

PART TWO

CONFIDENTIAL FILING

Rules governing the acceptance of
Business appointments by Civil Servants
Following resignations or retirement

CIVIL SERVICE

PT 1: January 1980

PT 2: July 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
8.7.87							
23.7.87							
3.7.87							
3.4.87							
4.8.87							
12.12.87							
14.12.88							
13.8.91							
17.10.91		PART		CLOSED			

PREM 19/3631

SERIES CLOSED

**END OF
CONSERVATIVE
ADMINISTRATION**

1 MAY 1997

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. Session 1987-88

Defence Committee

Business Appointments: Observations on the Government's Reply to the Second Report, Session 1987-88

Published by HMSO

ISBN 0 10 262288 4

Signed

J. Gray

Date

15/7/2017

PREM Records Team

110

CC PA
rhm


CABINET OFFICE
OFFICE of the MINISTER
for the CIVIL SERVICE

THE RT HON TIM RENTON MP
The Minister of State
Privy Council Office

Horse Guards Road
London SW1P 3AL
Telephone: 071-270 5929

C91/4591

The Rt Hon John MacGregor OBE MP
Lord President of the Council and
Leader of the House of Commons
Privy Council Office
68 Whitehall
LONDON
SW1A 2AS

17 October 1991

John

**RESPONSE TO THE FOURTH REPORT OF THE TREASURY AND
CIVIL SERVICE SELECT COMMITTEE (TCSC)**

Earlier this year, the Treasury and Civil Service Select Committee conducted an inquiry into the application of the rules affecting the acceptance of outside appointments by Crown servants, "the business appointment rules".

For the most part the inquiry was a bread and butter affair, concentrating on the minutiae of the rules and their application. Indeed perhaps the most substantial issue raised by the report - the question of the disclosure of information about individual applications - was not covered in any of the Committee's requests for written evidence or at the single hearing.

- ... The attached draft response (Annex A) has been cleared with departments (at official level) with the Advisory Committee on Business Appointments and with Sir Robin Butler. It is deliberately low key, avoiding seriatim responses to the list
- ... of conclusions and recommendations (attached at Annex B) which would serve only to draw undue attention to those which we cannot accept, while covering them all. You will see that subject to your views, it is proposed that the response

simply goes as a memorandum to the Committee under cover of a letter from me. The alternative of publication as a Command Paper would give us control over the timing and handling of publication. But I doubt whether the Committee will, in fact, make much of it, particularly if we do not send them at this stage a revised text of the rules which they might be tempted to pick at straightaway.

Subject to your views I propose to send this response to Terence Higgins by Friday 25 October.

I am copying this letter and the enclosures to the Prime Minister.

Tim
Tim

TIM RENTON

DRAFT

GOVERNMENT OBSERVATIONS ON THE FOURTH REPORT FROM THE
TREASURY AND CIVIL SERVICE SELECT COMMITTEE, SESSION 1990-91:
THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

1. The fourth report of the Treasury and Civil Service Select Committee considered the current application of the rules governing the acceptance of outside appointments by Crown servants (the business appointments rules) and made a number of recommendations. This Memorandum sets out the conclusions the Government has reached after careful consideration of the Committee's report.

2. The Government believes that the present system for controlling the acceptance of business appointments is working well. It welcomes both the general acknowledgment in the Committee's report that positive measures have been taken in recent years to improve the administration of the business appointments rules and a number of the detailed conclusions of the report commenting on some of the changes that have been made. Those include the welcome for the increased parliamentary representation on the Advisory Committee on Business Appointments, the commendation of the most recent revision of the form and content of the rules themselves, and the recognition that the reviews of departmental casework by the Advisory Committee and the Cabinet Office (OMCS) are proving an effective means of monitoring the application of the rules. The Government also welcomes the Committee's endorsement of the recent decision to waive the automatic 3 month waiting period for those appointed to Grade 1 or 1A posts on fixed term contracts from outside Crown service - and confirms that applications from such individuals to take up outside appointments will be considered under the rules in the normal way.

Drafting and application of the rules

3. The Committee has made a number of recommendations for changes to the drafting of the rules which the Government is able to accept, subject to one or two points of qualification.

4. The Government accepts the recommendation that the rules should be revised to make it clear that they are intended, inter alia, to prevent any impropriety which may arise from possible conflict between the nature of the proposed employment and the nature of the applicant's responsibilities while in Crown service. The Government does not believe that there is anything inherently improper about a department or agency making specific use of the expertise of a former employee to provide a consultancy service where that is the best way of meeting a particular need or that all such offers of employment should be covered by the rules. Nor should the Government seek to prevent former Crown servants from putting experience or knowledge gained from working in a particular area of Crown service to legitimate use in outside employment. Questions of impropriety may arise, however, where there are genuine grounds for concern:

(a) that the prospect of future employment may have coloured the actions of an individual while in Crown employment; or

(b) that potential competitors of that individual or his or her new employer may be put at an unfair advantage either as a result of improper use of information gained in the individual's former employment (relating either to the trade secrets of competitors or to proposed developments in Government policy in the area concerned) or if there were grounds for thinking

that the individual may still be in a position to exert undue influence in their former department.

