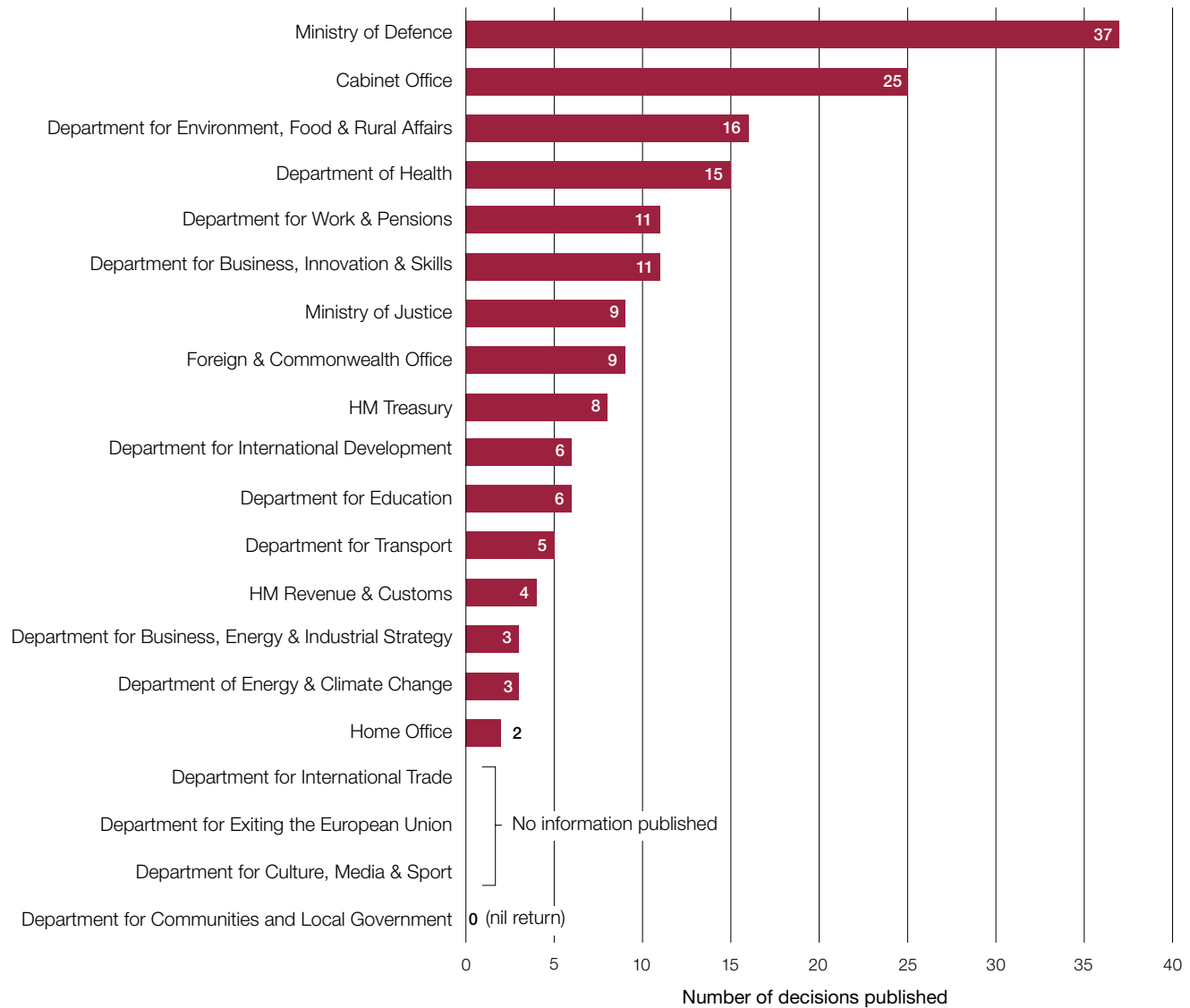
- 22 related to appointments with a registered company or charity; and
- nine related to appointments with another public body.

¹⁸ Departments have published summary information relating to decisions on business appointments taken up between January 2015 and January 2017.

Figure 3

Number of departmental decisions (Business Appointment Rules advice) published by central government departments

Thirty-six per cent of all decisions were published by the Ministry of Defence and the Cabinet Office



Notes

- 1 These data contain all decisions departments have published in relation to the Business Appointment Rules. Data were first published in February 2016, and the most recent data were published in March 2017.
- 2 An individual can take up one or more business appointments after leaving the civil service. Some of these decisions therefore relate to the same individual.
- 3 A small number of business appointments associated with these decisions were not taken up.
- 4 When departments publish data that show they have made no decisions in respect of the Business Appointment Rules, this is called a 'nil return'.
- 5 The Department for Business, Innovation & Skills and the Department of Energy & Climate Change merged to form the Department for Business, Energy & Industrial Strategy in July 2016.

