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PREM 19/2045

New Cover

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PART ONE

Confidential Filing

Rules governing the acceptance of business appointments by Civil Servants following resignation or retirement.

CIVIL SERVICE

PTI: January 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~21.10.85~~							
~~9.12.85~~							
~~8.5.86~~							
~~29.7.86~~							
19.2.87.							
PT 1 ENDS							

PREM 19/2045

PART 1 ends:-

NLW to PM 19.2.87

PART 2 begins:-

RTA to PM 8.7.87

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Commons Paper 216
House of Commons
Fourth Report from the Treasury and Civil Service Committee
Session 1980-81.
Acceptance of outside appointments by Crown Services.
Together with the Proceedings of the Committee and Appendices.
Published by HMSO

Cmnd 9465
Acceptance of outside appointments by Crown Services.
Government Observations and the Eighth Report from the Treasury and Civil Service Committee Session 1983-84, HC302
Published by HMSO ISBN 0 10 194650 3

Signed _____ Date 23/01/2015.

PREM Records Team

PRIME MINISTER

Box 4

cc. Mr. Ingham

You asked this morning about the application of the rules of acceptance of outside appointments by Crown servants.

The rules apply to Crown servants who are:

(a) of Grade III (Under-Secretary level, or equivalent, and above), and

(b) below Grade III and who two years before leaving the Crown service had a certain personal involvement with the company with whom they are seeking a job, or who have had access to commercially sensitive information of competitor companies.

Applications from civil servants of Grade III and below are dealt with by Cabinet Office in consultation with the Departments. The Advisory Committee on Business Appointments deals with applications from:

(i) Permanent Secretaries, Second Permanent Secretaries and Deputy Secretaries;

(ii) Heads of Departments below Grade II (but subject to certain exceptions);

(iii) Applications from Grade III civil servants in cases where the Head of the Home Civil Service so recommends, and you so agree.

N.L.W.

NLW

19 February, 1987.

JD3AVL

NBPM

Ref. A086/2191

MR WICKS

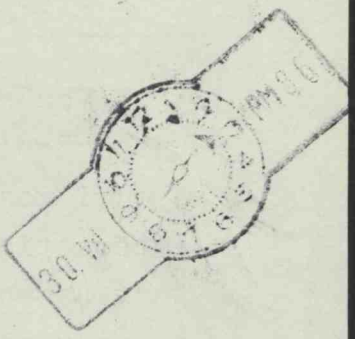
You should know that Sir Douglas Wass has accepted an invitation from Nomura Securities to be the Chairman of Nomura International Limited, the European arm of that Japanese Investment House. The appointment takes effect from 1 August.

2. Sir Douglas Wass retired from the public service in April 1983, and does not therefore require the agreement of the Government before undertaking an appointment of this kind.

RA

ROBERT ARMSTRONG

29 July 1986



TOP COPY FILED IN APPTS

APPOINTMENTS IN CONFIDENCE

(91) APPTS

10 DOWNING STREET

From the Principal Private Secretary

8 May 1986

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Prime Minister has seen your Minister's minute of 2 May about the Government's response to the Eighth Report from the Treasury and Civil Service Committee on "Acceptance of Outside Appointments by Crown Servants". The Prime Minister agrees, in the light of the information given in your Minister's minute, that an additional member, from the House of Commons, should be appointed to the Advisory Committee. She agrees also that this additional member should be Mr. Merlyn Rees.

I should be grateful if your department could now sound Mr. Rees on this appointment and let us know the outcome.

Appts. BF.

N L WICKS

Paul Thomas, Esq.,
Minister of State's Office,
Privy Council Office

APPOINTMENTS IN CONFIDENCE

O/D TOP COPY FILED IN APPTS

Prime Minister
Agree to added
Mr. Merlyn Rees
to the Advisory
Cttee?
N.L.W
7.5

MINISTER OF STATE, PRIVY COUNCIL OFFICE

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

I think that you are aware that the Government's response to the Eighth Report from the Treasury and Civil Service Committee entitled "Acceptance of Outside Appointments by Crown Servants", which was the subject of extensive interdepartmental consultation and was approved by the Cabinet, was not well received by the Committee. They felt that, having spent much time studying how the business appointment rules worked in practice, and having produced what they considered to be a well argued report making sensible recommendations, their efforts had been dismissed somewhat cavalierly by the Government. Although this was clearly untrue, the reaction was not altogether surprising; had the Government accepted all the other 25 out of the 27 of the TCSC's proposals, they would probably still have been disappointed by the rejection of their two main points, namely that the maximum waiting period (and thus of the period after retirement during which consent has to be sought) should be extended from two to five years from the date of resignation or retirement and that all senior Crown servants should give a written undertaking to abide by a code of conduct which would restrict their activities with a new employer for a period of five years.

2. I understand that, on receipt of the Government's response, the Committee was minded to produce a further report, and before making a decision on this, they invited Grey Gowrie and Sir Robert Armstrong to meet them. They had hoped to persuade Grey Gowrie that the Government was mistaken in not accepting their main recommendations and that there was, at least, room for some compromise.

3. Grey Gowrie and Sir Robert Armstrong gave oral evidence to the Committee in May 1985; the Committee was taken aback to find Grey Gowrie even more robust in his defence of the rules than they had sensed from the Government's formal response.

4. After I succeeded Grey Gowrie, the TCSC invited me to discuss with them the way forward, and I met them on 17 March for an informal and 'off the record' discussion. It was clear that the Committee including the Chairman (Mr Terence Higgins) and the other Conservative Members, continued to feel a sense of resentment that the Government had not taken them as seriously as they thought they deserved.

5. There are four aspects which particularly upset the TCSC. These are:

a. the refusal to extend the maximum period of delay;

b. the wording of the acknowledgement (that the rules have been brought to their attention) which senior officials are now asked to sign: the Committee recommended that he should require a signed undertaking to abide by the rules;

c. the refusal to make an announcement when your decision (or that of the Foreign and Commonwealth Secretary) is not wholly in line with the advice of the Diamond Committee; and

d. the composition of the Advisory Committee.

6. On the first of these, the length of the maximum period, it continues to be the Government's view, and also the view of Lord Diamond, that two years is already long enough: after two years any contacts or knowledge acquired during the period of service are very out of date. The Advisory Committee has recommended a waiting period of two years in four cases, and has never felt that it would have liked to recommend a longer period. I therefore made it clear that I saw no reason for any compromise. Any extension would be unnecessary, and would be perceived as unreasonable. It would restrict further the movement between the public and private sectors; it might also call into question the willingness of those affected to continue to accept the voluntary basis on which the rules operate and oblige us to consider legislating; and it would mean an increase in the workload of Departments, the Cabinet Office and the Advisory Committee for no obvious benefit. For their part the Committee could not see why a discretionary power to extend could do harm.

7. On the question of written undertakings, I emphasised that our response was based on legal advice that we should not require staff to give a formal undertaking which we should be unable to enforce (because the courts would be very unlikely to find in our favour if the requirement was challenged), and that we could not go further. As to making a public announcement whenever your decision (or that of the Foreign and Commonwealth Secretary in the case of members of the Diplomatic Service) was not wholly in line with the Diamond Committee's advice, this could clearly undermine the confidentiality of the system.

8. The one aspect which, in the interests of maintaining good relations with the Committee, I agreed to study further was the composition of the Advisory Committee itself. In doing so, I made it clear, of course, that this was your Committee and that any change would have to be with your agreement.

9. In their Eighth Report, the Committee recommended that the Government should add two senior backbench members of the House of Commons to the Advisory Committee. In our response, we said that:

> "... successive Governments have thought it important and valuable to have two senior Parliamentarians, one from each of the main political parties, on the Advisory Committee ... Those who have served hitherto have all been members of the House of Lords when invited to serve; but they have all been people who have had experience as senior Ministers and as members of the House of Commons, and this combination of Parliamentary and Ministerial experience seems to the Government to have been, and to be likely to continue to be, valuable qualification for membership of the Advisory Committee. There is no reason why one or other (or indeed both) of the two senior Parliamentarians on the Advisory Committee should not be a member of the House of Commons ..."

10. The current members of the Advisory Committee are:

The Rt Hon The Lord Diamond (Chairman)

The Rt Hon The Lord Trend (Deputy Chairman)

The Rt Hon The Lord Barber of Wentbridge

Sir David Orr

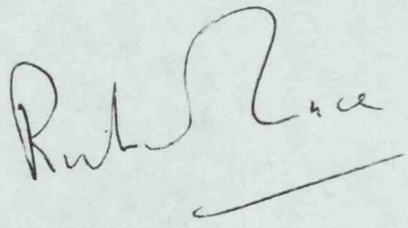
Admiral Sir Anthony Morton

Sir Trevor Holdsworth

11. When Lord Diamond was appointed, he was a member of the Labour Party. Since then he has joined the Social Democratic Party (which he leads in the House of Lords), and it can be argued that the Labour Party is not represented on the Committee. We could remedy this, and go some way to meet the TCSC, by adding to the Committee a Labour Party Counsellor from the House of Commons. Of the possible candidates who are currently on the back benches, I believe that Merlyn Rees would be the most suitable. As a former Labour Home Secretary, he would command the respect of the TCSC and of those whose cases fell to be considered by the Committee. I understand that the addition of one new member would be unlikely to cause any administrative difficulty, and Lord Diamond would be content with it, and with Mr Rees as the additional member. I recommend that he be invited to serve.

If you agree, I will, of course, ensure that he is sounded out and content before I inform the TCSC of the change and compromise we are prepared to offer.

12. I should add that the current appointments of the Chairman and Deputy Chairman and of Lord Barber all expire later this year, and we shall need to consider their renewal or otherwise in the near future. At this stage, I would simply say that it would be very difficult to lose both Lord Diamond and Lord Trend at roughly the same time; I understand they both have much valuable experience of dealing with applications under the rules and always take a firm but fair view. I think that we should therefore take no decisions until we know whether Lord Trend will be able to continue to serve (he has, as you know, not been at all well). If he gets well enough to carry on, we might ask Lord Barber to take Lord Diamond's place as Chairman and appoint a Privy Counsellor representative of the Liberal Party or SDP from the Commons or the Lords to join the Committee as a member.



RICHARD LUCE
2 May 1986

PERSONAL AND CONFIDENTIAL

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

The Prime Minister was grateful to you for informing her, in your minute Ref: A085/3173 of 5 December, about the approach which a Director of BAT Industries plc made to you.

N L WICKS

9 December 1985

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

Prime Minister
Simply to note.

Ref. A085/3173

PRIME MINISTER

Thatcher MS

N.L.W
6.12

Under the revised rules on the acceptance of outside appointments by Crown servants, I am required to inform you of any approach from an outside employer which seems to be intended or to be likely to result in an offer of employment.

2. I should tell you that I recently received an approach from a Director of BAT Industries PLC indicating that the Board of Directors would like to consider offering me a non-executive directorship after my retirement from the public service at the end of March 1987.

3. I responded to this approach as I should propose to respond to any other such approach: to the effect that I am grateful for the approach and what it implies; that I have not yet decided upon the pattern of my activities after I retire from the public service and therefore do not at this time feel able to give any positive response one way or the other to the approach; that I should of course be ready to consider a firm offer at the appropriate time; that my acceptance of any such offer would be dependent on your approval, after seeking the advice of the Advisory Committee; and that in the meantime I am reporting the approach to you.

RA

ROBERT ARMSTRONG

5 December 1985

PERSONAL AND CONFIDENTIAL

Late

10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

You minuted me on 19 October seeking the Prime Minister's agreement to your name going forward for election to the Council of the Jean Monnet Foundation for Europe.

The Prime Minister would be content for you to accept this invitation.

C D POWELL

21 October 1985

Prime Minister

Agree?

Yes - delighted

C.D.P.

21/x

MR. POWELL

As you probably know, the late Monsieur Jean Monnet left all his papers to a foundation, known as the Jean Monnet Foundation for Europe. The Foundation has acquired papers of a number of other people associated with the creation of the European Community. It is situated near Lausanne in Switzerland, and devotes itself to preserving and organising the archives in its possession and to promoting research and public education based on the archives. In the view of the British Government it is a worthy organisation, with laudable objectives, doing useful if unspectacular work.

The President of the Foundation has written to invite me to allow my name to be among a number of names to be submitted for election to the Council of the Foundation. The Council consists of a considerable number of people from various European countries; membership is totally honorary and (it would seem) largely honorific, though the Council meets once a year to receive a report on the Foundation's activities and financial position. The President makes it clear that he is inviting me because (as Monsieur Monnet records in his autobiography) I came to know Monsieur Monnet, and in some degree to do business with him, in the last years of his life. The Foreign and Commonwealth Office would be perfectly content for me to accept, though they make it clear that they would not press me to do so if I did not wish.

I am in fact disposed to accept the invitation, which would involve me in little or no commitment of time, not only because I should like to show good will towards the Foundation's purposes and activities but also because I came to have a great

affection as well as admiration for Jean Monnet, and accepting the invitation would in a sense be a means of expressing that.

I should be grateful if you would let me know whether the Prime Minister would be content for me to accept this invitation.

RA

SIR ROBERT ARMSTRONG

19 October 1985

12M

10 DOWNING STREET

From the Private Secretary

22 July, 1985

Dear Paul

RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Prime Minister has seen Sir Robert Armstrong's minute of 16 July to your Minister. She has agreed that the rules should be published and sent to Mr. Higgins before the end of July.

I am sending a copy of this letter to Rachel Lomax (HM Treasury) and Richard Hatfield (Cabinet Office).

Yours ever

Mark Addison

(Mark Addison)

P.Thomas, Esq.,
Chancellor of the Duchy of Lancaster's
Office.

1. Mr Butler – to see
2. Prime Minister

1

These revised rules have been drawn up following the Govt's commitment, in its response to the Select Committee report, to redraft the old ones to take account of the changes proposed in that response.

MEA 18/7

Ref. A085/1911

CHANCELLOR OF THE DUCHY OF LANCASTER

Agree that these should be published and sent to Mr. Higgins before July?

FCB 18.7.

Yes pm

Rules on the Acceptance of Outside Appointments by Crown Servants

You will recall that, when we gave evidence together before the Treasury and Civil Service Select Committee on 8 May, you undertook that the revised rules on the acceptance of appointments by Crown servants would be available to the Committee in about six weeks. I am afraid that we were unable to complete this task within that timescale, given the need for further extensive consultation and discussion with Permanent Secretaries; but I now attach a final draft of the revised rules. I believe that the revision of the rules fairly reflects the changes proposed in the Government's response to the Select Committee's Eighth Report and make them considerably clearer.

2. The main changes are as follows:

a. All applications for Grade 2 (or equivalent) Crown servants and above must now be referred to the Head of the Home Civil Service who will refer them to the Advisory Committee on Business Appointments unless he and the departmental Minister concerned are agreed that the proposed appointment is to a non-commercial body of such nature that this procedure would not be appropriate; all Grade 1 and 1A cases referred to the Advisory Committee will be subject to the minimum waiting period of three months, save those in which there is an overriding case in the national interest for a shorter (or no) waiting period. There will be no such automatic minimum waiting period for Grade 2 (or equivalent) applicants, though I suspect that a three month minimum may well become common practice.

CROABJ

b. All applications from Grade 3 (or equivalent) must now be referred to the Cabinet Office (MPO) who will then consult the Head of the Home Civil Service.

c. Applications should be made in writing, using a standard form. We have devised a form which we believe will be suitable for this purpose.

d. If a Minister is minded to impose a waiting period and/or other conditions the applicant should have an opportunity, if he so chooses, of putting his case at an interview with an appropriate departmental officer.

e. Any approach to a Crown servant, at any level, from an outside employer with whom the individual or his staff have had official dealings which seems likely to result in an offer of employment, must be reported to a superior officer.

f. Voluntary unpaid appointments with non-commercial bodies no longer require official approval.

3. Although the rules are clearer and go a considerable way to meeting many of the Select Committee's concerns, they are unlikely to be acclaimed as a great advance by those who look for further major tightening of the rules. Our legal advisers emphasise that, in any case, the rules would not stand up to judicial review. We have, I believe, achieved about the best we can, given that we continue to rely on Crown servants' willingness voluntarily to abide by the rules.

4. There are also some further procedural changes which the Government, in Cmnd 9465, undertook to implement, and I propose to write to Permanent Secretaries about them at the same time as the rules are published. These are:

a. Departments should review their arrangements for ensuring that all staff who are likely to fall within the scope of the rules, by virtue of their grade, or because of the nature of the work upon which they are engaged, are aware of the rules, and how these are likely to affect them.

b. A written acknowledgement should be sought from all officers who are at present serving at Grade 3 (or equivalent) and above and those who, in future, are promoted to, or appointed to, Grade 3 (or equivalent) that they have seen and are conversant with the rules.

c. Departments, in consultation with the Cabinet Office (MPO) should, where appropriate, make more use of behavioural conditions when approving applications, particularly those from less senior officers; these include, for example, a ban on dealings with a specific project for a certain period.

d. Prospective employers should be informed of any conditions which are attached to the approval of an application.

e. It will be necessary for Departments to let the Cabinet Office (MPO) have regular statistical reports on the applications processed and their outcome, whether or not they were referred to the Cabinet Office (MPO). These statistics will be necessary not only as a basis for the retrospective reviews of cases not previously referred to the Cabinet Office (MPO) but also as the data for the regular reports which we have promised to publish.

5. We should publish the rules before the end of July. I should be glad to know whether you are content that we should do so, and to send a copy to Mr Higgins.

6. I am sending copies of this minute and the revised rules to the Prime Minister and to the Chancellor of the Exchequer.

RCA

ROBERT ARMSTRONG

16 July 1985

CROABJ

RULES ON ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

INTRODUCTION

It is in the public interest that people with experience of public administration should be able to move into business or other bodies and that the possibility of such movement should not be frustrated by unjustified public concern over a particular appointment. It is also no less important whenever a Crown servant accepts a particular outside appointment that there should be no cause for any suspicion of impropriety. The rules set out below have been designed to safeguard against such criticism both the public service and individual officers who wish to leave to take up these appointments. The aim of the rules is:

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

b. to avoid the risk that a particular firm or organisation might be gaining an unfair advantage over competitors by employing an officer who has had in his official career access to information which those competitors could legitimately regard as their own trade secrets.

THE SCOPE OF THE RULES

2. Those to whom the rules apply are required to obtain the assent of the Government before accepting any offer of appointment or employment in business or other bodies outside the Civil Service which would commence within two years of leaving Crown employment, whether full or part-time, or before establishing a consultancy. The rules apply to appointments:

a. in the United Kingdom; or

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

Approval is not, however, required in respect of unpaid appointments with non-commercial organisations. Nor do the rules apply to those appointments which are within the gift of Ministers.

THOSE TO WHOM THE RULES APPLY

3. The rules apply to any Crown servant (defined for this purpose as a civil servant or a member of Her Majesty's forces)

a. of Grade 3 (Under Secretary) level or equivalent and above; and

b. below Grade 3 to whom an offer of appointment or employment of the kind to which the rules apply is made and who has at any time during the course of his or her official duties in the two years before leaving Crown service (or earlier if the association has been of a continued or repeated nature) had with the company or other organisation making the offer the kind of personal involvement described in paragraph 9 below, or who has had access to commercially sensitive information of competitors as described in paragraph 11 below.

4. Similar rules apply to members of the Diplomatic Service.

THOSE TO WHOM THE RULES DO NOT APPLY

5. The rules do not apply to Special Advisers to Ministers. Nor do they apply to individuals who are on secondment to the Civil Service from the private sector provided that they return to the seconding company or organisation at the end of their period of Crown service and remain with that company for two years. Where an individual wishes at the end of the secondment to take up employment other than with the seconding company or organisation he or she will be subject to the rules in the normal way. This should be made clear to people before they take up their secondment.

CRITERIA FOR DEALING WITH APPLICATIONS

Relationship of the Government to the Prospective Employer

6. One factor which will be relevant to the consideration of cases will be the relationship of the prospective employer to the Government. Particular attention should be paid to appointments where the prospective employer:

a. has a contractual relationship with the Government;

b. is in receipt of subsidies or their equivalent from the Government;

c. is one in which the Government is a shareholder;

d. is in receipt of loans, guarantees or other forms of financial assistance from the Government; or

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

CROABG

7. It may be appropriate to apply the rules to some appointments where the prospective employer is not in a relationship with the Government, when there is a perceived need to allay public concern over an appointment.

8. Many Crown servants are engaged in dealing with private interests on behalf of the Government. Moreover, such officials would have a special knowledge of how the Government would be likely to react to particular sets of circumstances. An official in this position could well be, or be thought to be, of considerable assistance to an outside body which had an interest in matters on which policy was developing or legislation was being prepared. It is important to take into account the advisability or otherwise of permitting Crown servants to join outside interests with whom the Department has been, or is, in a negotiating relationship. It may also be relevant that a senior official has been involved in policy discussion leading to a decision the effect of which is considerably to the benefit of the firm offering him an appointment. The extent of a company's dealing with an applicant's Department would be a relevant factor in deciding the outcome of an application for approval to take up a directorship with that company.

Relationship Between the Applicant and Prospective Employer

9. The degree of previous official contact between the applicant and the prospective employer is an important consideration, as is the nature of the proposed appointment and the connection between it and the applicants previous official duties. It should be established whether the individual was in a position to influence the outcome of contractual or other dealings between the Department and the prospective employer and, if so, whether he acted as a member of a team or whether the company benefited substantially from such dealings. Sometimes the prospective employer's relations with the Government may be relevant irrespective of any involvement on

the part of the individual concerned; normally, however, some measure of personal involvement on the part of the applicant will have been necessary for this factor to be relevant. This might be either direct involvement of the applicant in dealings with the company concerned or indirect involvement through officers for whom he was responsible (whether or not they normally worked to him.) Such involvement should be assumed when, at any time in the course of his official duties during the two years prior to his leaving Crown employment (or earlier if the association has been of a continued or repeated nature), the individual concerned had:

a. dealt with the receipt of tenders for and/or the awarding of contracts between the firm involved and the Government: or

b. dealt with the administration and/or monitoring of such contracts after they have been awarded; or

c. advised in a professional or technical capacity about such contracts either before they are awarded, as in a. or in the exercise of a monitoring brief, as in b.; or

d. been involved in contact of an official but non-contractual nature with the firm involved - where, for instance, the firm operates in a field in which the Government as a whole or the individual's Department has a special interest of a financial, policy or other nature.

10. Previous contact as outlined in paragraph 9 should weigh heavily in the consideration of any application. But the decision as to what waiting periods and/or behavioural conditions (if any) should be imposed will depend on the full circumstances of the case, including the extent and nature of the previous contact.

Trade Secrets

11. The possibility that the applicant may have had access to information about one or more of his prospective employer's competitors which could legitimately be regarded as their "trade secrets" must be considered. This may arise independently of any contact with the prospective employer when, for instance, the prospective employer is a newly-created company or consultancy in the relevant field (see also paragraph 12). Competitors should be consulted to see if they have any objections to the appointment.

Applications to set up Consultancies

12. An appointment to which these rules apply may be on a part-time or consultancy basis. A distinction can be drawn between the position of self-employed consultants who compete for commissions in the open market (ie "brass plate consultancies") and those who propose to work for one, or more than one, (specified) firm or firms. The risk of public criticism in the former case will usually be less than in the latter, given that the consultancy service would be equally available to a number of firms competing in the same field. While this may be used to rebut criticism from the "rewards for past favours" angle, it will not necessarily apply to criticism on trade secrets grounds and it will be necessary to establish the views of competitors. There may be occasions when an independent consultant may not be given unconditional approval to offer his services to one particular firm because he has "trade secrets" information about a competitor, gained as a result of his former official position. In such circumstances the fact that the competitor could also use the independent consultant, but does not choose to do so, would not make the information held any less sensitive or negate the potential advantage which could be gained by the other firm. It may be appropriate in such cases to give permission to set up a "brass

plate" consultancy subject to a requirement to seek official approval before accepting, in the first two years after leaving Crown employment, any commission from a company or other organisation which is in a contractual relationship with a department in which the person concerned has served or falls into any of the other categories set out in paragraph 6 above.

Appointments with Foreign Governments etc

13. In considering appointments in the service of a foreign Government, the essential factor will normally be whether, against the background of the particular appointment, the Crown servant has recently been employed in a capacity where he would have been advising Her Majesty's Government on its policies in relation to the foreign Government in question or would have been in a position to acquire special knowledge of Her Majesty's Government's policies or intentions which would be of benefit to that foreign Government to the detriment of Her Majesty's Government or its allies. The considerations would apply to all appointments with foreign publicly owned institutions or companies, and should essentially be the same as those applying to appointments with such British organisations.

NATIONAL INTEREST

14. There may be occasions when a Minister considers that the national interest is the overriding consideration regardless of the circumstances of the case. In all such cases, the normal procedures for dealing with applications should first be followed, including reference to the Advisory Committee where that is appropriate.

CROABG

REPORTING OFFERS OF EMPLOYMENT

15. Crown servants must report any approaches from an outside employer which seem to be intended or to be likely to result in an offer of appointment or employment falling within the scope of these rules, particularly where such an offer emanates from firms with whom the individual or his staff have had official dealings. In the case of an officer at Grade 3 (or equivalent) level or above such reports should be made to the Permanent Head of the Department, and in the case of a Permanent Secretary to the Minister in charge of the Department. For those below Grade 3 the report should be made to a superior officer at least two grades higher than himself. If the offer is to be pursued, an application for approval to take up the offer must be submitted in the normal way.

SUBMISSION OF APPLICATIONS

16. Application for approval to take up outside appointments or employment should normally be submitted to the applicant's Department, or former Department, preferably using a standard form.

THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

17. The Advisory Committee is appointed by the Prime Minister and comprises people with experience of the relationship between the Civil Service and the public or private sector(s). It has a quorum of three. The Committee considers cases as defined in paragraph 20, 23-24 and 27 and reports direct to the Prime Minister; it does <u>not</u> act as a court of appeal against decisions reached in cases not referred to it.

18. In considering cases the Advisory Committee has regard to the aim of the rules described in paragraph 1 and takes into account the view of the Department(s) concerned and of the

Cabinet Office (Management and Personnel Office). In all cases referred to the Committee, the final decision rests with the Prime Minister. The responsibility for all cases which are not referred to the Committee remains with the departmental Minister concerned.

19. Assent to an application will take the form of approval by the Prime Minister in cases referred to the Advisory Committee or by the Minister in charge of the Department in all other cases. It is open to a Minister to approve arrangements under which defined categories of cases may be dealt with at a specified level without reference to the Minister.

PROCEDURE

Permanent Secretaries, Second Permanent Secretaries and Deputy Secretaries (Grades 1, 1A and 2 respectively)

20. All applications from Grade 2 (or equivalent) Crown servants and above should be referred to the Head of the Home Civil Service. Where the Head of the Home Civil Service and the departmental Minister are agreed that the proposed appointment is to a non-commercial body of such a nature that this procedure would be inappropriate (eg a university), the appointment may be approved without reference to the Advisory Committee. All other cases will be referred by the Head of the Home Civil Service on behalf of the Prime Minister to the Advisory Committee.

Automatic Waiting Period for Permanent Secretaries, Second Permanent Secretaries and Deputy Secretaries

21. Except as noted in paragraph 22 all applications from Grade 1 and 1A (or equivalents) which are referred to the Advisory Committee are subject to a minimum waiting period of three

months between leaving Crown service and taking up an outside appointment. The date from which the waiting period is effective is the final date in Crown employment.

22. Exceptions to the waiting period prescribed in paragraph 21 may be made only in cases where the Prime Minister decides that the national interest is overriding.

Other Heads of Departments below Grade 2

23. All case concerning Heads of Departments below Grade 2 (or equivalent) will follow the procedure for Grade 2 cases and above with one variation: where the Minister responsible for the Department and the Head of the Home Civil Service are in agreement about whether consent should be given or withheld and about any conditions to which consent is to be subject, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

Under Secretaries and Equivalents (Grade 3)

24. All applications from Grade 3 (or equivalent) Crown servants (other than those covered by paragraph 23 above) should be referred to the Cabinet Office (MPO) who will consult the Head of the Home Civil Service.

Grade 4 and below

25. Departments should consult the Cabinet Office (MPO) in all cases below Grade 3 (or equivalent) and down to and including Principal, unless there has been no contact with the prospective employer and there appears to be no risk of criticism or where, for example, the employment is in a non-commercial organisation. They need not do so in cases up to and including Senior Executive Officer level (or equivalent) where the contact with

the prospective employer in the previous two years has been only casual, and there appears to be no risk of disclosure of commercially sensitive information to competitors.

26. In putting cases forward to the Cabinet Office (MPO), Departments should:

a. give details of the proposed appointment(s);

b. give details of the applicant's official duties during the last two years of service (or earlier if relevant), including information about the degree and nature of contact with the prospective employer, whether there might appear to be a risk of disclosure of commercially sensitive information to competitors, or that the applicant was in a position to exercise influence unfairly in favour of the prospective employer;

c. set out their proposed recommendation and the reasons for it;

d. provide any other information which may be relevant.

27. The Head of the Home Civil Service will have the discretion to recommend to the Prime Minister that an application from a Crown servant at Grade 3 level or below should be referred to the Advisory Committee where he considers the circumstances of the case make it desirable that this be done.

CONDITIONS WHICH MAY BE IMPOSED

28. It will be open to those considering applications to recommend unqualified approval or to recommend approval subject to any waiting periods or other conditions which are appropriate to the circumstances of each individual case. These may include:

a. a waiting period of up to two years, the duration to be determined according to the individual circumstances of the case. (In those cases where the automatic three months' waiting period applies (see paragraph 21) this period will form part of any longer period which may be imposed);

b. a ban on involvement by the applicant in dealings between the prospective employer and the Government, either absolute or with reference to a stated issue or issues, lasting for up to two years from the final day of Crown employment, the duration to be determined according to the circumstances of the case;

c. a ban on involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors), subject to the same conditions of scope and duration as those at b. above;

d. in the case of consultancies, approval in principle to establishing a consultancy subject to a requirement to seek official approval as set out in paragraph 12.

29. If the Minister is minded to impose a waiting period or other conditions on the acceptance of an appointment, the applicant should be given the opportunity of having an interview with an appropriate departmental officer if he so chooses.

cc DUCHY Lv

10 DOWNING STREET

THE PRIME MINISTER

20 March, 1985.

Dear Terence

I am pleased to tell you that the government's response to your Committee's Eighth report is to be published as a Command Paper today.

As I said in my letter of 12 February, very careful consideration has been given to your Report and its recommendations. Although we have not felt able to accept all the Committee's proposals, the response is nevertheless positive. I hope that the changes to the system, which the Government has agreed to make, will serve to reassure the Committee that all reasonable steps are taken and will continue to be taken to ensure that the rules governing the acceptance of outside appointments by former Crown Servants are sufficiently stringent in themselves and are applied so as to meet any criticism that may arise, without at the same time placing undue and unfair constraints on those who wish to move from the public to the private sector.

Yours ever

Margaret

The Rt. Hon. Terence Higgins, M.P.

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

You recently agreed the proposed Government response to the Select Committee's report, which is to be published tomorrow. I attach an advance copy (Flag A).

The announcement will be by written reply tomorrow, and Lord Gowrie thinks it would be best if you were to take this on (Flag B). We have accordingly taken the precaution of tabling the Question for answer in your name. If you accept Lord Gowrie's recommendations, you will also need to write tomorrow to the Chairman of the Select Committee, Terence Higgins. A draft reply for your signature is at Flag C.

Content that the written reply should come from you? Content to sign the letter to the Committee Chairman at Flag C?

→ Mary Roche.
As discussed.
MCA 20/3

Mark Addison

19 March 1985

COVERING CONFIDENTIAL UNTIL PUBLICATION

CABINET OFFICE

From the Chancellor of the Duchy of Lancaster
Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

The Rt Hon The Viscount Whitelaw CH MC DL
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

19 March 1985

Dear Lord President,

EIGHTH REPORT FROM THE TREASURY AND CIVIL SERVICE SELECT COMMITTEE

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

... Further to my letter of 15 February, I now enclose a 'Confidential Final Revise' copy of the response to the above Select Committee report, which is to be published as a Command Paper tomorrow (Cmnd 9465). Publication is to be announced in Parliament by the Prime Minister in answer to an arranged Parliamentary Question.

The Cabinet Office (MPO) Press Office has been briefed to handle any enquiries from the media and questions can therefore be redirected to the MPO as necessary.

A copy of this letter and enclosure goes to all Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

Yours sincerely,

Sonia Phippard

GOWRIE (Approved by Lord Gowrie and signed in his absence)

COVERING CONFIDENTIAL UNTIL PUBLICATION

CABINET OFFICE

From the Chancellor of the Duchy of Lancaster
Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

Mark Addison Esq
Private Secretary
10 Downing Street

18 March 1985

Dear Mark

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Government's response to the above Select Committee report is to be published as a Command Paper on Wednesday 20 March.

The Chancellor of the Duchy suggests that it would be appropriate for the Prime Minister to present the White Paper to Parliament by means of an arranged Question. If the Prime Minister agrees, I should be grateful if you would make the necessary arrangements to have the following Question tabled for answer on Wednesday 20 March:

> Q. ( ) To ask the Prime Minister when the government's response to the Treasury and Civil Service Committee's Eighth Report is to be published.
>
> A. The government's response to the Treasury and Civil Service Select Committee's Eighth Report is published today as Cmnd [9465] and copies are available in the House of Commons Library.

Select Committee convention requires that the Minister presenting the response writes formally to the Chairman of the appropriate Select Committee on the day of publication. (Confidential Final Revise Copies will have already been sent to the Committee 48 hours prior to publication.) If the Prime Minister is content to follow this convention I attach a draft letter to Mr Terence Higgins MP, the Chairman of the Treasury and Civil Service Committee, together with the response (a copy of which will be provided) on Wednesday 20 March.

Yours,

Sonia Phippard

MISS S C PHIPPARD

10 DOWNING STREET

From the Principal Private Secretary

11 March 1985

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Prime MInister was grateful for the Chancellor of the Duchy of Lancaster's minute of 7 March about the comments of Cabinet colleagues on the draft response to the Treasury and Civil Service Committee Report on Acceptance of Outside Appointments by Crown Servants. The Prime Minister is content with the changes proposed as a result of the Foreign Secretary's comments and agrees that the Chancellor of the Duchy should put in hand the final arrangements for publishing the response on the lines proposed in his minute.

I am copying this letter to Len Appleyard (Foreign and Commonwealth Office) and Sir Robert Armstrong .

E E R BUTLER

Paul Thomas, Esq.,
Chancellor of the Duchy of Lancaster's Office.

Chancellor of the Duchy of Lancaster

Prime Minister 1

Agree amendment at x| for inclusion in para 7 (Please see reference flag).

Agree that arrangements for publication should go ahead!

FERB 8.3.

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Cabinet colleagues have now told me that they are generally content with the draft response to the Treasury and Civil Service Committee's report on 'Acceptance of Outside Appointments by Crown Servants' which, with your approval, I circulated on 15 February 1985.

The Foreign and Commonwealth Secretary has proposed one minor change; this is incorporated in the attached draft. Other colleagues who offered comments have confirmed that we have struck the right balance.

The Foreign and Commonwealth Secretary said that he would like to see included some language to strengthen the case for even greater mobility, though he made no drafting suggestion. If you were disposed to act on this suggestion, it would be possible to add a new sentence to paragraph 7 of the general response: after the existing second sentence we could add a new sentence which might read:

x| It is highly desirable to improve by every possible means the understanding which industry has of Government and vice versa; and the representatives of industry who gave evidence to the Committee themselves emphasised the benefits which they would see in greater interchange, both ways, between the Civil Service and industry.

Perhaps you could let me know if you would like a sentence added on these lines.

I should be grateful for your approval to put in hand the final arrangements for publishing the response in a White Paper which, to comply with the agreed procedure for handling Select Committee Reports, we need to do before 20 March 1985. I recommend that this should be announced by means of an arranged Question.

I am sending a copy of this minute to the Foreign and Commonwealth Secretary.

GOWRIE

7 March 1985

APPENDIX I

DEFINITION OF OUTSIDE APPOINTMENTS
TO WHICH THE RULES APPLY

Under these rules all officers of the rank of Grade 3 (Under Secretary) ~~or, in the Diplomatic Service, Counsellor)~~ and above, and of the equivalent ranks in Her Majesty's Forces, are required to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business or other bodies, particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature below the rank of Grade 3 or equivalent to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

2. For these purposes employment is regarded as including self-employment, for instance in a consultancy.

3. The rules are intended to apply primarily to outside appointments in industrial or commercial bodies, and give discretion to those concerned to modify or dispense with the prescribed procedures in cases of unpaid appointments and appointments to non-commercial bodies of such a nature that the procedures would be inappropriate.

Similar rules apply to members of the Diplomatic Service.

CROABE

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CABINET OFFICE

From the Chancellor of the Duchy of Lancaster

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall, London SW1

15 February 1985

Dear Lord President,

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

With the Prime Minister's agreement, I am writing to seek comments on the draft response to the Eighth Report of the Treasury and Civil Service Committee in which they made recommendations for changes in the rules governing the acceptance of outside appointments by Crown servants. A copy of the existing rules is at Annex A; a copy of the Report's Summary of Conclusions and Recommendations is at Annex B; and the draft response is at Annex C.