These situations are already covered in the guidance on the application of the rules. However the Government accepts that the guidance could be expanded and clarified in certain respects and that there is a case for amending the wording of the rules governing their application to Crown servants below Grade 3 for the avoidance of any doubt that applications under the rules must be made in all circumstances which may raise considerations of this kind.

5. The Government accepts the recommendation that the rules on reporting offers of employment should be amended so that staff working in areas involving procurement or contract work are again required to report any offer of employment from an outside employer who has or may have a commercial interest in that area of work, particularly where such an offer emanates from an outside employer with whom the individual or his or her staff have had official dealings. The object of this aspect of the rules is principally to ensure that the department is aware of any discussions that an individual may be having with an outside employer about an offer of employment which is likely to fall within the scope of the rules. That is reflected in the existing wording. Nevertheless the Government accepts that there is a case, in the interests of maintaining public confidence in the system, for requiring all such approaches to be reported where staff involved in procurement or contract work are in contact with outside organisations, even when in practice they have no intention of entertaining the offer.

6. The Government also proposes to amend the rules so that departments and agencies are advised to take all reasonable steps to check that staff below Grade 3 who resign to take up outside appointments submit applications under the business

appointments rules where appropriate. The overwhelming majority of staff who resign from Crown service do not take up outside appointments which would require approval under the rules; and there is no evidence to suggest that these rules are not normally observed. Only a handful of cases where Crown servants have failed to make applications under the business appointments rules have come to light over the years and in almost all cases those occurred before the recent efforts - acknowledged by the Committee - to ensure that the rules are brought to the attention of staff. Against that background the Government does not believe that the rules should require departments and agencies to ask every individual who resigns from Crown service for details of any employment they propose to take up. There may be other reasons for making such inquiries - for example in the context of exit interviews; but, particularly in the light of an increasing emphasis on devolution of responsibility for personnel management to departments and agencies, it would be wrong to impose from the centre a blanket requirement which could give rise to a great deal of needless and expensive bureaucracy. Nevertheless the Government accepts that departments and agencies should be formally encouraged to take all opportunities provided by letters of resignation, exit interviews and requests for references to check whether an application under the rules is necessary and to ensure that personnel and line managers with responsibility for staff working in areas which involve contact of a commercial nature with outside organisations, particularly on procurement or contract work, are issued with regular reminders to monitor resignations by staff employed in those areas to ensure that business appointment applications are made where necessary. The rules will be amended accordingly.

7. The Government does not accept the Committee's view that there should be a formal system of monitoring behavioural conditions imposed on Crown servants who are given approval

to take up appointments under the rules. The Committee recommends that there should be formal checks on the observance of such conditions, particularly in the case of consultants whose clientele may change. There are, as was pointed in evidence to the Committee, a number of ways in which failure to comply with a condition may come to a department's attention. In practice a behavioural condition is most unlikely to be imposed in circumstances where the department will not have continuing, direct contact with the prospective employer (or the individual in the case of a 'brass plate' consultancy) or with competitors (whose interests the condition may have been intended to protect). Departments will of course, automatically, monitor any condition which prohibits an individual from dealings with the department on behalf of an outside employer and may, if necessary, draw such cases to the attention of staff working in areas likely to be affected. In cases where trade secrets may be a consideration, competitors will normally have been consulted and may object if they believe another competitor is in practice benefiting unfairly from the employment of a former Crown servant. These constraints have proved effective; and in the absence of evidence that behavioural conditions have been ignored or evaded the Government is not persuaded of the case for requiring departments to institute any more formal system of checks which would be time-consuming and largely nugatory, although it is always open to any department to follow up an individual case at its own discretion.

8. In commenting favourably on the casework reviews carried out by the Cabinet Office (OMCS), the Committee has noted two concerns: that the number of cases reviewed should always represent a significant proportion of the cases dealt with by a particular department; and that targeting departments whose quarterly returns have shown anomalies might lead to the neglect of departments which deal with very few cases and

which may be less accustomed to applying the rules. It recommends that the Cabinet Office (OMCS) should ensure that practice in each department is reviewed on a regular basis. The Government accepts that recommendation which is, indeed, fully in accordance with present practice. The aim is to review a significant proportion of cases considered by each department without reference to the Cabinet Office (OMCS) on at least a biennial basis. Those departments which deal with the most applications are invariably the subject of annual review.