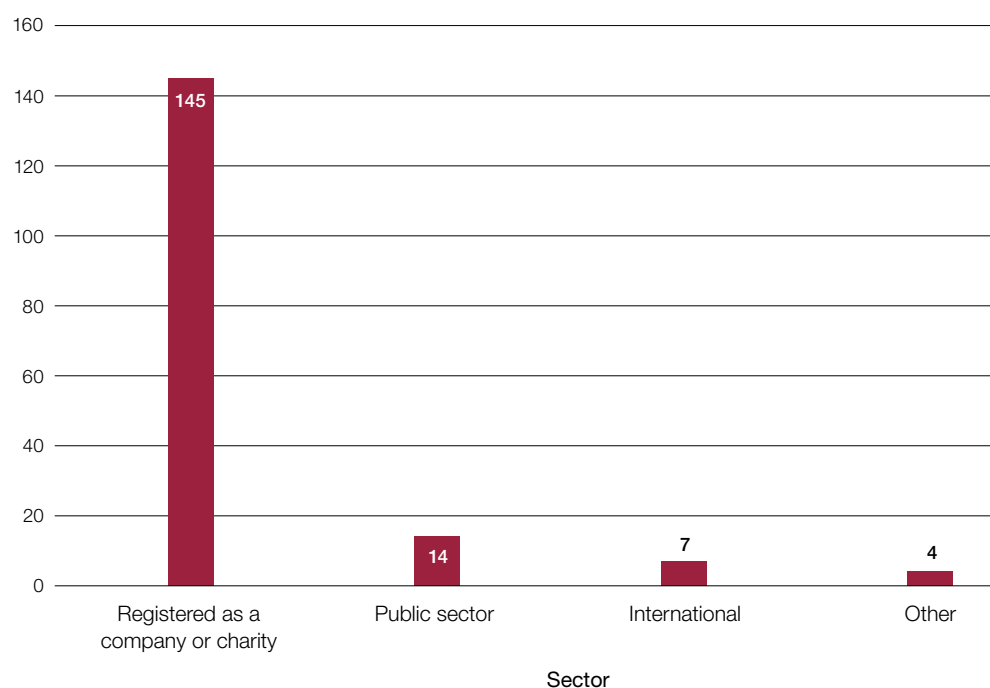
Source: National Audit Office analysis of departmental information hosted on GOV.UK

Figure 4

Where former civil servants are taking up business appointments

Most business appointments are with registered companies or charities

Number of business appointments

**Notes**

- 1 These data contain all business appointments published in relation to the Business Appointment Rules. Data were first published in February 2016, and the most recent data were published in March 2017.
- 2 Data represent appointments, not individuals. Individuals may take up a number of appointments in different sectors.
- 3 A small number of business appointments were not taken up.

Source: National Audit Office analysis of departmental information hosted on GOV.UK

2.17 The remaining 138 decisions had at least one condition attached to the appointment (**Figure 5** overleaf). Forty-seven (34%) appointments had one condition applied (87% of these were a lobbying ban only); 64 appointments had two conditions attached, and 27 had three conditions attached.