The Committee noted that their predecessors, reporting in 1981, thought that the arrangements were "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety". They concluded that the view was even more relevant today: that the interchange following retirement was exclusively one way, out of the Civil Service, that the flow was increasing and is particularly striking at senior levels of the Open Structure; and that the Ministry of Defence contributed substantially to it. They considered that these tendencies could only give the impression that the circumstances which were the mainspring for the introduction of the rules were still very much in evidence in the defence field, and that the rules were no longer adequate for the purpose for which they were intended; that there was now a steady and accepted movement of certain senior civil servants into certain areas of the private sector; and that the ease of the movement and the ready availability of employment suggested that the traditional independence and impartiality of the Civil Service was in danger of becoming eroded or compromised in the eyes of the public. They did not find any evidence of

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corruption or impropriety. They concluded, however, that there was a need for a significant tightening of the system and for making the way in which it was administered a more open process. They made 27 recommendations to this end.

The Report has been studied thoroughly by Departments. There is a very general feeling that the Committee's recommendations for tightening the rules, and in particular the recommendation that the maximum period of delay before being allowed to take up an appointment should be increased from two years to five years, would be likely undesirably to inhibit movement between the public service and the private sector, would be unfair to individuals, and is not justified on the evidence of the Committee's inquiries. The unfairness to individuals is not just a matter of equity.

The system is at present voluntary, not statutory, and both we and the Committee think that it should continue to be so. The more restrictive we try to make it, the greater the danger that someone will flout it, or even seek to challenge it in the courts and subject it to judicial review. In either event, we might find ourselves faced with inescapable pressure to introduce legislation imposing statutory rules and sanctions.

The draft response accordingly sets out to reject the most stringent of the Report's recommendations, but also to adopt many of the others concerned with making the process more open, provided this is done without breaching individual privacy and confidentiality.

I should be grateful if you could let me have any comments on the proposed response by close of play on Thursday 21 February.

I am copying this letter to all Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

Yours sincerely,

Lolita Phippard

GOWRIE (Approved by Lord Gowrie and signed in his absence)

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

THE RULES

It is in the public interest that people with experience of public administration should be able to move into business and industry, and that the possibility of such movement should not be frustrated by public concern over a particular appointment. It is also no less important whenever a Crown servant accepts a particular business appointment that he should not be open to any suspicion of impropriety. Therefore the rules set out below have been designed to safeguard against such criticisms both the public service and individual officers who wish to leave to take up these appointments. The rules aim at avoiding any suspicion - however unjustified - that serving officers might be ready to bestow favours on firms in the hope of future benefits to come. They also seek to guard against the risk that a particular firm might be thought to be gaining an unfair advantage over its competitors by employing an officer who, during his service, had access to technical or other information which those competitors could legitimately regard as their own trade secrets.

2. All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above, and of the equivalent ranks in HM Forces, are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

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and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature (below the rank of Under Secretary) to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

PROCEDURE

3. Assent to an application will take the form of approval by the Prime Minister in cases referred to an Advisory Committee, or by the Minister in charge of the Department in all other cases. It would however be open to a Minister to approve arrangements under which defined categories of case would be dealt with at a specified level without reference to the Minister.

4. PERMANENT SECRETARIES AND SECOND PERMANENT SECRETARIES

All cases concerning Permanent Secretaries and Second Permanent Secretaries (and those of equivalent rank in HM Forces) must be referred to the Head of the Civil Service and to the Minister responsible for the Department. Where the Head of the Civil Service and the departmental Minister are agreed that the proposed appointment is to a non-commercial body of such a nature that this procedure would be inappropriate (eg a University), the appointment may be approved without reference to the Committee. All other cases will then be referred by the Head of the Civil Service to the Prime Minister to be laid before the Advisory Committee (see paragraph 10).

5. ALL OTHER HEADS OF DEPARTMENTS

All cases concerning Heads of Departments other than Permanent Secretaries will follow the procedure for cases concerning Permanent Secretaries, with one variation; where the Minister responsible for the Department and the Head of the Civil Service are in agreement about whether consent should be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

6. DEPUTY SECRETARIES ETC

All cases concerning Deputy Secretaries, officers of higher rank below Second Permanent Secretary and HM Forces personnel of equivalent rank

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other than those covered by paragraph 5 above) will similarly follow the procedure for Permanent Secretaries, subject to the exception that where the Head of the Department concerned and the Head of the Civil Service are in agreement about whether assent may be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

7. ALL OTHER CASES

Save for the exception referred to in paragraph 8, the CSD must be consulted in all cases not covered by paragraphs 4 - 6 where there has been 'contact with the prospective employer' as defined in paragraph 16.

8. Departments need not consult the CSD in cases covered by paragraph 7 up to and including Senior Executive Officer level (or the equivalent rank in HM Forces) where the contact with the prospective employer in the previous two years had been only casual, and there appears to be no risk of criticism from the trade secrets angle.

9. In putting cases forward to the CSD, Departments should explain why they recommend that permission should be granted. They should say whether they consider that a satisfactory answer could be given in the event of the Government being criticised for allowing the appointment to be taken up.

ADVISORY COMMITTEE

10. The Advisory Committee will consist of 3 members having experience of relations between the Civil Service and the public or private sectors of industry. The members will on each occasion be drawn from a panel. Cases will be referred to the Committee by the Prime Minister and it will report to him. The Committee will consider the cases defined in paragraphs 4 - 6. It may also consider, exceptionally, cases falling outside those grades which are referred to it. The Committee will not act as a court of appeal against decisions reached in cases not referred to it.

11. In considering cases the Committee will have regard to the purpose of the rules as described in paragraph 1. The Committee will take into account the views of the Department concerned and of the CSD.

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12. In all cases referred to the Committee, the final decision will rest with the Prime Minister who will be answerable in the House for the decision; the responsibility for all cases which do not go to the Committee will however remain with the departmental Minister concerned. The Prime Minister will be free to accept or reject the Committee's report together with any recommendations which it may make.

13. Except as noted in paragraph 14, in all cases referred to the Committee which concern Permanent Secretaries (and their equivalents in HM Forces), a minimum period of 3 months must elapse between leaving the Service and taking up an outside appointment within the scope of the rules.

14. Exceptions to the waiting period prescribed in paragraph 13 may be made only in cases where the Prime Minister agrees that the national interest is overriding, eg where the appointment is to another post in the public sector (see also paragraph 18c).

CONDITIONS WHICH MAY BE IMPOSED

15. It will be open to those considering applications in accordance with paragraphs 4 - 7 to recommend outright refusal or unqualified approval; or to recommend approval subject to conditions. Such conditions may include:

a. a waiting period lasting for up to two years, the duration to be determined according to the individual circumstances of the case. (In the case of Permanent Secretaries, the automatic 3 months' period will form part of any longer period which may be imposed);

b. a ban on involvement in dealings between the prospective employer and the Government, either absolute or with reference to a stated issue or issues, lasting for up to two years, the duration to be determined according to the circumstances of the case;

c. a ban on involvement in dealings between the prospective employer and a named competitor (or competitors), subject to the same conditions of scope and duration as those at b. above;

d. a requirement to seek the approval of the prospective employer's competitors for the proposed appointment, should this not already have been done.

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CONSIDERATIONS TO BE TAKEN INTO ACCOUNT

16. One of the main factors which will be relevant to the consideration of cases will be the degree of contact there has been between the applicant and the prospective employer. Sometimes the prospective employer's relations with the Government may be relevant irrespective of any involvement on the part of the individual concerned. But normally some measure of personal involvement on the part of the applicant will be necessary for this factor to be relevant. Such involvement should be assumed when the individual concerned, either directly and personally or indirectly through those for whom he is responsible (whether or not they normally work to him) at any time in the course of his official duties during the two years before his resignation or retirement or earlier if the association has been of a continued or repeated nature, has:

a. dealt with the receipt of tenders for and/or the awarding of contracts between the firm involved and the Government; or

b. dealt with the administration and/or monitoring of such contracts after they have been awarded; or

c. advised in a professional or technical capacity about such contracts either before they are awarded, as in a. or in the exercise of a monitoring brief, as in b; or

d. been involved in contact of an official but non-contractual nature with the firm involved - where, for instance, the firm operates in a field in which the Government as a whole or the individual's Department has a special interest of a financial, policy or other nature.

17. Previous contact as outlined in paragraph 16 should weigh heavily in the consideration of any application. But the decision of what conditions (if any) should be imposed or whether the application should be rejected will depend on the full circumstances of the case, including the extent and nature of the previous contact.

18. Other considerations which should be kept in view include:

a. The possibility that the applicant may have had access to information about one or more of his prospective employer's competitors which

could legitimately be regarded as their "trade secrets". This may arise independently of any contact with the prospective employer - when, for instance, the prospective employer is a newly-created company or consultancy in the relevant field. It would be normal to consult these competitors to see if they had any objection to the appointment;

b. An appointment may be on a part-time or consultancy basis. If so, this may be a factor tending to reduce the likelihood of public criticism, especially if the consultancy service is to be offered without favour to a number of firms competing in the same field;

c. There may be occasions when a Minister considers it in the national interest that, although the normal weighing of the factors to be considered might dictate the granting only of qualified approval or even the rejection of the application, the appointment may nevertheless be allowed. In all such cases, the procedures set out in paragraphs 4 -7 should be followed, including reference to the Advisory Committee where that is appropriate.

d. Many senior Crown servants are engaged in dealing with private interests on behalf of the Government. Moreover, such senior officials would have a special knowledge of how the Government would be likely to react to particular sets of circumstances, and how the Government would be likely to legislate to give effect to its policies. An official in this position could well be, or be thought to be, of considerable assistance to an outside body which had an interest in matters on which policy was developing or legislation was being prepared. It is important to take into account the advisability or otherwise of permitting Crown servants to join outside interests with whom the Department had been, or was, in a negotiating relationship. It may also be relevant that a senior official was involved in policy discussion which led to a decision the effect of which was considerably to the benefit of the firm offering him an appointment.

19. In cases involving Permanent Secretary Heads of Department subject to the automatic waiting period (see paragraph 13), formal application to take up an outside appointment should not normally be made until after the successor to the individual concerned has been named. Cases where the individual intended to resign before retirement in order to take up an outside appointment would have to be considered earlier.

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WARNING TO STAFF

20. When an officer to whom the rules apply is nearing retirement his Department should remind him of the rules and should take the opportunity to suggest that, if he is in any doubt as to whether he needs to seek permission to take up a particular appointment, he should in the first instance approach his Establishment Officer for advice. It is important that the officer should be aware that permission must be sought not only for the initial appointment taken up on retirement, but for any subsequent appointment during the two year period which comes within the scope of the rules, including appointments to subsidiary or associated companies.

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CHAPTER 7

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

(i) We recommend that the rules should be redrafted following the sequence of subjects in this report (paragraph 3.2).

(ii) We recommend for under secretaries and above an extension of the maximum two year period of delay to five years (paragraph 3.13).

(iii) We recommend the more extended use by the Advisory Committee and by Government Departments, particularly the Ministry of Defence, of conditions governing behaviour after leaving the public service. Enquiries relating to the adherence to the conditions should be made after one year to ensure that all such conditions are being complied with and this should be continued during the period to which the conditions relate (paragraph 3.17).

(iv) We recommend that officials of the rank of under secretary and above leaving the public service should be required to give a written undertaking to abide by a code of conduct under which they would be prohibited for a period of five years from representing their new employer on specific and significant matters for which they were responsible in their official capacity. Contracts of employment would provide a useful further safeguard and, if they are introduced for civil servants, such a prohibition for senior officials could be included in them (paragraph 3.21).

(v) In general we think our own system is based upon the correct approach. We would not want to replace it by a system relying exclusively on a statutory code of conduct (paragraph 3.22).

(vi) We believe that sanctions may be needed if and when evidence becomes available of abuses of the present rules and the proposed code of conduct. If our recommendations on policing the rules and code of conduct are adopted, abuse should be effectively reported, so alerting Parliament to the need for review of suitable sanctions. We are impressed with the difficulties of introducing specific legislation and the problems of definition which would be involved and, therefore, recommend that, if sanctions become necessary, the Government should make it clear that it is prepared to take steps to abate automatically the pension of any civil servants who act in defiance of the rules on business appointments (paragraph 3.26).

(vii) We recommend that the rules should state specifically that all under secretaries and above need to apply for approval to take up business appointments, and other civil servants need to when there has been contact with the prospective employer or they have been responsible for anyone having such contact or the employer concerned has extensive dealings with the civil servant's Department. Contact is to be understood as meaning not only face-to-face dealings but also involvement in such dealings behind the scenes (paragraph 4.6).

(viii) We recommend that the rules should state explicitly and fully and in one place what the criteria are for deciding whether or not to give

approval to a proposed business appointment. The criteria should deal with the following points which we regard as essential:

(i) if a civil servant has had contact with a prospective employer in the course of his official duties, the nature of his dealings with the employer is the crucial consideration. Contact is to be understood as meaning not only face-to-face dealings with the employer but also behind the scenes involvement in such dealings. It is relevant to know whether or not, in those dealings, the civil servant exercised a significant amount of discretion in determining the outcome or, if he was acting as a member of a team, the extent to which he was able to influence the outcome. It is important to know whether or not the employer would have benefited substantially from a favourable outcome. It is also relevant to know the nature of the job to which the civil servant proposes to go and the extent of the connection between it and his official job. The question is whether there has been or will be any potential for improper behaviour before or after the move;

(ii) if a civil servant has not had previous contact with his prospective employer or has had contact but of an insignificant kind as judged by the criteria in (i), the question of whether or not the prospective employer has extensive dealings with the civil servant's Department needs to be taken into account. If the employer has, it is important to establish, having regard to the nature of the work being offered, if the civil servant is being recruited because of his knowledge of the working of the government machine or his professional knowledge of some area of government activity and can be expected to have dealings with his old Department. If the answer is in the affirmative the question to be weighed is whether, following a move, any potential damage to the Department's interests is outweighed by any potential public benefit;

(iii) if the prospective employer is operating in a competitive field, it is necessary to establish that competing firms do not object to the appointment. If competition is restricted it is necessary to look at the recruitment pattern to put the situation in perspective (paragraph 4.19).

(ix) We recommend that the rules should lay down the following principles in the light of which applications should be judged:

(i) those in authority over those directly involved in dealings with a firm should be deemed to be involved;

(ii) in considering the nature of the job to be taken, it should be borne in mind that any civil servant taking up an appointment to the board of a company will share with the rest of the board a collective responsibility for all the activities of the company including its dealings with his old Department (paragraph 4.29).

(x) On balance, we do not think a case has been made for a complete ban on the movement of permanent secretaries into the private sector. We believe greater openness in implementing the rules is the most effective way of removing the suspicion of impropriety (paragraph 4.35).

(xi) We recommend that Departments review their arrangements for ensuring that all staff who, judged by the criteria we set out in paragraph 4.6, might possibly be within the scope of the rules are specifically informed of this fact before resignation or retirement (paragraph 5.1).

(xii) We recommend that applications for approval to take up a business appointment should be made in writing in a standard form along the lines of that used by the Ministry of Defence. Applicants should always be interviewed if a refusal or the imposition of conditions is being contemplated. In other cases applicants should have the right to be interviewed (paragraph 5.4).

(xiii) We recommend that prospective employers should be consulted about applications and informed of the outcome and any conditions imposed (paragraph 5.5).

(xiv) We recommend that the rules should require that officials of the rank of under secretary and above do not discuss offers of post-retirement employment with prospective employers within the last year of service prior to retirement. If offers are made to such officials in mid career or to more junior officials in any circumstances, they may be discussed with prospective employers but the offers should first be reported to those in authority and appropriate permissions sought (paragraph 5.6).

(xv) We recommend that the Advisory Committee should consider all applications from under secretaries and above (paragraph 5.8).

(xvi) We recommend that the rules should state explicitly that the MPO should be consulted before a decision is taken in cases which raise substantial doubts and for which no precedents exist. The MPO should periodically review a selection of cases where Departments have taken the decisions without consultation (paragraph 5.11).

(xvii) We recommend that the MPO should take the initiative in sending to the Advisory Committee before a decision is taken Departmental cases on which it has been consulted and which raise issues of importance. The Advisory Committee should take the initiative in periodically calling for and reviewing a selection of the decisions taken by Departments after consulting the MPO. In these ways, the Advisory Committee would become a source of advice for Departmental Ministers as well as the Prime Minister (paragraph 5.12).

(xviii) We recommend that the sections of the MPO dealing with business appointments and standards of conduct should be merged, as a contribution towards securing more effective leadership in this field (paragraph 5.13).

(xix) We do not recommend turning the Advisory Committee into a decision-making body, provided the Government always make an announcement when they decide not to follow the Committee's advice (paragraph 5.14).

(xx) We recommend that the Government should add two senior back bench Members of the House of Commons to the Advisory Committee (paragraph 5.16).

(xxi) We recommend that members of the Advisory Committee should be appointed for three years and two replaced each year (paragraph 5.17).

(xxii) We recommend that the decisions taken by the Government on the advice of the Advisory Committee should be announced at the time they are taken, together with the terms of any conditions imposed and an indication of the occasions when the Committee's advice has not been accepted (paragraph 5.18).

(xxiii) We recommend that the Government should publish periodically reports on the working of the system (paragraph 5.19).

(xxiv) We have reached the conclusion that the hearings of the Advisory Committee ought not to be in public (paragraph 5.20).

(xxv) We recommend that information about the levels and patterns of movement of board members and senior staff of nationalised industries and other public bodies should be collected by the new unified section in the MPO ((xviii) above) (paragraph 6.3).

(xxvi) We would wish to be informed, in due course, of the extent to which, as a result of the approaches made by Departments, non-departmental public bodies have adopted rules to govern the taking up of outside appointments (paragraph 6.5).

(xxvii) We believe that it would be appropriate, in principle, for rules governing the taking up of outside appointments to be adopted throughout the public sector and we recommend that the Departments concerned should take appropriate action to that end (paragraph 6.6).

ANNEX C

DRAFT RESPONSE (8.2.85)

The Eighth Report of the Treasury and Civil Service Select Committee considered the rules governing the acceptance of outside appointments by Crown servants, and made a number of recommendations.

2. The definition of the outside appointments to which the rules apply is set out in Appendix I to this response. Briefly, they cover all employment in business or other bodies, whether or not of a commercial nature. Where the employment is in a non-commercial organisation or is unpaid, the Government consider the application of the rules to be discretionary and dependent on the circumstances of the particular case. As far as private consultancies are concerned, the rules are applied in respect of each commission undertaken.

3. The rules apply to members of the Home Civil Service, of the Diplomatic Service and of Her Majesty's Forces, collectively referred to in this response as Crown servants. They do not cover Special Advisers to Ministers; in their case, arrangements are made to ensure that they neither

have access to the kind of information (eg about individual companies) nor are involved in the kind of business (eg contracts) which underlies the need for the rules applicable to career Crown servants.

4. The Government agrees with the Committee that the rules governing the acceptance of outside appointments by Crown servants have to strike a balance between two principles: the principle of maximum possible freedom of movement, which is a matter not only of personal liberty but also of the economic and other benefits of interchange between the public service and other occupations and spheres of activity; and the requirement to avoid corruption or impropriety, or the suspicion of them, in relation to the public service. As the Committee points out, the risk of impropriety relates not only to the possibility that a retired Crown servant might use information or contacts obtained while in the public service to the unfair advantage of a new employer or to the disadvantage of his competitors, but also to the possibility that the advice given by a Crown servant while still serving could be coloured or conditioned, to

the advantage of a particular company, by an offer, or the prospect held out, of future employment after retirement.

5. It is a question of judgment whether the balance is struck at the right point by the existing rules. The Select Committee argues that the view of its predecessor Committee in 1981, that the balance is "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety", is even more relevant today, despite changes made to the rules following the 1981 Committee's Report. The Select Committee has therefore made a number of recommendations designed to reinforce the effects of the rules in avoiding suspicion of impropriety. Inevitably a number of their recommendations would tend to impair freedom of movement, in some cases very significantly.

6. The Government of course accepts the need to avoid impropriety, and even the suspicion of impropriety where that is reasonably felt, and the arrangements should be such as to allay legitimate and reasonable concern on these matters. But the Committee has not found any evidence of

impropriety or of failure of the rules as they now are to provide adequate safeguards against impropriety. On the contrary, the evidence - or lack of it - seems to suggest that the rules have been generally effective for the purposes for which they are intended. The Government does not find this surprising, given the high standards of integrity in the public service on which the Government believes continuing reliance can safely be placed. In the Government's view, the Committee's apprehensions "that the traditional independence and impartiality of the Civil Service is in danger of being eroded or compromised" are without foundation and the need for major change in the rules to prevent impropriety is not established.

7. So long as impropriety is avoided, the Government believes that there is positive merit in minimising the obstacles to freedom of movement. There is general agreement on the need for and advantages of greater movement between the public service and other sectors of national life. New sentence Many people who retire or resign from the public service, like people who retire or resign from other occupations, have energies, talents and

qualifications which can be deployed in other walks of life, with considerable benefit and without there being any question of impropriety: so long as any reasonable suspicion of impropriety is avoided, the Government considers that Crown servants should be no less free than others to use their talents and qualifications after retirement from their main careers, when by doing so they can continue to make a contribution to the economic life and well-being of this country.

8. This point is particularly pertinent to those Crown servants, such as members of the Armed Services, whose retirement occurs long before the completion of a normal working life.

9. Moreover, interchange is not exclusively one way, as the Committee seem to suggest. Indeed, some parts of the Civil Service depend to a considerable extent on being able to recruit experienced people from industry in mid-career. Such people will be deterred from making the transition into the Civil Service if they foresee unreasonable restrictions on their freedom to return to industry at a later stage.

10. The existing rules do not have the force or backing of law, and (as the Committee point out) there are no formal sanctions laid down, to be applied in cases where the rules are breached. They have been and continue to be effective because they are accepted by the Crown servants concerned and by outside bodies as being reasonable and sensible for the purposes for which they are intended. The Government agrees with the Committee's view that this system is based upon the correct approach, and that it is neither necessary nor desirable to think in terms of a statutory system or code of conduct in these matters.

11. But the effectiveness of a voluntary system depends upon the readiness of those affected by it to see and accept it as being not unreasonably restrictive in its operation - bearing in mind that Ministers, and people who come into the public service from outside employment on secondment, who have the same access to official information and contacts as career Crown servants, are able on leaving public office to take up or resume outside appointments without any formal restriction or delay. If the system were felt to be unduly restrictive, the voluntary consent of those

affected could be put at risk, and the rules themselves could even be subjected to legal challenge as being unreasonable between the parties concerned.

12. The Government agrees that reasonable parliamentary and public opinion should as far as possible be able to see that the system is operating effectively and consistently. It is ready to make appropriate changes in procedures and to publish additional information about the working of the system for these purposes.

13. It is against this general background that the Government has considered the Committee's detailed recommendations, and has reached the conclusions which follow. In reaching conclusions on recommendations which concern the work of the Advisory Committee on Business Appointments it has had the benefit of the Advisory Committee's own views, and these are noted in the Government's responses.

14. The Select Committee's recommendations are framed almost entirely in terms of officers of Grade 3 (or equivalent) and above, and the

Government's comments and conclusions are related to the precise terms of these recommendations. Individual Departments already apply the rules also to many less senior officers who hold a variety of posts and who account for most of the movements to the private sector, and any changes in the rules applying to officers of Grade 3 (or equivalent) and above will also be applied, where appropriate, to this group of staff. In considering its conclusions the Government has had regard to the additional administrative burdens and resources that some of the changes recommended by the Select Committee would impose. As a general rule it has not shrunk from accepting these consequences, where it took the view that the changes were justified on their merits.

February 1985

RECOMMENDATION NO 1

WE RECOMMEND THAT THE RULES SHOULD BE REDRAFTED FOLLOWING THE SEQUENCE OF SUBJECTS IN THIS REPORT (PARAGRAPH 3.2)

The rules are being redrafted to take account of the changes proposed in this response to the Committee's report. The Government will send the Committee copies of the revised rules as soon as they are ready.

RECOMMENDATION NO 2

WE RECOMMEND FOR UNDER SECRETARIES AND ABOVE AN EXTENSION OF THE MAXIMUM TWO YEAR PERIOD OF DELAY TO FIVE YEARS (PARAGRAPH 3.13)

The Government recognises that this recommendation relates to the length of the period after leaving the Service during which a former Crown servant is required to seek permission before accepting an outside appointment, and to the maximum period of delay that can be required between retirement and the date of taking up an outside appointment, and that it is not suggested that five years should become the standard period of delay. Nevertheless the Government considers that five years is an unnecessarily long period to prescribe.

The test of what is appropriate should be the period during which, after retirement, a former Crown servant is likely to retain from his period of service official information or contacts which could be used to the unfair advantage of the outside concern with which he takes up an appointment or the detriment of that concern's

competitors. Experience indicates that up-to-date knowledge of high technology and trade secrets erodes rapidly. Information relating to tenders and contracts is similarly likely to fade quickly, given the lack of access to official documents, and will have lost its value within two years. Staff movements, and changes in policies and procedures make both contacts and information very out of date by the end of two years. It is for this sort of reason that only in three instances has the Advisory Committee thought it necessary to recommend that a waiting period of a full two years should elapse after retirement on resignation before an appointment is taken up; the Advisory Committee has in no case thought that two years was too little.

If the maximum period of delay, and the period during which consent was required to be sought, were increased to five years, there could over time develop a tendency to longer periods of delay which could needlessly inhibit the movement of Crown servants into the private sector and the movement of people from industry into the Civil Service on short-term appointments - movements which the Government believes to be of mutual benefit to both

the public and private sectors alike: those concerned might be less willing to come into the public service on fixed term contract appointments if they feared that they could be required to wait for anything up to five years before rejoining the private sector at the end of their appointment. Mid-career moves, including those of armed forces personnel, which as a result of this proposal could be subject to a waiting period of longer than two and up to five years, would effectively be ruled out - companies would hardly be prepared to wait; in the case of post-retirement appointments, the individual, by virtue of his age, would be unlikely to be able to take up employment after a lengthy waiting period. To risk these disadvantages for purely presentational reasons would be patently inequitable.

As the Government has no evidence to suggest that two years has ever proved to be an insufficient waiting period, it considers that the balance of argument is against any increase in the maximum period of delay and the period after retirement or resignation during which a retired Crown servant is required to seek consent before taking up an outside appointment. This is also the view of the Advisory Committee.

RECOMMENDATION NO 3

WE RECOMMEND THE MORE EXTENDED USE BY THE ADVISORY COMMITTEE AND BY GOVERNMENT DEPARTMENTS, PARTICULARLY THE MINISTRY OF DEFENCE, OF CONDITIONS GOVERNING BEHAVIOUR AFTER LEAVING THE PUBLIC SERVICE. ENQUIRIES RELATING TO THE ADHERENCE TO THE CONDITIONS SHOULD BE MADE AFTER ONE YEAR TO ENSURE THAT ALL SUCH CONDITIONS ARE BEING COMPLIED WITH, AND THIS SHOULD BE CONTINUED DURING THE PERIOD TO WHICH THE CONDITIONS RELATE (PARAGRAPH 3.17)

Departments already employ a variety of conditions governing the behaviour of former Crown servants, when they take up new employment.

The Advisory Committee has made little use of such conditions in the case of Permanent Secretaries; it thinks it preferable to rely almost exclusively on the use of waiting periods. The Advisory Committee takes the view now, as in the past, that, as far as senior officers are concerned, waiting periods are the most effective way of securing the objectives of the rules.

More use is made of behavioural conditions in applications from less senior officers. The Government notes the Select Committee's view that more use should be made of such conditions, and is ready to consider acting accordingly in particular cases; but whether such conditions should be imposed and what they should be must depend on the circumstances of each individual case.

The Government does not believe that formal checks are necessary or justified. The absence of formal checks does not mean that the imposition of conditions is unpoliced. An effective sanction is provided by the awareness on the one hand of competitor firms who have been made aware of the employment of former Crown servants, and on the other, of those officers remaining in the Service who will continue to deal with the employing firm and who will also be aware of the terms on which the appointment has been approved.

RECOMMENDATION NO 4

WE RECOMMEND THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE LEAVING THE PUBLIC SERVICE SHOULD BE REQUIRED TO GIVE A WRITTEN UNDERTAKING TO ABIDE BY A CODE OF CONDUCT UNDER WHICH THEY WOULD BE PROHIBITED FOR A PERIOD OF FIVE YEARS FROM REPRESENTING THEIR NEW EMPLOYER ON SPECIFIC AND SIGNIFICANT MATTERS FOR WHICH THEY WERE RESPONSIBLE IN THEIR OFFICIAL CAPACITY. CONTRACTS OF EMPLOYMENT WOULD PROVIDE A USEFUL FURTHER SAFEGUARD AND, IF THEY ARE INTRODUCED FOR CIVIL SERVANTS, SUCH A PROHIBITION FOR SENIOR OFFICIALS COULD BE INCLUDED IN THEM (PARAGRAPH 3.21)

The Government believes that the rules governing business appointments after retirement amount in practice to a sufficient guide to conduct to make a code of conduct as such unnecessary. It further believes that a general restraint on rights of representation is not required: the purpose for which this is proposed can already be achieved by a suitable period of delay and by the imposition of suitable conditions in particular cases.

The Government considers, however, that it would be right to ask senior Crown servants to acknowledge in writing that the rules governing acceptance of outside appointments have been brought to their attention. This aim could be met by securing a written acknowledgement from Crown servants of Grade 3 level (or equivalent) and above, at the time of their promotion or appointment to Grade 3 or equivalent, and again at the time of retirement. A suitable form of words is attached.

The Government believes that the Crown servants concerned understand the reasons for having rules which strike a fair balance between the desirability of freedom of movement and the need to avoid impropriety, or the suspicion of it, and will continue to comply with the rules as amended in the light of the response as they have complied with the existing rules.

APPENDIX

DRAFT ACKNOWLEDGEMENT TO BE SIGNED BY ALL CROWN SERVANTS ON PROMOTION OR APPOINTMENT TO A POST AT GRADE 3 OR EQUIVALENT LEVEL

I have read the rules, a copy of which is appended hereto, requiring officers promoted or appointed to and on retiring from posts at Grade 3 and equivalent level and above to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business and other bodies and in semi-public organisations brought into being by the Government or Parliament.

Signed .....

Date .....

RECOMMENDATIONS NO 5 AND 6

WE BELIEVE THAT SANCTIONS MAY BE NEEDED IF AND WHEN EVIDENCE BECOMES AVAILABLE OF ABUSES OF THE PRESENT RULES AND THE PROPOSED CODE OF CONDUCT. IF OUR RECOMMENDATIONS ON POLICING THE RULES AND CODE OF CONDUCT ARE ADOPTED, ABUSE SHOULD BE EFFECTIVELY REPORTED, SO ALERTING PARLIAMENT TO THE NEED FOR REVIEW OF SUITABLE SANCTIONS. WE ARE IMPRESSED WITH THE DIFFICULTIES OF INTRODUCING SPECIFIC LEGISLATION AND THE PROBLEMS OF DEFINITION WHICH WOULD BE INVOLVED AND, THEREFORE, RECOMMEND THAT, IF SANCTIONS BECOME NECESSARY, THE GOVERNMENT SHOULD MAKE IT CLEAR THAT IT IS PREPARED TO TAKE STEPS TO ABATE AUTOMATICALLY THE PENSION OF ANY CIVIL SERVANTS WHO ACT IN DEFIANCE OF THE RULES ON BUSINESS APPOINTMENTS (PARAGRAPH 3.26)

The Committee acknowledge that there is no evidence to suggest that any impropriety has occurred or that the current rules have been flouted, and have not therefore proposed the introduction of sanctions. If it were to become apparent that people were not complying with the rules, or that the rules were significantly failing to achieve the desired effect, the Government would

need to look at them again in their widest context. Sanctions could probably not be introduced in isolation; they could come only as part of a major change putting the rules on to a statutory basis; which the Committee does not recommend and the Government does not favour. In that event the abatement of pensions - which would require legislation - would clearly be one sanction which would have to be considered.

RECOMMENDATIONS NO 7 AND 8

7. WE RECOMMEND THAT THE RULES SHOULD STATE SPECIFICALLY THAT ALL UNDER SECRETARIES AND ABOVE NEED TO APPLY FOR APPROVAL TO TAKE UP BUSINESS APPOINTMENTS, AND OTHER CIVIL SERVANTS NEED TO WHEN THERE HAS BEEN CONTACT WITH THE PROSPECTIVE EMPLOYER OR THEY HAVE BEEN RESPONSIBLE FOR ANYONE HAVING SUCH CONTACT OR THE EMPLOYER CONCERNED HAS EXTENSIVE DEALINGS WITH THE CIVIL SERVANT'S DEPARTMENT. CONTACT IS TO BE UNDERSTOOD AS MEANING NOT ONLY FACE-TO-FACT DEALINGS BUT ALSO INVOLVEMENT IN SUCH DEALINGS BEHIND THE SCENES (PARAGRAPH 4.6)

8. WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY AND FULLY AND IN ONE PLACE WHAT THE CRITERIA ARE FOR DECIDING WHETHER OR NOT TO GIVE APPROVAL TO A PROPOSED BUSINESS APPOINTMENT. THE CRITERIA SHOULD DEAL WITH THE FOLLOWING POINTS .... IN PERSPECTIVE (PARAGRAPH 4.19)

The recommendations set out in Chapter 4 paragraphs 4.6 and 4.19 are largely covered by the current rules which apply to all Crown servants at Grade 3 or equivalent level and above and other officers to whom the rules have been applied by

Departments. The rules will, however, be redrafted to make these points specifically and the Committee's suggestions for change will be taken fully into account.

RECOMMENDATION NO 9

WE RECOMMEND THAT THE RULES SHOULD LAY DOWN THE FOLLOWING PRINCIPLES IN THE LIGHT OF WHICH APPLICATIONS SHOULD BE JUDGED -

I. THOSE IN AUTHORITY OVER THOSE DIRECTLY INVOLVED IN DEALINGS WITH A FIRM SHOULD BE DEEMED TO BE INVOLVED;

II. IN CONSIDERING THE NATURE OF THE JOB TO BE TAKEN, IT SHOULD BE BORNE IN MIND THAT ANY CIVIL SERVANT TAKING UP AN APPOINTMENT TO THE BOARD OF A COMPANY WILL SHARE WITH THE REST OF THE BOARD A COLLECTIVE RESPONSIBILITY FOR ALL THE ACTIVITIES OF THE COMPANY INCLUDING ITS DEALINGS WITH HIS OLD DEPARTMENT (PARAGRAPH 4.29).

The Government agrees that, in principle senior officers are responsible for what happens throughout their areas of management. They cannot be absolved of responsibility simply because they had no direct involvement in individual contractual dealings handled by their staff. The degree of actual involvement by senior officers in particular

contracts is a significant factor when applications are being considered which must be taken into account when considering whether or not it is appropriate to give approval for an appointment; approval, however, cannot be automatically ruled out on these grounds.

The Government also agrees that a retired civil servant who becomes a director (executive or non-executive) of a company cannot divest himself of responsibility for those matters for which the Board of Directors is responsible. It is no doubt open to an individual Director (if need be) to say that, while accepting responsibility for whatever the Board may decide in a particular case, he will take no part in the process by which the decision is reached. Clearly, however, the extent of the dealings which a company had with a particular Department would be a relevant factor in considering any application from a retiring or retired Crown servant for permission to join the Board of the company, and in deciding whether to impose a waiting period and, if so, for how long.

RECOMMENDATION NO 10

ON BALANCE, WE DO NOT THINK A CASE HAS BEEN MADE FOR A COMPLETE BAN ON THE MOVEMENT OF PERMANENT SECRETARIES INTO THE PRIVATE SECTOR. WE BELIEVE GREATER OPENNESS IN IMPLEMENTING THE RULES IS THE MOST EFFECTIVE WAY OF REMOVING THE SUSPICION OF IMPROPRIETY (PARAGRAPH 4.35)

The Government welcomes the Committee's recognition that a case has not been made for imposing a complete ban on the movement of former Permanent Secretaries into the private sector. The Committee's recommendations for greater openness are considered below.

RECOMMENDATION NO 11

WE RECOMMEND THAT DEPARTMENTS REVIEW THEIR ARRANGEMENTS FOR ENSURING THAT ALL STAFF WHO, JUDGED BY THE CRITERIA WE SET OUT IN PARAGRAPH 4.6, MIGHT POSSIBLY BE WITHIN THE SCOPE OF THE RULES ARE SPECIFICALLY INFORMED OF THIS FACT BEFORE RESIGNATION OR RETIREMENT (PARAGRAPH 5.1)

All Departments are being asked to review their arrangements for bringing the rules to the attention of staff who fall within their scope and who are about to retire or resign.

RECOMMENDATION NO 12

WE RECOMMEND THAT APPLICATIONS FOR APPROVAL TO TAKE UP A BUSINESS APPOINTMENT SHOULD BE MADE IN WRITING IN A STANDARD FORM ALONG THE LINES OF THAT USED BY THE MINISTRY OF DEFENCE. APPLICANTS SHOULD ALWAYS BE INTERVIEWED IF A REFUSAL OR THE IMPOSITION OF CONDITIONS IS BEING CONTEMPLATED. IN OTHER CASES APPLICANTS SHOULD HAVE THE RIGHT TO BE INTERVIEWED (PARAGRAPH 5.4)

The Government accepts that there would be benefits to be gained in standardising procedures for dealing with applications and agrees that applicants should be required to submit in writing to their Departments, or former Department, applications for approval to take up outside appointments. As an aid to consistency and to ensure that all the relevant details concerning each case are known, the Cabinet Office (MPO) will provide a suitable form, which can be adapted by individual Departments as necessary to meet their particular needs.