9. The Committee's concerns about the staffing of the section in the Cabinet Office (OMCS) which deals with the business appointments rules have also been noted. The current level of staffing is considered adequate for the tasks which the section is required to fulfill; but the position will be kept under review.

OPENNESS

10. In its report the Committee places a great deal of emphasis on the importance of openness in the application of the business appointments rules as a factor in maintaining public confidence in the system. The Government accepts that principle. Indeed it has consistently demonstrated a willingness to be open about the administration of the system in evidence presented both to the Treasury and Civil Service Select Committee and to the Defence Committee, in the production of regular statistical reports on the operation of the system and by submitting the system to the independent scrutiny of the Advisory Committee on Business Appointments.

11. The production of regular annual statistical reports on the operation of the system is, as the Committee acknowledges, a key component of the "measures intended to promote public and Parliamentary confidence in the business

appointments system". These reports are based on regular statistical returns from departments. There were instances of incomplete returns, and some examples of inconsistencies, when the system was first introduced; but this is no longer the case and the Government can confirm that the Committee's recommendation that "prompt and accurate returns to the Cabinet Office" should be regarded "as a matter of highest priority" is in accordance with current practice.

12. The Government accepts the Committee's recommendations for specific improvements in the presentation of the statistics, namely that they should:

(i) set applications under the business appointment rules in the context of total wastage from Crown service;

(ii) distinguish the number of applications from those who resign or seek early retirement from those who retire at the end of their career; and

(iii) provide more information on a departmental basis.

13. With these and other possible improvements in mind the Government has decided to publish future statistical reports in a different format, producing statistics on a financial year basis and facilitating year on year comparisons over a rolling five year period. The first report in this form, providing the additional information sought by the Committee, will be for the financial year 1991/92 (covering the five years from 1987/88).

14. In the Government's view the Committee under-estimates the role of the Advisory Committee on Business Appointments in subjecting the administration of the business appointments rules to independent scrutiny. The fact that the members of

the Advisory Committee are appointed by the Government certainly does not detract from their independence. The Advisory Committee sees all the applications from the most senior Crown servants, and although its recommendations are advisory, successive Prime Ministers have departed from them in only a handful of cases (5 out of more than 300 since 1985). Moreover any of the individual cases handled by the Cabinet Office (OMCS) may be the subject of review by the Chairman or Deputy Chairman in one of their periodic reviews of casework, the effectiveness of which is acknowledged in the Committee's report.

15. The Government therefore rejects any suggestion that the business appointments rules are administered in a secretive manner. But it remains firmly committed to the principle that individual applications made under the rules should be received and treated in confidence; and it is unable to accept the Committee's recommendations that the outcome of such applications should be revealed, on request, to a Select Committee and that the conclusions of the Advisory Committee on Business Appointments should be made public, and any delay imposed or behavioural conditions applied should be generally known. Some outside appointments taken up by Crown servants do become a matter of public record; and the Government has always accepted that, exceptionally, in such circumstances it may from time to time be necessary or appropriate to comment on its handling of individual cases which are announced publicly and attract public attention. But that is a different matter from accepting a commitment to publish or disclose information about the outcome of individual cases as a normal practice.

16. The reasons for the Government's policy on this issue were set out in full in its response to the Second and Ninth Reports on the Defence Select Committee (Session 1987/88), published in February 1989 (Cmnd 585). It is not only a

question of respecting the privacy of the individuals concerned, as the Committee's report implies, although that is an important consideration. The application of the business appointments rules represents a substantial constraint on the freedom of the individuals concerned to take up employment of their choice. In its 1983/84 inquiry the Committee agreed that the present system, which depends ultimately on the voluntary consent of those affected, should not be replaced by one relying exclusively on a statutory code of conduct: a conclusion which the Government strongly endorses. In the Government's judgment the efficacy of the existing system, which depends on total frankness on the part of the individuals concerned and their readiness to see and accept it as not being unreasonably restrictive in its operation, would be undermined if the Government were to adopt a policy of routinely publishing the outcome of applications or disclosing them to a Select Committee.

FOURTH REPORT

The Treasury and Civil Service Committee has agreed to the following Report:

THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

1. Our purpose in undertaking this brief inquiry has been to survey the current application of the rules governing the acceptance of outside appointments by Crown servants and to establish the extent to which the situation has changed since the implementation of the recommendations made by our predecessor Committee in 1984. In the course of the inquiry we received evidence from the Cabinet Office (OMCS), the Prime Minister's Advisory Committee on Business Appointments and a firm of recruitment consultants.