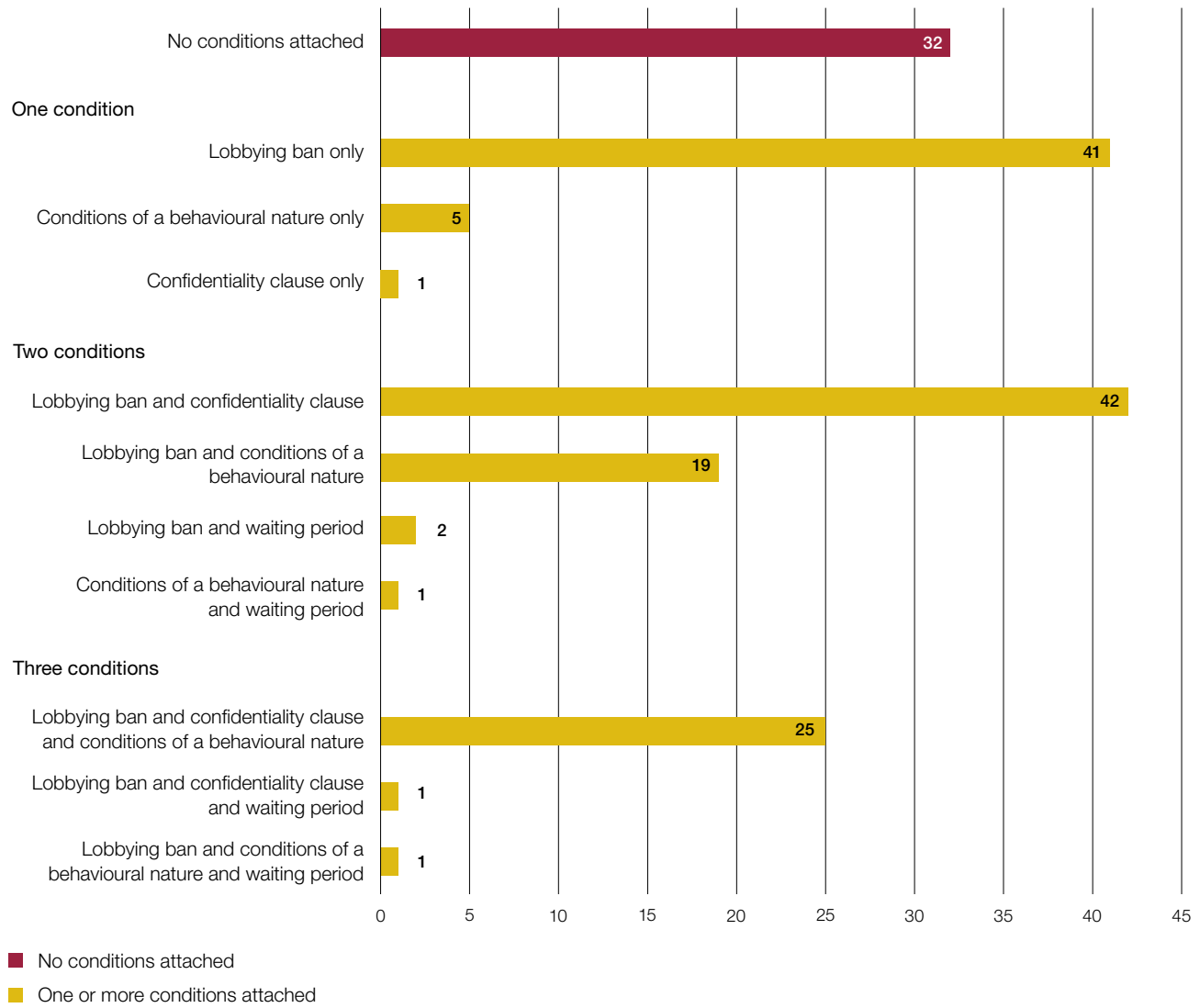
2.18 The most commonly used conditions were:

- 95% included a lobbying ban;
- 50% included a confidentiality clause; and
- 37% included other conditions of a behavioural nature (such as not working directly on commercial activities associated with their previous role).

Figure 5

Count of departmental decisions (Business Appointment Rules advice) by the number and type of conditions attached

The most common condition departments attached to a decision was a lobbying ban



Notes

- 1 These data contain all decisions departments have published in relation to the Business Appointment Rules. Data were first published in February 2016, and the most recent data were published in March 2017.
- 2 An individual can take up one or more business appointments after leaving the civil service. Some of these decisions therefore relate to the same individual, but each may contain different conditions.
- 3 A small number of business appointments associated with these decisions were not taken up.

Source: National Audit Office analysis of departmental information hosted on GOV.UK

2.19 From published data, it is not possible to confirm that all:

- individuals that should have sought departmental approval before accepting a business appointment did so; and
- applications made by individuals are included rather than just those where the department has made a decision.

2.20 We compared decisions on business appointments published by central government departments for 2015-16 with the numbers of senior civil servants of levels one and two leaving the civil service due to resignation, redundancy or severance during the same period.¹⁹ We discovered that for the 17 central government departments that existed during this period, 261 senior civil servants of levels one and two left the civil service, and that departments published decisions relating to 67 individuals²⁰ (accounting for 26% of all leavers). It should be noted that senior civil servants of levels one and two are only required to make an application under the Rules in certain conditions (see Appendix Two).

¹⁹ Numbers of senior civil servants leaving the civil service between April 2015 and March 2016 due to resignation, redundancy or severance are reported by the Office for National Statistics in its *Annual Civil Service Employment Survey*.