As far as interviewing applicants is concerned, the Government agrees that an applicant

should be given the opportunity of an interview if a waiting period or other conditions are to be imposed on the acceptance of an appointment or if the application seems likely to be rejected. Whether or not the applicant wishes to exercise that right should be left to the individual. Departments must be allowed to exercise judgment about how much to reveal to an individual applicant about the reasons behind the conditions/waiting periods which were being contemplated. It would be necessary to avoid revealing information given on a commercial-in-confidence basis by the prospective employer's competitors in justification of objections raised to an appointment.

RECOMMENDATION NO 13

WE RECOMMEND THAT PROSPECTIVE EMPLOYERS SHOULD BE CONSULTED ABOUT APPLICATIONS AND INFORMED OF THE OUTCOME AND ANY CONDITIONS IMPOSED (PARAGRAPH 5.5)

The Government agrees that employers should be informed of any conditions that are attached to the approval of an appointment; indeed, this is already done in many cases. They do not consider this to be necessary in straightforward cases where approval is granted unconditionally. Some Departments, notably the Ministry of Defence, already contact prospective employers before a decision is taken in those cases where it is necessary to consult competitors, and Departments will be encouraged to consult prospective employers in appropriate cases; but the Government does not consider it necessary to make it an invariable rule that prospective employers should be consulted in every instance.

RECOMMENDATION NO 14

WE RECOMMEND THAT THE RULES SHOULD REQUIRE THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE DO NOT DISCUSS OFFERS OF POST-RETIREMENT EMPLOYMENT WITH PROSPECTIVE EMPLOYERS WITHIN THE LAST YEAR OF SERVICE PRIOR TO RETIREMENT. IF OFFERS ARE MADE TO SUCH OFFICIALS IN MID-CAREER OR TO MORE JUNIOR OFFICIALS IN ANY CIRCUMSTANCES, THEY MAY BE DISCUSSED WITH PROSPECTIVE EMPLOYERS BUT THE OFFERS SHOULD FIRST BE REPORTED TO THOSE IN AUTHORITY AND APPROPRIATE PERMISSIONS SOUGHT (PARAGRAPH 5.6)

The Government believes that a blanket prohibition on the discussion of post-retirement employment offers would be not only unnecessarily restrictive but in practice impossible to enforce. Encouragement should be given to increasing the movement in mid-career between Crown service and private sector employment, and the Government would not want to frustrate desirable interchange by imposing too rigid restrictions. The distinction drawn by the Committee between discussions before post-retirement employment and those which precede resignation fails to take into account that some Crown servants, particularly armed service

personnel, are encouraged to retire early, sometimes from about 45 years of age. It would be unreasonable not to allow such officers to make preparations for establishing a new career as they approach retirement. Nor would it be reasonable or practicable to debar officers approaching normal retirement age from discussing future employment offers. The Government considers, however, that any approach from an outside employer which seems to be intended or to be likely to result in an offer of employment to a Crown servant at any level, particularly (but not only) where such an offer emanates from firms with whom the individual or his staff have had official dealings, should be reported by the Crown servant concerned to a superior officer at least two grades higher than himself; in the case of an officer at Grade 3 (or equivalent) level or above to the Permanent Head of the Department; and in the case of a Permanent Secretary to the Minister in charge of the Department. If the offer is to be pursued, an application for approval to take up the appointment must of course be submitted in the normal way.

The mischief against which this recommendation is presumably aimed is that the advice given by a

Crown servant while still serving could be coloured or conditioned by the offer, or the prospect held out, of future employment. Apart from the integrity of the public service, and the fact that it is rare for a single individual to be the only person responsible for or concerned with a important decision of the kind involved , some protection is afforded by the ability to require a waiting period or to impose other conditions on the taking up of an appointment after retirement. But an important safeguard must lie in making as sure as possible that the fact that an offer of employment has been made, or a prospect of employment held out, is known to those set in authority over the person concerned.

RECOMMENDATIONS NO 15 AND 17

WE RECOMMEND THAT THE ADVISORY COMMITTEE SHOULD CONSIDER ALL APPLICATIONS FROM UNDER SECRETARIES AND ABOVE (PARAGRAPH 5.8)

WE RECOMMEND THAT THE MPO SHOULD TAKE THE INITIATIVE IN SENDING TO THE ADVISORY COMMITTEE BEFORE A DECISION IS TAKEN DEPARTMENTAL CASES ON WHICH IT HAS BEEN CONSULTED AND WHICH RAISE ISSUES OF IMPORTANCE. THE ADVISORY COMMITTEE SHOULD TAKE THE INITIATIVE IN PERIODICALLY CALLING FOR AND REVIEWING A SELECTION OF THE DECISIONS TAKEN BY DEPARTMENTS AFTER CONSULTING THE MPO. IN THESE WAYS, THE ADVISORY COMMITTEE WOULD BECOME A SOURCE OF ADVICE FOR DEPARTMENTAL MINISTERS AS WELL AS THE PRIME MINISTER (PARAGRAPH 5.12)

The Government does not believe that the advantages of referring to the Advisory Committee all applications from Grade 3 (Under Secretary or equivalent) and above would be sufficient to outweigh the major increase in the Committee's workload which would be entailed. The Government agrees, however, that it would be useful to bring

the Advisory Committee's judgment to bear on a wider range of cases: this will both reassure public opinion as to the avoidance of impropriety and provide Departments with more extensive guidance for taking decisions which continue to be made without reference to the Advisory Committee.

Having consulted the Advisory Committee, and with the Committee's agreement, the Government proposes that:

1. all applications from Grade 2 (or equivalent) Crown servants and above should be referred to the Advisory Committee;

2. all applications from Grade 3 (or equivalent) Crown servants should be referred to the Cabinet Office (MPO) and to the Head of the Home Civil Service;

3. In the case of applications from Grade 3 (or equivalent) Crown servants and below which are referred to the Cabinet Office (MPO), the Head of the Home Civil Service should have discretion to recommend to the Prime Minister a reference to the Advisory Committee of any

application which in his opinion raises issues on which it would be desirable to have the Advisory Committee's judgment.

4. The Cabinet Office (MPO) should provide the Advisory Committee with regular statistical reports on all cases referred to the Cabinet Office (MPO); from these the Chairman of the Advisory Committee should select a sample for detailed examination by the Committee, to ensure that the handling of cases by Departments and by the Cabinet Office is consistent with the Committee's.

RECOMMENDATION NO 16

WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY THAT THE MPO SHOULD BE CONSULTED BEFORE A DECISION IS TAKEN IN CASES WHICH RAISE SUBSTANTIAL DOUBTS AND FOR WHICH NO PRECEDENTS EXIST. THE MPO SHOULD PERIODICALLY REVIEW A SELECTION OF CASES WHERE DEPARTMENTS HAVE TAKEN THE DECISIONS WITHOUT CONSULTATION (PARAGRAPH 5.11)

The Cabinet Office (MPO) has an important consultative and advisory role in relation to those departmental cases which raise points of principle, where no precedent exists or where there are substantial doubts. The existing rules already require Departments to consult the Cabinet Office (MPO) about cases (at all levels) involving applicants whose previous contact with prospective employers has been other than casual or where there are trade secret implications. The current rules may however give rise to some confusion and it is therefore proposed to clarify them. The Government also agrees with the Committee that retrospective reviews would be useful for checking whether or not

the rules are being consistently applied across Departments. The Cabinet Office (MPO) will conduct such reviews periodically.

RECOMMENDATION NO 18

WE RECOMMEND THAT THE SECTIONS OF THE MPO DEALING WITH BUSINESS APPOINTMENTS AND STANDARDS OF CONDUCT SHOULD BE MERGED, AS A CONTRIBUTION TOWARDS SECURING MORE EFFECTIVE LEADERSHIP IN THIS FIELD (PARAGRAPH 5.13)

The Assistant Secretary in charge of the division of the Cabinet Office (MPO) dealing with business appointments reports direct to the Secretary of the Cabinet, to whom the divisions dealing with standards of conduct are also responsible. This arrangement is in the Government's view sufficient to ensure consistency and direction.

RECOMMENDATION NO 19

WE DO NOT RECOMMEND TURNING THE ADVISORY COMMITTEE INTO A DECISION-MAKING BODY, PROVIDED THE GOVERNMENT ALWAYS MAKE AN ANNOUNCEMENT WHEN THEY DECIDE NOT TO FOLLOW THE COMMITTEE'S ADVICE (PARAGRAPH 5.14)

The Government agrees with the Committee that the Advisory Committee should not become a decision-making body. It does not propose to introduce a system whereby decisions regarding individual cases are published, since to do so could easily give rise to breaches of confidentiality, but it will include in the regular statistical reports to be published in future (see response to Recommendation No 23) numbers of cases referred to the Advisory Committee and decided otherwise than wholly in accordance with the Committee's recommendations.

RECOMMENDATION NO 20

WE RECOMMEND THAT THE GOVERNMENT SHOULD ADD TWO SENIOR BACK BENCH MEMBERS OF THE HOUSE OF COMMONS TO THE ADVISORY COMMITTEE (PARAGRAPH 5.16)

It is clearly important that no hint of political partisanship should enter, and should be thought to be likely to enter, into the Advisory Committee's deliberations and recommendations. Following the recommendation of the previous Select Committee, the authority and independence of the Advisory Committee were strengthened by the appointment of a number of people from outside the public service; with the result that now only a minority of its members are former members of a public service. Successive Governments have thought it important and valuable to have two senior Parliamentarians, one from each of the main political parties, on the Advisory Committee, and the Government is grateful to those who have been willing to find time for this public service. Those who have served hitherto have all been members of the House of Lords when invited to serve; but they have all been people who have had experience as senior Ministers and as members of

the House of Commons, and this combination of Parliamentary and Ministerial experience seems to the Government to have been, and to be likely to continue to be, valuable qualification for membership of the Advisory Committee. There is no reason why one or other (or indeed both) of the two senior Parliamentarians on the Advisory Committee should not be a member of the House of Commons if he or she meets the requirements. But the Government does not think it appropriate to have more than two senior Parliamentarians on the Advisory Committee at any one time.

RECOMMENDATION NO 21

WE RECOMMEND THAT MEMBERS OF THE ADVISORY COMMITTEE SHOULD BE APPOINTED FOR THREE YEARS AND TWO REPLACED EACH YEAR (PARAGRAPH 5.17)

The Government accepts that the membership of the Advisory Committee should be regularly reviewed. It is also desirable that there should be a reasonable continuity of experience in the membership. Recent appointments to membership have been for a term of three years in the first instance, and that will continue to be the practice. The Government would propose not to make it a fixed rule to replace two members of the Committee each year. It will often be sensible to ask a member to serve a second three-year term. The Government considers, however, that the presumption should be against a member serving a third term, unless there is some special reason for his being invited to do so.

RECOMMENDATION NO 22

WE RECOMMEND THAT THE DECISIONS TAKEN BY THE GOVERNMENT ON THE ADVICE OF THE ADVISORY COMMITTEE SHOULD BE ANNOUNCED AT THE TIME THEY ARE TAKEN, TOGETHER WITH THE TERMS OF ANY CONDITIONS IMPOSED AND AN INDICATION OF THE OCCASIONS WHEN THE COMMITTEE'S ADVICE HAS NOT BEEN ACCEPTED (PARAGRAPH 5.18)

The Government thinks that it would be a breach of confidence and privacy for it to announce individual decisions taken on the advice of the Advisory Committee at the time those decisions are taken. The regular statistical reports to be published in future (see response to Recommendation No 23) will, however, note (subject to such aggregation or other precautions as may be necessary to preserve anonymity) the numbers of cases referred to the Advisory Committee for consideration, the numbers of cases decided in accordance with the Advisory Committee's recommendation, and the numbers of cases decided otherwise than wholly in accordance with the Advisory Committee's recommendation.

RECOMMENDATION NO 23

WE RECOMMEND THAT THE GOVERNMENT SHOULD PUBLISH PERIODICALLY REPORTS ON THE WORKING OF THE SYSTEM (PARAGRAPH 5.19)

The Government agrees with the proposal that the Cabinet Office (MPO) should periodically review and report on the working of the system, and will implement it by publishing regular statistical reports which will cover applications by officers at all grades but not identify the details of any individual cases.

RECOMMENDATION NO 24

WE HAVE REACHED THE CONCLUSION THAT THE HEARINGS OF THE ADVISORY COMMITTEE OUGHT NOT TO BE IN PUBLIC (PARAGRAPH 5.20)

The Government agrees with the Committee that the Advisory Committee's hearings and other proceedings should not be in public. So does the Advisory Committee.

RECOMMENDATION NO 25

WE RECOMMEND THAT INFORMATION ABOUT THE LEVELS AND PATTERNS OF MOVEMENT OF BOARD MEMBERS AND SENIOR STAFF OF NATIONALISED INDUSTRIES AND OTHER PUBLIC BODIES SHOULD BE COLLECTED BY THE NEW UNIFIED SECTION OF THE MPO (PARAGRAPH 6.3)

As indicated in its response to recommendation 27, the Government considers that the degree of managerial autonomy accorded to most categories of public body makes it inappropriate for Ministers to intervene to press for the adoption of rules on the acceptance of outside appointments after resignation or retirement. Given this, regular collection by the Cabinet Office (MPO) of statistics about levels and patterns of movement of board members and senior staff would serve little practical purpose. The Government could scarcely justify requiring the maintenance of detailed records for which the bodies concerned would (in many instances) themselves not see any need.

RECOMMENDATION NO 26

WE WOULD WISH TO BE INFORMED, IN DUE COURSE, OF THE EXTENT TO WHICH, AS A RESULT OF APPROACHES MADE BY DEPARTMENTS, NDPBs HAVE ADOPTED RULES TO GOVERN THE TAKING UP OF OUTSIDE APPOINTMENTS (PARAGRAPH 6.5)

When the revised rules for Crown servants are available, Departments will bring them, together with the observations of the Committee, to the attention of non-departmental public bodies (NDPB) with executive responsibilities. No rules about the acceptance of outside appoitments currently apply to Board members of NDPBs.

RECOMMENDATION NO 27

WE BELIEVE THAT IT WOULD BE APPROPRIATE, IN PRINCIPLE, FOR RULES GOVERNING THE TAKING UP OF OUTSIDE APPOINTMENTS TO BE ADOPTED THROUGHOUT THE PUBLIC SECTOR AND WE RECOMMEND THAT THE DEPARTMENTS CONCERNED SHOULD TAKE APPROPRIATE ACTION TO THAT END (PARAGRAPH 6.6)

The Government has little to add to its response (reproduced on page 178 of the Committee's report) to the similar suggestion made by its predecessor Committee.

The circumstances of particular groups in the public sector - local government, the NHS, nationalised industries and various types of non-departmental public bodies (NDPB's) vary so greatly that it is difficult to see how standard rules could deal effectively with all of them.

In the absence of a serious problem, the Government would find it hard to justify imposing such a requirement generally when making Ministerial appointments to outside bodies. Such rules could well make it difficult to attract good

calibre members, and in some cases inhibit desirable cross-fertilisation of experience. So far as staff are concerned, for most of these bodies responsibility and authority rests clearly with the managements concerned, and the imposition of rules by Government is neither practicable nor appropriate.

As acknowledged in the Government's response to the predecessor Committee's recommendation, the strongest case for Government intervention in this area would be in relation to NDPBs funded to the extent of 50 per cent or more by the taxpayer. Paragraph 6.5 of the present report notes the Government's action in incorporating into standing guidance to Departments the advice that they should "consider..... taking account of the nature of the body whether it should be asked to adopt rules for board members and/or staff about the acceptance of appointments after resignation or retirement.....". The relevant guidance (the Cabinet Office (MPO) booklet "NDPBs: a Guide for Departments") is currently being revised, and the opportunity will be taken to make clear that the need for such rules should be considered both when a body is set up and, where appropriate,

periodically thereafter. At the same time the guidance would acknowledge that the need for rules must be considered in relation to the functions of the NDPB concerned and any potential for conflict of interests which may give rise to public concern.

APPENDIX I

DEFINITION OF OUTSIDE APPOINTMENTS TO WHICH THE RULES APPLY

Under these rules all officers of the rank of Grade 3 (Under Secretary or, in the Diplomatic Service, Counsellor) and above, and of the equivalent ranks in Her Majesty's Forces, are required to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business or other bodies, particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature below the rank of Grade 3 or equivalent to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

2. For these purposes employment is regarded as including self-employment, for instance in a consultancy.

3. The rules are intended to apply primarily to outside appointments in industrial or commercial bodies, and give discretion to those concerned to modify or dispense with the prescribed procedures in cases of unpaid appointments and appointments to non-commercial bodies of such a nature that the procedures would be inappropriate.

CROABE

NBPM

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

JF7634

Secretary of State for Trade and Industry

28 February 1985

The Lord Gowrie PC
Chancellor of the Duchy of
Lancaster
Cabinet Office
Management and Personnel
Office
Great George Street
LONDON
SW1P 3AL

Dear Grey,

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Thank you for your letter of ~~15~~ will request if required February inviting comments on the draft response to the Treasury and Civil Service Committee's report recommending changes in the rules on business appointments.

2 I see no case for imposing any major new restrictions on Crown Servants wishing to take up business appointments after leaving the Service, particularly as the Committee found no evidence of any impropriety arising under the present rules. On the contrary, I share the view expressed in the response that, so long as impropriety is avoided, there is positive merit in minimising obstacles to free movement between the public service and the private sector. As the response rightly points out, this is not only a question of allowing the talents of Crown Servants to be redeployed after retirement (which in some cases occurs well before 60 or 65 years of age) but also of not deterring individuals in the private sector from joining the Civil Service in mid-career because of possible restrictions on their freedom to move later on.

3 To my mind the response takes the right line on this main issue and on the detailed recommendations. I am content with it as drafted.

/4. Copies ..

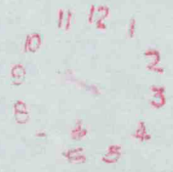
4 Copies of this letter go to all Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

NORMAN TEBBIT

CIVIL SERVICE: Acceptance of Outside Appts by CS

Jan 80

28 FEB 1985



CRO

CONFIDENTIAL

N BPM

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

The Rt Hon Lord Gowrie
Chancellor of the Duchy of Lancaster
Management and Personnel Office
Great George Street
London SW1P 3AL

27 February 1985

Dear Grey.

I am sorry not to have replied sooner to your letter of 15 February. I am however content with the draft response proposed.

It is particularly important that the rules governing appointments should be specifically drawn to the attention of those most likely to be affected by them. Only if they are flouted should we undertake to consider sanctions. I welcome the retention of the two year period of delay. To have moved to five years in the absence of evidence of impropriety would have had undesirable consequences of the kind you indicate.

There are two relatively small points which I should like you to consider. The existing rules I am advised make it clear that university appointments are outside the scope of the present arrangements on the grounds that universities are non-commercial bodies. Although some Departments nowadays enter into research contracts with universities I hope the exception can be unambiguously retained because of the very open manner in which university appointments are made.

Secondly, although I agree to the response on Recommendation 26, Departments with executive Non Departmental Public Bodies may need guidance in advising them whether the rules should be applied. Some central advice may be necessary to achieve consistency.

I am copying this letter to all Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

Yours.

Keith.

27 FEB 1985

D10

SECRETARY OF STATE FOR THE ENVIRONMENT

NBPM

2 MARSHAM STREET
LONDON SW1P 3EB

01-212 3434

My ref:

Your ref:

26 February 1985

Dear Grey, will report if required

Thank you for copying to me your letter to Willie Whitelaw of 15 February about the Government's response to the Eighth Report of the Treasury and Civil Service Select Committee about the rules which apply to the acceptance of outside appointments by crown servants.

I understand that officials of my Department have been fully involved in the discussions on the report, and that no difficulty is seen here in implementing the procedural changes proposed.

I also agree with the response in rejecting recommendation No 27 on similar rules being adopted "throughout the public sector". The relevance of such rules in relation to individual non-Departmental public bodies can certainly be considered but requiring such rules to be adopted by, for example, local government and the nationalised industries is, as the response says, neither practicable nor appropriate.

Copies of this letter go to Cabinet colleagues, the Paymaster General and Sir Robert Armstrong.

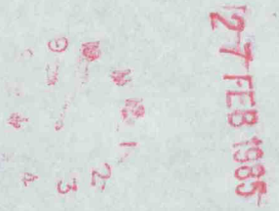
Yours ever

Patrick

PATRICK JENKIN

The Lord Gowrie

civic service outside appts



27 FEB 1985

FROM:
THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

NBPM

25th February 1985

My dear Grey:

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

You have copied to me your letter to Willie Whitelaw of 15th February.

I am broadly in agreement with the draft response to the Treasury and Civil Service Committee's recommendations for changes in the rules about Crown Servants accepting outside appointments and have no amendments which I wish to suggest.

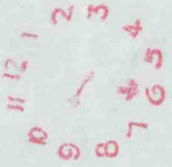
Copies of this go to Cabinet colleagues, the Paymaster General and Sir Robert Armstrong.

Yrs:

The Earl of Gowrie
The Chancellor of the
Duchy of Lancaster
Cabinet Office
Great George Street
London SW1P 3AL

CIVIL SERVICE
Outside Appts.
Jan 80

27 FEB 1985



CONFIDENTIAL

MBPM

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

R/PSO/2427/85

The Rt Hon Earl of Gowrie
Chancellor of the Duchy of Lancaster
Management and Personnel Office
Great George Street,
LONDON, SW1P 3AL

25 February 1985

Dear Gyn

Thank you for sending me, with a copy of your letter to Willie Whitelaw, the draft response to the report of the Treasury and Civil Service Select Committee on the acceptance of outside appointments by Crown servants after resignation or retirement.

I have no comments to make on the response. Its proposals can be implemented without difficulty with regard to Department of Transport staff.

I am copying this letter to Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

NICHOLAS RIDLEY

CONFIDENTIAL

CONFIDENTIAL

NBPM

FCS/85/39

CHANCELLOR OF THE DUCHY OF LANCASTER

Acceptance of Outside Appointments by Crown Servants

1. Thank you for my copy of your letter of 15 February, and for allowing me an extension to your deadline for comments.

2. Because of other commitments, I have still not had the opportunity to study the draft response to the Treasury and Civil Service Committee's Report in as much detail as I would have wished, but it seems to me that in general the draft responses to the detailed recommendations strike about the right balance between liberality and the need to prevent impropriety. I think it particularly important to strike the right note in the introduction, in order to give an appropriate signal not only to Parliament, the Select Committee and the public, but also to the Advisory Committee. Even before the Report was published, the Committee reacted to the Select Committee's line of enquiry by taking a more cautious line and recommending longer waiting periods. I think that the White Paper needs to encourage the Committee to relax a little, and to this end I welcome the fact that the introduction comes out strongly in favour of freedom of movement. Without this, the Advisory Committee might interpret the changes that are proposed, not as a necessary contribution to monitoring the system more effectively, and to making it more open, but as a tacit admission of the need to make it more restrictive. In practice, better monitoring and more openness should allow the system to operate less restrictively than before.

3. Had I had more time, I would nevertheless have hoped to have suggested some language to strengthen the case for even greater mobility. I note that the CBI, in their evidence to the Committee, argued strongly in favour of

/freedom

freedom of movement. I note too that, to say the least, the MPO's enquiries about practice in other countries turned up very little to support the Committee's general line. Indeed, an important argument for greater mobility is the need to increase mutual understanding between the Civil Service and industry, an understanding which by general consent is greater in countries like France and Japan.

4. I also note the view expressed in the introduction to the draft White Paper that the rules depend on voluntary consent and that they could be subject to the challenge of being unreasonable. I think that a voluntary scheme of very limited application can be defended, but I hope that the risk of challenge will be borne in mind when the rules come to be drafted so that they are sufficiently flexible not to risk a successful challenge which could bring the whole edifice down.

5. On a point of detailed drafting, I would question the equation which appears to be drawn in Appendix I between Counsellors in the Diplomatic Service and Under-Secretaries in the Home Civil Service. This is not correct, although it seems to have slipped through the net in 1975, since an Under-Secretary in the Home Civil Service equates to an Assistant-Under-Secretary in the Diplomatic Service. In any case, I would prefer to take out that detailed reference and merely add a sentence at the bottom, to the effect that similar rules apply to members of the Diplomatic Service. This would allow several differences of procedure and grading etc to be taken care of within specific rules applicable to the Diplomatic Service rather than in a side-letter as was the case in 1975. I think that this would be a tidier way of doing things.

6. I am copying this letter to the other recipients of yours.

GEOFFREY HOWE

Foreign and Commonwealth Office
25 February, 1985

25 FEB 1985

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

NBPM

From the Minister
CONFIDENTIAL

The Rt Hon Earl of Gowrie
Chancellor of the Duchy of Lancaster
Management and Personnel Office
Great George Street
London SW1

22 February 1985

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

A Flap. Will Request if Required

I am generally content with the draft response to the Select Committee which you enclosed with your letter of 15 February to the Lord President. I do not think the Committee's proposal to extend the maximum period of delay to five years is either fair or necessary and I agree that we should reject it. In my view, problems which might arise are more likely during the period prior to retirement rather than after people have left the Service. For this reason, I particularly support the strength of the present procedures which is set out in the reply to recommendation No 14.

I am copying this letter to Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong.

MICHAEL JOPLING

Civil Service : Business Appts Jan 80.

22 FEB 1989



NBPM

870

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

21 February 1985

Dear Willie,

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Grey Gowrie copied round his letter of 15 February to you about this subject.

The number of cases arising in the Scottish Office in recent years has been quite small and the cases have been handled easily enough within the existing rules. The main concern of the Committee is clearly in the defence field and I do not have much to contribute to consideration by colleagues of the issues that arise. For my own part, however, I agree that the extension of the period of delay from 2 years to 5 years is likely to be too severe a response. On the other hand I do regard the issues that arise in this area as very sensitive and I am glad that we are going as far as we can to respond to many of the other recommendations that the Committee made.

Yours ever,

George.

I am copying this letter to all Cabinet colleagues, the Paymaster General and to Sir Robert Armstrong

CONFIDENTIAL

File

RM

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Thank you for your minute of 8 February (A085/448), which the Prime Minister received with the endorsement of the Chancellor of the Duchy of Lancaster.

The Prime Minister has agreed that the draft response should be circulated to all Cabinet Ministers by the Chancellor of the Duchy of Lancaster, with a request for comments by a reasonable time next week.

I am sending a copy of this minute to Mr. Thomas (Chancellor of the Duchy of Lancaster's Office).

RB

13 February, 1985

CONFIDENTIAL

Prime Minister
You read an advance copy over the weekend. Content that the Chancellor of the Duchy should circulate to Cabinet?
FERB 13.2.

Ref. A085/448

1. CHANCELLOR OF THE DUCHY OF LANCASTER

2. PRIME MINISTER

Acceptance of Outside Appointments by Crown Servants

The Eighth Report of the Treasury and Civil Service Committee, published on 20 September 1984, made recommendations for changes in the rules governing the acceptance of outside appointments by Crown servants. A copy of the existing rules is attached herewith at Annex A.

2. A copy of the Summary of Conclusions and Recommendations of the Treasury and Civil Service Committee is attached herewith at Annex B.

3. The Committee note that their predecessors, reporting in 1981, thought that the arrangements were "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety". They say that that view is even more relevant today: that the interchange following retirement is exclusively one way, out of the Civil Service, that the flow is increasing and is particularly striking at senior levels of the Open Structure; and that the Ministry of Defence contributes substantially to it. They consider that these tendencies can only give the impression that the circumstances which were the mainspring for the introduction of the rules are still very much in evidence in the defence field, and that the rules are no longer adequate for the purpose for which they were intended; that there is now a steady and accepted movement of certain senior civil servants into certain areas of the private sector; and that the ease of the movement and the ready availability of employment suggests that the traditional

independence and impartiality of the Civil Service is in danger of becoming eroded or compromised in the eyes of the public.

4. The Committee have not, however, found any evidence of corruption or impropriety.

5. Their study has led them to conclude that there is a need for a significant tightening of the system and for making the way in which it is administered a much more open process. They have made 27 recommendations to this end.

6. The Committee's report has been thoroughly studied by Departments. There is a very general feeling that the Committee's recommendations for tightening the rules, and in particular the recommendation that the maximum period of delay before being allowed to take up an appointment should be increased from two years to five years, would be likely undesirably to inhibit movement between the public service and the private sector, would be unfair to individuals, and are not justified on the evidence of the Committee's inquiries. The unfairness to individuals is not just a matter of equity. The system is at present voluntary, not statutory, and both the Government and the Committee think that it should continue to be so. The more restrictive we try to make it, the greater the danger that some one will flout it, or even seek to challenge it in the courts and subject it to judicial review. In either event the Government might find itself faced with inescapable pressure to introduce legislation imposing statutory rules and sanctions.

7. We think on the other hand that there is scope for adopting many of the recommendations for making the process more open, in so far as this can be done without breach of individual privacy and confidence.

8. I attach at Annex C an interdepartmentally agreed draft response for the Government to make to the Treasury and Civil

Service Committee's report accordingly. I think that Ministers will wish to look with particular attention at the response to Recommendation 2, which proposed the extension of the maximum period of delay from two to five years; and the response to Recommendation 20, which proposed that two senior backbench Members of the House of Commons should be added to the Advisory Committee on Business Appointments.

9. If you and the Prime Minister are in general agreement, I suggest that the draft response should now be circulated by you to all Cabinet Ministers, with a request for comments to be sent to you by, say, Tuesday 19 February. We will then arrange for the draft to be revised in the light of Ministers' comments and submitted for final approval by you and the Prime Minister. That should make it possible to publish the response during the first half of March, as we have proposed that the Prime Minister should foreshadow in a reply to Mr Terence Higgins MP.

RA

ROBERT ARMSTRONG

8 February 1985

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

THE RULES

It is in the public interest that people with experience of public administration should be able to move into business and industry, and that the possibility of such movement should not be frustrated by public concern over a particular appointment. It is also no less important whenever a Crown servant accepts a particular business appointment that he should not be open to any suspicion of impropriety. Therefore the rules set out below have been designed to safeguard against such criticisms both the public service and individual officers who wish to leave to take up these appointments. The rules aim at avoiding any suspicion - however unjustified - that serving officers might be ready to bestow favours on firms in the hope of future benefits to come. They also seek to guard against the risk that a particular firm might be thought to be gaining an unfair advantage over its competitors by employing an officer who, during his service, had access to technical or other information which those competitors could legitimately regard as their own trade secrets.

2. All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above, and of the equivalent ranks in HM Forces, are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

SA

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature (below the rank of Under Secretary) to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

PROCEDURE

3. Assent to an application will take the form of approval by the Prime Minister in cases referred to an Advisory Committee, or by the Minister in charge of the Department in all other cases. It would however be open to a Minister to approve arrangements under which defined categories of case would be dealt with at a specified level without reference to the Minister.

4. PERMANENT SECRETARIES AND SECOND PERMANENT SECRETARIES

All cases concerning Permanent Secretaries and Second Permanent Secretaries (and those of equivalent rank in HM Forces) must be referred to the Head of the Civil Service and to the Minister responsible for the Department. Where the Head of the Civil Service and the departmental Minister are agreed that the proposed appointment is to a non-commercial body of such a nature that this procedure would be inappropriate (eg a University), the appointment may be approved without reference to the Committee. All other cases will then be referred by the Head of the Civil Service to the Prime Minister to be laid before the Advisory Committee (see paragraph 10).

5. ALL OTHER HEADS OF DEPARTMENTS

All cases concerning Heads of Departments other than Permanent Secretaries will follow the procedure for cases concerning Permanent Secretaries, with one variation; where the Minister responsible for the Department and the Head of the Civil Service are in agreement about whether consent should be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

6. DEPUTY SECRETARIES ETC

All cases concerning Deputy Secretaries, officers of higher rank below Second Permanent Secretary and HM Forces personnel of equivalent rank

SA

(other than those covered by paragraph 5 above) will similarly follow the procedure for Permanent Secretaries, subject to the exception that where the Head of the Department concerned and the Head of the Civil Service are in agreement about whether assent may be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

7. ALL OTHER CASES

Save for the exception referred to in paragraph 8, the CSD must be consulted in all cases not covered by paragraphs 4 - 6 where there has been 'contact with the prospective employer' as defined in paragraph 16.

8. Departments need not consult the CSD in cases covered by paragraph 7 up to and including Senior Executive Officer level (or the equivalent rank in HM Forces) where the contact with the prospective employer in the previous two years had been only casual, and there appears to be no risk of criticism from the trade secrets angle.

9. In putting cases forward to the CSD, Departments should explain why they recommend that permission should be granted. They should say whether they consider that a satisfactory answer could be given in the event of the Government being criticised for allowing the appointment to be taken up.

ADVISORY COMMITTEE

10. The Advisory Committee will consist of 3 members having experience of relations between the Civil Service and the public or private sectors of industry. The members will on each occasion be drawn from a panel. Cases will be referred to the Committee by the Prime Minister and it will report to him. The Committee will consider the cases defined in paragraphs 4 - 6. It may also consider, exceptionally, cases falling outside those grades which are referred to it. The Committee will not act as a court of appeal against decisions reached in cases not referred to it.

11. In considering cases the Committee will have regard to the purpose of the rules as described in paragraph 1. The Committee will take into account the views of the Department concerned and of the CSD.

SA

12. In all cases referred to the Committee, the final decision will rest with the Prime Minister who will be answerable in the House for the decision; the responsibility for all cases which do not go to the Committee will however remain with the departmental Minister concerned. The Prime Minister will be free to accept or reject the Committee's report together with any recommendations which it may make.

13. Except as noted in paragraph 14, in all cases referred to the Committee which concern Permanent Secretaries (and their equivalents in HM Forces), a minimum period of 3 months must elapse between leaving the Service and taking up an outside appointment within the scope of the rules.

14. Exceptions to the waiting period prescribed in paragraph 13 may be made only in cases where the Prime Minister agrees that the national interest is overriding, eg where the appointment is to another post in the public sector (see also paragraph 18c).

CONDITIONS WHICH MAY BE IMPOSED

15. It will be open to those considering applications in accordance with paragraphs 4 - 7 to recommend outright refusal or unqualified approval; or to recommend approval subject to conditions. Such conditions may include:

a. a waiting period lasting for up to two years, the duration to be determined according to the individual circumstances of the case. (In the case of Permanent Secretaries, the automatic 3 months' period will form part of any longer period which may be imposed);

b. a ban on involvement in dealings between the prospective employer and the Government, either absolute or with reference to a stated issue or issues, lasting for up to two years, the duration to be determined according to the circumstances of the case;

c. a ban on involvement in dealings between the prospective employer and a named competitor (or competitors), subject to the same conditions of scope and duration as those at b. above;

d. a requirement to seek the approval of the prospective employer's competitors for the proposed appointment, should this not already have been done.

SA

CONSIDERATIONS TO BE TAKEN INTO ACCOUNT

16. One of the main factors which will be relevant to the consideration of cases will be the degree of contact there has been between the applicant and the prospective employer. Sometimes the prospective employer's relations with the Government may be relevant irrespective of any involvement on the part of the individual concerned. But normally some measure of personal involvement on the part of the applicant will be necessary for this factor to be relevant. Such involvement should be assumed when the individual concerned, either directly and personally or indirectly through those for whom he is responsible (whether or not they normally work to him) at any time in the course of his official duties during the two years before his resignation or retirement or earlier if the association has been of a continued or repeated nature, has:

a. dealt with the receipt of tenders for and/or the awarding of contracts between the firm involved and the Government; or

b. dealt with the administration and/or monitoring of such contracts after they have been awarded; or

c. advised in a professional or technical capacity about such contracts either before they are awarded, as in a. or in the exercise of a monitoring brief, as in b; or

d. been involved in contact of an official but non-contractual nature with the firm involved - where, for instance, the firm operates in a field in which the Government as a whole or the individual's Department has a special interest of a financial, policy or other nature.

17. Previous contact as outlined in paragraph 16 should weigh heavily in the consideration of any application. But the decision of what conditions (if any) should be imposed or whether the application should be rejected will depend on the full circumstances of the case, including the extent and nature of the previous contact.

18. Other considerations which should be kept in view include:

a. The possibility that the applicant may have had access to information about one or more of his prospective employer's competitors which

could legitimately be regarded as their "trade secrets". This may arise independently of any contact with the prospective employer - when, for instance, the prospective employer is a newly-created company or consultancy in the relevant field. It would be normal to consult these competitors to see if they had any objection to the appointment;

b. An appointment may be on a part-time or consultancy basis. If so, this may be a factor tending to reduce the likelihood of public criticism, especially if the consultancy service is to be offered without favour to a number of firms competing in the same field;

c. There may be occasions when a Minister considers it in the national interest that, although the normal weighing of the factors to be considered might dictate the granting only of qualified approval or even the rejection of the application, the appointment may nevertheless be allowed. In all such cases, the procedures set out in paragraphs 4 -7 should be followed, including reference to the Advisory Committee where that is appropriate.

d. Many senior Crown servants are engaged in dealing with private interests on behalf of the Government. Moreover, such senior officials would have a special knowledge of how the Government would be likely to react to particular sets of circumstances, and how the Government would be likely to legislate to give effect to its policies. An official in this position could well be, or be thought to be, of considerable assistance to an outside body which had an interest in matters on which policy was developing or legislation was being prepared. It is important to take into account the advisability or otherwise of permitting Crown servants to join outside interests with whom the Department had been, or was, in a negotiating relationship. It may also be relevant that a senior official was involved in policy discussion which led to a decision the effect of which was considerably to the benefit of the firm offering him an appointment.