Background

2. The rules on the acceptance of outside appointments by Crown servants (the business appointments rules) are designed

“... to avoid any suspicion, no matter how unjustified — that the advice and decisions of serving officers might be influenced by the hope or expectation of future employment with a particular firm or organisation: or

that a particular firm might gain an unfair advantage over its competitors by employing someone who, in the course of their official duties, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets.”¹

In successive investigations of the acceptance of outside appointments by Crown servants, Committees of this House have agreed with the consistent Government view that

“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 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.”²

The business appointments rules are intended to be the means by which any potential conflict between these two principles is resolved but there has been disagreement over what weight should be given to the free movement of Crown servants to commerce and industry compared with that given to the avoidance of any appearance of impropriety.

3. Our predecessors made a preliminary report on the acceptance of outside appointments by Crown servants in 1981.³ This was followed in Session 1983–84 by a further, extensive, inquiry at the end of which the Committee concluded that “we confirm the opinion of our predecessor Committee 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.”⁴ The Government accepted many of the recommendations of that Report, most notably those concerned with the drafting and administration of the business appointments rules. However, to our regret, it did not introduce the degree of openness into the system that our predecessor

¹The business appointments rules have been revised several times. In this report we refer to three drafts; the 1983 version, which preceded our predecessor Committee's Eighth Report of Session 1983–84 (*The Acceptance of Outside Appointments by Crown Servants*, HC302) and was printed in that Report, the 1988 version, which was printed in the 1988 Cabinet Office Statistical Report on the Acceptance of Outside Appointments by Crown Servants, and the 1989 version, which is the most recent revision of the rules, and was published in the 1989 Cabinet Office Statistical Report on the Acceptance of Outside Appointments by Crown Servants. Where no date is given, the reference is to the current text. Rules on the Acceptance of Outside Appointments by Crown Servants (1989), para 1.1.

²Rules on Acceptance of Outside Appointments by Crown Servants, 1988 version, para 1. cf. 1983 version, para 1, and 1989 version para 1.2.

³Fourth Report from the Treasury and Civil Service Committee, *The Acceptance of Outside Appointments by Crown Servants*, HC(1980–81)216.

⁴Eighth Report from the Treasury and Civil Service Committee, *The Acceptance of Outside Appointments by Crown Servants*, HC(1983–84)302, para 1.11.

Committee desired. Since then, the Defence Committee has examined the movement of MoD civil servants and members of HM Forces into the private sector on a number of occasions.⁵ It has repeatedly expressed its concern that the Government's understandable desire to preserve individual confidentiality had led to excessive and unnecessary secrecy about such movement and that this secrecy made it impossible to conclude "that the movement of Crown Servants to industry was in the public interest, or that the business appointment rules ensured its propriety."⁶ We note the Defence Committee's conclusion: "We do not say that impropriety exists. We do say that the Government has been unwilling to demonstrate to us, either publicly or privately, that impropriety does not exist."⁷

4. In the course of conducting our present inquiry, we learnt that between 1988 and 1989 the Cabinet Office itself undertook a thorough review of the ways in which departments were interpreting and implementing the rules. This has clearly led to an increase in applications under the rules in certain departments and certain circumstances.⁸ We also learnt that our interest in one case in which an applicant had failed to receive details of the conditions the department intended to impose has led to tighter procedures in the department concerned. These examples suggest that outside scrutiny, whether from Committees of this House or from the Cabinet Office, leads to greater concern to observe the rules. **The greater openness desired by our colleagues and ourselves would not only increase public confidence in the system, but make its workings more efficient.**

THE BUSINESS APPOINTMENTS RULES

5. The rules may be summarised as follows:

—those who propose to take an appointment to which the rules apply within two years of leaving Crown service must seek permission to do so. The rules do not apply to "unpaid appointments in non-commercial organisations; or appointments in the gift of ministers",⁹ but do bite on any other application from Grades 1, 1A, 2 and 3,¹⁰ and applications from those at lower grades who have had official dealings with their prospective employer or access to commercially sensitive information of competitors of their prospective employer;¹¹

—the rules allow departments to impose a waiting period or conditions on a former Crown servant who moves to the private sector; for example, a Crown servant may be told not to contact his previous department, or forbidden to work on a specific project. The greatest sanction available is the imposition of a two year waiting period before taking up a particular position. The rules do not apply to those who have left Crown service more than two years previously.

⁵Second Report from the Defence Committee, *Business Appointments: The Acceptance of Appointments in Commerce and Industry by Members of the Armed Forces and Officials of the Ministry of Defence*, HC(1987-88)392, Ninth Report from the Defence Committee, *Business Appointments: Observations on the Government's Reply to the Second Report, Session 1987-88*, HC(1987-88)622, Fourth Report from the Defence Committee, *Statement on the Defence Estimates 1989*, HC(1988-89)383, paras 146-150, First Report from the Defence Committee, *The Appointment of the Head of Defence Export Services*, HC(1989-90)14.

⁶Fourth Report, HC(1988-89)383, para 148. See also Second Report, HC(1987-88)392, para 1.