²⁰ Decisions were published relating to a further five individuals, however these have not been included in our analysis as leave dates were not provided.

Part Three

Application of the Rules by departments

Role of departments

3.1 Departments are expected to have a process in place for handling business appointment applications and decisions. This involves consideration by a countersigning officer (normally within the line management chain) and a departmental assessment.

- The countersigning officer is required to consider and note whether there could be a justifiable perception that the applicant:
 - had been influenced in the conduct of his or her duties by the hope or offer of employment;
 - had in the course of official duties access to sensitive information about the prospective employer's competitors, or about developing or unannounced government policy that could give the prospective employer an improper advantage; or
 - could have had privileged knowledge or contacts with ministers or officials that could be used to lobby government or improperly further the interests of the new employer.
- The departmental assessment is conducted by the human resources division.

3.2 For applicants up to and including senior civil service level two, the Business Appointment Rules (the Rules) state that applications may be approved unconditionally, or approved subject to conditions (such as restrictions on lobbying, or a waiting period).²¹ The Rules do not contain a provision for departments to decide that an appointment or employment is unsuitable, and that the application should be rejected on this basis. The Public Administration and Constitutional Affairs Committee (PACAC) highlighted that the Rules do not define whether or not certain appointments will be acceptable.

²¹ Where no suitable alternative employment is available, departments can consider whether there is a case for individuals to be compensated.

3.3 Unlike departments, the Advisory Committee on Business Appointments (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.²² 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. Our analysis of the data provided by a sample of eight departments indicated that none had rejected any applications.

3.4 When a department approves an application with conditions or a waiting period, it must offer the applicant an opportunity to discuss any concerns they may have. It must also inform prospective employers of any conditions that have been attached to the approval (see paragraph 3.8), and publish summary information in respect of senior civil servants of levels one and two (see paragraph 2.8).²³

Compliance with the Rules

3.5 We asked eight departments to provide us with information and data to identify how they manage the Rules in practice. We found that departments make officials aware of the Rules, including when staff join and/or leave the civil service. However, we established that departments are not applying the Rules consistently. In addition, internal audit functions at the departments in our sample have not been able to provide evidence that the application of the Rules has been reviewed in the past five years. We highlight some of the variation we discovered below.

Treatment of retrospective applications

3.6 Since October 2014 the Rules have stated that retrospective applications 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.

3.7 Four departments in our sample of eight had processed retrospective applications. 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.

²² Senior civil servants of levels three and four.

²³ ACoBA publishes its advice to the Prime Minister in respect of applications made by the most senior civil servants (levels three and four), along with a summary of an individual's last civil service post.

Informing prospective employers of any conditions attached to an approval

3.8 Departments must inform prospective employers of any conditions attached to the approval of an appointment or employment. In our sample, only one department told us that it always notified prospective employers. The remaining seven departments have attached conditions to at least 187 approvals in the past five years; however, only two departments had informed prospective employers of conditions attached to an approval, and in total only six notifications had been sent.²⁴ One department told us that it does not inform prospective employers, but asks those receiving departmental decisions to share any conditions with their new employer.

Measures for gaining assurance, and dealing with non-compliance

3.9 Departments are responsible for enforcing the Rules, during the period to which they apply. No department in our sample has assurance that former civil servants remain compliant with the Rules during the relevant period.²⁵

- One department told us that it does not ensure that the Rules are observed in the one or two-year period to which they apply.
- Six departments considered the onus to be on the former civil servant to comply with the Rules (including any conditions it placed on them).
- One department told us that the Rules do not set out a requirement for departments to ensure that individuals observe the Rules.

Non-compliance

3.10 The Rules do not define when and how a former public servant's knowledge and experience is considered to be used improperly, and whether or not certain appointments will be acceptable. This led PACAC to conclude that there was a lack of clear boundaries defining what behaviour is or is not acceptable.

3.11 Our 2015 report *Conflicts of interest* highlights the importance of monitoring compliance.²⁶ It stated that preventative measures need to be supported by proportionate mechanisms to detect non-compliance, and a system of proportionate, enforceable sanctions, including personal consequences (such as disciplinary action, dismissal or prosecution) and management actions (for example, retroactive cancellation of a decision or contract).

²⁴ In respect of business appointment approvals for civil servants of any grade up to and including senior civil service level two.

²⁵ 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.

²⁶ Comptroller and Auditor General, *Conflicts of interest*, Session 2014-15, HC 907, National Audit Office, January 2015.