19. In cases involving Permanent Secretary Heads of Department subject to the automatic waiting period (see paragraph 13), formal application to take up an outside appointment should not normally be made until after the successor to the individual concerned has been named. Cases where the individual intended to resign before retirement in order to take up an outside appointment would have to be considered earlier.

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20. When an officer to whom the rules apply is nearing retirement his Department should remind him of the rules and should take the opportunity to suggest that, if he is in any doubt as to whether he needs to seek permission to take up a particular appointment, he should in the first instance approach his Establishment Officer for advice. It is important that the officer should be aware that permission must be sought not only for the initial appointment taken up on retirement, but for any subsequent appointment during the two year period which comes within the scope of the rules, including appointments to subsidiary or associated companies.

CHAPTER 7

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

(i) We recommend that the rules should be redrafted following the sequence of subjects in this report (paragraph 3.2).

(ii) We recommend for under secretaries and above an extension of the maximum two year period of delay to five years (paragraph 3.13).

(iii) We recommend the more extended use by the Advisory Committee and by Government Departments, particularly the Ministry of Defence, of conditions governing behaviour after leaving the public service. Enquiries relating to the adherence to the conditions should be made after one year to ensure that all such conditions are being complied with and this should be continued during the period to which the conditions relate (paragraph 3.17).

(iv) We recommend that officials of the rank of under secretary and above leaving the public service should be required to give a written undertaking to abide by a code of conduct under which they would be prohibited for a period of five years from representing their new employer on specific and significant matters for which they were responsible in their official capacity. Contracts of employment would provide a useful further safeguard and, if they are introduced for civil servants, such a prohibition for senior officials could be included in them (paragraph 3.21).

(v) In general we think our own system is based upon the correct approach. We would not want to replace it by a system relying exclusively on a statutory code of conduct (paragraph 3.22).

(vi) We believe that sanctions may be needed if and when evidence becomes available of abuses of the present rules and the proposed code of conduct. If our recommendations on policing the rules and code of conduct are adopted, abuse should be effectively reported, so alerting Parliament to the need for review of suitable sanctions. We are impressed with the difficulties of introducing specific legislation and the problems of definition which would be involved and, therefore, recommend that, if sanctions become necessary, the Government should make it clear that it is prepared to take steps to abate automatically the pension of any civil servants who act in defiance of the rules on business appointments (paragraph 3.26).

(vii) We recommend that the rules should state specifically that all under secretaries and above need to apply for approval to take up business appointments, and other civil servants need to when there has been contact with the prospective employer or they have been responsible for anyone having such contact or the employer concerned has extensive dealings with the civil servant's Department. Contact is to be understood as meaning not only face-to-face dealings but also involvement in such dealings behind the scenes (paragraph 4.6).

(viii) We recommend that the rules should state explicitly and fully and in one place what the criteria are for deciding whether or not to give

approval to a proposed business appointment. The criteria should deal with the following points which we regard as essential:

(i) if a civil servant has had contact with a prospective employer in the course of his official duties, the nature of his dealings with the employer is the crucial consideration. Contact is to be understood as meaning not only face-to-face dealings with the employer but also behind the scenes involvement in such dealings. It is relevant to know whether or not, in those dealings, the civil servant exercised a significant amount of discretion in determining the outcome or, if he was acting as a member of a team, the extent to which he was able to influence the outcome. It is important to know whether or not the employer would have benefited substantially from a favourable outcome. It is also relevant to know the nature of the job to which the civil servant proposes to go and the extent of the connection between it and his official job. The question is whether there has been or will be any potential for improper behaviour before or after the move;

(ii) if a civil servant has not had previous contact with his prospective employer or has had contact but of an insignificant kind as judged by the criteria in (i), the question of whether or not the prospective employer has extensive dealings with the civil servant's Department needs to be taken into account. If the employer has, it is important to establish, having regard to the nature of the work being offered, if the civil servant is being recruited because of his knowledge of the working of the government machine or his professional knowledge of some area of government activity and can be expected to have dealings with his old Department. If the answer is in the affirmative the question to be weighed is whether, following a move, any potential damage to the Department's interests is outweighed by any potential public benefit;

(iii) if the prospective employer is operating in a competitive field, it is necessary to establish that competing firms do not object to the appointment. If competition is restricted it is necessary to look at the recruitment pattern to put the situation in perspective (paragraph 4.19).

(ix) We recommend that the rules should lay down the following principles in the light of which applications should be judged:

(i) those in authority over those directly involved in dealings with a firm should be deemed to be involved;

(ii) in considering the nature of the job to be taken, it should be borne in mind that any civil servant taking up an appointment to the board of a company will share with the rest of the board a collective responsibility for all the activities of the company including its dealings with his old Department (paragraph 4.29).

(x) On balance, we do not think a case has been made for a complete ban on the movement of permanent secretaries into the private sector. We believe greater openness in implementing the rules is the most effective way of removing the suspicion of impropriety (paragraph 4.35).

(xi) We recommend that Departments review their arrangements for ensuring that all staff who, judged by the criteria we set out in paragraph 4.6, might possibly be within the scope of the rules are specifically informed of this fact before resignation or retirement (paragraph 5.1).

(xii) We recommend that applications for approval to take up a business appointment should be made in writing in a standard form along the lines of that used by the Ministry of Defence. Applicants should always be interviewed if a refusal or the imposition of conditions is being contemplated. In other cases applicants should have the right to be interviewed (paragraph 5.4).

(xiii) We recommend that prospective employers should be consulted about applications and informed of the outcome and any conditions imposed (paragraph 5.5).

(xiv) We recommend that the rules should require that officials of the rank of under secretary and above do not discuss offers of post-retirement employment with prospective employers within the last year of service prior to retirement. If offers are made to such officials in mid career or to more junior officials in any circumstances, they may be discussed with prospective employers but the offers should first be reported to those in authority and appropriate permissions sought (paragraph 5.6).

(xv) We recommend that the Advisory Committee should consider all applications from under secretaries and above (paragraph 5.8).

(xvi) We recommend that the rules should state explicitly that the MPO should be consulted before a decision is taken in cases which raise substantial doubts and for which no precedents exist. The MPO should periodically review a selection of cases where Departments have taken the decisions without consultation (paragraph 5.11).

(xvii) We recommend that the MPO should take the initiative in sending to the Advisory Committee before a decision is taken Departmental cases on which it has been consulted and which raise issues of importance. The Advisory Committee should take the initiative in periodically calling for and reviewing a selection of the decisions taken by Departments after consulting the MPO. In these ways, the Advisory Committee would become a source of advice for Departmental Ministers as well as the Prime Minister (paragraph 5.12).

(xviii) We recommend that the sections of the MPO dealing with business appointments and standards of conduct should be merged, as a contribution towards securing more effective leadership in this field (paragraph 5.13).

(xix) We do not recommend turning the Advisory Committee into a decision-making body, provided the Government always make an announcement when they decide not to follow the Committee's advice (paragraph 5.14).

(xx) We recommend that the Government should add two senior back bench Members of the House of Commons to the Advisory Committee (paragraph 5.16).

(xxi) We recommend that members of the Advisory Committee should be appointed for three years and two replaced each year (paragraph 5.17).

(xxii) We recommend that the decisions taken by the Government on the advice of the Advisory Committee should be announced at the time they are taken, together with the terms of any conditions imposed and an indication of the occasions when the Committee's advice has not been accepted (paragraph 5.18).

(xxiii) We recommend that the Government should publish periodically reports on the working of the system (paragraph 5.19).

(xxiv) We have reached the conclusion that the hearings of the Advisory Committee ought not to be in public (paragraph 5.20).

(xxv) We recommend that information about the levels and patterns of movement of board members and senior staff of nationalised industries and other public bodies should be collected by the new unified section in the MPO ((xviii) above) (paragraph 6.3).

(xxvi) We would wish to be informed, in due course, of the extent to which, as a result of the approaches made by Departments, non-departmental public bodies have adopted rules to govern the taking up of outside appointments (paragraph 6.5).

(xxvii) We believe that it would be appropriate, in principle, for rules governing the taking up of outside appointments to be adopted throughout the public sector and we recommend that the Departments concerned should take appropriate action to that end (paragraph 6.6).

ANNEX C

DRAFT RESPONSE (8.2.85)

The Eighth Report of the Treasury and Civil Service Select Committee considered the rules governing the acceptance of outside appointments by Crown servants, and made a number of recommendations.

2. The definition of the outside appointments to which the rules apply is set out in Appendix I to this response. Briefly, they cover all employment in business or other bodies, whether or not of a commercial nature. Where the employment is in a non-commercial organisation or is unpaid, the Government consider the application of the rules to be discretionary and dependent on the circumstances of the particular case. As far as private consultancies are concerned, the rules are applied in respect of each commission undertaken.

3. The rules apply to members of the Home Civil Service, of the Diplomatic Service and of Her Majesty's Forces, collectively referred to in this response as Crown servants. They do not cover Special Advisers to Ministers; in their case, arrangements are made to ensure that they neither

have access to the kind of information (eg about individual companies) nor are involved in the kind of business (eg contracts) which underlies the need for the rules applicable to career Crown servants.

4. The Government agrees with the Committee that the rules governing the acceptance of outside appointments by Crown servants have to strike a balance between two principles: the principle of maximum possible freedom of movement, which is a matter not only of personal liberty but also of the economic and other benefits of interchange between the public service and other occupations and spheres of activity; and the requirement to avoid corruption or impropriety, or the suspicion of them, in relation to the public service. As the Committee points out, the risk of impropriety relates not only to the possibility that a retired Crown servant might use information or contacts obtained while in the public service to the unfair advantage of a new employer or to the disadvantage of his competitors, but also to the possibility that the advice given by a Crown servant while still serving could be coloured or conditioned, to

the advantage of a particular company, by an offer, or the prospect held out, of future employment after retirement.

5. It is a question of judgment whether the balance is struck at the right point by the existing rules. The Select Committee argues that the view of its predecessor Committee in 1981, that the balance is "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety", is even more relevant today, despite changes made to the rules following the 1981 Committee's Report. The Select Committee has therefore made a number of recommendations designed to reinforce the effects of the rules in avoiding suspicion of impropriety. Inevitably a number of their recommendations would tend to impair freedom of movement, in some cases very significantly.

6. The Government of course accepts the need to avoid impropriety, and even the suspicion of impropriety where that is reasonably felt, and the arrangements should be such as to allay legitimate and reasonable concern on these matters. But the Committee has not found any evidence of

impropriety or of failure of the rules as they now are to provide adequate safeguards against impropriety. On the contrary, the evidence - or lack of it - seems to suggest that the rules have been generally effective for the purposes for which they are intended. The Government does not find this surprising, given the high standards of integrity in the public service on which the Government believes continuing reliance can safely be placed. In the Government's view, the Committee's apprehensions "that the traditional independence and impartiality of the Civil Service is in danger of being eroded or compromised" are without foundation and the need for major change in the rules to prevent impropriety is not established.

7. So long as impropriety is avoided, the Government believes that there is positive merit in minimising the obstacles to freedom of movement. There is general agreement on the need for and advantages of greater movement between the public service and other sectors of national life. Many people who retire or resign from the public service, like people who retire or resign from other occupations, have energies, talents and

qualifications which can be deployed in other walks of life, with considerable benefit and without there being any question of impropriety: so long as any reasonable suspicion of impropriety is avoided, the Government considers that Crown servants should be no less free than others to use their talents and qualifications after retirement from their main careers, when by doing so they can continue to make a contribution to the economic life and well-being of this country.

8. This point is particularly pertinent to those Crown servants, such as members of the Armed Services, whose retirement occurs long before the completion of a normal working life.

9. Moreover, interchange is not exclusively one way, as the Committee seem to suggest. Indeed, some parts of the Civil Service depend to a considerable extent on being able to recruit experienced people from industry in mid-career. Such people will be deterred from making the transition into the Civil Service if they foresee unreasonable restrictions on their freedom to return to industry at a later stage.

10. The existing rules do not have the force or backing of law, and (as the Committee point out) there are no formal sanctions laid down, to be applied in cases where the rules are breached. They have been and continue to be effective because they are accepted by the Crown servants concerned and by outside bodies as being reasonable and sensible for the purposes for which they are intended. The Government agrees with the Committee's view that this system is based upon the correct approach, and that it is neither necessary nor desirable to think in terms of a statutory system or code of conduct in these matters.

11. But the effectiveness of a voluntary system depends upon the readiness of those affected by it to see and accept it as being not unreasonably restrictive in its operation - bearing in mind that Ministers, and people who come into the public service from outside employment on secondment, who have the same access to official information and contacts as career Crown servants, are able on leaving public office to take up or resume outside appointments without any formal restriction or delay. If the system were felt to be unduly restrictive, the voluntary consent of those

affected could be put at risk, and the rules themselves could even be subjected to legal challenge as being unreasonable between the parties concerned.

12. The Government agrees that reasonable parliamentary and public opinion should as far as possible be able to see that the system is operating effectively and consistently. It is ready to make appropriate changes in procedures and to publish additional information about the working of the system for these purposes.

13. It is against this general background that the Government has considered the Committee's detailed recommendations, and has reached the conclusions which follow. In reaching conclusions on recommendations which concern the work of the Advisory Committee on Business Appointments it has had the benefit of the Advisory Committee's own views, and these are noted in the Government's responses.

14. The Select Committee's recommendations are framed almost entirely in terms of officers of Grade 3 (or equivalent) and above, and the

Government's comments and conclusions are related to the precise terms of these recommendations. Individual Departments already apply the rules also to many less senior officers who hold a variety of posts and who account for most of the movements to the private sector, and any changes in the rules applying to officers of Grade 3 (or equivalent) and above will also be applied, where appropriate, to this group of staff. In considering its conclusions the Government has had regard to the additional administrative burdens and resources that some of the changes recommended by the Select Committee would impose. As a general rule it has not shrunk from accepting these consequences, where it took the view that the changes were justified on their merits.

February 1985

RECOMMENDATION NO 1

WE RECOMMEND THAT THE RULES SHOULD BE REDRAFTED FOLLOWING THE SEQUENCE OF SUBJECTS IN THIS REPORT (PARAGRAPH 3.2)

The rules are being redrafted to take account of the changes proposed in this response to the Committee's report. The Government will send the Committee copies of the revised rules as soon as they are ready.

RECOMMENDATION NO 2

WE RECOMMEND FOR UNDER SECRETARIES AND ABOVE AN EXTENSION OF THE MAXIMUM TWO YEAR PERIOD OF DELAY TO FIVE YEARS (PARAGRAPH 3.13)

The Government recognises that this recommendation relates to the length of the period after leaving the Service during which a former Crown servant is required to seek permission before accepting an outside appointment, and to the maximum period of delay that can be required between retirement and the date of taking up an outside appointment, and that it is not suggested that five years should become the standard period of delay. Nevertheless the Government considers that five years is an unnecessarily long period to prescribe.

The test of what is appropriate should be the period during which, after retirement, a former Crown servant is likely to retain from his period of service official information or contacts which could be used to the unfair advantage of the outside concern with which he takes up an appointment or the detriment of that concern's

competitors. Experience indicates that up-to-date knowledge of high technology and trade secrets erodes rapidly. Information relating to tenders and contracts is similarly likely to fade quickly, given the lack of access to official documents, and will have lost its value within two years. Staff movements, and changes in policies and procedures make both contacts and information very out of date by the end of two years. It is for this sort of reason that only in three instances has the Advisory Committee thought it necessary to recommend that a waiting period of a full two years should elapse after retirement on resignation before an appointment is taken up; the Advisory Committee has in no case thought that two years was too little.

If the maximum period of delay, and the period during which consent was required to be sought, were increased to five years, there could over time develop a tendency to longer periods of delay which could needlessly inhibit the movement of Crown servants into the private sector and the movement of people from industry into the Civil Service on short-term appointments - movements which the Government believes to be of mutual benefit to both

the public and private sectors alike: those concerned might be less willing to come into the public service on fixed term contract appointments if they feared that they could be required to wait for anything up to five years before rejoining the private sector at the end of their appointment. Mid-career moves, including those of armed forces personnel, which as a result of this proposal could be subject to a waiting period of longer than two and up to five years, would effectively be ruled out - companies would hardly be prepared to wait; in the case of post-retirement appointments, the individual, by virtue of his age, would be unlikely to be able to take up employment after a lengthy waiting period. To risk these disadvantages for purely presentational reasons would be patently inequitable.

As the Government has no evidence to suggest that two years has ever proved to be an insufficient waiting period, it considers that the balance of argument is against any increase in the maximum period of delay and the period after retirement or resignation during which a retired Crown servant is required to seek consent before taking up an outside appointment. This is also the view of the Advisory Committee.

RECOMMENDATION NO 3

WE RECOMMEND THE MORE EXTENDED USE BY THE ADVISORY COMMITTEE AND BY GOVERNMENT DEPARTMENTS, PARTICULARLY THE MINISTRY OF DEFENCE, OF CONDITIONS GOVERNING BEHAVIOUR AFTER LEAVING THE PUBLIC SERVICE. ENQUIRIES RELATING TO THE ADHERENCE TO THE CONDITIONS SHOULD BE MADE AFTER ONE YEAR TO ENSURE THAT ALL SUCH CONDITIONS ARE BEING COMPLIED WITH, AND THIS SHOULD BE CONTINUED DURING THE PERIOD TO WHICH THE CONDITIONS RELATE (PARAGRAPH 3.17)

Departments already employ a variety of conditions governing the behaviour of former Crown servants, when they take up new employment.

The Advisory Committee has made little use of such conditions in the case of Permanent Secretaries; it thinks it preferable to rely almost exclusively on the use of waiting periods. The Advisory Committee takes the view now, as in the past, that, as far as senior officers are concerned, waiting periods are the most effective way of securing the objectives of the rules.

More use is made of behavioural conditions in applications from less senior officers. The Government notes the Select Committee's view that more use should be made of such conditions, and is ready to consider acting accordingly in particular cases; but whether such conditions should be imposed and what they should be must depend on the circumstances of each individual case.

The Government does not believe that formal checks are necessary or justified. The absence of formal checks does not mean that the imposition of conditions is unpoliced. An effective sanction is provided by the awareness on the one hand of competitor firms who have been made aware of the employment of former Crown servants, and on the other, of those officers remaining in the Service who will continue to deal with the employing firm and who will also be aware of the terms on which the appointment has been approved.

RECOMMENDATION NO 4

WE RECOMMEND THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE LEAVING THE PUBLIC SERVICE SHOULD BE REQUIRED TO GIVE A WRITTEN UNDERTAKING TO ABIDE BY A CODE OF CONDUCT UNDER WHICH THEY WOULD BE PROHIBITED FOR A PERIOD OF FIVE YEARS FROM REPRESENTING THEIR NEW EMPLOYER ON SPECIFIC AND SIGNIFICANT MATTERS FOR WHICH THEY WERE RESPONSIBLE IN THEIR OFFICIAL CAPACITY. CONTRACTS OF EMPLOYMENT WOULD PROVIDE A USEFUL FURTHER SAFEGUARD AND, IF THEY ARE INTRODUCED FOR CIVIL SERVANTS, SUCH A PROHIBITION FOR SENIOR OFFICIALS COULD BE INCLUDED IN THEM (PARAGRAPH 3.21)

The Government believes that the rules governing business appointments after retirement amount in practice to a sufficient guide to conduct to make a code of conduct as such unnecessary. It further believes that a general restraint on rights of representation is not required: the purpose for which this is proposed can already be achieved by a suitable period of delay and by the imposition of suitable conditions in particular cases.

The Government considers, however, that it would be right to ask senior Crown servants to acknowledge in writing that the rules governing acceptance of outside appointments have been brought to their attention. This aim could be met by securing a written acknowledgement from Crown servants of Grade 3 level (or equivalent) and above, at the time of their promotion or appointment to Grade 3 or equivalent, and again at the time of retirement. A suitable form of words is attached.

The Government believes that the Crown servants concerned understand the reasons for having rules which strike a fair balance between the desirability of freedom of movement and the need to avoid impropriety, or the suspicion of it, and will continue to comply with the rules as amended in the light of the response as they have complied with the existing rules.

APPENDIX

DRAFT ACKNOWLEDGEMENT TO BE SIGNED BY ALL CROWN SERVANTS ON PROMOTION OR APPOINTMENT TO A POST AT GRADE 3 OR EQUIVALENT LEVEL

I have read the rules, a copy of which is appended hereto, requiring officers promoted or appointed to and on retiring from posts at Grade 3 and equivalent level and above to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business and other bodies and in semi-public organisations brought into being by the Government or Parliament.

Signed .....

Date .....

RECOMMENDATIONS NO 5 AND 6

WE BELIEVE THAT SANCTIONS MAY BE NEEDED IF AND WHEN EVIDENCE BECOMES AVAILABLE OF ABUSES OF THE PRESENT RULES AND THE PROPOSED CODE OF CONDUCT. IF OUR RECOMMENDATIONS ON POLICING THE RULES AND CODE OF CONDUCT ARE ADOPTED, ABUSE SHOULD BE EFFECTIVELY REPORTED, SO ALERTING PARLIAMENT TO THE NEED FOR REVIEW OF SUITABLE SANCTIONS. WE ARE IMPRESSED WITH THE DIFFICULTIES OF INTRODUCING SPECIFIC LEGISLATION AND THE PROBLEMS OF DEFINITION WHICH WOULD BE INVOLVED AND, THEREFORE, RECOMMEND THAT, IF SANCTIONS BECOME NECESSARY, THE GOVERNMENT SHOULD MAKE IT CLEAR THAT IT IS PREPARED TO TAKE STEPS TO ABATE AUTOMATICALLY THE PENSION OF ANY CIVIL SERVANTS WHO ACT IN DEFIANCE OF THE RULES ON BUSINESS APPOINTMENTS (PARAGRAPH 3.26)

The Committee acknowledge that there is no evidence to suggest that any impropriety has occurred or that the current rules have been flouted, and have not therefore proposed the introduction of sanctions. If it were to become apparent that people were not complying with the rules, or that the rules were significantly failing to achieve the desired effect, the Government would

need to look at them again in their widest context. Sanctions could probably not be introduced in isolation; they could come only as part of a major change putting the rules on to a statutory basis; which the Committee does not recommend and the Government does not favour. In that event the abatement of pensions - which would require legislation - would clearly be one sanction which would have to be considered.

RECOMMENDATIONS NO 7 AND 8

7. WE RECOMMEND THAT THE RULES SHOULD STATE SPECIFICALLY THAT ALL UNDER SECRETARIES AND ABOVE NEED TO APPLY FOR APPROVAL TO TAKE UP BUSINESS APPOINTMENTS, AND OTHER CIVIL SERVANTS NEED TO WHEN THERE HAS BEEN CONTACT WITH THE PROSPECTIVE EMPLOYER OR THEY HAVE BEEN RESPONSIBLE FOR ANYONE HAVING SUCH CONTACT OR THE EMPLOYER CONCERNED HAS EXTENSIVE DEALINGS WITH THE CIVIL SERVANT'S DEPARTMENT. CONTACT IS TO BE UNDERSTOOD AS MEANING NOT ONLY FACE-TO-FACT DEALINGS BUT ALSO INVOLVEMENT IN SUCH DEALINGS BEHIND THE SCENES (PARAGRAPH 4.6)

8. WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY AND FULLY AND IN ONE PLACE WHAT THE CRITERIA ARE FOR DECIDING WHETHER OR NOT TO GIVE APPROVAL TO A PROPOSED BUSINESS APPOINTMENT. THE CRITERIA SHOULD DEAL WITH THE FOLLOWING POINTS .... IN PERSPECTIVE (PARAGRAPH 4.19)

The recommendations set out in Chapter 4 paragraphs 4.6 and 4.19 are largely covered by the current rules which apply to all Crown servants at Grade 3 or equivalent level and above and other officers to whom the rules have been applied by

Departments. The rules will, however, be redrafted to make these points specifically and the Committee's suggestions for change will be taken fully into account.

RECOMMENDATION NO 9

WE RECOMMEND THAT THE RULES SHOULD LAY DOWN THE FOLLOWING PRINCIPLES IN THE LIGHT OF WHICH APPLICATIONS SHOULD BE JUDGED -

I. THOSE IN AUTHORITY OVER THOSE DIRECTLY INVOLVED IN DEALINGS WITH A FIRM SHOULD BE DEEMED TO BE INVOLVED;

II. IN CONSIDERING THE NATURE OF THE JOB TO BE TAKEN, IT SHOULD BE BORNE IN MIND THAT ANY CIVIL SERVANT TAKING UP AN APPOINTMENT TO THE BOARD OF A COMPANY WILL SHARE WITH THE REST OF THE BOARD A COLLECTIVE RESPONSIBILITY FOR ALL THE ACTIVITIES OF THE COMPANY INCLUDING ITS DEALINGS WITH HIS OLD DEPARTMENT (PARAGRAPH 4.29).

The Government agrees that, in principle senior officers are responsible for what happens throughout their areas of management. They cannot be absolved of responsibility simply because they had no direct involvement in individual contractual dealings handled by their staff. The degree of actual involvement by senior officers in particular

contracts is a significant factor when applications are being considered which must be taken into account when considering whether or not it is appropriate to give approval for an appointment; approval, however, cannot be automatically ruled out on these grounds.

The Government also agrees that a retired civil servant who becomes a director (executive or non-executive) of a company cannot divest himself of responsibility for those matters for which the Board of Directors is responsible. It is no doubt open to an individual Director (if need be) to say that, while accepting responsibility for whatever the Board may decide in a particular case, he will take no part in the process by which the decision is reached. Clearly, however, the extent of the dealings which a company had with a particular Department would be a relevant factor in considering any application from a retiring or retired Crown servant for permission to join the Board of the company, and in deciding whether to impose a waiting period and, if so, for how long.

RECOMMENDATION NO 10

ON BALANCE, WE DO NOT THINK A CASE HAS BEEN MADE FOR A COMPLETE BAN ON THE MOVEMENT OF PERMANENT SECRETARIES INTO THE PRIVATE SECTOR. WE BELIEVE GREATER OPENNESS IN IMPLEMENTING THE RULES IS THE MOST EFFECTIVE WAY OF REMOVING THE SUSPICION OF IMPROPRIETY (PARAGRAPH 4.35)

The Government welcomes the Committee's recognition that a case has not been made for imposing a complete ban on the movement of former Permanent Secretaries into the private sector. The Committee's recommendations for greater openness are considered below.

RECOMMENDATION NO 11

WE RECOMMEND THAT DEPARTMENTS REVIEW THEIR ARRANGEMENTS FOR ENSURING THAT ALL STAFF WHO, JUDGED BY THE CRITERIA WE SET OUT IN PARAGRAPH 4.6, MIGHT POSSIBLY BE WITHIN THE SCOPE OF THE RULES ARE SPECIFICALLY INFORMED OF THIS FACT BEFORE RESIGNATION OR RETIREMENT (PARAGRAPH 5.1)

All Departments are being asked to review their arrangements for bringing the rules to the attention of staff who fall within their scope and who are about to retire or resign.

RECOMMENDATION NO 12

WE RECOMMEND THAT APPLICATIONS FOR APPROVAL TO TAKE UP A BUSINESS APPOINTMENT SHOULD BE MADE IN WRITING IN A STANDARD FORM ALONG THE LINES OF THAT USED BY THE MINISTRY OF DEFENCE. APPLICANTS SHOULD ALWAYS BE INTERVIEWED IF A REFUSAL OR THE IMPOSITION OF CONDITIONS IS BEING CONTEMPLATED. IN OTHER CASES APPLICANTS SHOULD HAVE THE RIGHT TO BE INTERVIEWED (PARAGRAPH 5.4)

The Government accepts that there would be benefits to be gained in standardising procedures for dealing with applications and agrees that applicants should be required to submit in writing to their Departments, or former Department, applications for approval to take up outside appointments. As an aid to consistency and to ensure that all the relevant details concerning each case are known, the Cabinet Office (MPO) will provide a suitable form, which can be adapted by individual Departments as necessary to meet their particular needs.

As far as interviewing applicants is concerned, the Government agrees that an applicant

should be given the opportunity of an interview if a waiting period or other conditions are to be imposed on the acceptance of an appointment or if the application seems likely to be rejected. Whether or not the applicant wishes to exercise that right should be left to the individual. Departments must be allowed to exercise judgment about how much to reveal to an individual applicant about the reasons behind the conditions/waiting periods which were being contemplated. It would be necessary to avoid revealing information given on a commercial-in-confidence basis by the prospective employer's competitors in justification of objections raised to an appointment.

RECOMMENDATION NO 13

WE RECOMMEND THAT PROSPECTIVE EMPLOYERS SHOULD BE CONSULTED ABOUT APPLICATIONS AND INFORMED OF THE OUTCOME AND ANY CONDITIONS IMPOSED (PARAGRAPH 5.5)

The Government agrees that employers should be informed of any conditions that are attached to the approval of an appointment; indeed, this is already done in many cases. They do not consider this to be necessary in straightforward cases where approval is granted unconditionally. Some Departments, notably the Ministry of Defence, already contact prospective employers before a decision is taken in those cases where it is necessary to consult competitors, and Departments will be encouraged to consult prospective employers in appropriate cases; but the Government does not consider it necessary to make it an invariable rule that prospective employers should be consulted in every instance.

RECOMMENDATION NO 14

WE RECOMMEND THAT THE RULES SHOULD REQUIRE THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE DO NOT DISCUSS OFFERS OF POST-RETIREMENT EMPLOYMENT WITH PROSPECTIVE EMPLOYERS WITHIN THE LAST YEAR OF SERVICE PRIOR TO RETIREMENT. IF OFFERS ARE MADE TO SUCH OFFICIALS IN MID-CAREER OR TO MORE JUNIOR OFFICIALS IN ANY CIRCUMSTANCES, THEY MAY BE DISCUSSED WITH PROSPECTIVE EMPLOYERS BUT THE OFFERS SHOULD FIRST BE REPORTED TO THOSE IN AUTHORITY AND APPROPRIATE PERMISSIONS SOUGHT (PARAGRAPH 5.6)

The Government believes that a blanket prohibition on the discussion of post-retirement employment offers would be not only unnecessarily restrictive but in practice impossible to enforce. Encouragement should be given to increasing the movement in mid-career between Crown service and private sector employment, and the Government would not want to frustrate desirable interchange by imposing too rigid restrictions. The distinction drawn by the Committee between discussions before post-retirement employment and those which precede resignation fails to take into account that some Crown servants, particularly armed service

personnel, are encouraged to retire early, sometimes from about 45 years of age. It would be unreasonable not to allow such officers to make preparations for establishing a new career as they approach retirement. Nor would it be reasonable or practicable to debar officers approaching normal retirement age from discussing future employment offers. The Government considers, however, that any approach from an outside employer which seems to be intended or to be likely to result in an offer of employment to a Crown servant at any level, particularly (but not only) where such an offer emanates from firms with whom the individual or his staff have had official dealings, should be reported by the Crown servant concerned to a superior officer at least two grades higher than himself; in the case of an officer at Grade 3 (or equivalent) level or above to the Permanent Head of the Department; and in the case of a Permanent Secretary to the Minister in charge of the Department. If the offer is to be pursued, an application for approval to take up the appointment must of course be submitted in the normal way.

The mischief against which this recommendation is presumably aimed is that the advice given by a

Crown servant while still serving could be coloured or conditioned by the offer, or the prospect held out, of future employment. Apart from the integrity of the public service, and the fact that it is rare for a single individual to be the only person responsible for or concerned with a important decision of the kind involved , some protection is afforded by the ability to require a waiting period or to impose other conditions on the taking up of an appointment after retirement. But an important safeguard must lie in making as sure as possible that the fact that an offer of employment has been made, or a prospect of employment held out, is known to those set in authority over the person concerned.

RECOMMENDATIONS NO 15 AND 17

WE RECOMMEND THAT THE ADVISORY COMMITTEE SHOULD CONSIDER ALL APPLICATIONS FROM UNDER SECRETARIES AND ABOVE (PARAGRAPH 5.8)

WE RECOMMEND THAT THE MPO SHOULD TAKE THE INITIATIVE IN SENDING TO THE ADVISORY COMMITTEE BEFORE A DECISION IS TAKEN DEPARTMENTAL CASES ON WHICH IT HAS BEEN CONSULTED AND WHICH RAISE ISSUES OF IMPORTANCE. THE ADVISORY COMMITTEE SHOULD TAKE THE INITIATIVE IN PERIODICALLY CALLING FOR AND REVIEWING A SELECTION OF THE DECISIONS TAKEN BY DEPARTMENTS AFTER CONSULTING THE MPO. IN THESE WAYS, THE ADVISORY COMMITTEE WOULD BECOME A SOURCE OF ADVICE FOR DEPARTMENTAL MINISTERS AS WELL AS THE PRIME MINISTER (PARAGRAPH 5.12)

The Government does not believe that the advantages of referring to the Advisory Committee all applications from Grade 3 (Under Secretary or equivalent) and above would be sufficient to outweigh the major increase in the Committee's workload which would be entailed. The Government agrees, however, that it would be useful to bring

the Advisory Committee's judgment to bear on a wider range of cases: this will both reassure public opinion as to the avoidance of impropriety and provide Departments with more extensive guidance for taking decisions which continue to be made without reference to the Advisory Committee.

Having consulted the Advisory Committee, and with the Committee's agreement, the Government proposes that:

1. all applications from Grade 2 (or equivalent) Crown servants and above should be referred to the Advisory Committee;

2. all applications from Grade 3 (or equivalent) Crown servants should be referred to the Cabinet Office (MPO) and to the Head of the Home Civil Service;

3. In the case of applications from Grade 3 (or equivalent) Crown servants and below which are referred to the Cabinet Office (MPO), the Head of the Home Civil Service should have discretion to recommend to the Prime Minister a reference to the Advisory Committee of any

application which in his opinion raises issues on which it would be desirable to have the Advisory Committee's judgment.

4. The Cabinet Office (MPO) should provide the Advisory Committee with regular statistical reports on all cases referred to the Cabinet Office (MPO); from these the Chairman of the Advisory Committee should select a sample for detailed examination by the Committee, to ensure that the handling of cases by Departments and by the Cabinet Office is consistent with the Committee's.

RECOMMENDATION NO 16

WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY THAT THE MPO SHOULD BE CONSULTED BEFORE A DECISION IS TAKEN IN CASES WHICH RAISE SUBSTANTIAL DOUBTS AND FOR WHICH NO PRECEDENTS EXIST. THE MPO SHOULD PERIODICALLY REVIEW A SELECTION OF CASES WHERE DEPARTMENTS HAVE TAKEN THE DECISIONS WITHOUT CONSULTATION (PARAGRAPH 5.11)

The Cabinet Office (MPO) has an important consultative and advisory role in relation to those departmental cases which raise points of principle, where no precedent exists or where there are substantial doubts. The existing rules already require Departments to consult the Cabinet Office (MPO) about cases (at all levels) involving applicants whose previous contact with prospective employers has been other than casual or where there are trade secret implications. The current rules may however give rise to some confusion and it is therefore proposed to clarify them. The Government also agrees with the Committee that retrospective reviews would be useful for checking whether or not

the rules are being consistently applied across Departments. The Cabinet Office (MPO) will conduct such reviews periodically.

RECOMMENDATION NO 19

WE DO NOT RECOMMEND TURNING THE ADVISORY COMMITTEE INTO A DECISION-MAKING BODY, PROVIDED THE GOVERNMENT ALWAYS MAKE AN ANNOUNCEMENT WHEN THEY DECIDE NOT TO FOLLOW THE COMMITTEE'S ADVICE (PARAGRAPH 5.14)

The Government agrees with the Committee that the Advisory Committee should not become a decision-making body. It does not propose to introduce a system whereby decisions regarding individual cases are published, since to do so could easily give rise to breaches of confidentiality, but it will include in the regular statistical reports to be published in future (see response to Recommendation No 23) numbers of cases referred to the Advisory Committee and decided otherwise than wholly in accordance with the Committee's recommendations.

RECOMMENDATION NO 20

WE RECOMMEND THAT THE GOVERNMENT SHOULD ADD TWO SENIOR BACK BENCH MEMBERS OF THE HOUSE OF COMMONS TO THE ADVISORY COMMITTEE (PARAGRAPH 5.16)

It is clearly important that no hint of political partisanship should enter, and should be thought to be likely to enter, into the Advisory Committee's deliberations and recommendations. Following the recommendation of the previous Select Committee, the authority and independence of the Advisory Committee were strengthened by the appointment of a number of people from outside the public service; with the result that now only a minority of its members are former members of a public service. Successive Governments have thought it important and valuable to have two senior Parliamentarians, one from each of the main political parties, on the Advisory Committee, and the Government is grateful to those who have been willing to find time for this public service. Those who have served hitherto have all been members of the House of Lords when invited to serve; but they have all been people who have had experience as senior Ministers and as members of

the House of Commons, and this combination of Parliamentary and Ministerial experience seems to the Government to have been, and to be likely to continue to be, valuable qualification for membership of the Advisory Committee. There is no reason why one or other (or indeed both) of the two senior Parliamentarians on the Advisory Committee should not be a member of the House of Commons if he or she meets the requirements. But the Government does not think it appropriate to have more than two senior Parliamentarians on the Advisory Committee at any one time.

RECOMMENDATION NO 21

WE RECOMMEND THAT MEMBERS OF THE ADVISORY COMMITTEE SHOULD BE APPOINTED FOR THREE YEARS AND TWO REPLACED EACH YEAR (PARAGRAPH 5.17)

The Government accepts that the membership of the Advisory Committee should be regularly reviewed. It is also desirable that there should be a reasonable continuity of experience in the membership. Recent appointments to membership have been for a term of three years in the first instance, and that will continue to be the practice. The Government would propose not to make it a fixed rule to replace two members of the Committee each year. It will often be sensible to ask a member to serve a second three-year term. The Government considers, however, that the presumption should be against a member serving a third term, unless there is some special reason for his being invited to do so.