⁷HC(1988-89)383, para 150.

⁸The Defence Committee's 1984 inquiry into business appointments suggested that one result of our predecessor Committee's inquiry in Session 1983-84 was that the MoD treated applications more stringently than it had previously done, although the MoD subsequently disputed this. See HC(1987-88)392; HC(1987-88)622.

⁹Rules on the Acceptance of Outside Appointments by Crown Servants, para 2.1.

¹⁰For equivalent ranks in the Armed Forces see Evidence p 47. In Civil Service terms, Grade 1: Permanent Secretary; Grade 1A: Second Permanent Secretary; Grade 2: Deputy Secretary; and Grade 3: Under Secretary. These grades are covered by the Top Salaries Review Board.

¹¹The procedure for each grade varies: Applications from Grades 1, 1A and 2 must be referred to the Head of the Home Civil Service, and will be referred to the Prime Minister's Advisory Committee on Business Appointments (the Advisory Committee) unless "the Head of the Home Civil Service and the Departmental Minister agree that such reference would be inappropriate (for example, when the appointment is to a non-commercial body such as a university)". Applications from Grades 1 and 1A are automatically subject to a three month waiting period.

Applications from those at Grade 3 or equivalent must be referred to the Cabinet Office who then consult the Head of the Home Civil Service who may, if he sees fit, recommend to the Prime Minister that the application be referred to the Advisory Committee.

Applications from grades below Grade 3 are dealt with by departments although the Cabinet Office must be consulted "unless the applicant has had no dealings with the prospective employer and there appears to be no risk of criticism; or the employment is with a non-commercial organisation" (Grades 4-7). When the applicant is an SEO or below, departments "do not need to consult the Cabinet Office where:

- the applicant has had no official dealings with the prospective employer in the previous two years, or at most dealings of a casual nature; and
- there appears to be no risk of the disclosure of commercially sensitive information; or
- the appointment is with a non-commercial organisation." (para 4.3)

6. In the years between 1985 and 1989, the number of applications from those at Grade levels 1 to 3 has fluctuated between 80 and 116 per year; applications from those at Grade levels 4 to 7 have been between 291 and 385 per year and from those at or below the level of SEO between 384 and 578 per year.¹² However it is impossible to set the number of those making applications under the business appointments rules in the context of total wastage from Crown Service, a deficiency which we discuss in paragraph 42 below.

Application of the rules to those on contract appointments

7. In the course of our inquiry we learned that the Government is considering a change in the rules. At present, the rules apply to those appointed to Crown service from outside on a fixed contract basis in exactly the same way as they apply to career civil servants. As a witness told us:

“Ministers are minded to amend the business appointment rules to exempt Crown servants appointed to Grade 1 or 1A posts . . . on a fixed contract basis from the requirement that permanent officials in those grades should have an automatic 3 month period before taking up outside employment. The reason for making this distinction is in the first place that the circumstances of Grade 1 or 1A officials recruited from outside the Civil Service on a fixed contract are rather different from those of permanent civil servants in those grades who, when they retire, have a pension and lump sum to cushion the initial blow of retirement or who resign from their own choice. Somebody coming in on a fixed term contract comes in from other employment and will be expecting to return to employment. The Government has determined there is to be no departure from the principle that in all such cases those concerned should seek approval under the rules and cases will still go to the Advisory Committee in the normal way. In other words cases coming to the Advisory Committee should be considered on their merits and where under the normal application of the rules a waiting period—which could be 3 months or longer than 3 months—or any other condition is necessary then it should be imposed. . . . But the automatic imposition of a 3 month waiting period in the circumstances of these cases seems particularly onerous and potentially unfair since it amounts to, in effect, an enforced period of unemployment. The Government is exercised by the fact it wants to get people of the right calibre into jobs and does not want to put unnecessary obstacles in their way . . .”¹³

8. We see the force of this argument and agree that the automatic three month waiting period for those appointed to Grade 1 or 1A posts on fixed term contracts from outside Crown service should be waived. This is on the understanding that the Advisory Committee will continue to see all such cases and apply the rules as stringently to those seconded into Crown service as to career Crown servants in all cases where there could be any suspicion of impropriety.

ADMINISTRATION OF THE RULES

The Prime Minister's Advisory Committee on Business Appointments

9. The Prime Minister's Advisory Committee on Business Appointments (the Advisory Committee) is at the apex of the business appointments system. This is an independent Committee which “advises the Prime Minister on applications referred to it under the rules on the acceptance of outside appointments by Crown servants”.¹⁴ As a witness told us “one of the keys to the integrity of this system is the Advisory Committee. They are an independent committee and they have to be trusted”.¹⁵ Our predecessors recommended that two senior backbench Members of this House should be added to the Advisory Committee which was already chaired by a Member of the House of Lords.¹⁶ Although in 1985 the Government thought it inappropriate to have more than two senior Parliamentarians on the Committee at any one time,¹⁷ the Committee now consists of *three* senior Parliamentarians, one of

¹²Cabinet Office Statistical Report, 1989, Table 8.