Detecting non-compliance

3.12 None of the departments in our sample have processes (or resources) in place to proactively detect cases of non-compliance, rather departments rely on cases being brought to their attention. 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.

Consequences of non-compliance

3.13 Departments gave us a range of different responses in respect of how they approach and deal with non-compliance, from setting out and communicating the prospect of legal action against an individual, to considering there to be no realistic expectation of enforcement once a civil servant's employment contract comes to an end. Other examples of how departments told us they would react include:

- seeking advice from ACoBA;
- writing to the individual (and possibly also their new employer) reminding them of the conditions set out in their decision;
- contacting the individual to discuss the issue, and if required, arranging a conversation between the individual and the permanent secretary for the purposes of reminding them of the restrictions imposed and their obligations under the Code; and
- human resources and the permanent secretary determining an appropriate sanction.

One department told us that it has no processes and applies no resources to proactively handling cases of non-compliance because it has not identified any individuals who have not observed the Rules.

Appendix One

Our investigative approach

Scope

1 We conducted an investigation into policy and practice in relation to business appointments for civil servants, up to and including senior civil service level two, on leaving public service to pursue a career elsewhere.

2 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) and the Independent Adviser on Ministers' Interests. ACoBA advises the Prime Minister on the most senior civil servants (typically directors general and permanent secretaries)²⁷ 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*.²⁸ 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). 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.

3 The Business Appointment Rules (the Rules) are designed to uphold the core values of the civil service, and inform the business appointments process. The Rules form part of the Civil Service Management Code (the Code), and 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.

4 The diplomatic service, intelligence agencies and armed forces have equivalent versions of the Rules, but these are not included in the scope of this investigation.

²⁷ Senior civil servants of levels three and four.

²⁸ 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.

Methods

5 In examining the issues in paragraph two, we drew on a variety of evidence sources.

6 We reviewed documents relating to the business appointments framework for civil servants: the Rules and the Code. These documents are publicly available on GOV.UK.

7 We interviewed key individuals from the Cabinet Office's propriety and ethics team to establish the role of the centre of government in relation to business appointments.

8 We surveyed a sample of departments to understand how they manage business appointments in practice. We reviewed departmental policies and business appointment records. We selected eight departments using various criteria including:

- presence of transparency data relating to business appointments;
- absence of transparency data relating to business appointments; and
- perception of relatively high risk relating to business appointments due to extent of outsourcing, a regulatory role, and/or handling of commercially sensitive information.

When sampling, we excluded the relatively new Department for Exiting the European Union, and the Department for International Trade (both created by the Prime Minister on 14 July 2016).

9 We compared transparency data on business appointments available on GOV.UK²⁹ with data on civil servants leaving the civil service, as recorded by the Office for National Statistics.

29 However, it is not clear whether the transparency data are complete.

Appendix Two

Making an application under the Business Appointment Rules

1 Civil servants are responsible for determining whether they are required to make an application under the Business Appointment Rules (the Rules).

2 Depending on the grade of a civil servant when they leave the civil service, the Rules apply for either one or two years after the individual's last day of paid service:³⁰

- for the most senior civil servants (typically directors general and permanent secretaries),³¹ the Rules apply for two years, and an application must be made for any new appointment or employment during that period;
- for other senior civil servants,³² the Rules apply for two years but an application need only be made for any new appointment or employment during that period if certain criteria are met (see paragraph 3); and
- for all other grades, the Rules normally apply for one year, and an application need only be made for any new appointment or employment during that period if certain criteria are met (see paragraph 3).

3 An application might only be required for a new appointment or employment if the individual's circumstances match one or more of the following:

- 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.
- 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.
- They have had any official dealings with their prospective employer at any time in their last two years in the civil service.

³⁰ No application is required under the Rules when a special adviser takes up a role with a political 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), they take up an appointment in a different organisation, approval under the Rules is required.

³¹ Senior civil servants levels three and four.

³² Senior civil servants levels one and two.

- They have had official dealings of a continued or repeated nature with their prospective employer at any time during their civil service career.
- They have had access to commercially sensitive information regarding competitors of their prospective employer in the course of their official duties.
- The proposed appointment or employment would involve making representations to, or lobbying, the government on behalf of a new employer.
- 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 outside bodies or organisations in their last two years in the civil service that are involved in their proposed area of consultancy work.

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National Audit Office

Design and Production by NAO External Relations
DP Ref: 11532-001

£10.00

ISBN 978-1-78604-138-8