RECOMMENDATION NO 22

WE RECOMMEND THAT THE DECISIONS TAKEN BY THE GOVERNMENT ON THE ADVICE OF THE ADVISORY COMMITTEE SHOULD BE ANNOUNCED AT THE TIME THEY ARE TAKEN, TOGETHER WITH THE TERMS OF ANY CONDITIONS IMPOSED AND AN INDICATION OF THE OCCASIONS WHEN THE COMMITTEE'S ADVICE HAS NOT BEEN ACCEPTED (PARAGRAPH 5.18)

The Government thinks that it would be a breach of confidence and privacy for it to announce individual decisions taken on the advice of the Advisory Committee at the time those decisions are taken. The regular statistical reports to be published in future (see response to Recommendation No 23) will, however, note (subject to such aggregation or other precautions as may be necessary to preserve anonymity) the numbers of cases referred to the Advisory Committee for consideration, the numbers of cases decided in accordance with the Advisory Committee's recommendation, and the numbers of cases decided otherwise than wholly in accordance with the Advisory Committee's recommendation.

RECOMMENDATION NO 23

WE RECOMMEND THAT THE GOVERNMENT SHOULD PUBLISH PERIODICALLY REPORTS ON THE WORKING OF THE SYSTEM (PARAGRAPH 5.19)

The Government agrees with the proposal that the Cabinet Office (MPO) should periodically review and report on the working of the system, and will implement it by publishing regular statistical reports which will cover applications by officers at all grades but not identify the details of any individual cases.

RECOMMENDATION NO 24

WE HAVE REACHED THE CONCLUSION THAT THE HEARINGS OF THE ADVISORY COMMITTEE OUGHT NOT TO BE IN PUBLIC (PARAGRAPH 5.20)

The Government agrees with the Committee that the Advisory Committee's hearings and other proceedings should not be in public. So does the Advisory Committee.

RECOMMENDATION NO 25

WE RECOMMEND THAT INFORMATION ABOUT THE LEVELS AND PATTERNS OF MOVEMENT OF BOARD MEMBERS AND SENIOR STAFF OF NATIONALISED INDUSTRIES AND OTHER PUBLIC BODIES SHOULD BE COLLECTED BY THE NEW UNIFIED SECTION OF THE MPO (PARAGRAPH 6.3)

As indicated in its response to recommendation 27, the Government considers that the degree of managerial autonomy accorded to most categories of public body makes it inappropriate for Ministers to intervene to press for the adoption of rules on the acceptance of outside appointments after resignation or retirement. Given this, regular collection by the Cabinet Office (MPO) of statistics about levels and patterns of movement of board members and senior staff would serve little practical purpose. The Government could scarcely justify requiring the maintenance of detailed records for which the bodies concerned would (in many instances) themselves not see any need.

RECOMMENDATION NO 26

WE WOULD WISH TO BE INFORMED, IN DUE COURSE, OF THE EXTENT TO WHICH, AS A RESULT OF APPROACHES MADE BY DEPARTMENTS, NDPBs HAVE ADOPTED RULES TO GOVERN THE TAKING UP OF OUTSIDE APPOINTMENTS (PARAGRAPH 6.5)

When the revised rules for Crown servants are available, Departments will bring them, together with the observations of the Committee, to the attention of non-departmental public bodies (NDPB) with executive responsibilities. No rules about the acceptance of outside appoitments currently apply to Board members of NDPBs.

RECOMMENDATION NO 27

WE BELIEVE THAT IT WOULD BE APPROPRIATE, IN PRINCIPLE, FOR RULES GOVERNING THE TAKING UP OF OUTSIDE APPOINTMENTS TO BE ADOPTED THROUGHOUT THE PUBLIC SECTOR AND WE RECOMMEND THAT THE DEPARTMENTS CONCERNED SHOULD TAKE APPROPRIATE ACTION TO THAT END (PARAGRAPH 6.6)

The Government has little to add to its response (reproduced on page 178 of the Committee's report) to the similar suggestion made by its predecessor Committee.

The circumstances of particular groups in the public sector - local government, the NHS, nationalised industries and various types of non-departmental public bodies (NDPB's) vary so greatly that it is difficult to see how standard rules could deal effectively with all of them.

In the absence of a serious problem, the Government would find it hard to justify imposing such a requirement generally when making Ministerial appointments to outside bodies. Such rules could well make it difficult to attract good

calibre members, and in some cases inhibit desirable cross-fertilisation of experience. So far as staff are concerned, for most of these bodies responsibility and authority rests clearly with the managements concerned, and the imposition of rules by Government is neither practicable nor appropriate.

As acknowledged in the Government's response to the predecessor Committee's recommendation, the strongest case for Government intervention in this area would be in relation to NDPBs funded to the extent of 50 per cent or more by the taxpayer. Paragraph 6.5 of the present report notes the Government's action in incorporating into standing guidance to Departments the advice that they should "consider..... taking account of the nature of the body whether it should be asked to adopt rules for board members and/or staff about the acceptance of appointments after resignation or retirement.....". The relevant guidance (the Cabinet Office (MPO) booklet "NDPBs: a Guide for Departments") is currently being revised, and the opportunity will be taken to make clear that the need for such rules should be considered both when a body is set up and, where appropriate,

periodically thereafter. At the same time the guidance would acknowledge that the need for rules must be considered in relation to the functions of the NDPB concerned and any potential for conflict of interests which may give rise to public concern.

APPENDIX I

DEFINITION OF OUTSIDE APPOINTMENTS TO WHICH THE RULES APPLY

Under these rules all officers of the rank of Grade 3 (Under Secretary or, in the Diplomatic Service, Counsellor) and above, and of the equivalent ranks in Her Majesty's Forces, are required to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business or other bodies, particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature below the rank of Grade 3 or equivalent to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

2. For these purposes employment is regarded as including self-employment, for instance in a consultancy.

3. The rules are intended to apply primarily to outside appointments in industrial or commercial bodies, and give discretion to those concerned to modify or dispense with the prescribed procedures in cases of unpaid appointments and appointments to non-commercial bodies of such a nature that the procedures would be inappropriate.

CROABE

(1)

Confidential

Prime Minister

Re essential bits are the submission at 'A' and Annex 'C'.

CDP

P/2.

Mr. Butler

Acceptance of outside appointments by Crown servants

The submission of which I attach a copy is intended to reach the Prime Minister via the Chancellor of the Duchy of Lancaster. But it constitutes a long read, more easily undertaken at the weekend, and it may save time if I send you this advance copy now, so that the Prime Minister has an opportunity of studying it over the weekend.

RA

8 February 1985

Ref. A085/448

1. CHANCELLOR OF THE DUCHY OF LANCASTER
2. PRIME MINISTER

Acceptance of Outside Appointments by Crown Servants

The Eighth Report from the Treasury and Civil Service Committee, published on 20 September 1984, made recommendations for changes in the rules governing the acceptance of outside appointments by Crown servants. A copy of the existing rules is attached herewith at Annex A.

2. A copy of the Summary of Conclusions and Recommendations of the Treasury and Civil Service Committee is attached herewith at Annex B.

3. The Committee note that their predecessors, reporting in 1981, thought that the arrangements were "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety". They say that that view is even more relevant today: that the interchange following retirement is exclusively one way, out of the Civil Service, that the flow is increasing and is particularly striking at senior levels of the Open Structure; and that the Ministry of Defence contributes substantially to it. They consider that these tendencies can only give the impression that the circumstances which were the mainspring for the introduction of the rules are still very much in evidence in the defence field, and that the rules are no longer adequate for the purpose for which they were intended; that there is now a steady and accepted movement of certain senior civil servants into certain areas of the private sector; and that the ease of the movement and the ready availability of employment suggests that the traditional

independence and impartiality of the Civil Service is in danger of becoming eroded or compromised in the eyes of the public.

4. The Committee have not, however, found any evidence of corruption or impropriety.

5. Their study has led them to conclude that there is a need for a significant tightening of the system and for making the way in which it is administered a much more open process. They have made 27 recommendations to this end.

6. The Committee's report has been thoroughly studied by Departments. There is a very general feeling that the Committee's recommendations for tightening the rules, and in particular the recommendation that the maximum period of delay before being allowed to take up an appointment should be increased from two years to five years, would be likely undesirably to inhibit movement between the public service and the private sector, would be unfair to individuals, and are not justified on the evidence of the Committee's inquiries. The unfairness to individuals is not just a matter of equity. The system is at present voluntary, not statutory, and both the Government and the Committee think that it should continue to be so. The more restrictive we try to make it, the greater the danger that some one will flout it, or even seek to challenge it in the courts and subject it to judicial review. In either event the Government might find itself faced with inescapable pressure to introduce legislation imposing statutory rules and sanctions.

7. We think on the other hand that there is scope for adopting many of the recommendations for making the process more open, in so far as this can be done without breach of individual privacy and confidence.

8. I attach at Annex C an interdepartmentally agreed draft response for the Government to make to the Treasury and Civil

Service Committee's report accordingly. I think that Ministers will wish to look with particular attention at the response to Recommendation 2, which proposed the extension of the maximum period of delay from two to five years; and the response to Recommendation 20, which proposed that two senior backbench Members of the House of Commons should be added to the Advisory Committee on Business Appointments.

9. If you and the Prime Minister are in general agreement, I suggest that the draft response should now be circulated by you to all Cabinet Ministers, with a request for comments to be sent to you by, say, Tuesday 19 February. We will then arrange for the draft to be revised in the light of Ministers' comments and submitted for final approval by you and the Prime Minister. That should make it possible to publish the response during the first half of March, as we have proposed that the Prime Minister should foreshadow in a reply to Mr Terence Higgins MP.

RA

ROBERT ARMSTRONG

8 February 1985

ANNEX A

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

THE RULES

It is in the public interest that people with experience of public administration should be able to move into business and industry, and that the possibility of such movement should not be frustrated by public concern over a particular appointment. It is also no less important whenever a Crown servant accepts a particular business appointment that he should not be open to any suspicion of impropriety. Therefore the rules set out below have been designed to safeguard against such criticisms both the public service and individual officers who wish to leave to take up these appointments. The rules aim at avoiding any suspicion - however unjustified - that serving officers might be ready to bestow favours on firms in the hope of future benefits to come. They also seek to guard against the risk that a particular firm might be thought to be gaining an unfair advantage over its competitors by employing an officer who, during his service, had access to technical or other information which those competitors could legitimately regard as their own trade secrets.

2. All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above, and of the equivalent ranks in HM Forces, are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

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and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature (below the rank of Under Secretary) to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

PROCEDURE

3. Assent to an application will take the form of approval by the Prime Minister in cases referred to an Advisory Committee, or by the Minister in charge of the Department in all other cases. It would however be open to a Minister to approve arrangements under which defined categories of case would be dealt with at a specified level without reference to the Minister.

4. PERMANENT SECRETARIES AND SECOND PERMANENT SECRETARIES

All cases concerning Permanent Secretaries and Second Permanent Secretaries (and those of equivalent rank in HM Forces) must be referred to the Head of the Civil Service and to the Minister responsible for the Department. Where the Head of the Civil Service and the departmental Minister are agreed that the proposed appointment is to a non-commercial body of such a nature that this procedure would be inappropriate (eg a University), the appointment may be approved without reference to the Committee. All other cases will then be referred by the Head of the Civil Service to the Prime Minister to be laid before the Advisory Committee (see paragraph 10).

5. ALL OTHER HEADS OF DEPARTMENTS

All cases concerning Heads of Departments other than Permanent Secretaries will follow the procedure for cases concerning Permanent Secretaries, with one variation; where the Minister responsible for the Department and the Head of the Civil Service are in agreement about whether consent should be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

6. DEPUTY SECRETARIES ETC

All cases concerning Deputy Secretaries, officers of higher rank below Second Permanent Secretary and HM Forces personnel of equivalent rank

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(other than those covered by paragraph 5 above) will similarly follow the procedure for Permanent Secretaries, subject to the exception that where the Head of the Department concerned and the Head of the Civil Service are in agreement about whether assent may be given or withheld and, if the former, about any conditions to be imposed, the case may be decided, without reference to the Advisory Committee, by the departmental Minister.

7. ALL OTHER CASES

Save for the exception referred to in paragraph 8, the CSD must be consulted in all cases not covered by paragraphs 4 - 6 where there has been 'contact with the prospective employer' as defined in paragraph 16.

8. Departments need not consult the CSD in cases covered by paragraph 7 up to and including Senior Executive Officer level (or the equivalent rank in HM Forces) where the contact with the prospective employer in the previous two years had been only casual, and there appears to be no risk of criticism from the trade secrets angle.

9. In putting cases forward to the CSD, Departments should explain why they recommend that permission should be granted. They should say whether they consider that a satisfactory answer could be given in the event of the Government being criticised for allowing the appointment to be taken up.

ADVISORY COMMITTEE

10. The Advisory Committee will consist of 3 members having experience of relations between the Civil Service and the public or private sectors of industry. The members will on each occasion be drawn from a panel. Cases will be referred to the Committee by the Prime Minister and it will report to him. The Committee will consider the cases defined in paragraphs 4 - 6. It may also consider, exceptionally, cases falling outside those grades which are referred to it. The Committee will not act as a court of appeal against decisions reached in cases not referred to it.

11. In considering cases the Committee will have regard to the purpose of the rules as described in paragraph 1. The Committee will take into account the views of the Department concerned and of the CSD.

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12. In all cases referred to the Committee, the final decision will rest with the Prime Minister who will be answerable in the House for the decision; the responsibility for all cases which do not go to the Committee will however remain with the departmental Minister concerned. The Prime Minister will be free to accept or reject the Committee's report together with any recommendations which it may make.

13. Except as noted in paragraph 14, in all cases referred to the Committee which concern Permanent Secretaries (and their equivalents in HM Forces), a minimum period of 3 months must elapse between leaving the Service and taking up an outside appointment within the scope of the rules.

14. Exceptions to the waiting period prescribed in paragraph 13 may be made only in cases where the Prime Minister agrees that the national interest is overriding, eg where the appointment is to another post in the public sector (see also paragraph 18c).

CONDITIONS WHICH MAY BE IMPOSED

15. It will be open to those considering applications in accordance with paragraphs 4 - 7 to recommend outright refusal or unqualified approval; or to recommend approval subject to conditions. Such conditions may include:

a. a waiting period lasting for up to two years, the duration to be determined according to the individual circumstances of the case. (In the case of Permanent Secretaries, the automatic 3 months' period will form part of any longer period which may be imposed);

b. a ban on involvement in dealings between the prospective employer and the Government, either absolute or with reference to a stated issue or issues, lasting for up to two years, the duration to be determined according to the circumstances of the case;

c. a ban on involvement in dealings between the prospective employer and a named competitor (or competitors), subject to the same conditions of scope and duration as those at b. above;

d. a requirement to seek the approval of the prospective employer's competitors for the proposed appointment, should this not already have been done.

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CONSIDERATIONS TO BE TAKEN INTO ACCOUNT

16. One of the main factors which will be relevant to the consideration of cases will be the degree of contact there has been between the applicant and the prospective employer. Sometimes the prospective employer's relations with the Government may be relevant irrespective of any involvement on the part of the individual concerned. But normally some measure of personal involvement on the part of the applicant will be necessary for this factor to be relevant. Such involvement should be assumed when the individual concerned, either directly and personally or indirectly through those for whom he is responsible (whether or not they normally work to him) at any time in the course of his official duties during the two years before his resignation or retirement or earlier if the association has been of a continued or repeated nature, has:

a. dealt with the receipt of tenders for and/or the awarding of contracts between the firm involved and the Government; or

b. dealt with the administration and/or monitoring of such contracts after they have been awarded; or

c. advised in a professional or technical capacity about such contracts either before they are awarded, as in a. or in the exercise of a monitoring brief, as in b; or

d. been involved in contact of an official but non-contractual nature with the firm involved - where, for instance, the firm operates in a field in which the Government as a whole or the individual's Department has a special interest of a financial, policy or other nature.

17. Previous contact as outlined in paragraph 16 should weigh heavily in the consideration of any application. But the decision of what conditions (if any) should be imposed or whether the application should be rejected will depend on the full circumstances of the case, including the extent and nature of the previous contact.

18. Other considerations which should be kept in view include:

a. The possibility that the applicant may have had access to information about one or more of his prospective employer's competitors which

could legitimately be regarded as their "trade secrets". This may arise independently of any contact with the prospective employer - when, for instance, the prospective employer is a newly-created company or consultancy in the relevant field. It would be normal to consult these competitors to see if they had any objection to the appointment;

b. An appointment may be on a part-time or consultancy basis. If so, this may be a factor tending to reduce the likelihood of public criticism, especially if the consultancy service is to be offered without favour to a number of firms competing in the same field;

c. There may be occasions when a Minister considers it in the national interest that, although the normal weighing of the factors to be considered might dictate the granting only of qualified approval or even the rejection of the application, the appointment may nevertheless be allowed. In all such cases, the procedures set out in paragraphs 4 -7 should be followed, including reference to the Advisory Committee where that is appropriate.

d. Many senior Crown servants are engaged in dealing with private interests on behalf of the Government. Moreover, such senior officials would have a special knowledge of how the Government would be likely to react to particular sets of circumstances, and how the Government would be likely to legislate to give effect to its policies. An official in this position could well be, or be thought to be, of considerable assistance to an outside body which had an interest in matters on which policy was developing or legislation was being prepared. It is important to take into account the advisability or otherwise of permitting Crown servants to join outside interests with whom the Department had been, or was, in a negotiating relationship. It may also be relevant that a senior official was involved in policy discussion which led to a decision the effect of which was considerably to the benefit of the firm offering him an appointment.

19. In cases involving Permanent Secretary Heads of Department subject to the automatic waiting period (see paragraph 13), formal application to take up an outside appointment should not normally be made until after the successor to the individual concerned has been named. Cases where the individual intended to resign before retirement in order to take up an outside appointment would have to be considered earlier.

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WARNING TO STAFF

20. When an officer to whom the rules apply is nearing retirement his Department should remind him of the rules and should take the opportunity to suggest that, if he is in any doubt as to whether he needs to seek permission to take up a particular appointment, he should in the first instance approach his Establishment Officer for advice. It is important that the officer should be aware that permission must be sought not only for the initial appointment taken up on retirement, but for any subsequent appointment during the two year period which comes within the scope of the rules, including appointments to subsidiary or associated companies.

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CHAPTER 7

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

(i) We recommend that the rules should be redrafted following the sequence of subjects in this report (paragraph 3.2).

(ii) We recommend for under secretaries and above an extension of the maximum two year period of delay to five years (paragraph 3.13).

(iii) We recommend the more extended use by the Advisory Committee and by Government Departments, particularly the Ministry of Defence, of conditions governing behaviour after leaving the public service. Enquiries relating to the adherence to the conditions should be made after one year to ensure that all such conditions are being complied with and this should be continued during the period to which the conditions relate (paragraph 3.17).

(iv) We recommend that officials of the rank of under secretary and above leaving the public service should be required to give a written undertaking to abide by a code of conduct under which they would be prohibited for a period of five years from representing their new employer on specific and significant matters for which they were responsible in their official capacity. Contracts of employment would provide a useful further safeguard and, if they are introduced for civil servants, such a prohibition for senior officials could be included in them (paragraph 3.21).

(v) In general we think our own system is based upon the correct approach. We would not want to replace it by a system relying exclusively on a statutory code of conduct (paragraph 3.22).

(vi) We believe that sanctions may be needed if and when evidence becomes available of abuses of the present rules and the proposed code of conduct. If our recommendations on policing the rules and code of conduct are adopted, abuse should be effectively reported, so alerting Parliament to the need for review of suitable sanctions. We are impressed with the difficulties of introducing specific legislation and the problems of definition which would be involved and, therefore, recommend that, if sanctions become necessary, the Government should make it clear that it is prepared to take steps to abate automatically the pension of any civil servants who act in defiance of the rules on business appointments (paragraph 3.26).

(vii) We recommend that the rules should state specifically that all under secretaries and above need to apply for approval to take up business appointments, and other civil servants need to when there has been contact with the prospective employer or they have been responsible for anyone having such contact or the employer concerned has extensive dealings with the civil servant's Department. Contact is to be understood as meaning not only face-to-face dealings but also involvement in such dealings behind the scenes (paragraph 4.6).

(viii) We recommend that the rules should state explicitly and fully and in one place what the criteria are for deciding whether or not to give

approval to a proposed business appointment. The criteria should deal with the following points which we regard as essential:

(i) if a civil servant has had contact with a prospective employer in the course of his official duties, the nature of his dealings with the employer is the crucial consideration. Contact is to be understood as meaning not only face-to-face dealings with the employer but also behind the scenes involvement in such dealings. It is relevant to know whether or not, in those dealings, the civil servant exercised a significant amount of discretion in determining the outcome or, if he was acting as a member of a team, the extent to which he was able to influence the outcome. It is important to know whether or not the employer would have benefited substantially from a favourable outcome. It is also relevant to know the nature of the job to which the civil servant proposes to go and the extent of the connection between it and his official job. The question is whether there has been or will be any potential for improper behaviour before or after the move;

(ii) if a civil servant has not had previous contact with his prospective employer or has had contact but of an insignificant kind as judged by the criteria in (i), the question of whether or not the prospective employer has extensive dealings with the civil servant's Department needs to be taken into account. If the employer has, it is important to establish, having regard to the nature of the work being offered, if the civil servant is being recruited because of his knowledge of the working of the government machine or his professional knowledge of some area of government activity and can be expected to have dealings with his old Department. If the answer is in the affirmative the question to be weighed is whether, following a move, any potential damage to the Department's interests is outweighed by any potential public benefit;

(iii) if the prospective employer is operating in a competitive field, it is necessary to establish that competing firms do not object to the appointment. If competition is restricted it is necessary to look at the recruitment pattern to put the situation in perspective (paragraph 4.19).

(ix) We recommend that the rules should lay down the following principles in the light of which applications should be judged:

(i) those in authority over those directly involved in dealings with a firm should be deemed to be involved;

(ii) in considering the nature of the job to be taken, it should be borne in mind that any civil servant taking up an appointment to the board of a company will share with the rest of the board a collective responsibility for all the activities of the company including its dealings with his old Department (paragraph 4.29).

(x) On balance, we do not think a case has been made for a complete ban on the movement of permanent secretaries into the private sector. We believe greater openness in implementing the rules is the most effective way of removing the suspicion of impropriety (paragraph 4.35).

(xi) We recommend that Departments review their arrangements for ensuring that all staff who, judged by the criteria we set out in paragraph 4.6, might possibly be within the scope of the rules are specifically informed of this fact before resignation or retirement (paragraph 5.1).

(xii) We recommend that applications for approval to take up a business appointment should be made in writing in a standard form along the lines of that used by the Ministry of Defence. Applicants should always be interviewed if a refusal or the imposition of conditions is being contemplated. In other cases applicants should have the right to be interviewed (paragraph 5.4).

(xiii) We recommend that prospective employers should be consulted about applications and informed of the outcome and any conditions imposed (paragraph 5.5).

(xiv) We recommend that the rules should require that officials of the rank of under secretary and above do not discuss offers of post-retirement employment with prospective employers within the last year of service prior to retirement. If offers are made to such officials in mid career or to more junior officials in any circumstances, they may be discussed with prospective employers but the offers should first be reported to those in authority and appropriate permissions sought (paragraph 5.6).

(xv) We recommend that the Advisory Committee should consider all applications from under secretaries and above (paragraph 5.8).

(xvi) We recommend that the rules should state explicitly that the MPO should be consulted before a decision is taken in cases which raise substantial doubts and for which no precedents exist. The MPO should periodically review a selection of cases where Departments have taken the decisions without consultation (paragraph 5.11).

(xvii) We recommend that the MPO should take the initiative in sending to the Advisory Committee before a decision is taken Departmental cases on which it has been consulted and which raise issues of importance. The Advisory Committee should take the initiative in periodically calling for and reviewing a selection of the decisions taken by Departments after consulting the MPO. In these ways, the Advisory Committee would become a source of advice for Departmental Ministers as well as the Prime Minister (paragraph 5.12).

(xviii) We recommend that the sections of the MPO dealing with business appointments and standards of conduct should be merged, as a contribution towards securing more effective leadership in this field (paragraph 5.13).

(xix) We do not recommend turning the Advisory Committee into a decision-making body, provided the Government always make an announcement when they decide not to follow the Committee's advice (paragraph 5.14).

(xx) We recommend that the Government should add two senior back bench Members of the House of Commons to the Advisory Committee (paragraph 5.16).

(xxi) We recommend that members of the Advisory Committee should be appointed for three years and two replaced each year (paragraph 5.17).

(xxii) We recommend that the decisions taken by the Government on the advice of the Advisory Committee should be announced at the time they are taken, together with the terms of any conditions imposed and an indication of the occasions when the Committee's advice has not been accepted (paragraph 5.18).

(xxiii) We recommend that the Government should publish periodically reports on the working of the system (paragraph 5.19).

(xxiv) We have reached the conclusion that the hearings of the Advisory Committee ought not to be in public (paragraph 5.20).

(xxv) We recommend that information about the levels and patterns of movement of board members and senior staff of nationalised industries and other public bodies should be collected by the new unified section in the MPO ((xviii) above) (paragraph 6.3).

(xxvi) We would wish to be informed, in due course, of the extent to which, as a result of the approaches made by Departments, non-departmental public bodies have adopted rules to govern the taking up of outside appointments (paragraph 6.5).

(xxvii) We believe that it would be appropriate, in principle, for rules governing the taking up of outside appointments to be adopted throughout the public sector and we recommend that the Departments concerned should take appropriate action to that end (paragraph 6.6).

ANNEX C

DRAFT RESPONSE (8.2.85)

The Eighth Report of the Treasury and Civil Service Select Committee considered the rules governing the acceptance of outside appointments by Crown servants, and made a number of recommendations.

2. The definition of the outside appointments to which the rules apply is set out in Appendix I to this response. Briefly, they cover all employment in business or other bodies, whether or not of a commercial nature. Where the employment is in a non-commercial organisation or is unpaid, the Government consider the application of the rules to be discretionary and dependent on the circumstances of the particular case. As far as private consultancies are concerned, the rules are applied in respect of each commission undertaken.

3. The rules apply to members of the Home Civil Service, of the Diplomatic Service and of Her Majesty's Forces, collectively referred to in this response as Crown servants. They do not cover Special Advisers to Ministers; in their case, arrangements are made to ensure that they neither

have access to the kind of information (eg about individual companies) nor are involved in the kind of business (eg contracts) which underlies the need for the rules applicable to career Crown servants.

4. The Government agrees with the Committee that the rules governing the acceptance of outside appointments by Crown servants have to strike a balance between two principles: the principle of maximum possible freedom of movement, which is a matter not only of personal liberty but also of the economic and other benefits of interchange between the public service and other occupations and spheres of activity; and the requirement to avoid corruption or impropriety, or the suspicion of them, in relation to the public service. As the Committee points out, the risk of impropriety relates not only to the possibility that a retired Crown servant might use information or contacts obtained while in the public service to the unfair advantage of a new employer or to the disadvantage of his competitors, but also to the possibility that the advice given by a Crown servant while still serving could be coloured or conditioned, to

the advantage of a particular company, by an offer, or the prospect held out, of future employment after retirement.

5. It is a question of judgment whether the balance is struck at the right point by the existing rules. The Select Committee argues that the view of its predecessor Committee in 1981, that the balance is "tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety", is even more relevant today, despite changes made to the rules following the 1981 Committee's Report. The Select Committee has therefore made a number of recommendations designed to reinforce the effects of the rules in avoiding suspicion of impropriety. Inevitably a number of their recommendations would tend to impair freedom of movement, in some cases very significantly.

6. The Government of course accepts the need to avoid impropriety, and even the suspicion of impropriety where that is reasonably felt, and the arrangements should be such as to allay legitimate and reasonable concern on these matters. But the Committee has not found any evidence of

impropriety or of failure of the rules as they now are to provide adequate safeguards against impropriety. On the contrary, the evidence - or lack of it - seems to suggest that the rules have been generally effective for the purposes for which they are intended. The Government does not find this surprising, given the high standards of integrity in the public service on which the Government believes continuing reliance can safely be placed. In the Government's view, the Committee's apprehensions "that the traditional independence and impartiality of the Civil Service is in danger of being eroded or compromised" are without foundation and the need for major change in the rules to prevent impropriety is not established.

7. So long as impropriety is avoided, the Government believes that there is positive merit in minimising the obstacles to freedom of movement. There is general agreement on the need for and advantages of greater movement between the public service and other sectors of national life. Many people who retire or resign from the public service, like people who retire or resign from other occupations, have energies, talents and

qualifications which can be deployed in other walks of life, with considerable benefit and without there being any question of impropriety: so long as any reasonable suspicion of impropriety is avoided, the Government considers that Crown servants should be no less free than others to use their talents and qualifications after retirement from their main careers, when by doing so they can continue to make a contribution to the economic life and well-being of this country.

8. This point is particularly pertinent to those Crown servants, such as members of the Armed Services, whose retirement occurs long before the completion of a normal working life.

9. Moreover, interchange is not exclusively one way, as the Committee seem to suggest. Indeed, some parts of the Civil Service depend to a considerable extent on being able to recruit experienced people from industry in mid-career. Such people will be deterred from making the transition into the Civil Service if they foresee unreasonable restrictions on their freedom to return to industry at a later stage.

10. The existing rules do not have the force or backing of law, and (as the Committee point out) there are no formal sanctions laid down, to be applied in cases where the rules are breached. They have been and continue to be effective because they are accepted by the Crown servants concerned and by outside bodies as being reasonable and sensible for the purposes for which they are intended. The Government agrees with the Committee's view that this system is based upon the correct approach, and that it is neither necessary nor desirable to think in terms of a statutory system or code of conduct in these matters.

11. But the effectiveness of a voluntary system depends upon the readiness of those affected by it to see and accept it as being not unreasonably restrictive in its operation - bearing in mind that Ministers, and people who come into the public service from outside employment on secondment, who have the same access to official information and contacts as career Crown servants, are able on leaving public office to take up or resume outside appointments without any formal restriction or delay. If the system were felt to be unduly restrictive, the voluntary consent of those

affected could be put at risk, and the rules themselves could even be subjected to legal challenge as being unreasonable between the parties concerned.

12. The Government agrees that reasonable parliamentary and public opinion should as far as possible be able to see that the system is operating effectively and consistently. It is ready to make appropriate changes in procedures and to publish additional information about the working of the system for these purposes.

13. It is against this general background that the Government has considered the Committee's detailed recommendations, and has reached the conclusions which follow. In reaching conclusions on recommendations which concern the work of the Advisory Committee on Business Appointments it has had the benefit of the Advisory Committee's own views, and these are noted in the Government's responses.

14. The Select Committee's recommendations are framed almost entirely in terms of officers of Grade 3 (or equivalent) and above, and the

Government's comments and conclusions are related to the precise terms of these recommendations. Individual Departments already apply the rules also to many less senior officers who hold a variety of posts and who account for most of the movements to the private sector, and any changes in the rules applying to officers of Grade 3 (or equivalent) and above will also be applied, where appropriate, to this group of staff. In considering its conclusions the Government has had regard to the additional administrative burdens and resources that some of the changes recommended by the Select Committee would impose. As a general rule it has not shrunk from accepting these consequences, where it took the view that the changes were justified on their merits.

February 1985

RECOMMENDATION NO 1

WE RECOMMEND THAT THE RULES SHOULD BE REDRAFTED FOLLOWING THE SEQUENCE OF SUBJECTS IN THIS REPORT (PARAGRAPH 3.2)

The rules are being redrafted to take account of the changes proposed in this response to the Committee's report. The Government will send the Committee copies of the revised rules as soon as they are ready.

RECOMMENDATION NO 2

WE RECOMMEND FOR UNDER SECRETARIES AND ABOVE AN EXTENSION OF THE MAXIMUM TWO YEAR PERIOD OF DELAY TO FIVE YEARS (PARAGRAPH 3.13)

The Government recognises that this recommendation relates to the length of the period after leaving the Service during which a former Crown servant is required to seek permission before accepting an outside appointment, and to the maximum period of delay that can be required between retirement and the date of taking up an outside appointment, and that it is not suggested that five years should become the standard period of delay. Nevertheless the Government considers that five years is an unnecessarily long period to prescribe.

The test of what is appropriate should be the period during which, after retirement, a former Crown servant is likely to retain from his period of service official information or contacts which could be used to the unfair advantage of the outside concern with which he takes up an appointment or the detriment of that concern's

competitors. Experience indicates that up-to-date knowledge of high technology and trade secrets erodes rapidly. Information relating to tenders and contracts is similarly likely to fade quickly, given the lack of access to official documents, and will have lost its value within two years. Staff movements, and changes in policies and procedures make both contacts and information very out of date by the end of two years. It is for this sort of reason that only in three instances has the Advisory Committee thought it necessary to recommend that a waiting period of a full two years should elapse after retirement on resignation before an appointment is taken up; the Advisory Committee has in no case thought that two years was too little.

If the maximum period of delay, and the period during which consent was required to be sought, were increased to five years, there could over time develop a tendency to longer periods of delay which could needlessly inhibit the movement of Crown servants into the private sector and the movement of people from industry into the Civil Service on short-term appointments - movements which the Government believes to be of mutual benefit to both

the public and private sectors alike: those concerned might be less willing to come into the public service on fixed term contract appointments if they feared that they could be required to wait for anything up to five years before rejoining the private sector at the end of their appointment. Mid-career moves, including those of armed forces personnel, which as a result of this proposal could be subject to a waiting period of longer than two and up to five years, would effectively be ruled out - companies would hardly be prepared to wait; in the case of post-retirement appointments, the individual, by virtue of his age, would be unlikely to be able to take up employment after a lengthy waiting period. To risk these disadvantages for purely presentational reasons would be patently inequitable.

As the Government has no evidence to suggest that two years has ever proved to be an insufficient waiting period, it considers that the balance of argument is against any increase in the maximum period of delay and the period after retirement or resignation during which a retired Crown servant is required to seek consent before taking up an outside appointment. This is also the view of the Advisory Committee.

RECOMMENDATION NO 3

WE RECOMMEND THE MORE EXTENDED USE BY THE ADVISORY COMMITTEE AND BY GOVERNMENT DEPARTMENTS, PARTICULARLY THE MINISTRY OF DEFENCE, OF CONDITIONS GOVERNING BEHAVIOUR AFTER LEAVING THE PUBLIC SERVICE. ENQUIRIES RELATING TO THE ADHERENCE TO THE CONDITIONS SHOULD BE MADE AFTER ONE YEAR TO ENSURE THAT ALL SUCH CONDITIONS ARE BEING COMPLIED WITH, AND THIS SHOULD BE CONTINUED DURING THE PERIOD TO WHICH THE CONDITIONS RELATE (PARAGRAPH 3.17)

Departments already employ a variety of conditions governing the behaviour of former Crown servants, when they take up new employment.

The Advisory Committee has made little use of such conditions in the case of Permanent Secretaries; it thinks it preferable to rely almost exclusively on the use of waiting periods. The Advisory Committee takes the view now, as in the past, that, as far as senior officers are concerned, waiting periods are the most effective way of securing the objectives of the rules.

More use is made of behavioural conditions in applications from less senior officers. The Government notes the Select Committee's view that more use should be made of such conditions, and is ready to consider acting accordingly in particular cases; but whether such conditions should be imposed and what they should be must depend on the circumstances of each individual case.

The Government does not believe that formal checks are necessary or justified. The absence of formal checks does not mean that the imposition of conditions is unpoliced. An effective sanction is provided by the awareness on the one hand of competitor firms who have been made aware of the employment of former Crown servants, and on the other, of those officers remaining in the Service who will continue to deal with the employing firm and who will also be aware of the terms on which the appointment has been approved.

RECOMMENDATION NO 4

WE RECOMMEND THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE LEAVING THE PUBLIC SERVICE SHOULD BE REQUIRED TO GIVE A WRITTEN UNDERTAKING TO ABIDE BY A CODE OF CONDUCT UNDER WHICH THEY WOULD BE PROHIBITED FOR A PERIOD OF FIVE YEARS FROM REPRESENTING THEIR NEW EMPLOYER ON SPECIFIC AND SIGNIFICANT MATTERS FOR WHICH THEY WERE RESPONSIBLE IN THEIR OFFICIAL CAPACITY. CONTRACTS OF EMPLOYMENT WOULD PROVIDE A USEFUL FURTHER SAFEGUARD AND, IF THEY ARE INTRODUCED FOR CIVIL SERVANTS, SUCH A PROHIBITION FOR SENIOR OFFICIALS COULD BE INCLUDED IN THEM (PARAGRAPH 3.21)

The Government believes that the rules governing business appointments after retirement amount in practice to a sufficient guide to conduct to make a code of conduct as such unnecessary. It further believes that a general restraint on rights of representation is not required: the purpose for which this is proposed can already be achieved by a suitable period of delay and by the imposition of suitable conditions in particular cases.

The Government considers, however, that it would be right to ask senior Crown servants to acknowledge in writing that the rules governing acceptance of outside appointments have been brought to their attention. This aim could be met by securing a written acknowledgement from Crown servants of Grade 3 level (or equivalent) and above, at the time of their promotion or appointment to Grade 3 or equivalent, and again at the time of retirement. A suitable form of words is attached.