¹³Q28.

¹⁴Evidence, p 33.

¹⁵Q64.

¹⁶HC(1983-84)302 para 5.16.

¹⁷Cmnd 9465, para 44.

them a Member of this House, two industrialists, and three former Crown Servants. We are pleased that the Government has increased Parliamentary representation on the Prime Minister's Advisory Committee on Business Appointments.

10. The Advisory Committee is serviced by the section of the Cabinet Office which deals with the business appointments rules and the Advisory Committee itself reviews a selection of cases dealt with by the Cabinet Office. This system is intended to ensure applications are dealt with consistently and we were told that "the influence of the Advisory Committee is pervasive throughout the system",¹⁸ even though it deals directly with only a small proportion of all applications.¹⁹

Relations between departments and the Cabinet Office

11. All cases in which conditions may be imposed should be referred to the Cabinet Office (OMCS), but departments are, in most instances, the final arbiters of the applications they receive. We were told that "Except in cases in which the Advisory Committee makes a recommendation to the Prime Minister the final decision in all cases rests with the department concerned".²⁰ Nonetheless, although a great deal of responsibility for the administration of the rules is devolved to individual departments, departments are expected to follow the lead set by the Cabinet Office. In spite of the advisory nature of the Cabinet Office's role, it performs an essential function as it has the wide knowledge of precedents necessary to ensure that the rules are applied consistently throughout the Crown Service.²¹

12. We were told that the Cabinet Office "will not infrequently make suggestions for a different approach from that recommended by the Department, although no formal record is kept of the number of cases in which this occurs. If the Department disagrees with the advice given in such circumstances it will discuss the case with the Cabinet Office. The final decision rests with the departmental Minister; but in practice differences of view rarely, if ever, remain following such discussions."²² We would be concerned if it appeared the Cabinet Office did not have sufficient authority to ensure that all departments applied the rules consistently.

13. The same section of the Cabinet Office is responsible for both the administration of the business appointments rules and the standards of conduct in the Civil Service. Our predecessor Committee recommended this²³ and we are pleased that, despite the Government's previous rejection of the recommendation, it has now been implemented. We trust that this combination of responsibilities will ensure that a clear lead is given in the implementation of the rules.

DRAFTING AND APPLICATION OF THE RULES

14. One of the consequences of the review of the business appointments rules which we referred to in paragraph 4 above was that the Cabinet Office produced a new version of the rules, which was published with the 1989 Statistical Report on the Business Appointments Rules. The rules were generally clarified and now contain details of the procedures for ensuring that the rules are brought to the attention of all staff. With a few exceptions, which we discuss below, the latest text of the rules is far superior to that which preceded it.

Impropriety that may arise from duties in Crown service

15. In the course of conducting this inquiry we have become aware that there is a lacuna in the drafting of the rules which has existed since our predecessor Committee first addressed the subject. The rules then stated:

"The rules aim at avoiding any suspicion—however unjustified—that serving officers might be ready to bestow favours on firms in the hope of benefits to come. They also seek to guard against the risk that a particular firm might be thought to be gaining an

¹⁸Q64.

¹⁹Evidence, p 8, Table A. In 1989, for example, the most recent year for which final figures are available, there were a total of 992 applications made under the rules, of which 246 applications (from 196 individuals) were referred to the Cabinet Office and 37 applications (from 27 individuals) to the Advisory Committee.

²⁰Evidence, p 26.

²¹*ibid.*

²²*ibid.*

²³HC(1983-84)302, para 5.13.

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."²⁴

In fact, as our inquiry revealed, the rules are also designed to prevent Crown servants exercising undue influence on their former colleagues or taking advantage of what might be termed the "trade secrets" of their former department; for example, we were told that

"... a senior Crown servant may give an unfair advantage to an employer which he is joining by exploiting contacts in his or her former department. There have been a number of instances recently where the Advisory Committee have imposed 'no contact' conditions in those circumstances, which would not apply in quite the same force in lower grades."

and

"say somebody at around SEO level involved in setting a requirement for a government contract... puts in an application to go to a firm which is likely to bid for that contract. In such circumstances the department would certainly consult the competitors of that company. ... I think the department would normally be looking at a behavioural condition under those circumstances which would prevent the individual concerned working on that particular project."²⁵

In our view, it would clearly be improper for a former Crown servant to take employment in which he dealt with a particular project for which he had previously had responsibility and the rules must ensure that this does not happen.