The Government believes that the Crown servants concerned understand the reasons for having rules which strike a fair balance between the desirability of freedom of movement and the need to avoid impropriety, or the suspicion of it, and will continue to comply with the rules as amended in the light of the response as they have complied with the existing rules.

APPENDIX

DRAFT ACKNOWLEDGEMENT TO BE SIGNED BY ALL CROWN SERVANTS ON PROMOTION OR APPOINTMENT TO A POST AT GRADE 3 OR EQUIVALENT LEVEL

I have read the rules, a copy of which is appended hereto, requiring officers promoted or appointed to and on retiring from posts at Grade 3 and equivalent level and above to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business and other bodies and in semi-public organisations brought into being by the Government or Parliament.

Signed .....

Date .....

RECOMMENDATIONS NO 5 AND 6

WE BELIEVE THAT SANCTIONS MAY BE NEEDED IF AND WHEN EVIDENCE BECOMES AVAILABLE OF ABUSES OF THE PRESENT RULES AND THE PROPOSED CODE OF CONDUCT. IF OUR RECOMMENDATIONS ON POLICING THE RULES AND CODE OF CONDUCT ARE ADOPTED, ABUSE SHOULD BE EFFECTIVELY REPORTED, SO ALERTING PARLIAMENT TO THE NEED FOR REVIEW OF SUITABLE SANCTIONS. WE ARE IMPRESSED WITH THE DIFFICULTIES OF INTRODUCING SPECIFIC LEGISLATION AND THE PROBLEMS OF DEFINITION WHICH WOULD BE INVOLVED AND, THEREFORE, RECOMMEND THAT, IF SANCTIONS BECOME NECESSARY, THE GOVERNMENT SHOULD MAKE IT CLEAR THAT IT IS PREPARED TO TAKE STEPS TO ABATE AUTOMATICALLY THE PENSION OF ANY CIVIL SERVANTS WHO ACT IN DEFIANCE OF THE RULES ON BUSINESS APPOINTMENTS (PARAGRAPH 3.26)

The Committee acknowledge that there is no evidence to suggest that any impropriety has occurred or that the current rules have been flouted, and have not therefore proposed the introduction of sanctions. If it were to become apparent that people were not complying with the rules, or that the rules were significantly failing to achieve the desired effect, the Government would

need to look at them again in their widest context. Sanctions could probably not be introduced in isolation; they could come only as part of a major change putting the rules on to a statutory basis; which the Committee does not recommend and the Government does not favour. In that event the abatement of pensions - which would require legislation - would clearly be one sanction which would have to be considered.

RECOMMENDATIONS NO 7 AND 8

7. WE RECOMMEND THAT THE RULES SHOULD STATE SPECIFICALLY THAT ALL UNDER SECRETARIES AND ABOVE NEED TO APPLY FOR APPROVAL TO TAKE UP BUSINESS APPOINTMENTS, AND OTHER CIVIL SERVANTS NEED TO WHEN THERE HAS BEEN CONTACT WITH THE PROSPECTIVE EMPLOYER OR THEY HAVE BEEN RESPONSIBLE FOR ANYONE HAVING SUCH CONTACT OR THE EMPLOYER CONCERNED HAS EXTENSIVE DEALINGS WITH THE CIVIL SERVANT'S DEPARTMENT. CONTACT IS TO BE UNDERSTOOD AS MEANING NOT ONLY FACE-TO-FACT DEALINGS BUT ALSO INVOLVEMENT IN SUCH DEALINGS BEHIND THE SCENES (PARAGRAPH 4.6)

8. WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY AND FULLY AND IN ONE PLACE WHAT THE CRITERIA ARE FOR DECIDING WHETHER OR NOT TO GIVE APPROVAL TO A PROPOSED BUSINESS APPOINTMENT. THE CRITERIA SHOULD DEAL WITH THE FOLLOWING POINTS .... IN PERSPECTIVE (PARAGRAPH 4.19)

The recommendations set out in Chapter 4 paragraphs 4.6 and 4.19 are largely covered by the current rules which apply to all Crown servants at Grade 3 or equivalent level and above and other officers to whom the rules have been applied by

Departments. The rules will, however, be redrafted to make these points specifically and the Committee's suggestions for change will be taken fully into account.

RECOMMENDATION NO 9

WE RECOMMEND THAT THE RULES SHOULD LAY DOWN THE FOLLOWING PRINCIPLES IN THE LIGHT OF WHICH APPLICATIONS SHOULD BE JUDGED -

I. THOSE IN AUTHORITY OVER THOSE DIRECTLY INVOLVED IN DEALINGS WITH A FIRM SHOULD BE DEEMED TO BE INVOLVED;

II. IN CONSIDERING THE NATURE OF THE JOB TO BE TAKEN, IT SHOULD BE BORNE IN MIND THAT ANY CIVIL SERVANT TAKING UP AN APPOINTMENT TO THE BOARD OF A COMPANY WILL SHARE WITH THE REST OF THE BOARD A COLLECTIVE RESPONSIBILITY FOR ALL THE ACTIVITIES OF THE COMPANY INCLUDING ITS DEALINGS WITH HIS OLD DEPARTMENT (PARAGRAPH 4.29).

The Government agrees that, in principle senior officers are responsible for what happens throughout their areas of management. They cannot be absolved of responsibility simply because they had no direct involvement in individual contractual dealings handled by their staff. The degree of actual involvement by senior officers in particular

RECOMMENDATION NO 10

ON BALANCE, WE DO NOT THINK A CASE HAS BEEN MADE FOR A COMPLETE BAN ON THE MOVEMENT OF PERMANENT SECRETARIES INTO THE PRIVATE SECTOR. WE BELIEVE GREATER OPENNESS IN IMPLEMENTING THE RULES IS THE MOST EFFECTIVE WAY OF REMOVING THE SUSPICION OF IMPROPRIETY (PARAGRAPH 4.35)

The Government welcomes the Committee's recognition that a case has not been made for imposing a complete ban on the movement of former Permanent Secretaries into the private sector. The Committee's recommendations for greater openness are considered below.

RECOMMENDATION NO 11

WE RECOMMEND THAT DEPARTMENTS REVIEW THEIR ARRANGEMENTS FOR ENSURING THAT ALL STAFF WHO, JUDGED BY THE CRITERIA WE SET OUT IN PARAGRAPH 4.6, MIGHT POSSIBLY BE WITHIN THE SCOPE OF THE RULES ARE SPECIFICALLY INFORMED OF THIS FACT BEFORE RESIGNATION OR RETIREMENT (PARAGRAPH 5.1)

All Departments are being asked to review their arrangements for bringing the rules to the attention of staff who fall within their scope and who are about to retire or resign.

RECOMMENDATION NO 12

WE RECOMMEND THAT APPLICATIONS FOR APPROVAL TO TAKE UP A BUSINESS APPOINTMENT SHOULD BE MADE IN WRITING IN A STANDARD FORM ALONG THE LINES OF THAT USED BY THE MINISTRY OF DEFENCE. APPLICANTS SHOULD ALWAYS BE INTERVIEWED IF A REFUSAL OR THE IMPOSITION OF CONDITIONS IS BEING CONTEMPLATED. IN OTHER CASES APPLICANTS SHOULD HAVE THE RIGHT TO BE INTERVIEWED (PARAGRAPH 5.4)

The Government accepts that there would be benefits to be gained in standardising procedures for dealing with applications and agrees that applicants should be required to submit in writing to their Departments, or former Department, applications for approval to take up outside appointments. As an aid to consistency and to ensure that all the relevant details concerning each case are known, the Cabinet Office (MPO) will provide a suitable form, which can be adapted by individual Departments as necessary to meet their particular needs.

As far as interviewing applicants is concerned, the Government agrees that an applicant

should be given the opportunity of an interview if a waiting period or other conditions are to be imposed on the acceptance of an appointment or if the application seems likely to be rejected. Whether or not the applicant wishes to exercise that right should be left to the individual. Departments must be allowed to exercise judgment about how much to reveal to an individual applicant about the reasons behind the conditions/waiting periods which were being contemplated. It would be necessary to avoid revealing information given on a commercial-in-confidence basis by the prospective employer's competitors in justification of objections raised to an appointment.

RECOMMENDATION NO 13

WE RECOMMEND THAT PROSPECTIVE EMPLOYERS SHOULD BE CONSULTED ABOUT APPLICATIONS AND INFORMED OF THE OUTCOME AND ANY CONDITIONS IMPOSED (PARAGRAPH 5.5)

The Government agrees that employers should be informed of any conditions that are attached to the approval of an appointment; indeed, this is already done in many cases. They do not consider this to be necessary in straightforward cases where approval is granted unconditionally. Some Departments, notably the Ministry of Defence, already contact prospective employers before a decision is taken in those cases where it is necessary to consult competitors, and Departments will be encouraged to consult prospective employers in appropriate cases; but the Government does not consider it necessary to make it an invariable rule that prospective employers should be consulted in every instance.

RECOMMENDATION NO 14

WE RECOMMEND THAT THE RULES SHOULD REQUIRE THAT OFFICIALS OF THE RANK OF UNDER SECRETARY AND ABOVE DO NOT DISCUSS OFFERS OF POST-RETIREMENT EMPLOYMENT WITH PROSPECTIVE EMPLOYERS WITHIN THE LAST YEAR OF SERVICE PRIOR TO RETIREMENT. IF OFFERS ARE MADE TO SUCH OFFICIALS IN MID-CAREER OR TO MORE JUNIOR OFFICIALS IN ANY CIRCUMSTANCES, THEY MAY BE DISCUSSED WITH PROSPECTIVE EMPLOYERS BUT THE OFFERS SHOULD FIRST BE REPORTED TO THOSE IN AUTHORITY AND APPROPRIATE PERMISSIONS SOUGHT (PARAGRAPH 5.6)

The Government believes that a blanket prohibition on the discussion of post-retirement employment offers would be not only unnecessarily restrictive but in practice impossible to enforce. Encouragement should be given to increasing the movement in mid-career between Crown service and private sector employment, and the Government would not want to frustrate desirable interchange by imposing too rigid restrictions. The distinction drawn by the Committee between discussions before post-retirement employment and those which precede resignation fails to take into account that some Crown servants, particularly armed service

personnel, are encouraged to retire early, sometimes from about 45 years of age. It would be unreasonable not to allow such officers to make preparations for establishing a new career as they approach retirement. Nor would it be reasonable or practicable to debar officers approaching normal retirement age from discussing future employment offers. The Government considers, however, that any approach from an outside employer which seems to be intended or to be likely to result in an offer of employment to a Crown servant at any level, particularly (but not only) where such an offer emanates from firms with whom the individual or his staff have had official dealings, should be reported by the Crown servant concerned to a superior officer at least two grades higher than himself; in the case of an officer at Grade 3 (or equivalent) level or above to the Permanent Head of the Department; and in the case of a Permanent Secretary to the Minister in charge of the Department. If the offer is to be pursued, an application for approval to take up the appointment must of course be submitted in the normal way.

The mischief against which this recommendation is presumably aimed is that the advice given by a

Crown servant while still serving could be coloured or conditioned by the offer, or the prospect held out, of future employment. Apart from the integrity of the public service, and the fact that it is rare for a single individual to be the only person responsible for or concerned with a important decision of the kind involved , some protection is afforded by the ability to require a waiting period or to impose other conditions on the taking up of an appointment after retirement. But an important safeguard must lie in making as sure as possible that the fact that an offer of employment has been made, or a prospect of employment held out, is known to those set in authority over the person concerned.

RECOMMENDATIONS NO 15 AND 17

WE RECOMMEND THAT THE ADVISORY COMMITTEE SHOULD CONSIDER ALL APPLICATIONS FROM UNDER SECRETARIES AND ABOVE (PARAGRAPH 5.8)

WE RECOMMEND THAT THE MPO SHOULD TAKE THE INITIATIVE IN SENDING TO THE ADVISORY COMMITTEE BEFORE A DECISION IS TAKEN DEPARTMENTAL CASES ON WHICH IT HAS BEEN CONSULTED AND WHICH RAISE ISSUES OF IMPORTANCE. THE ADVISORY COMMITTEE SHOULD TAKE THE INITIATIVE IN PERIODICALLY CALLING FOR AND REVIEWING A SELECTION OF THE DECISIONS TAKEN BY DEPARTMENTS AFTER CONSULTING THE MPO. IN THESE WAYS, THE ADVISORY COMMITTEE WOULD BECOME A SOURCE OF ADVICE FOR DEPARTMENTAL MINISTERS AS WELL AS THE PRIME MINISTER (PARAGRAPH 5.12)

The Government does not believe that the advantages of referring to the Advisory Committee all applications from Grade 3 (Under Secretary or equivalent) and above would be sufficient to outweigh the major increase in the Committee's workload which would be entailed. The Government agrees, however, that it would be useful to bring

the Advisory Committee's judgment to bear on a wider range of cases: this will both reassure public opinion as to the avoidance of impropriety and provide Departments with more extensive guidance for taking decisions which continue to be made without reference to the Advisory Committee.

Having consulted the Advisory Committee, and with the Committee's agreement, the Government proposes that:

1. all applications from Grade 2 (or equivalent) Crown servants and above should be referred to the Advisory Committee;

2. all applications from Grade 3 (or equivalent) Crown servants should be referred to the Cabinet Office (MPO) and to the Head of the Home Civil Service;

3. In the case of applications from Grade 3 (or equivalent) Crown servants and below which are referred to the Cabinet Office (MPO), the Head of the Home Civil Service should have discretion to recommend to the Prime Minister a reference to the Advisory Committee of any

application which in his opinion raises issues on which it would be desirable to have the Advisory Committee's judgment.

4. The Cabinet Office (MPO) should provide the Advisory Committee with regular statistical reports on all cases referred to the Cabinet Office (MPO); from these the Chairman of the Advisory Committee should select a sample for detailed examination by the Committee, to ensure that the handling of cases by Departments and by the Cabinet Office is consistent with the Committee's.

RECOMMENDATION NO 16

WE RECOMMEND THAT THE RULES SHOULD STATE EXPLICITLY THAT THE MPO SHOULD BE CONSULTED BEFORE A DECISION IS TAKEN IN CASES WHICH RAISE SUBSTANTIAL DOUBTS AND FOR WHICH NO PRECEDENTS EXIST. THE MPO SHOULD PERIODICALLY REVIEW A SELECTION OF CASES WHERE DEPARTMENTS HAVE TAKEN THE DECISIONS WITHOUT CONSULTATION (PARAGRAPH 5.11)

The Cabinet Office (MPO) has an important consultative and advisory role in relation to those departmental cases which raise points of principle, where no precedent exists or where there are substantial doubts. The existing rules already require Departments to consult the Cabinet Office (MPO) about cases (at all levels) involving applicants whose previous contact with prospective employers has been other than casual or where there are trade secret implications. The current rules may however give rise to some confusion and it is therefore proposed to clarify them. The Government also agrees with the Committee that retrospective reviews would be useful for checking whether or not

the rules are being consistently applied across Departments. The Cabinet Office (MPO) will conduct such reviews periodically.

RECOMMENDATION NO 18

WE RECOMMEND THAT THE SECTIONS OF THE MPO DEALING WITH BUSINESS APPOINTMENTS AND STANDARDS OF CONDUCT SHOULD BE MERGED, AS A CONTRIBUTION TOWARDS SECURING MORE EFFECTIVE LEADERSHIP IN THIS FIELD (PARAGRAPH 5.13)

The Assistant Secretary in charge of the division of the Cabinet Office (MPO) dealing with business appointments reports direct to the Secretary of the Cabinet, to whom the divisions dealing with standards of conduct are also responsible. This arrangement is in the Government's view sufficient to ensure consistency and direction.

RECOMMENDATION NO 19

WE DO NOT RECOMMEND TURNING THE ADVISORY COMMITTEE INTO A DECISION-MAKING BODY, PROVIDED THE GOVERNMENT ALWAYS MAKE AN ANNOUNCEMENT WHEN THEY DECIDE NOT TO FOLLOW THE COMMITTEE'S ADVICE (PARAGRAPH 5.14)

The Government agrees with the Committee that the Advisory Committee should not become a decision-making body. It does not propose to introduce a system whereby decisions regarding individual cases are published, since to do so could easily give rise to breaches of confidentiality, but it will include in the regular statistical reports to be published in future (see response to Recommendation No 23) numbers of cases referred to the Advisory Committee and decided otherwise than wholly in accordance with the Committee's recommendations.

RECOMMENDATION NO 20

WE RECOMMEND THAT THE GOVERNMENT SHOULD ADD TWO SENIOR BACK BENCH MEMBERS OF THE HOUSE OF COMMONS TO THE ADVISORY COMMITTEE (PARAGRAPH 5.16)

It is clearly important that no hint of political partisanship should enter, and should be thought to be likely to enter, into the Advisory Committee's deliberations and recommendations. Following the recommendation of the previous Select Committee, the authority and independence of the Advisory Committee were strengthened by the appointment of a number of people from outside the public service; with the result that now only a minority of its members are former members of a public service. Successive Governments have thought it important and valuable to have two senior Parliamentarians, one from each of the main political parties, on the Advisory Committee, and the Government is grateful to those who have been willing to find time for this public service. Those who have served hitherto have all been members of the House of Lords when invited to serve; but they have all been people who have had experience as senior Ministers and as members of

the House of Commons, and this combination of Parliamentary and Ministerial experience seems to the Government to have been, and to be likely to continue to be, valuable qualification for membership of the Advisory Committee. There is no reason why one or other (or indeed both) of the two senior Parliamentarians on the Advisory Committee should not be a member of the House of Commons if he or she meets the requirements. But the Government does not think it appropriate to have more than two senior Parliamentarians on the Advisory Committee at any one time.

RECOMMENDATION NO 21

WE RECOMMEND THAT MEMBERS OF THE ADVISORY COMMITTEE SHOULD BE APPOINTED FOR THREE YEARS AND TWO REPLACED EACH YEAR (PARAGRAPH 5.17)

The Government accepts that the membership of the Advisory Committee should be regularly reviewed. It is also desirable that there should be a reasonable continuity of experience in the membership. Recent appointments to membership have been for a term of three years in the first instance, and that will continue to be the practice. The Government would propose not to make it a fixed rule to replace two members of the Committee each year. It will often be sensible to ask a member to serve a second three-year term. The Government considers, however, that the presumption should be against a member serving a third term, unless there is some special reason for his being invited to do so.

RECOMMENDATION NO 22

WE RECOMMEND THAT THE DECISIONS TAKEN BY THE GOVERNMENT ON THE ADVICE OF THE ADVISORY COMMITTEE SHOULD BE ANNOUNCED AT THE TIME THEY ARE TAKEN, TOGETHER WITH THE TERMS OF ANY CONDITIONS IMPOSED AND AN INDICATION OF THE OCCASIONS WHEN THE COMMITTEE'S ADVICE HAS NOT BEEN ACCEPTED (PARAGRAPH 5.18)

The Government thinks that it would be a breach of confidence and privacy for it to announce individual decisions taken on the advice of the Advisory Committee at the time those decisions are taken. The regular statistical reports to be published in future (see response to Recommendation No 23) will, however, note (subject to such aggregation or other precautions as may be necessary to preserve anonymity) the numbers of cases referred to the Advisory Committee for consideration, the numbers of cases decided in accordance with the Advisory Committee's recommendation, and the numbers of cases decided otherwise than wholly in accordance with the Advisory Committee's recommendation.

RECOMMENDATION NO 23

WE RECOMMEND THAT THE GOVERNMENT SHOULD PUBLISH PERIODICALLY REPORTS ON THE WORKING OF THE SYSTEM (PARAGRAPH 5.19)

The Government agrees with the proposal that the Cabinet Office (MPO) should periodically review and report on the working of the system, and will implement it by publishing regular statistical reports which will cover applications by officers at all grades but not identify the details of any individual cases.

RECOMMENDATION NO 24

WE HAVE REACHED THE CONCLUSION THAT THE HEARINGS OF THE ADVISORY COMMITTEE OUGHT NOT TO BE IN PUBLIC (PARAGRAPH 5.20)

The Government agrees with the Committee that the Advisory Committee's hearings and other proceedings should not be in public. So does the Advisory Committee.

RECOMMENDATION NO 25

WE RECOMMEND THAT INFORMATION ABOUT THE LEVELS AND PATTERNS OF MOVEMENT OF BOARD MEMBERS AND SENIOR STAFF OF NATIONALISED INDUSTRIES AND OTHER PUBLIC BODIES SHOULD BE COLLECTED BY THE NEW UNIFIED SECTION OF THE MPO (PARAGRAPH 6.3)

As indicated in its response to recommendation 27, the Government considers that the degree of managerial autonomy accorded to most categories of public body makes it inappropriate for Ministers to intervene to press for the adoption of rules on the acceptance of outside appointments after resignation or retirement. Given this, regular collection by the Cabinet Office (MPO) of statistics about levels and patterns of movement of board members and senior staff would serve little practical purpose. The Government could scarcely justify requiring the maintenance of detailed records for which the bodies concerned would (in many instances) themselves not see any need.

RECOMMENDATION NO 26

WE WOULD WISH TO BE INFORMED, IN DUE COURSE, OF THE EXTENT TO WHICH, AS A RESULT OF APPROACHES MADE BY DEPARTMENTS, NDPBs HAVE ADOPTED RULES TO GOVERN THE TAKING UP OF OUTSIDE APPOINTMENTS (PARAGRAPH 6.5)

When the revised rules for Crown servants are available, Departments will bring them, together with the observations of the Committee, to the attention of non-departmental public bodies (NDPB) with executive responsibilities. No rules about the acceptance of outside appoitments currently apply to Board members of NDPBs.

RECOMMENDATION NO 27

WE BELIEVE THAT IT WOULD BE APPROPRIATE, IN PRINCIPLE, FOR RULES GOVERNING THE TAKING UP OF OUTSIDE APPOINTMENTS TO BE ADOPTED THROUGHOUT THE PUBLIC SECTOR AND WE RECOMMEND THAT THE DEPARTMENTS CONCERNED SHOULD TAKE APPROPRIATE ACTION TO THAT END (PARAGRAPH 6.6)

The Government has little to add to its response (reproduced on page 178 of the Committee's report) to the similar suggestion made by its predecessor Committee.

The circumstances of particular groups in the public sector - local government, the NHS, nationalised industries and various types of non-departmental public bodies (NDPB's) vary so greatly that it is difficult to see how standard rules could deal effectively with all of them.

In the absence of a serious problem, the Government would find it hard to justify imposing such a requirement generally when making Ministerial appointments to outside bodies. Such rules could well make it difficult to attract good

calibre members, and in some cases inhibit desirable cross-fertilisation of experience. So far as staff are concerned, for most of these bodies responsibility and authority rests clearly with the managements concerned, and the imposition of rules by Government is neither practicable nor appropriate.

As acknowledged in the Government's response to the predecessor Committee's recommendation, the strongest case for Government intervention in this area would be in relation to NDPBs funded to the extent of 50 per cent or more by the taxpayer. Paragraph 6.5 of the present report notes the Government's action in incorporating into standing guidance to Departments the advice that they should "consider..... taking account of the nature of the body whether it should be asked to adopt rules for board members and/or staff about the acceptance of appointments after resignation or retirement.....". The relevant guidance (the Cabinet Office (MPO) booklet "NDPBs: a Guide for Departments") is currently being revised, and the opportunity will be taken to make clear that the need for such rules should be considered both when a body is set up and, where appropriate,

periodically thereafter. At the same time the guidance would acknowledge that the need for rules must be considered in relation to the functions of the NDPB concerned and any potential for conflict of interests which may give rise to public concern.

APPENDIX I

DEFINITION OF OUTSIDE APPOINTMENTS TO WHICH THE RULES APPLY

Under these rules all officers of the rank of Grade 3 (Under Secretary or, in the Diplomatic Service, Counsellor) and above, and of the equivalent ranks in Her Majesty's Forces, are required to obtain the assent of the Government before accepting within two years of resignation or retirement offers of employment in business or other bodies, particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance; or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature below the rank of Grade 3 or equivalent to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government.

2. For these purposes employment is regarded as including self-employment, for instance in a consultancy.

3. The rules are intended to apply primarily to outside appointments in industrial or commercial bodies, and give discretion to those concerned to modify or dispense with the prescribed procedures in cases of unpaid appointments and appointments to non-commercial bodies of such a nature that the procedures would be inappropriate.

CROABE

Foreign and Commonwealth Office

London SW1A 2AH

From the Secretary of State

3 December 1984

Dear Burke

Thank you for your letter of 11 October about the acceptance of business appointments after retirement by Sir Jock Taylor.

I am grateful to you for your recommendation, which I have accepted.

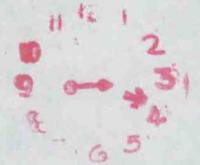
I am copying this letter to the Prime Minister for information.

GEOFFREY HOWE

The Rt Hon The Lord Trend of Greenwich GCB CVO



- 5 1984



10 Downing Street
Whitehall

Mr. James BLYTH

Not referred to the Diamon
Committee but filed with
Business Appointments
papers

SENIOR STAFF IN CONFIDENCE

MKJ AGQ
6 Appts.

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

Mr James Blyth: Outside Appointment

The Prime Minister has seen your minute of 22 October (AO84/2778) and is content that Mr. Blyth should be given permission to join the Imperial Group Board as a non-executive director during the short remaining period of his time with the Ministry of Defence.

Ferb.

24 October 1984

SENIOR STAFF IN CONFIDENCE

CST

D10

FERB

Prime Minister
Content with this proposal?

FERB
23.10.

Ref. A084/2778

MR BUTLER

Mr James Blyth: Outside Appointment

Sir Clive Whitmore has written to me about Mr James Blyth who is seeking permission to join the Imperial Group Board as a non-executive director while continuing to hold his appointment as Head of Defence Sales.

2. Mr Blyth was first approached by the Imperial Group some 18 months ago. Before he could formally apply for permission to join the Board Lucas, his parent company, placed an embargo on the appointment and there the matter rested.

3. Mr Blyth is now planning to resign from his appointment as Head of Defence Sales in the early part of next year, so that he can return to industry. He does not, however, wish to go back to Lucas and he has made this clear to Mr Godfrey Messervy, the Chairman of Lucas. This has the effect of lifting Lucas's embargo on his acceptance of part-time appointments with other companies, and so the Imperial Group have now renewed their invitation to him to join their Board as a non-executive director.

4. The Secretary of State for Defence has been consulted about the proposed appointment and he agrees that Mr Blyth should be given permission to accept the Imperial Group's offer. I too am content: I am satisfied that this appointment would not in any way conflict with the interests of his department, nor be inconsistent with his position as a public servant during the short remaining period of this time with the Ministry of Defence. Before replying to Sir Clive Whitmore, however I should be glad to know that the Prime Minister is content.

RWA

22 October 1984

ROBERT ARMSTRONG

Ref. A084/2638

MR BUTLER

Treasury and Civil Service Select Committee Report: Outside Appointments of Crown Servants

Mr Hatfield sent you on 19 September a summary of the Select Committee's recommendations.

2. These recommendations are now being considered by a Working Group of the Departments principally affected, and I shall submit a draft response when that work is done. I will then make proposals for Ministerial consideration; I presume the Prime Minister will think that the response should be considered by Ministers collectively.

3. Some of the Committee's recommendations relate to the terms of reference and composition of the Advisory Committee. I propose, if the Prime Minister agrees, to ask the Advisory Committee to consider those recommendations and let us have their comments, so that these can be taken into account in preparing the Government's response.

ROBERT ARMSTRONG

ROBERT ARMSTRONG

3 October 1984

Civil Service : Rules governing acceptance of
business appts by Civil Servants 1/80

10 DOWNING STREET

From the Principal Private Secretary

MR. HATFIELD
CABINET OFFICE

Treasury and Civil Service Select Committee: Outside Appointments of Crown Servants

Thank you for your minute of 19 September (AO84/2517) covering the summary of recommendations drawn from the Confidential Final Revise of the Report of the Treasury and Civil Service Select Committee.

The Prime Minister has seen the recommendations and has noted that Sir Robert Armstrong is arranging for urgent consideration to be given to the Government's response.

20 September 1984

PERSONAL SENIOR STAFF IN CONFIDENCE

FILE

R57

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

The Prime Minister has seen and noted your minute of 15 March (A084/849) about Mr. Peter Le Cheminant.

A. L. N. BUTLER

16 March, 1984

PERSONAL SENIOR STAFF IN CONFIDENCE

PERSONAL SENIOR STAFF IN CONFIDENCE

Ref. A084/849

PRIME MINISTER

I have to report that Mr Le Cheminant has been offered, and would like to accept, appointment as Director General of the General Council of British Shipping in succession to Mr Patrick Shovelton. The appointment would take effect from 1 January 1985; and, on the assumption that the Diamond Committee agreed that there should be no more than the minimum period of quarantine, Mr Le Cheminant would leave the Service on 30 September 1984.

2. I shall very much regret Mr Le Cheminant's departure, because he has done a marvellously good job in his present post, as in previous posts, and I have come to depend very much upon him. But I have had to say that I can see no prospect of his being further promoted in the Civil Service, before his retirement in 1986; and in his personal circumstances I can understand his wish to take up a post which will give him a larger immediate salary and the prospect of employment well beyond the date at which he would be obliged to retire from the public service.

3. Mr Le Cheminant has asked that his proposal should be referred to the Advisory Committee on Business Appointments and I am arranging accordingly.

RtA

ROBERT ARMSTRONG

15 March 1984

PERSONAL SENIOR STAFF IN CONFIDENCE

CONFIDENTIAL

FILE

Ref

cc: FCO
MOD
CW
LPS

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Prime Minister has seen your minute of 22 February (A084/606) about the consideration by the new Treasury and Civil Service Select Committee of the acceptance of outside appointments by Crown servants.

Subject to the views of her colleagues, the Prime Minister is content with the proposals in paragraphs 8 and 9 and, as a fall-back, paragraph 10 of your minute. The Prime Minister inserted the word "individual" in the last line of paragraph 9 of your minute.

I am copying this minute to the Private Secretaries of those who received yours.

R E R BUTLER

27 February, 1984

CONFIDENTIAL

CT.

4

Prime Minister

Agree the proposals at ✓X/ and ✓Y/, and the fallback at ZY, if your colleagues are content?

FERB 22.2.

Ref. A084/606

PRIME MINISTER

Agreed MS

Acceptance of Outside Appointments by Crown Servants

You will remember that this subject was considered by the Treasury and Civil Service Select Committee in the 1980-81 session, and was the subject of an interim report (HC216).

2. The new Treasury and Civil Service Committee has decided to revert to the subject, and its inquiry is being conducted by a Sub-Committee consisting of Mr Austin Mitchell MP (Chairman), Mr Beaumont-Dark MP, Mr Freeman MP and Mr Brian Sedgemore MP.

3. The Sub-Committee have invited me to give evidence on 19 March, and I have agreed to do so.

4. The Sub-Committee have also asked Lord Diamond to give evidence on 7 March, in his capacity as Chairman of your Advisory Committee on Business Appointments.

5. The Sub-Committee have also asked for a list of those from whom applications have been considered by the Advisory Committee since 1979, to include the name of the individual concerned, his job in the Civil Service or the forces, the name of the outside employer, the title of the job being offered, the Prime Minister's decision, and an indication of any conditions attached to approval.

6. The Cabinet Office were consulted about the proposal to summon Lord Diamond to give evidence. We said that we thought that it was inappropriate to ask Lord Diamond to give evidence to the Sub-Committee. Select Committees are not given access to confidential advice to Ministers, and the recommendations of the Advisory Committee are essentially confidential advice of that kind. Moreover I believe (as I say later in this minute) that the Government should refuse to discuss individual cases with the Sub-Committee; if that is right, it would be equally inappropriate for the Chairman of the Advisory Committee to do so. It is questionable whether the Chairman of the Advisory Committee should give evidence even on the system, given that he is there to operate within it rather than to express views on its merits or otherwise.

7. Despite the advice given by the Cabinet Office, the Sub-Committee have decided to summon Lord Diamond. I have discussed the matter with Lord Diamond. He is well aware that, if he were to give evidence, he would be extremely restricted in what he could say, given that he could not discuss the evidence given or decision taken in individual cases. He would clearly prefer not to give evidence. But he is reluctant to use his position as a Peer as a reason for refusing to attend, and he will be prepared to accept the summons unless he is specifically asked by the Government not to do so. I should add that he was not summoned to give evidence by the previous Select Committee which looked into this subject.

8. There is a case for saying that, having said to the Committee that it is inappropriate that they should invite Lord Diamond to give evidence, the Government should ask Lord Diamond to refuse the Committee's invitation to do so. Coming on top of the refusal to allow the Director of GCHQ to give evidence to the Select Committee on Employment, a decision to ask Lord Diamond not to give evidence would no doubt cause a row with the Select Committee. If you and your colleagues do not wish to go as far as that, I think that the alternative is for you (or me on your behalf) to write formally to Lord Diamond, to say that the Government has made clear to the Sub-Committee its view that it is inappropriate that he should be invited to give evidence, especially bearing in mind that he was not invited to do so last time round; but that, if he is otherwise minded to accept the summons, the Government wish to leave it to him to decide for himself, on the understanding that he will not disclose confidential advice to Ministers or details of individual cases.

9. As to the request for a list of all applications considered by the Advisory Committee since 1979, it would be a breach of individual privacy and commercial confidentiality to give the information requested. I think therefore that we should stick to the line taken with the earlier Select Committee, and tell the new Sub-Committee that it is not the Government's practice to discuss details of individual applications under the business appointments rules.

10. As a compromise, we could perhaps offer to supply the Sub-Committee with the numbers of cases referred to the Advisory Committee since 1979 and, as a breakdown of that, the numbers of cases in which that advice was acted upon without modification and the numbers of cases in which the Government's decision in some respect modified the Advisory Committee's advice. We could perhaps offer a further subdivision of the cases in which the Committee had advised a delay of longer than the minimum three months.

11. I do not think that we should go further than that; and I do not think that we should offer that unless we are obliged to do so. I hope that in the first instance we can stand on the refusal to disclose details of individual cases. That will not stop the Sub-Committee trying to construct its own list of people and jobs on the basis of public information and asking Lord Diamond or me to supply details of the conditions which were attached to the various approvals. I should be minded to resist any fishing expeditions of that kind; but perhaps we can cross that bridge when we come to it.

12. I am sending a copy of this minute to the Foreign and Commonwealth Secretary (who deals separately with applications from retired members of the Diplomatic Service, some of which also go to the Advisory Committee), to the Secretary of State for Defence, to the Lord Privy Seal, to the Chief Whip and to the Minister of State, Privy Council Office.

RCA

ROBERT ARMSTRONG

22 February 1984

CS: Acceptance by Appls
by CS: Jan 80

Cabinet Secretariat

10 DOWNING STREET

From the Private Secretary

26 March 1982

ACCEPTANCE OF OUTSIDE APPOINTMENTS

The Prime Minister has seen the Home Secretary's minute of 26 March. This is just to let you know that I wrote to Jim Buckley on 23 March to tell him that the Prime Minister was content for Lady Young to write to Mr. Du Cann on the lines of the draft attached to her minute of 22 March.

W. P. S. RICKETT

J. F. Halliday, Esq.,
Home Office.

WR 24/3

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS

I have seen Janet Young's minute of 22 March. I agree with the line she proposes to take in replying to the Select Committee.

I was concerned by one recent appointment accepted earlier in the year by a senior Metropolitan police officer, but I do not think the answer lies in applying the present arrangements for Crown servants to the police service. If the Select Committee subsequently asks about the issues raised by this particular appointment, I can reply separately, in consultation with Janet Young.

I am copying this to members of the Cabinet, Paul Channon and Sir Robert Armstrong.

Willis.

26 March 1982

26 MAR 1982

File

Civil Service

23 March 1982

Acceptance of Outside Appointments by Crown Servants: Extension of the Rules to Other Classes of Public Servant

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The Prime Minister has seen Lady Young's minute of 22 March. She is content for Lady Young to write to Mr. du Cann on the lines of the draft attached to her minute.

I am sending a copy of this letter to David Wright (Cabinet Office).

W.F.S. RICKETT

Jim Buckley, Esq.,
Chancellor of the Duchy of Lancaster's Office.

Chancellor of the Duchy of Lancaster

Prime Minister 1

Content for Lady Young to write to Mr Du Cann as at A ?

WR 22/3

PRIME MINISTER

Yes

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS: EXTENSION OF THE RULES TO OTHER CLASSES OF PUBLIC SERVANT

Following my minute of 19 November, you agreed that the Treasury and Civil Service Select Committee should be told that their suggestion on legislative sanctions had been rejected. I wrote to Mr Du Cann accordingly on 22 December.

The Interdepartmental Group of officials which has been considering the Fourth Report has submitted the attached paper on the last of the Committee's suggestions, namely that the Government should examine whether the rules should be extended to cover other classes of public servant. This is a difficult area and there has therefore been some delay; the Committee have now asked for an immediate response to this last suggestion. In the circumstances I propose, subject to your views, that we should accept the Group's conclusion that the scope for positive action by the Government in this area is very limited and to write to the Committee on the lines of the attached draft. (My letter of 5 March which is referred to in the draft was a holding one, which promised a full reply within 3 weeks.)

I am copying this to members of the Cabinet, to Mr Channon and to Sir Robert Armstrong and, in view of the very tight time constraint, will assume that colleagues are content unless I hear to the contrary by the evening of 25 March.

Janet Young

BARONESS YOUNG

22 March 1982

WORKING GROUP ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

EXTENSION OF THE BUSINESS APPOINTMENTS RULES TO OTHER CLASSES OF PUBLIC SERVANT

1. This submission is concerned with the suggestion, put forward in the Fourth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments, that the Government should examine whether the rules should be extended to cover other classes of public servant. The other suggestions contained in the Fourth Report have been the subject of separate submissions.

2. The relevant paragraph of the Select Committee's Report reads:

"Persons to Whom The Rules Apply

30. The rules are headed "Acceptance of outside business appointments by Crown Servants". In their memorandum the CSD say that the rules cover the Civil Service, The Diplomatic Service and the Armed Forces [Appendix 2 to the Fourth Report]. It is hard to see why the coverage of the rules should be limited in this way. There are other groups of workers in the public service (eg National Health Service and local government employees) whose salaries are paid directly or indirectly by the taxpayer. There is a case for considering the extension of the rules to them."

3. The Working Group has considered this question in relation to the following additional groups whose salaries are paid directly or indirectly by the taxpayer, and who are in a position in which their public activities could in theory be influenced by the prospect of future employment, or in which they could in theory confer unfair advantage on one employer by the knowledge they take to him on leaving the public service:

Members of Parliament

Ministers of the Crown
Local Government elected officials
Local Government employees
National Health Service employees

Police

Fire Service employees

Nationalised Industries board members

Nationalised Industries employees

Members of fringe bodies wholly or partly funded from public monies

Staff of fringe bodies wholly or partly funded from public monies

4. For the above groups we have considered the Select Committee's suggestion against the background of three questions:

a. is there scope for concern of the type which the rules as applied to Crown servants are designed to avoid?

b. would the introduction of rules as applied to Crown servants be appropriate to counteract such concern?

c. what is the Government's locus?

Scope for Concern

5. We consider it important to be clear what is involved here. It is not a question of ensuring that corruption is punished (this is dealt with separately under the law), nor whether there is current and specific concern about corruption or suspicions of irregularities which the imposition of rules similar to those applied to Crown servants might have avoided. Rather, the question is whether there is a possibility of public concern or criticism arising. The Working Group believe that, generally speaking, public servants of the types listed in paragraph 3 may well be in a position where the considerations inherent in the rules would be applicable, and therefore similar to Crown servants in relation to possible concern. As with Crown servants, the scope for concern varies between levels of responsibility and between different functions within the same employment.

Relevance of rules

6. In considering the question of whether rules on the lines of those applicable to Crown servants would have a part to play in alleviating the scope for concern about the other groups listed in paragraph 3, it is again important to be clear what the usefulness of these rules is. They are not the means of dealing with corruption,

nor the means of bringing it to light. They are means of providing some assurance that individual cases have been considered by responsible authorities in the public service in question, and not simply left to the individuals and new employers - those who in theory stand to profit.

7. There does not seem to the Working Group to be any particular usefulness in bringing these other groups within the same machinery as the Crown servants. Their individual circumstances are so different that the idea of consistency between all these groups is misleading, and no single piece of machinery could be expected to deal effectively with all of them.

8. We are left with the question of whether it would be useful for each or any combination of these groups to have its own arrangements somewhat analogous to those which apply to Crown servants. It is fair to say that some of these bodies have conditions of service based on those of the Civil Service with commensurate benefits in the way of security of employment, pensions etc and many have functions which in other circumstances might well be undertaken by Departments themselves: these include the disbursement of fairly large sums of Government money. On balance we consider that a case could be made for bringing employees of some of these bodies within the ambit of the rules but for two important factors.

9. We recognise that greater staff mobility now exists than when the rules were first introduced. High quality staff, particularly those with professional qualifications, now move frequently from company to company and even from one type of employment to another so as to widen their experience, gain responsibility and improve their financial position. The application of rules on outside appointments similar to those applied in the Civil Service might well make it more difficult to recruit sufficient staff of the right calibre. We also find it difficult to see how it would be possible to enforce such rules were they to be extended in the way envisaged. It is difficult to see what sanctions could be applied to those who breach the rules, particularly bearing in mind the legal view that any rules in

this area are likely to be considered as an unreasonable restraint of trade.

The role of the Government

10. There is then the question of what locus the Government has in relation to whether other public servants should be subjected to business appointments rules similar to those applying in the Crown service.

11. There could be circumstances in which Ministers decided that they were obliged to take positive steps; for instance, circumstances of specific current concern. Apart from those circumstances, however, there are two general considerations which tell against the Government wishing to make this their business. The first is that it is of the essence of these rules that they provide some assurance of responsible consideration by the public service concerned. The second is the general presumption in favour of "less government". These general considerations point against Government taking up this question at present in relation to Members of Parliament (which is a sovereign self-regulating institution) or local authorities including the fire service (which have responsibility under the Local Government Act 1972 for determining their conditions of service.) The position in the Nationalised Industries, Police and National Health Service, although differing in some degree, seems broadly similar. This leaves two cases in which the responsibilities of central Government are directly engaged: Ministers themselves and controlled fringe bodies.

12. As to Ministers, there is the practical difficulty of who is to administer any rules. Cases will tend to arise when a new Government comes into office, and there may be difficulties about decisions on the employment of outgoing Ministers being dealt by an Administration of a different political complexion. It may therefore be best to regard the position of Ministers as being a matter for Parliament.

13. In the case of controlled fringe bodies which are 50% or more funded by government, whose staff are responsible for the

administration of public funds, and where the two primary aims of the business appointments rules are of relevance, one possible course of action might be for responsible Ministers to invite the chairmen to consider whether the members and staff should be subject to similar rules to those applying to members of the Civil Service and the Armed Forces, and if so, to put forward proposals. However, there are powerful practical objections which a number of fringe bodies would be bound to point out at once to the Ministers concerned. If no satisfactory proposals could be formulated in a wide range of cases the approach would be seen to have been misconceived.

14. We are reinforced in the views we have set out above by reference to the Report of the Royal Commission chaired by Lord Salmon on Standards of Conduct in Public Life (published in 1976 as Cmnd 6524). The Salmon Commission felt unable to endorse the earlier recommendations of the Redcliffe-Maud Committee that local authorities should adopt similar rules to those applying in the Civil Service. While the Salmon Commission considered it important that employees in the public sector outside central government should avoid movements to private sector employment that could arouse criticism, they took the view that it is for the management of each public body to decide whether the circumstances are such as to justify any attempt to limit the subsequent employment of employees.

CONCLUSION AND RECOMMENDATION

15. In the light of the considerations set out in the above paragraphs our conclusion is that the scope for positive action on the part of the Government in relation to applying business appointments rules to public sector employees is limited. We therefore recommend that the Government's reply to the Select Committee on this aspect should draw attention to the fact that in many areas of the public sector the Government has very limited authority in staffing matters and cannot unilaterally decide to

apply rules, on the lines of those applying to Crown servants, to public sector groups of workers. This points to the Government not being in a position to take positive action, other than perhaps to draw the attention of the management of the bodies concerned to the Select Committee's views. The Select Committee will no doubt wish to consider the need for this in the light of any comments they have received from public sector employing authorities.

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY OF LANCASTER TO SEND TO:

The Rt Hon Edward Du Cann MP
Chairman
Treasury and Civil Service Committee
House of Commons
London SW1A OAA

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

Further to my letter of 5 March I am now able to let you have a full response to the remaining suggestion in your Committee's Report, namely that the rules should be extended to cover other classes of public servant.

The Government have examined the issues closely, taking into account the scope for concern of the type which the rules, as applied to crown servants, are designed to avoid; whether the introduction of rules as applied to crown servants would be appropriate to counteract such concern; and the Government's locus in relation to other types of public servant. In many areas of the public sector the responsibility and authority for staffing matters properly rests with the managements concerned and the Government has very limited powers in this area and could not, for example, unilaterally decide to apply rules, on the lines of those applying to crown servants, to other groups of workers.

In the case of controlled fringe bodies, ie those which are funded to the extent of 50 per cent or more by the Government, whose staff administer public money and where the primary aims of the business appointment rules are of relevance, one possible course of action might be for the responsible Minister to invite the Chairmen to consider whether the members and staff should be subject to rules similar to those applying to members of the Civil Service and the Armed Forces, and if so, to put forward proposals. However, there are powerful practical difficulties

which a number of Chairmen would be bound to point out at once and if no satisfactory proposals could be formulated the approach might be seen as having been misconceived. The Committee will, no doubt, wish to consider this in conjunction with any other views which they have obtained from other public sector employing authorities.

BARONESS YOUNG


2 MAR 1982

BK

file
cc: CO

24 November 1981

Acceptance of Outside Appointments by Crown Servants: Legislative Sanctions

The Prime Minister has seen Lady Young's minute of 19 November. She is content for the Treasury and Civil Service Select Committee to be told that their recommendation on legislative sanctions has been rejected.

I am copying this letter to David Wright (Cabinet Office).

WFS RICKETT

Jim Buckley, Esq.,
Chancellor of the Duchy of Lancaster's Office

2

Chancellor of the Duchy of Lancaster

Prime Minister

Content for Lady Young to tell the Treasury and Civil Service Select Committee that this recommendation has been rejected?

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS: LEGISLATIVE SANCTIONS

Following my minute of 28 September, you approved the draft reply giving the Government's interim response to the Fourth Report from the Treasury and Civil Service Committee on the acceptance of outside appointments by Crown servants. This covered the first four suggestions of the Select Committee.

The inter-departmental group of officials which has been considering the Fourth Report has now submitted the attached paper on the Committee's fifth suggestion, that there should be legislation to provide penalties for those who breach the rules. I propose, subject to your views, that we should accept their conclusion that this recommendation be rejected, and to advise the Select Committee accordingly.

I am copying this to members of the Cabinet and to Sir Robert Armstrong.

Janet Young

BARONESS YOUNG
19 November 1981

INTRODUCTION OF LEGISLATIVE SANCTIONS TO BE APPLIED IN BREACHES OF THE RULES GOVERNING THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Note by the Working Group on the Acceptance of Outside Appointments by Crown Servants.

This paper examines the suggestion put forward by the Treasury and Civil Service Committee that legislative sanctions should be applied to those who act in breach of the Business Appointments Rules, and invites Ministers to endorse the Group's conclusions that the Select Committee's suggestion should be rejected on the grounds that it is both impractical and undesirable.

FOURTH REPORT FROM THE TREASURY AND CIVIL SERVICE COMMITTEE

2. The Fourth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants (published on 2 April 1981 as House of Commons Paper 216) contains a number of suggestions for tightening up the Rules governing the acceptance of business appointments and in our interim report we dealt with 4 of these: this submission is concerned with the 6th suggestion:

> "While there is no evidence available of people taking up appointments without applying for or having been refused Government approval, we do not think this disposes of the argument for any set of rules incorporating some means of punishing those who act in breach of them. As we understand the situation, fresh legislation would be needed to provide appropriate penalties. In principle, we believe such legislation is desirable; but we should welcome comments /from interested parties/ before such legislation is drafted".

STATUS OF THE RULES

3. The Business Appointments Rules are referred to in the General Principles of Conduct section of the Civil Service Pay and Conditions of Service Code as follows:

> "BUSINESS APPOINTMENTS
>
> 9961 All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above, and of the equivalent ranks in HM Forces,

JAV

are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies particularly those:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies or their equivalent from the Government;

c. in which the Government is a shareholder;

d. which are in receipt from the Government of loans, guarantees or other forms of capital assistance;

or

e. with which Services, or Departments or branches of Government are, as a matter of course, in a special relationship;

and in semi-public organisations brought into being by the Government or Parliament. In addition there are posts of a special or technical nature (below the rank of Under Secretary) to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government."

Although the question cannot be regarded as having been authoritatively resolved by the Courts, we are advised that the relationship between the Crown and its civil servants is basically contractual and that the provisions of the Civil Service Pay and Conditions of Service Code, read together with the letter of appointment and the Departmental Staff Handbook, constitute the civil servant's contract of employment.

BACKGROUND

4. The question of the need for legislation to enforce the Business Appointments Rules is one that has been considered in the past. The Report of the Royal Commission on Standards of Conduct in Public Life chaired by Lord Salmon (which was

JAV

published in 1976 as Cmnd 6524) took the view that it would be wrong to attempt to apply the criminal law in a situation where a civil servant left the Service to take a business appointment for which permission had been refused by the Government. The 11th Report from the Expenditure Committee, Session 1976-77 (HC 535) suggested that the Government's concurrence should be required contractually or by legislation when ex-civil servants are appointed by companies to jobs with close financial links with Government. The previous Administration, in their reply to the Expenditure Committee (Cmnd 7117), referred the Committee to the comments made by the Salmon Commission in this respect. In response to an undertaking given by the then Lord Privy Seal when he subsequently appeared before the General Sub-Committee of the Expenditure Committee, the previous Administration examined the suggestion that legislation should be introduced by which fines would be imposed on civil servants and employers who disregard the rules governing the acceptance of business appointments. Their conclusions were set out in a letter dated 26 June 1978 from the Lord Privy Seal to the Chairman of the Sub-Committee (at Annex).

THE CASE FOR AND AGAINST LEGISLATION

5. In our view, the comment by the Select Committee that in principle it would be desirable to have legislation introducing sanctions against those who act in breach of the Business Appointment Rules raises two areas for consideration, namely the desirability of such legislation, and the practicability. This is highlighted in the Lord Chancellor's minute dated 13 May to the Prime Minister, which included the paragraph:

> "I understand that it is not legally possible to enforce the present rules or any others which we might substitute. This being so, it makes little sense for the official group to spend time on most of the recommendations unless they first direct their attention to the practicality of legislation and obtain ministerial direction on this issue."

With regard to the Lord Chancellor's understanding, both Senior Crown Counsel in Northern Ireland and Treasury junior Counsel have recently given advice which supports that view.

6. Under the general heading of desirability it is perhaps necessary to consider whether there is evidence of breaches of the Rules sufficient to

justify the need for legislation. Although relatively few cases have come to light where the Rules have not been followed, there may be others of which Departments are not aware; the incidence of such cases coming to light certainly appears to be increasing in one Department. Some of such cases involve officers who were unaware of the application of the Rules to themselves or to the appointments they took up. In re-writing the Rules in the interests of clarity, which we proposed in our Interim Report, we recommend that the opportunity should be taken to reinforce the arrangements for drawing the Rules to the attention of staff covered by them. We are only aware of one case where an officer has taken up an appointment having been refused permission by the Government and where consequently it would have been appropriate to invoke legislative sanctions had these existed; this case involves a former senior member of the Northern Ireland Civil Service and the Government have taken appropriate steps, other than legal action, to ensure compliance with the spirit of the rules.

7. Also relevant to the heading of desirability is the view taken by the Salmon Commission about the inappropriateness of seeking to apply the criminal law to such a situation. A more recent view has been obtained from the Criminal Policy Department of the Home Office among whose functions is the scrutiny of proposals to create new criminal offences. They have explained that such proposals must be weighed against an assessment of the extent and gravity of any social mischief involved and the adequacy of existing legislation to deal with the problem. On none of these criteria would they consider that a justifiable case existed for bringing within the criminal law a breach of the Business Appointments Rules, as such. There is no real evidence that any real mischief exists or that the Rules are often breached: moreover, powers already exist for dealing with alleged offences of corruption or unauthorised disclosure of official information.

8. At present the Rules are applied to civil servants and members of the Armed Forces. To single out these groups of public servants for special constraints in legislation, as opposed to a code of conduct, would be regarded as unfair. Apart from employees of the major public sector organisations such as the National Health

Service, there are others who could be suspected of exercising improper influence in the hope of future employment or who have information about firms which might be of use to competitors, eg Ministers, some Members of Parliament, members of fringe bodies and employees of commercial firms working on Government contracts. And to extend the Rules to employees in other parts of the public sector (a suggestion also contained in the 4th Report and on which we shall be reporting to Ministers separately) would, we believe, only increase the difficulties inherent in introducing legislation in this area.

9. This leads into the practicability of the Select Committee suggestion for legislation, which would have to be considered against the background of the common law principle that an employer may not impose restraints on the employment of an ex-employee unless those restraints can be justified as being reasonable not only in the public interest but also as between employer and employee. The terms of the present Rules are phrased so generally that the consent of the Government is required before an officer can accept employment in a very wide range of concerns and organisations; these go far beyond the firms with which he may have had some contact and which might therefore give rise to criticism. In the event of permission being withheld in the case of an application submitted under the Rules, the width of the restriction would, in the view of Counsel, be far wider than the Government could at common law represent as being a reasonable restriction for the preservation of its legitimate interests.

CONCLUSION AND RECOMMENDATION

10. Against the background of paragraphs 5-9 above, and notwithstanding what might be necessary and applicable in other countries, we believe that it would be undesirable, inappropriate and impracticable to introduce legislation in this area. And given the proportionately very small number of civil servants who wish to take up outside employment against the total number who leave the Civil Service on retirement or resignation, we are doubtful of the need for any additional measures. We therefore recommend that the Select Committee should be informed that the Government does not accept the view that in principle it is desirable to have legislative sanctions against civil servants who take up appointments without applying for or having been refused Government approval.

ANNEX

LETTER FROM THE RT HON LORD PEART TO THE CHAIRMAN OF THE SUB-COMMITTEE REGARDING RULES GOVERNING THE ACCEPTANCE OF BUSINESS APPOINTMENTS DATED 26 JUNE 1978 (GC 178)

When I gave evidence to the General Sub-Committee on 18 April I undertook to examine the suggestion that legislation should be introduced by which fines would be imposed on civil servants and employers who disregard the rules governing the acceptance of business appointments.

The Government have considered this option carefully in the light of the concern expressed by the Committee. But for a number of reasons we remain of the view that legislation would not be appropriate.

There would undoubtedly be difficulty in devising an effective legal sanction. The general common law principle applied by the courts is that an employer may not impose restraint on the employment of an individual once he has left his employ unless he can justify those restraints as being reasonable. Legislation as proposed would go beyond this principle, and there would need to be very strong arguments to justify it. If the purpose was to protect sensitive official information of potential commercial value, legislation would no doubt have to go beyond the Civil Service. Others have access to such information, including Ministers, some MPs, members of fringe bodies, employees in the nationalised industries, officers in the Armed Forces, local government members and officers, and employees of commercial firms working on Government contracts. On the other hand, the means of dealing with an official who gave biased advice on the expectation of offers of employment after retirement already exists in the law of corruption.

Since there is no evidence of significant abuse and the number of applications under the rules is in any case very small—about 10 per cent of those leaving at Under Secretary level or above—the Government do not agree that legislation should be introduced in the face of the arguments in paragraph 3 above. The Government could not justify setting aside time amid a crowded Parliamentry timetable for a Bill to inhibit a mischief which appears to be largely theoretical.

The Government are also anxious to maintain the purpose of the existing business appointment rules. This is to reassure the public and the business community of the impartiality of state servants (the rules apply equally to the Armed Forces and the Diplomatic Service), while also recognising that it is in the public interest that people with experience of public administration should be able to move into business and industry. Statutory powers inhibiting public servants from entering these fields would run directly counter to this.

26 *June* 1978

NOV 1981

jfh

Civil Service

19 October 1981

Acceptance of Outside Appointments by Crown Servants

The Prime Minister was grateful for Lady Young's minute of 28 September. She is content for Mr. Hayhoe to reply to the Chairman of the Treasury and Civil Service Select Committee along the lines of the draft attached to Lady Young's minute.

I am sending a copy of this letter to the Private Secretaries to other members of the Cabinet and to David Wright (Cabinet Office).

WR

Jim Buckley, Esq.,
Chancellor of the Duchy of Lancaster's Office.

1.

1. MR. WHITMORE
2. PRIME MINISTER

Acceptance of Outside Appointments by Crown Servants

The Fourth Report of the Treasury and Civil Service Select Committee, which was published on 2 April, dealt with this subject. The Committee felt that the present arrangements for vetting outside appointments by Crown Servants did not do enough to remove suspicions of impropriety. With this in mind, they put forward six suggestions:

(a) that arrangements should be made to ensure greater consistency in dealing with applications;

(b) the advice of the Advisory Committee and the reasons for Ministerial decisions should be open to scrutiny by the Select Committee machinery;

(c) the membership of the Advisory Committee should cease to be dominated by those whose main careers have been in the public service;

(d) the rules should cover employment in the service of foreign governments or their nationalised industries and self-employed consultancies, and should prohibit "lobbying" of former colleagues;

(e) consideration should be given to extending the scope of the rules to other classes of public servant (the Committee cites NHS and local government employees as an example); and

(f) consideration should be given to the introduction of legislative sanctions for breaches of the rules.

Following the Report's publication, Lord Soames invited comments from interested bodies, and set up an official group to produce a response. This group is still continuing its work.

However, in June the Chairman of the Select Committee asked for an interim reply. It has taken since then for CSD Ministers to clear a draft reply with colleagues. Lady Young now proposes that Barney Hayhoe should respond as in the draft letter at A. Essentially, this draft rejects the first recommendation of the

/ Select Committee

Select Committee on the grounds that present arrangements are adequate; rejects the second; accepts the third and fourth; and says that the Government will respond later to the Committee's last two recommendations, with the comment on recommendation (e) that this is more a question for the nationalised industries and local government than for Ministers.

Content that Mr. Hayhoe should reply to the Chairman of the Select Committee as in the draft at A?

WTSR

30 September 1981

REVISED DRAFT LETTER FROM THE MINISTER OF STATE, CSD, TO THE CHAIRMAN OF THE TREASURY AND CIVIL SERVICE COMMITTEE

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

I am sorry that we were not able to let you have an interim reply to suggestions put forward in the Fourth Report from the Treasury and Civil Service Committee about the Acceptance of Outside Appointments by Crown Servants as you requested in your letter of 4 June. I can however now let you have the Government's preliminary views on the first four suggestions contained in paragraph 37 of the Fourth Report.

2. In considering the Fourth Report, the Government has kept in mind the long-standing purpose of the rules about the acceptance of business appointments by civil servants, to strike a balance between the desirability of public servants being able to move freely into business and industry and the need to avoid impropriety or the appearance of impropriety when they do. In the light of the comments made in the Fourth Report we have considered the current validity of the purpose of the rules; the extent to which the rules and practice detract from the balance which needs to be struck; and changes which may be necessary in order to achieve the balance which is identified as being needed. We endorse the aims of the rules, believing them to be as relevant today as when they were first introduced, if not more so. At the same time, we consider it essential to continue to encourage cross-fertilisation between the public and private sectors; it is therefore important to ensure that the procedures devised to meet the requirements of propriety do not operate to the detriment of this objective. In examining existing practice, we have found no evidence that the rules are

inadequate for the avoidance of impropriety, but we accept that some changes may be desirable in order to underline the more important aspects of the rules.

3. Against this background, I offer the following comments on the first four suggestions put forward in the Fourth Report.

Consistency of Decision-Taking

4. The Government endorses the Select Committee's comments on the importance of having arrangements to ensure that the rules are applied consistently. A thorough examination of the way in which the rules are administered in the major employing Departments has therefore been carried out. Although there are naturally some divergences of practice - stemming usually from differing departmental circumstances - these are not on matters of any substance. Cases delegated to departments are those where the circumstances are such that it is very unlikely that any decision other than unconditional approval would be justified. Even on these cases it is always open to departments to consult CSD in the event of any doubts. And the same staff in the Civil Service Department who deal with these enquiries also serve the Advisory Committee on Business Appointments, whose Chairman has said that the members do not feel they lack briefing about the treatment given to cases decided at departmental level. As noted in the Fourth Report, the Civil Service Department provides a linch pin in this respect. Accordingly, as a result of the review, the Government is satisfied that present arrangements for ensuring consistency are effective.

Accountability

5. We have considered carefully the suggestion that the advice tendered by the Advisory Committee and the action taken by departmental Ministers in particular cases should be made available on request to the appropriate departmentally-related Select Committee or to a specially constituted Select Committee. The Government has concluded, however, that it would be wrong to

depart from the line taken by successive administrations, namely that, in the interests of the privacy of individuals and of organisations, the details of individual applications submitted under the business appointments rules should not be publicly disclosed; and clearly any Select Committee must retain the right to publish information provided to it. But, in these circumstances, the Government accepts that it is all the more important that Parliament should have confidence in both the rules themselves and the broad procedures for applying them.

Composition of the Advisory Committee

6. The Government has complete confidence in the present Advisory Committee but accepts the suggestion that the membership should not contain a preponderant number of those whose main careers have been in the public services from which the applicants for outside appointments come. In the light of the final recommendations of the Select Committee the Government will consider how the membership should be extended.

Scope of the Rules

7. We agree that the rules should explicitly provide for assent to be required before former public servants accept employment in the service of foreign governments or their nationalised industries. The rules will be extended to cover this - and the wording will be amended generally to improve their clarity and remove possible points of doubt - in the light of the Select Committee's final recommendations.

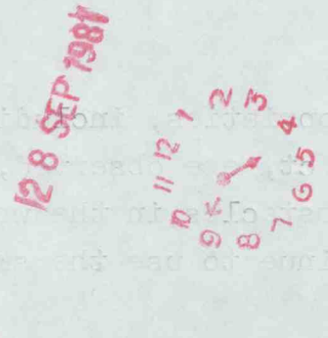
8. The Fourth Report suggests that the rules should also deal with the position of former public servants wishing to set up in business as self-employed consultants on matters of which they have obtained their knowledge in the public service. The Government agrees that the rules are not as clear as they might be in this respect. They will therefore be amended to clarify the position both of self-employed consultants who compete for commissions in the open market and of those who are employed by

a single firm. Providing the normal proprieties, including the provisions of the Official Secrets Act, are observed, however, there seems no case for placing obstacles in the way of those who wish after retirement to continue to use the skills they gained in the public service.

9. In relation to the third suggestion made under this heading, we consider that in adopting the provisions of the United States legislation we would be taking the wrong approach in the majority of the cases with which we are concerned. There is provision in the rules as they stand at present for similar conditions to be imposed where the circumstances of a case justify this. But the main point here is the integrity of the existing staff, who are bound by the Civil Service code of conduct and can have disciplinary measures taken against them if they permit themselves to be improperly influenced in their official duties by former colleagues.

10. With regard to the fifth and sixth suggestions contained in paragraph 37 of the Fourth Report, I hope to let you have the Government's views soon. But in relation to a possible extension of the rules to other classes of public servant, the Government does not consider that it would be appropriate to express a view on staff of the nationalised industries or local government at this stage. Your Committee may like to consider making separate approaches, if you have not already done so, to individual nationalised industries, or indeed the nationalised industries chairmen's group, and to the Local Authorities Conditions of Service Advisory Board.

BARNEY HAYHOE


28 SEP 1981

CHANCELLOR OF THE DUCHY OF LANCASTER

WFSR O/R

MAP 29/IX

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Christopher Soames' minute of 28 July enclosed a copy of the interim report of the working group of officials set up to consider the Government's response to the Fourth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants, and recommended that the Minister of State should reply to Edward du Cann on the lines of the draft attached to the working group's report.

A number of colleagues have since commented on this subject, and I now enclose an amended draft reply which reflects both their views and the fact that we were not able to meet Edward du Cann's request for an interim reply before the Summer Recess. I should be glad to have your approval to replying accordingly.

I am copying this to members of the Cabinet and to Sir Robert Armstrong.

Janet Young

BARONESS YOUNG
28 September 1981

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

The Rt Hon The Lord Soames GCMG GCVO CH CBE
Lord President of the Council and Leader of
the House of Lords
Civil Service Department
Whitehall
LONDON
SW1

8 SEP 1981

Dear Christopher

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

You sent me a copy of your minute of 28 July to the Prime Minister with the Interim Report of the Inter-departmental Working Group.

I confirm that we are content with the Report and the suggested reply to the Select Committee.

I am copying this to those who received your minute.

Yours

NORMAN FOWLER

Guidance
BF 7.9.8

10 DOWNING STREET

Note for the Record

Lord Trenchard (MOD) has some comments on Lord Soames's draft letter to me on the Acceptance of Outside Appointments by Crown Servants. He wishes to discuss these with me and MPA before putting them to CSD: this will therefore not be before the first week in September.

The Lord President's Office will then come back to the PM with a revised draft early in September.

WPS 19/8

PERSONAL

Civil Service Department
Whitehall London SW1A 2AZ
01-273 4400

Sir Robert Armstrong
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

18 August 1981

Dear Robert,

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Thank you for your letter which was waiting for me on my return from the States.

Although I hadn't thought of John Hunt's appointment when I read the draft, I imagined cases such as his to be exempted by the last part of the sentence which reads ... "whether he would have been in the position to acquire special knowledge of HMG's policies or intentions which would be of benefit to that foreign government to the detriment of HMG or its allies". However, I entirely take your point, and agree that the offending sentence in paragraph 6 should be taken out.

I agree also with Geoffrey Howe's view that a balance must be struck between guarding against any possible impropriety, while not preventing good people going on to do useful work after their retirement. The draft will be amended to reflect this.

I am copying this to the Prime Minister and to the Chancellor of the Exchequer.

Yours ever

Christopher

SOAMES

PERSONAL

19 AUG 1981

CABINET OFFICE
70 Whitehall, London SW1A 2AS Telephone 01-233 8319
From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Personal 7 August 1981

My dear Christopher,

You kindly sent me a copy of your minute of 28 July to the Prime Minister about the acceptance of outside appointments by Crown Servants.

I am a little concerned that paragraph 6 of the draft letter to the Chairman of the Treasury and Civil Service Committee may be read as reflecting on the propriety of my predecessor's appointment as chairman of the London subsidiary of the

The Rt. Hon. the Lord Soames, GCMG, GCVO, ~~CBE~~ CH, CBE

Banque Nationale de Paris. He had undoubtedly been employed in a capacity where he would have been advising HMG on its policies in relation to the French Government, and would have had special knowledge of HMG's policies and intentions. So far as I know, he is the only Crown Servant in recent years (other than his predecessor Patrick Reilly) who could be said to have taken up an appointment in the service of a foreign government or its nationalised industries. It would be grossly unfair to him if this was interpreted, by Mr English or by the press, as

meaning that the Governor thought that he should not have taken up the appointment: he was approached to do so by the Governor of the Bank of England, and the ~~of~~ proposal was submitted to and approved by the Advisory Committee.

The simplest way of meeting my point would be to delete the second sentence of paragraph 6. The sentence is in any case incomplete: it purports to describe the "essential factors" to be be taken into account in considering such applications, but there are other essential factors besides those listed.

~~I am sending copies of this~~

Incidentally, I very much agree with the Chancellor of the Exchequer's comments, in his minute of 7 August. We should of course do all we can to avoid impropriety. But we all – including Mr English – acknowledge the merits of interchange between the public sector and the private sector, and it would be very regrettable if men and women retiring from the public service for no better reason than that they are 60, with considerable personal qualities and much to contribute, came to be more or less debarred from making their contribution in areas of industry and

commerce where they could do a useful and socially valuable job, just because of excessive precautions to ensure prosperity.

I suppose I have a contingent personal interest: but not for another 5½ years, and then I have no idea what I may want to do. My present concern is simply to avoid inadvertent impairment to John Hunt.

I am sending copies of this letter to the Prime Minister and the Chancellor of the Exchequer.

Yours ever Robert Armstrong

- 7 AUG 1981



The Lord President's office will consider these comments. BF

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Lord President kindly sent me a copy of his minute to you, including the draft letter to the Chairman of the Treasury and Civil Service Committee.

2. I have only one comment on presentation. It seems to me important to leave the Committee in no doubt at this, rather than a later stage, that the Government endorses the long standing purpose of the rules which the Committee set out in paragraph 33 of their conclusions. The Committee accept that a balance has to be struck between the desirability of public servants being able to move freely into business and industry and the need to avoid impropriety or the appearance of impropriety when they do. Thereafter they concentrate on the impropriety aspects.

3. I suggest that the first paragraphs of the letter should explain that since the report was received, the CSD have been considering with departments the current validity of the purpose of the rules; the extent to which the rules and practice detract from the balance which needs to be struck; and changes which should be made to achieve the desired balance. The letter might go on to say that the Government considers it essential to continue to encourage cross-fertilisation between the public and private sectors and needs, therefore, to consider carefully that the rules devised to ensure propriety do not operate to the detriment of this objective. In examining existing practice the Government did not find evidence that the rules were inadequate for the avoidance of impropriety. But they accept that some changes may be desirable to underline the more important aspects of the

rules. The letter might then go on, as the Lord President proposes, to give the Government's preliminary views about the Committee's detailed suggestions in paragraph 37 of the report.

4. I am copying this minute to the Lord President, members of the Cabinet and to Sir Robert Armstrong.

(G.H.)
7 August 1981

ET AUG 1981

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

In my minute of 13 April I said that I was setting up a small inter-departmental group of officials to consider the Government's response to the Fourth Report from the Treasury and Civil Service Committee covering the Acceptance of Outside Appointments by Crown Servants, published on 2 April.

It had been the intention of the group to complete their study in time to enable the Government to reply within 6 months of the publication of the Fourth Report. However, on 4 June Edward du Cann, as Chairman of the Committee, asked us to consider an interim reply before the Summer Recess. The official group have accordingly produced the attached report and draft interim Government response to the Committee. In drafting this report they have taken full account of the views expressed by the Advisory Committee on Business Appointments as set out in Lord Diamond's letter to you of 21 May.

This report covers the first four of the six suggestions put forward by the Committee. It suggests that we can move some way towards meeting the Committee's views. The exception is their suggestion that the advice of the Advisory Committee and the action taken by Ministers in considering individual business appointment applications should be open to scrutiny by the Select Committee machinery. I am firmly of the view that this must be rejected.

You will see from paragraph 16 to 18 of the report it is proposed that, subject to your views, the Select Committee should be told that the Government accepts that membership of the Advisory Committee be extended to include one or two people whose main careers have been outside the public service.

The group will report in due course on the fifth and sixth suggestions of the Select Committee, namely that the rules be extended to cover other employees in the public sector and that consideration be given to the introduction of legislation to enforce the rules. The group have assumed, rightly I think, that in spite of the Lord Chancellor's minute to you of 13 May it is not pointless to consider changes to the rules unless they can be enforced legally. But, it is important that we should decide quickly whether it is desirable and practicable to give such legal backing.

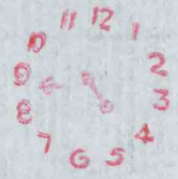
If you are content, I propose that the Minister of State should write to the Chairman of the Select Committee as in the draft attached to the report.

I am copying this minute to members of the Cabinet and to Sir Robert Armstrong.

S.

SOAMES
28 July 1981

30 JUL 1981



WORKING GROUP ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS - INTERIM REPORT

Background

1 The Working Group was established at the request of Ministers to consider the form of the Government's response to the Fourth Report from the Treasury and Civil Service Committee - on the Acceptance of Outside Appointments by Crown Servants (House of Commons Paper 216). The Fourth Report contains suggestions for tightening up and making more open the present arrangements for handling applications submitted in accordance with the Business Appointments Rules and invites early comments on the suggestions from "Departments, professional associations, trade unions and others who believe they have an interest". It is understood that, in the light of comments made, the Select Committee will reach final views on the need for changes in this area.

2 The Departments represented on the Working Group are:

Civil Service Department
Department of Health and Social Security
Home Office
Ministry of Defence
Foreign and Commonwealth Office
Departments of the Environment and Transport
Departments of Industry and Trade

These are the Departments which have the most experience of the administration of the Business Appointments Rules but also, in view of the Select Committee's suggestion for extending the Rules to other classes of public servant, represent those which sponsor most of the major public sector organisations.

3 Other Departments have been given the opportunity to receive the Working Group's papers and to feed in comments.

Time-table

4 It was our original intention to complete our task in time to enable the Government to respond to the Select Committee within six months of the date of publication of the Fourth Report on 2 April 1981. However, in response to a letter from the Minister of State, Civil Service Department, about the proposed time-scale, the Chairman of the Treasury and Civil Service Committee, while recognising that the necessary consultations would take time, expressed the hope that the Government would be able to provide an interim reply to the suggestions in the Fourth Report before the Summer Recess.

5 This interim report therefore is largely confined to the first four of the six suggestions made in the Fourth Report, and, if Ministers are content with our recommendations, suggests the form of a reply to the Select Committee (Annex A).

Objectives

6 We think it important to consider any suggestions for change against the background of the objectives of the Business Appointments Rules - which would now be more appropriately referred to as the "Outside Appointments Rules." Paraphrasing slightly the wording in paragraph 1 of the Rules, these can be stated as follows:

(1) To avoid any suspicion that serving officers might be ready to bestow favours on firms or other organisations in the hope of future employment with them.

(2) To avoid the risk that a particular firm or other organisation might be thought to be gaining an unfair advantage over its competitors by employing an officer who, during his service, had access to technical or other information which those competitors could legitimately regard as their own trade or other secrets.

(3) To keep to the minimum necessary to achieve (1) and (2) above constraints on the freedom of individuals to change job or to seek post-retirement employment, taking into account that it is in the public interest that people with experience of public administration should be able to move into business and industry.

7 The Select Committee suggested that the present rules are tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety. The Working Group does not share this view but considers that the main emphasis should continue to be on the third objective outlined above.

Other factors

8 We have kept the following points in mind:

(a) The Rules apply not just to a handful of senior officers but to staff at all levels. The great majority of cases are dealt with by departments without any difficulty.

(b) If unduly harsh restrictions on movement were imposed it might be difficult to recruit competent and experienced staff, particularly in the professional fields where staff tend to spend a part, rather than the whole of their careers in the Service.

(c) The views of the Advisory Committee on Business Appointments on certain of the suggestions in the Fourth Report as set out in Lord Diamond's letter dated 21 May 1981 to the Prime Minister (Annex B).

(d) Particularly in relation to objective (2), it is fairly common for private sector employers to include restrictive clauses in their contracts of service with employees preventing them from disclosing trade secrets to another company after termination of employment.