16. The question of how far this principle should be applied when a Crown servant has been responsible not for a project but for advising Ministers on questions of policy is more difficult, since Ministers ultimately have the responsibility for deciding policy, whatever advice is given. Nonetheless, the rules are drafted to avoid the suspicion that "the advice and decisions of a serving officer"²⁶ might be influenced by the prospect of future employment, and in our opinion it would be improper for a Crown servant who had been at the head of a division which advised Ministers on policy or on a particular aspect of policy to move directly to a post with an organisation which had benefited from Government policy on the subject concerned.

17. We recommend that the rules should be revised to make it clear that they are intended to prevent any impropriety which may arise from possible conflict between the nature of the proposed employment and the nature of the applicant's responsibilities while in Crown service, whether those responsibilities were for a specific project or were more general in their nature.

Reporting offers of employment

18. The version of the rules which appeared in response to our predecessor Committee's Report contained the requirement that "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".²⁷ This section of the rules has now been revised so that such offers must be reported only if the individual concerned intends to pursue the offer of employment. In our opinion, this was a mistake. However great the probity of the individuals concerned, public confidence in the integrity of a system which would allow a Crown servant working on a procurement project, say, to receive an offer of employment from one of the interested

²⁴HC(1983-84)302, Evidence, p172. These aims have remained substantially unchanged throughout successive versions of the rules.

²⁵Q34.

²⁶Business Appointments Rules, para 1.1.

²⁷Rules on the Acceptance of Outside Appointments by Crown Servants, 1986 version, para 15. This requirement was introduced by the Government in partial response to a recommendation that "the rules should require that officials of the rank of Under Secretary and above do not discuss offers of post retirement employment in 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 permission sought". (HC(1983-84)302, para 5.6) The Government response suggested that the mischief against which the recommendation was aimed could be avoided "by 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". (Cmnd.9465, para 35).

parties without reporting it is unlikely to be high. There is a further disadvantage in that the change deprives departments of a means of finding out if an outside employer is offering employment to such a number of the Crown servants with whom it has dealings that suspicions of impropriety inevitably arise.

19. We were told that the revision to the rules was made because departments found the previous requirements impracticable²⁸. We find this surprising, since in 1985 the Government accepted and indeed strengthened our predecessor's recommendation about the reporting of such offers. **At the very least, we recommend that Crown servants employed in sections involving procurement or contract work should once again be obliged to report all approaches that seem likely to lead to offers of employment which would fall within the business appointments rules.**

Applications on resignation

20. Those retiring from the public service at the normal retirement age of sixty may still wish to continue to work and seek outside employment. It is not unreasonable for them to do so but clearly different considerations apply to those who resign or retire early to take up appointments in the private sector.

21. The movement of senior figures has attracted attention and even censure in the past, but it can be argued that the movement of Crown servants to the private sector in mid-career is more likely to raise questions of impropriety than movement at the end of a career. The Defence Committee has pointed out that "where an Under Secretary may have been responsible for the overall supervision of a number of equipment projects, a Senior Executive Officer, say, may have been intimately concerned over a considerable period with the details of a single purchase". In Session 1988-89 the Defence Committee twice expressed its concern "that relatively junior staff are moving to defence contractors on a substantial scale, raising . . . questions of propriety and scrutiny."²⁹

22. It must, of course, be remembered that the business appointments system is a voluntary one, and that while those who experience delay in being given permission to take up an appointment after retirement have a pension to support them, those who resign before permission is granted have no such resources. Nor is the business appointments system intended to guard departments against the retention problems which are common to almost all employers of trained staff. Nonetheless, those concerned must balance these considerations with an awareness that applications to take up appointments after resignation from Crown service may require special scrutiny.

23. At present, there are no figures available which would enable us to determine the number of applications made on resignation from Crown service, as opposed to the number on retirement, a matter to which we return below.

Application of the rules below Grade 3

24. We are concerned that at grades below Grade 3 the business appointments rules are simply drawn to the attention of those retiring or resigning from Crown service and those concerned have to decide for themselves whether the rules apply in their case. No formal checks are made to ensure that applications are made when appropriate.³⁰ **This is unsatisfactory.**

25. We accept that since the Government response to our predecessor's Report in 1985, and in particular since the Cabinet Office conducted a review of the application of the rules in departments in 1988-89, "guidance on best practice has been circulated, with particular emphasis on procedures for ensuring that the rules are brought to the attention of staff".³¹ In addition, departments would be likely to hear of cases which might have caused concern even if an application had not been made under the rules:

²⁸Q40.

²⁹Fourth Report from the Defence Committee, HC(1988-89)383, para 149. See also HC(1988-89)269, paras 30 and 31.

³⁰Indeed, we began this inquiry, in part, in response to a Joint Customs Consultative Committee paper which suggested that there had been cases in which the business appointments rules had not been properly applied. Our inquiries revealed the officer concerned had had dealings with his current employer "while working in the Department but did not seek approval for the appointment as he should have done under the rules". (Evidence, p3).