The wording of the rules

9 The Rules were last reviewed in 1975 but the wording of them has evolved slowly since 1937. Although they are in general well understood by those responsible for operating them and there seems no need to change the broad policy underlying them, the time has come in the interests of clarity and consistency to rewrite them. For example, the present wording relates almost entirely to 'pure' business appointments whereas the Rules are now accepted as applying to certain other types of appointment both in this country and with foreign governments. And

both the exact scope of the Rules and the relevance of the procedures at various levels might not be readily understood by all staff who contemplate outside employment. We should be glad to suggest a revised version once decisions are taken on the final recommendations of the Select Committee.

Consistency of decision-taking: suggestion (i) of the Fourth Report

10 Paragraph 21 of the Fourth Report draws attention to the variety of ways in which decisions on business appointments applications are taken and comments on the desirability of ensuring that arrangements exist for ensuring that the Rules are applied consistently throughout.

11 The Working Group shares the Select Committee's views on the need for consistency in decision-taking in this respect. With this in mind, we have examined in some detail the administration of the Rules in the Departments represented on the Working Group. Although there are one or two divergencies of practice, these are in the main a natural consequence of the differing circumstances of Departments, and we do not believe there are grounds for doubting the adequacy of the present arrangements for ensuring consistency. The cases which Departments have discretion to handle without reference to CSD are those where the circumstances are such that it is very unlikely that any decision other than unconditional approval would be justified. The Departments represented on the Working Group do not consider that they lack any necessary guidance from CSD; nor do they feel

constrained from consulting CSD about any case with their delegated powers but about which, nonetheless, they have doubts. Our examination has, however, lead to a useful exchange of ideas which in itself will tend to improve consistency, for example in methods used to make staff aware of the Rules.

12 It may also be relevant to point out that the concern that has been expressed in recent years on the propriety of a number of appointments, mentioned in paragraph 4 of the Fourth Report, has arisen in connection with officers at the most senior levels. We are not aware of any criticism which has arisen over an appointment which has been decided by the Department concerned alone.

13 The Advisory Committee on Business Appointments sees no grounds for the view that the present Rules are not applied consistently.

14 We therefore recommend that Ministers should endorse the thinking behind the Select Committee's comments on the desirability of consistency in decision-taking, but express the view that there is no evidence to suggest that the present arrangements are unsatisfactory. It is, however, possible to offer a few comments which might help to reassure the Select Committee.

Accountability: suggestion (ii) of the Fourth Report

15 While we see some force in the Select Committee's comments that one of the primary aims of the Rules is

to avoid public concern over a particular appointment, and what they see as the secretiveness in the way in which the Rules are operated to some extent militates against the retention of public confidence in the Rules, there are other considerations to be weighed against this. Successive Administrations have taken the view that the privacy of both the applicant and the company or body which has made the offer of employment should be protected, and on this basis have refused to disclose details of individual applications. More important, perhaps, is the point that has been made by the Advisory Committee on Business Appointments about the implications for the Ministerial decision-taking process of the suggestion that the advice tendered by the Advisory Committee and the action taken by Ministers be available on request to a Select Committee. If this suggestion were adopted, Ministers might on occasions be seen publicly to have rejected the Advisory Committee's advice. It seems right to continue the refusal to disclose details of the individual cases but to go as far as possible to bolster confidence in the system for dealing with such cases. This leads on to the next recommendation.

Composition of the Advisory Committee: suggestion (iii) of the Fourth Report

16 As the Advisory Committee has noted, questions of membership are entirely for the Prime Minister.

17 While there is no reason to suppose that changing the membership of the Advisory Committee to include

more people with experience of industry and commerce would lead to different advice, there would in our view be presentational advantages to the Government if this course were adopted. Senior businessmen might in particular be able to express useful views on the second objective quoted in paragraph 6.

18 Depending on the views of the Prime Minister, we recommend that the Select Committee be told that the Government accepts their suggestion that the membership of the Advisory Committee be extended to include one or two people whose main careers have been outside the public service.

Scope of the Rules: suggestion (iv) of the Fourth Report

19 The Fourth Report says that one of the limitations on the scope of the Rules is that they are defined in terms of firms and do not make clear what principles should apply in the case of Crown servants accepting appointments from foreign governments or their nationalised industries. We accept this criticism and recommend that the Rules be redrafted to reflect the criteria to be taken into account in considering such applications, of which there have in fact been very few.

20 We consider that considerations applying to appointments with foreign commercial organisations, public or private, should be the same as those applying to British commercial organisations. In considering foreign government appointments, the

essential factor which we would expect to see weighed is whether, against the background of the particular appointment on offer, the officer has been employed during the previous two years in a capacity where he would have been advising HMG on its policies in relation to the foreign government in question or would have been in a position to acquire special knowledge of HMG's policies or intentions which would be of benefit to that foreign government to the detriment of HMG or its allies.

21 The Select Committee also suggests that the Rules should deal with the position of ex-public servants wishing to set up in business as self-employed consultants on matters of which they have obtained their knowledge in the public service. We agree that the Rules, although they mention this matter, are not as clear as they might be and we recommend that they be amended to cover the position more clearly than at present of the two different types of consultants: those who are employed by a single firm and those who compete for commissions in the open market. Providing the normal proprieties are observed, including the provisions of the Official Secrets Acts, there seems no case for placing obstacles in the way of those who wish after retirement to continue to utilise the skills they gained in the public service.

22 A further suggestion made under this heading is that the Rules should preclude former officials from

seeking to exert influence on their former colleagues in the interest of their new employers, and that the provisions of United States legislation in this respect might be taken as a guide. We consider that by adopting such provisions we would be taking the wrong approach in the majority of the cases with which we are concerned. There is provision in the present Rules for approval to applications to be granted subject to the imposition of conditions which are pertinent to this consideration eg a bar on the former official from being involved in dealings between the Government and his new employer, and we consider that this adequately meets the point of concern. We also understand that some Departments have been able to reach informal agreements with particular firms or groups of firms eg in the pharmaceutical industry, covering both the conditions under which former civil servants could be employed and also consultation with competing firms about such employment. We recommend that these informal arrangements should be encouraged. The main point here, however, is the position of the former colleague. The Civil Service code of conduct, with the associated disciplinary measures which can be taken against those who breach it, precludes an official from allowing himself to be improperly influenced by outside factors in the exercise of his official duty. In other words the safeguard must be the integrity of serving officers not legal constraints on those who now have other jobs.

Persons to whom the Rules apply: suggestion (v) of the Fourth Report

23 The Fourth Report suggests that there is a case for considering the extension of the Rules to other groups of workers in the public sector whose salaries are paid directly or indirectly by the taxpayer. National Health Service and local government employees are cited as examples of those the Select Committee have in mind, but there are a large number of non-departmental bodies employing staff who come into this category, the majority of whom are not employed on work to which the Business Appointments Rules are of any relevance. We see formidable difficulties in extending the Rules in the way suggested but the Departments concerned have not yet had time to complete their considerations of the issues.

24 The nationalised industries would certainly regard this kind of thing as entirely within their own responsibility, and not as a matter on which they should be in any way answerable to the Government. It may therefore be inappropriate for the Government to comment on the question of any extension of the Rules to the nationalised industries, but to suggest that, if the Select Committee wish to pursue this, they should make a separate approach to individual nationalised industries or have consultations with the nationalised industries chairmen's group.

Lack of Legal Sanctions: suggestion (vi) of the Fourth Report

25 In the light of the Lord Chancellor's minute of 13 May 1981 to the Prime Minister about the practicability of legislation to enforce the present Rules, we consider that Ministers should be asked to consider the arguments for and against legislation in this area. A submission will be made shortly, and we suggest that the interim reply to the Select Committee should say that the Government will be considering this suggestion.

Next Steps

26 We hope to report further on suggestions (v) and (vi) of the Fourth Report in due course.

ANNEX A

DRAFT PARAGRAPHS FOR INCLUSION IN A LETTER FROM THE MINISTER OF STATE, CIVIL SERVICE DEPARTMENT, TO THE CHAIRMEN OF THE TREASURY AND CIVIL SERVICE COMMITTEE

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

1 In your letter of 4 June you asked that the Government should consider sending an interim reply to the suggestions put forward in the Fourth Report from the Committee about the Acceptance of Outside Appointments by Crown Servants.

2 The Government has considered and formed preliminary views on the first four suggestions contained in paragraph 37 of the Fourth Report. These are set out below.

Consistency of decision-taking

3 The Government endorses the Select Committee's comments on the importance of having arrangements to ensure that the Rules are applied consistently. A thorough examination of the way in which the Rules are administered in the major employing Departments has therefore been carried out. This has led to a useful exchange of information and a pooling of ideas, for example on ways of making staff at all levels aware of the Rules. Although there are naturally some divergence of practice - stemming usually from differing Departmental circumstances - these are not on matters of any substance. Cases delegated to Departments are those where the circumstances are such that it is very unlikely that any decision other than unconditional approval would be justified. Even on these cases it is always open to Departments to consult CSD in the event of any doubts.

And the same staff in CSD who deal with these enquiries also service the Advisory Committee on Business Appointments whose chairman has said that they do not feel they lack briefing about the treatment given to cases decided at Departmental level. As noted in the Fourth Report, the Civil Service Department provides a linch pin in this respect. Accordingly, as a result of the review, the Government is satisfied that present arrangements for ensuring consistency are effective.

Accountability

4 We have considered carefully the suggestion that the advice tendered by the Advisory Committee and the action taken by departmental Ministers in particular cases should be made available on request to the appropriate departmentally-related Select Committee or to a specially constituted Select Committee. The Government has concluded, however, that it would be wrong to depart from the line taken by successive Administrations, namely that, in the interests of the privacy of individuals and of organisations, the details of individual applications submitted under the Business Appointments Rules should not be publicly disclosed; and clearly any Select Committee must retain the right to publish information provided to it. But, in these circumstances, the Government accepts that it is all the more important that Parliament should have confidence in both the Rules themselves and the broad procedures for applying them.

Composition of the Advisory Committee

5 The Government has complete confidence in the present Advisory Committee but accepts the suggestion that the membership should not contain a preponderant number of those whose main careers have been in the public services from which the applicants for outside appointments come. In the light of the final recommendations of the Select Committee the Government will consider how the membership should be extended.

Scope of the Rules

6 The Government agrees that the Rules should state the circumstances in which former public servants are allowed to accept employment in the service of foreign governments or their nationalised industries. In considering such applications the essential factors are whether the officer concerned has been employed during the previous two years in a capacity where he would have been advising HMG on its policies in relation to the foreign government in question, or whether he would have been in a position to acquire special knowledge of HMG's policies or intentions which would be of benefit to that foreign government to the detriment of HMG or its allies. The rules will be extended to cover this point - and generally to improve their clarity and remove possible points of doubt - in the light of the Select Committee's final recommendations.

7 The Fourth Report suggests that the Rules should also deal with the position of former public servants wishing to set up in business as self-employed consultants on matters of which they have obtained their knowledge in the

public service. The Government agrees that the Rules are not as clear as they might be in this respect. They will therefore be amended to clarify the position of not only self-employed consultants who compete for commissions in the open market, but also those who are employed by a single firm. Providing the normal proprieties, including the provisions of the Official Secrets Act, are observed, however, there seems no case for placing unnecessary obstacles in the way of those who wish after retirement to continue to utilise the skills they gained in the public service.

8 In relation to the third suggestion made under this heading, we consider that in adopting the provisions of the United States legislation we would be taking the wrong approach in the majority of the cases with which we are concerned. There is provision in the Rules as they stand at present for similar conditions to be imposed where the circumstances of a case justify this. But the main point here is the integrity of the existing staff, who are bound by the Civil Service code of conduct and can have disciplinary measures taken against them if they permit themselves to be improperly influenced in their official duties by former colleagues.

9 With regard to the fifth and sixth suggestions contained in paragraph 37 of the Fourth Report, I hope to let you have the Government's views later which will take into account the views of the major public sector organisations such as the NHS. But in relation to a

possible extension of the Rules to the nationalised industries, the Government does not consider that it would be appropriate to express a view. Your committee may like to consider making separate approaches, if you have not already done so, to individual nationalised industries or indeed the nationalised industries chairmen's group.

file AH

10 DOWNING STREET

From the Principal Private Secretary

MANAGEMENT IN CONFIDENCE

SIR IAN BANCROFT

MR HENRY NEUBURGER:
BUSINESS APPOINTMENTS RULES

Thank you for your minute of 12 June 1981.

I have shown this to the Prime Minister, and she agrees that we should not pursue further the suggestion that the business appointments rules which requires serving and recently retired civil servants to accept a cooling off period of at least three months might be adapted and applied to civil servants who resign to take up politically sensitive appointments.

AJW.

16 June 1981

AT

MANAGEMENT IN CONFIDENCE

PRIME MINISTER

MR HENRY NEUBURGER : BUSINESS APPOINTMENTS RULES

When the Chancellor of the Exchequer minuted you on 1st May 1981 about the resignation of Mr Henry Neuburger from the Treasury, who left to take up a post as a political adviser in Mr Foot's office (Flag A), you said that we should consider a three month rule for the future, very much on the lines of the restrictions which apply to serving and recently retired civil servants who are offered business appointments.

I accordingly sought the advice of Sir Ian Bancroft who has now responded with the minute immediately below. As you will see, he thinks that there would be considerable practical difficulty in applying a cooling off period to people who wished to leave politically sensitive posts in the Civil Service to take up Party political appointments and he suggests that we should leave matters as they are. Are you content to do so ?

Yes MF AMW.

15 June 1981

MR C A WHITMORE

MR HENRY NEUBURGER: BUSINESS APPOINTMENTS RULES

In your letter of 5 May to Mr Wiggins about the case of Mr Henry Neuburger, you recorded the Prime Minister's comment that we should consider applying to cases of this kind the rules which in the case of business appointments requires serving and retired civil servants to accept a cooling off period of at least 3 months. You asked that I should give some thought to the Prime Minister's suggestion and provide advice in due course.

I have considered the need for imposing a cooling off period on civil servants who advise Ministers or who have access to sensitive information of the type out of which political capital could be made and who wish to leave the Civil Service for posts involving the provision of political advice to political parties in opposition. While a requirement such as this sounds attractive in theory, I have serious doubts about the practical implications. Such a rule would look odd in relation to the right of any civil servant to stand for election to Parliament immediately after resigning from the Service. Without legislation it would be impossible to enforce once the officer had left the Civil Service. I believe a more useful course of action - and this is what happened in the case of Mr Neuburger - would be to deny access to sensitive material as soon as the officer makes his intentions known. This would have much the same practical effect and, since there are very few cases such as that of Mr Neuburger, should pose no serious problems.

It is also relevant that any move in the direction of a cooling-off period would have to be agreed with the Council of Civil Service Unions since it would involve a change in civil servants terms and conditions of service; and this may well be impossible to achieve at least for existing staff.

I therefore recommend that this question should not be pursued further.

NB

IAN BANCROFT
12 June 1981

Civil Service

10 DOWNING STREET

From the Private Secretary

26 May 1981

I enclose a letter to the Prime Minister from Lord Diamond setting out the views of the Advisory Committee on Business Appointments on the Report of the Treasury and Civil Service Select Committee. I also enclose a copy of Clive Whitmore's acknowledgement.

The Prime Minister would be grateful if Lord Soames could take these comments into account in considering the Government's response to the Select Committee's Report.

WR

Jim Buckley, Esq.,
Lord President's Office.

10 DOWNING STREET

Mr Whitmore

Many thanks.
AWS 22/5.

I suggest you acknowledge Lord Diamond's letter as attached. I will then send it to CSD. I don't think we need bother the PM.

WPBR
22/5

22 May 1981

I am writing on behalf of the Prime Minister to thank you for your letter of 21 May.

She was grateful to you for letting her have the views of the Advisory Committee on Business Appointments on the Report of the Treasury and Civil Service Select Committee. She has asked me to assure you that your Committee's views will be taken into account by the Government in considering its response to the Select Committee's Report.

C A WHITMORE

The Right Honourable The Lord Diamond

Aynhoe
Doggett's Wood Lane
Chalfont St Giles
Bucks

21st May 1981

The Rt Hon Margaret Thatcher
10 Downing Street
London SW1

Dear Prime Minister,

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

The Advisory Committee on Business Appointments have read with interest the Fourth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants and at a recent meeting they took the opportunity of discussing some of the suggestions which the Select Committee put forward.

It may be helpful to the Government, in considering their response to that Report, to be aware of the views of the Advisory Committee.

Consistency

The present Business Appointments Rules provide for applications made under the Rules by Deputy Secretaries and Heads of Departments other than Permanent Secretaries to be referred to the Head of the Home Civil Service. We understand that, in advising the Head of the Home Civil Service on these cases, the Civil Service Department, who also provide the Secretariat to the Advisory Committee, always have in mind the considerations which are taken into account by the Advisory Committee in making their recommendations about applications from Permanent Secretaries and others which the Prime Minister of the day refers to us. While cases involving officers of a lower level are not necessarily referred to the Head of the Home Civil Service, the Civil Service Department is consulted in all cases except those involving junior officers where the features are clearly uncontentious.

In the light of this, the Advisory Committee sees no grounds for the view that the present Rules are not applied consistently. Similarly they do not feel they lack briefing about the treatment given to cases decided departmentally. As noted in the Fourth Report, the Civil Service Department provides a linchpin in this respect.

Accountability

The Advisory Committee has always operated on the basis that its role is to provide confidential advice to the Prime Minister. If it were known that our advice could be disclosed to other parties, some applicants might feel constrained in their replies to our probing, and there would therefore be some risk of all relevant factors not being taken fully into account. But whether this point outweighs the presentational argument

for the arrangements to be more open to public scrutiny, is one of the matters for your own consideration. We believe that the primary implication of the Select Committee's suggestion relates to the position of the Prime Minister. In particular, it would seem in our view undesirable that the Prime Minister, or the departmental Minister concerned, should be placed in the position of being seen publicly to reject the Advisory Committee's advice.

Membership

The Select Committee have suggested that the membership of the Advisory Committee should cease to contain a preponderant number of those whose main careers have been in the public service. The present Advisory Committee would not, of course, be averse to having among its number one or more members, whether additional or not, whose careers have been in industry or commerce, and sees the presentational advantages of such an expansion of the membership. The Committee has, however, no reason to think that the substance of its recommendations would be likely to change. The present members recognise that questions of membership, including their own membership, are entirely for the Prime Minister.

The Advisory Committee have noted the other suggestions put forward in the Select Committee's Report, but do not feel it appropriate to offer comments on them.

Yours sincerely,

Jack Diamond

DIAMOND

cc. CSD

10 DOWNING STREET

From the Principal Private Secretary

STAFF IN CONFIDENCE

5 May 1981

Dear John,

MR HENRY NEUBURGER

The Prime Minister has seen and taken note of the Chancellor of the Exchequer's minute of 1st May 1981 about Henry Neuburger's departure from the Treasury.

The Prime Minister has commented that we should consider applying to cases of this kind the rule which in the case of business appointments requires serving and retired civil servants to accept a cooling off period of at least three months. I should be grateful if Sir Ian Bancroft, to whom I am sending a copy of this letter, could give some thought to the Prime Minister's suggestion and let her have his advice in due course.

Yours ever,

Clive Whitmore.

John Wiggins Esq.,
H M Treasury.

Prime Minister.

I think X/ below may be a difficult line to sustain. It would be very surprising if someone who chose to leave the Civil Service to go to the Leader of the Opposition's office did not disagree with Government policy.

AW
1.v.81.

I think we should consider a 3-month rule for the future. Kenneth Barrett had to observe such a rule to go to a politically neutral organisation! NT.

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

NEUBERGER

PRIME MINISTER

There have been some low-key references in the press to the fact that Henry Neuburger, currently head of the Treasury's domestic economic forecasting and analysis division, has resigned from the Treasury and is taking up a post as a political adviser in the office of the Leader of the Opposition. Neuburger, aged 37, is a Senior Economic Adviser, the equivalent in the Government Economic Service of Assistant Secretary. I thought that you should know of the background to this, and I suppose that there might be references to it at Prime Minister's Questions.

2. Neuburger has been considering for some time taking a post outside the Civil Service of one sort or another, and so his move to the Office of the Leader of the Opposition cannot be seen as stemming from a disagreement over policy. Perhaps a little surprisingly, there is nothing in the Civil Service Code to prevent him from moving directly from the Civil Service to a political appointment. Nor is there any formal legal inhibition. Neuburger is well aware of his obligations as regards the confidentiality of official information, and, for what it may be worth, has confirmed that he intends to honour them: by the nature of forecasting, the currency of any knowledge he has of the unpublished parts of the Government's fore-casts is relatively transitory, and, by mutual agreement, Neuburger has not been seeing paper on sensitive matters since his

X

intention of taking up his new post was known. Neuburger left the Treasury at Easter and will be on leave until he taken up his new position on 13 May.

3. If the matter is raised at Prime Minister's Questions, I suggest that you take the line that you understand that Neuburger has been considering for some time taking a job outside the Civil Service and so his decision to make this move cannot be seen as stemming from a disagreement over policy: resignations from the Civil Service to take up appointments as political advisers are not unprecedented (we may remind ourselves of Adam Ridley's example) and Neuburger is subject to the normal rules governing official information.

4. I am copying this minute to Sir Ian Bancroft

(G.H.)
1 May 1981

WR
14/5

10 DOWNING STREET

Mr Rickett
Let us see how
Lord Soames responds.
14v

Mr Whitmore

You may wish to see this minute from the Lord Chancellor. A natural reaction from a lawyer. I am not sure these rules have to be legally enforceable. And in any case Lord Soames suggested the official group study the question of legal sanctions (see ¶ in his minute). NBPM, I think, at least until we have more ministerial reactions.

WFSR
14/5

Civil Service

10 DOWNING STREET

Clive

This is an uninformative piece of paper.

NBPM, I suggest.

MAP

14/4

~~Mike~~

Thank you.

I agree NBPM.

AW

14 W

Civil Service

PRIME MINISTER

ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

The Fourth Report from the Treasury and Civil Service Committee, which deals with the 'Acceptance of Outside Appointments by Crown Servants', was published on 2 April. The purpose of this minute is to let you know how I propose to take this forward.

2. The Report recognises that the aim of the present rules is to strike a balance between the desirability of free movement between the public service and industry on the one hand and the importance of avoiding the appearance of impropriety on the other. But it considers that the arrangements are tilted too much in the direction of freedom of movement and too little in the direction of removing the suspicion of impropriety. With this in mind, the Committee puts forward six suggestions, summarised as follows:

a. there should be greater consistency in dealing with applications;

b. the advice of the Advisory Committee and the reasons for Ministerial decisions should be open to scrutiny by the Select Committee machinery;

c. the membership of the Advisory Committee should cease to be dominated by those whose main careers have been in the public service;

d. the rules should cover employment in the service of foreign governments or their nationalised industries and self employed consultancies, and should prohibit "lobbying" of former colleagues;

e. consideration should be given to extending the scope of the rules to other classes of public servant (the Committee cites NHS and local government employees as an example); and

f. consideration should be given to the introduction of legislative sanctions for breaches of the rules.

3. The Committee has invited views from "Departments, professional associations, trade unions and others who believe they have an interest".

4. Some of the Committee's suggestions could have wide ranging implications including for example the possibility of bringing

Ministers within the scope of any revised rules: other suggestions are relatively uncontentious. In order to consider the Government's response I am setting up a small official group under CSD chairmanship. It will consist of representatives from those departments most concerned with the operation of the existing Rules, particularly the Ministry of Defence and, in view of the Committee's suggestion for extending their scope, representatives of, at least, DHSS, DOE, Home Office and the Department of Industry. The Group will prepare the draft of a reply to the Select Committee which I will clear with colleagues as appropriate. I will of course keep you informed.

5. I am copying this minute to members of the Cabinet and to Sir Robert Armstrong.

S

SOAMES
13 April 1981

FROM:
THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

Mr Whitmore

Prime Minister

Acceptance of outside appointments by Crown Servants

The Lord President sent me a copy of his minute to you about the study of the recommendations in the Fourth Report of the Treasury and Civil Service Committee on this subject which he has set in hand.

I understand that it is not legally possible to enforce the present rules or any others which we might substitute. This being so, it makes little sense for the official group to spend time on most of the recommendations unless they first direct their attention to the practicability of legislation and obtain ministerial direction on this issue.

I am copying this minute to members of the Cabinet and to Sir Robert Armstrong.

H. of St. M.

From: THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

13th May, 1981



Civil Service

Original in Appts. files

24 March 1980

I am writing on behalf of the Prime Minister to thank you for your letter of 4 March. She is glad to know that you are content with the amendment to the rules governing the acceptance of business appointments by Crown servants which were foreshadowed in her letter of 24 January. Arrangements are now being made for this change to be put into effect and for the revised rules to be made available to the House.

sgd. C A Whitmore

The Right Honourable The Lord Diamond

Civil Service

PA

10 DOWNING STREET MS

CLIVE

This is coming out tomorrow I think morning. The recommendations (paras 33-end) call for a tighter system.

I Bancroft's office say that they will be offering no early comment tomorrow, but setting up an interdepartmental working group to prepare the Govt's response.

MS

1.4.87

Original in Appts. filing

MR LAUGHRIN
CIVIL SERVICE DEPARTMENT

I enclose a copy of a letter dated 4 March from Lord Diamond together with a copy of my acknowledgment.

As you will see, he is content with the amendment to the rules on business appointments which was put to him by Mr Davie in his letter of 29 February. I should be grateful if you would now arrange for this change to be put into effect and for the revised rules to be made available to the House.

sgd. C A Whitmore

24 March 1980

Original in Appts filing

Miss Porter.

[illegible]

21 iii

2.

PRIME MINISTER

Advisory Committee on Business Appointments

The letter from Lord Diamond at Flag A, which is in response to your letter of 24 January about the case of Sir Kenneth Berrill, lets you know that he is content with the proposed change in the rules governing business appointments which became necessary to deal with the loophole identified by Sir Kenneth Berrill.

I have delayed submitting Lord Diamond's letter while we obtained from the CSD their letter to him which sets out the proposed amendment. This is at Flag B. As you will see, the change the CSD are suggesting is minimal but it does, I think, meet the circumstances of a case like Sir Kenneth Berrill's and will certainly tide us over until we have the recommendations of the Select Committee on the Treasury and the Civil Service, after which more far reaching revision of the rules may be needed.

I hope the amendment is adequate

[illegible]

[illegible]

17 March 1980

APPOINTMENTS IN CONFIDENCE MFJ

Original in Appts. file

Civil Service.

11 March 1980

Thank you for your letter of 6 March, which Clive Whitmore has also seen, about Ministerial appointments.

In the light of your explanation, we accept that the issue is a presentational one. We nevertheless think that it would be helpful to make explicit a Minister's responsibility for propriety when he himself makes an appointment. I hope that a suitable opportunity will be taken to spell this out.

M. A. PATTISON

D.P. Laughrin, Esq.,
Civil Service Department.

APPOINTMENTS IN CONFIDENCE

Original in Appts file

Mike

I am not sure I understand X | below. But I think that Y |, at the least, would be worth doing, though I am ready to go along with Z |.

Ian
7/3

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
Telephone 01 273 5400

Sir Ian Bancroft G.C.B.
Head of the Home Civil Service

M A Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

6 March 1980

Mr. Whitmore to see.

Dear Mike,

MINISTERIAL APPOINTMENTS

Thank you for your letter of 14 February recording the concern you and Clive Whitmore share about our practice on Ministerial appointments, which have never been regarded as within the scope of the business appointment rules. And there has never been criticism, so far as I am aware.

X | This seems to us to identify a presentational point, not a possible loophole, in the application of the business appointment rules. The rules act to introduce a Government responsibility; but the Government responsibility for a Ministerial appointment is inherent. Applying the business appointment rules to Ministerial appointments would simply mean that the Prime Minister (as advised by the Advisory Committee - but their advice is, of course, confidential), would necessarily see cases at Permanent Secretary level; and that in cases at a lower level, if the appointing Minister differs from the departmental Minister, the latter would be brought in. In practice, apart from reference to the Advisory Committee, these consultations may already take place; as indeed they did in the case of Sir Leo Pliatzky and the British Airways Board.

Y | An alternative to revising the procedures would be to make explicit, perhaps in the first paragraph of the business appointment rules, a Minister's responsibility for propriety when he himself makes an appointment.

Z | We do not think that a further amendment or an immediate change in our formal procedures is necessary, pending any further study of the rules which may emerge from the Select Committee's current examination. And probably not even then.

Yours sincerely
Ian Bancroft

D P LAUGHRIN
Private Secretary

APPOINTMENTS IN CONFIDENCE

Original in Appts. filing

Anyhoe
Doggett's Wood Lane
Chalfont St Giles
Bucks

4th March 1980

The Rt Hon Mrs Margaret Thatcher, MP
10 Downing Street
London
SW1

Dear Prime Minister,

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

Thank you for your letter of 24 January which was awaiting me on my return from holiday. My colleagues - to whom I have circulated your letter - and I are most grateful for your expression of appreciation of the Committee's efforts.

I have now heard from the Civil Service Department about the proposed amendment to the rules and I am content with the change suggested. I note that in due course this change will be promulgated to the Civil Service and the revised rules made available to the House.

Yours sincerely,

Jack Diamond

DIAMOND

Original in Appts. filing

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
Telephone Direct line 01 273 5540
Switchboard 01 273 3000

29 February 1980

The Rt Hon The Lord Diamond
Anyhoe
Doggett's Wood Lane
Chalfont St Giles
Bucks

Dear Lord Diamond

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

The Prime Minister's letter of 24 January to you about the case of Sir Kenneth Berrill, which has now been circulated with my letter of 26 February to all members of the Committee, referred in the penultimate paragraph to the need for some clarification of the rules.

I now attach a copy of paragraph 2 of the rules showing the amendment proposed. The aim has been to make the amendment as simple and brief as possible given that this is seen as a technical not a substantive deficiency in the rules. (Also the Select Committee on the Treasury and the Civil Service is currently examining the rules, and the need to avoid trespassing on matters about which the Committee may make recommendations is a further argument for minimal change). I should be grateful if you would regard this letter as the consultation which the Prime Minister promised, and should be glad to know whether you are content with the draft amendment. Subject to the appropriate consultations, this amendment will be promulgated to the Civil Service and the revised rules made available to the House.

I am copying this letter to all members of the Committee. Also, Sir Melvyn Rosser has drawn my attention to an omission in the minutes of the meeting of 14 January, and with your permission, I am circulating a correction with this letter.

Yours sincerely,
Rex Davie

S R DAVIE
Secretary

ACCEPTANCE OF OUTSIDE BUSINESS APPOINTMENTS BY CROWN SERVANTS

THE RULES

Paragraph 2 (Proposed amendment underlined)

"All officers of the rank of Under Secretary (or, in the Diplomatic Service, Counsellors) and above, and of the equivalent ranks in HM Forces are required to obtain the assent of the Government before accepting within 2 years of resignation or retirement offers of employment in business and other bodies <u>particularly those:</u>

a. which are in contractual relationships with the Governm
b. which are in receipt of subsidies or their equivalent f the Government;
c. in which the Government is a shareholder;
d. which are in receipt from the Government of loans, guara or other forms of capital assistance; or
e. with which Services or Departments or branches of Government are, as a matter of course, in a special relation ship;

and in semi-public organisations brought into being by the Governmen or Parliament. In addition there are posts of a special or technical nature (below the rank of Under Secretary) to which Departments must apply a similar requirement. The Government's assent must similarly be obtained if an officer wishes to accept an appointment in the service of a foreign government."

APPOINTMENTS IN CONFIDENCE

FILE

Original in Appts filing

TMP

10 DOWNING STREET

From the Private Secretary

14 February 1980

Thank you for your letter of 13 February, about the relevance of the business appointments rules to the case of Sir Leo Pliatzky and the British Airways Board.

You will have received separately a copy of my letter to Stuart Hampson confirming that the Prime Minister is content with Sir Leo's appointment.

There was no doubt in our minds about the propriety of this particular appointment. But Clive Whitmore and I nevertheless are concerned about the grounds on which it can be argued that paragraph 4 of the business appointments rules does not apply in this case. British Airways obviously falls into several of the categories of business defined in paragraph 2 of the rules. Paragraph 4 requires that all ex-Permanent Secretary appointments to commercial bodies have to be referred by the Head of the Civil Service to the Prime Minister to be laid before the Advisory Committee.

Whilst we understand the argument that the rules are not applicable where the appointment was one made by a Minister and initiated by him, we are not convinced that this remains tenable. There is still considerable disquiet about any form of paid public appointment being offered to ex-senior civil servants who are drawing healthy pensions. These rules are published, and need to serve as a defence against criticisms about the way in which such appointments occur. Critics could very easily say, in cases such as Sir Leo's, that senior civil servants only have to have a good working relationship with their last Minister to ensure themselves rewarding retirement jobs in the nationalised industries outside the discipline of the rules.

The purpose of this letter, therefore, is to draw attention to this as a further possible loophole in the rules, which might be considered at the same time as the implications of another recent case. It seems increasingly important to ensure that the rules are seen to be a fair system which is applied across the board.

M. A. PATTISON

D.P. Laughrin, Esq.,
Civil Service Department.

APPOINTMENTS IN CONFIDENCE

Original in Appts filing

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
Telephone 01 273 5400

Sir Ian Bancroft G.C.B.
Head of the Home Civil Service

Mike Pattison Esq
10 Downing Street
LONDON SW1

13 February 1980

Dear Mike,

BRITISH AIRWAYS BOARD: SIR LEO PLIATZKY

You asked why we do not regard this appointment as within the scope of the business appointments rules.

Public appointments made by Ministers are not "outside" appointments in the strict sense, and the view has always been taken that it would be inappropriate to apply the rules' requirement of obtaining the Government's assent when the appointment is at the wish of a Minister.

This is not to say that the propriety aspects of a particular appointment should not be considered along with the various other factors that a Minister has to take into account when making an appointment. But as you know, the Secretary of State for Trade has satisfied himself on this point and Sir Ian Bancroft, who was consulted, is also content.

Incidentally you may recall that in his minute of 27 July to Sir Ian Bancroft, Clive Whitmore said the Prime Minister agreed that the time Sir Leo spent on the Quango review should count towards the 'cooling off' period: at that time Mr Nott envisaged a gap of 6 months from the date of Sir Leo's departure from the Department of Trade would be an appropriate period.

Yours sincerely,

David

DAVID LAUGHRIN
Private Secretary

APPOINTMENTS IN CONFIDENCE

SENIOR STAFF IN CONFIDENCE

Original in Appts. filing
Copied to CSD 12/2.

10 DOWNING STREET

THE PRIME MINISTER

24 January 1980

Dear Lord Diamond,

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS:
SIR KENNETH BERRILL

Thank you for your letter of 1 December 1979 about Sir Kenneth Berrill's application for permission to join Vickers da Costa Ltd.

After a very great deal of deliberation I have decided that Sir Kenneth's waiting period before he is allowed to join the firm should be one of only three months, rather than six months as your Committee recommended. I have reduced the period in view of certain special factors which I think would, quite properly, not have entered into your Committee's consideration of the case.

In particular it has been represented to me that Sir Kenneth could reasonably claim that his appointment with Vickers da Costa is not strictly within the scope of the business appointments rules, as that scope is defined in the second paragraph of the rules:-

"... employment in business and other bodies:

a. which are in contractual relationships with the Government;

b. which are in receipt of subsidies ...;

c. in which the Government is a shareholder,

/d. which are in

d. which are in receipt from the Government of loans, guarantees....; or

e. with which Services or Department or branches of Government are, as a matter of course, in a special relationship; ....."

I am bound to say that I think that there is substance in such an interpretation of the rules in this case.

Nonetheless, I believe that the scope of the rules as set out in paragraph 2 is at variance with the way in which they were intended to apply. For example, Sir Kenneth's appointment with Vickers could be held to raise the kind of considerations which are mentioned in paragraph 18a. of the rules where it says:-

"Other considerations which should be kept in view include:

a. the possibility that the applicant may have had access to information about one or more of his prospective employer's competitors which could legitimately be regarded as their 'trade secrets'. This may arise independently of any contact with the prospective employer....."

Similarly, the opening paragraph of the rules sets out their purpose in the following terms:-

"The rules aim at avoiding any suspicion - however unjustified - that serving officers might be ready to bestow favours on firms in the hope of future benefits to come. They also seek to guard agains the risk that a particular firm might be thought to be gaining an unfair advantage over its competitors by employing an officer who,

/during his service,

during his service, had access to technical or other information which those competitors could legitimately regard as their own trade secrets."

Moreover, it seems to have been intended in Sir Harold Wilson's statement in 1975 that it is the Prime Minister who has the responsibility to decide which cases need be referred to the Advisory Committee.

I am disturbed that this inconsistency in the rules has been identified only at this stage, especially given that the present rules have been in operation for 4½ years; have been published in full; have been looked at carefully and warmly endorsed by the Royal Commission on Standards of Conduct in Public Life; and have not previously been challenged (although I understand there have been other applicants to whom, in retrospect, the same conclusion might apply). We are therefore considering urgently at the least some clarification of the rules, and I will ensure that you are consulted before any change is promulgated. In the meantime I feel that I have no alternative but to give Sir Kenneth Berrill the benefit of the doubt.

Finally, I should like to take this opportunity to say how grateful I am to you and your colleagues for the time and care which you devote to this work. Your contribution is indispensable to the operation of the present arrangements.

Yours sincerely

Margaret Thatcher

The Right Honourable
The Lord Diamond.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