³¹Evidence, p2. In addition, we were told that the Cabinet Office encouraged departments to issue staff who resigned with an application form which contained a copy of the rules, Departments had discretion to waive this requirement in the case of staff who could be readily identified as unlikely to fall within the rules.

"We hear from time to time of cases where people very occasionally have failed to apply under the rules where they should have done. Those situations arise, and departments get to hear about them, because they have been reported by another member of staff who has been in contact with the employing organisation or by a competitor of that firm."³²

26. In written evidence, the Cabinet Office gave three examples in which cases involving former Crown servants who worked as consultants without seeking approval (as they should have done) had come to departments' attention. Each of these cases related to contact between former officials and the department in which they had been employed.³³ It is not clear to us that all cases in which the potential for impropriety arose would come to light so easily. Accordingly, we asked whether personnel departments routinely asked what employment, if any, resigning civil servants intended to take up. We were disappointed to be told that the information was not available to the Cabinet Office.

"It would not be reasonable to impose such a requirement on departments in the context of the business appointments' rules, since in the overwhelming majority of cases staff who resign from the Civil Service do not take up outside appointments which would require approval under the rules. However, following the Cabinet Office (OMCS) review of the rules in 1988-89, departments were encouraged to assess the need for an application under the rules whenever they receive a request for a reference on behalf of an existing or former member of staff and to follow this up with the individual concerned as necessary."³⁴

27. We find it hard to accept this logic. **The requirement to consider whether an application under the rules is necessary when a reference is sought is welcome**, but there must be many cases in which references are not sought through a central personnel unit. If this requirement is to be implemented effectively³⁵ all those within the department who might be asked to supply references must be made aware of it.³⁶ **Even if, on resignation, the vast majority of Crown servants do not go to employment to which the business appointments rules apply, asking for details of any employment they intended to take up would provide the means for a simple and effective check which would show if there was a need to enquire further.**

Monitoring of conditions

28. Our predecessor Committee recommended that enquiries should be made after one year to ensure that any behavioural conditions imposed on former Crown servants were complied with³⁷, but the Government maintained "the absence of formal checks does not mean that the imposition of conditions is unpoliced".³⁸ In the course of this inquiry we were told

"As far as enforcing the behavioural conditions is concerned, I think they are most frequently given in two situations. One is where competitors express concern about a particular appointment, and there in effect the conditions are, if you like, almost brokered with the competitors . . . and the competitor will blow the whistle if they think anything is going wrong. Another area where conditions may apply is in relation to contacts between the firm and the department itself, and there of course the department is in a position to police its own conditions . . . Among the cases where we have suggested a condition, where departments might have otherwise not been inclined to, I can recall one or two cases where we have made sure departments have taken steps to ensure people in the area concerned are informed so that staff will report any breaches of the conditions. So that although the system is voluntary, there are quite a lot of constraining factors operating".³⁹

³²Q15.

³³Evidence, pp23-24.

³⁴Evidence, p26.

³⁵*ibid.*

³⁶In evidence to the PAC, the Cabinet Office expressed the hope that departments would routinely conduct exit interviews with clerical officers who had resigned, although the devolution of responsibility to individual departments meant that they did not know whether this was being done. Those responsible for such interviews should be aware of the rules and could inquire as to future employment. Fourth Report from the Committee of Public Accounts, *Clerical Recruitment in the Civil Service*, HC(1990-91)73, Q4802.

³⁷HC(1983-84)302, para 3.17.

³⁸Cmnd 9465, para 24.

³⁹QQ58-59.

29. We accept that honest attempts are made to ensure that informal monitoring of behavioural conditions does take place. Nevertheless, it seems optimistic to assume that companies will always be able to detect when their competitors breach conditions prescribed under the business appointments rules. In most departments, it would not be onerous to conduct a formal check annually; even the Ministry of Defence, the department from which most applications come, and about which there is most concern, has only imposed such conditions in 93 cases since 1986.⁴⁰ **To increase public confidence in the system, we recommend that formal checks on the observance of behavioural conditions are made.**

CONSULTANCIES

30. The section of the rules which deals with applications to take up a post as a consultant, either as a self employed consultant (a "brass-plate" consultancy) or as an employee of a larger consultancy, has been redrafted and considerably extended. As well as the normal conditions for applications under the business appointments rules, applications are required if a Crown servant who wishes to take up employment as a consultant has "had any dealings of a commercial nature with any outside body or organisation in the last two years of Crown employment"⁴¹. We welcome this, since, as the Cabinet Office made clear, it recognises the danger that a Crown servant employed as a consultant may be working at one remove for a company with whom he or she may have had dealings while in Crown service.

31. The procedures set out in the rules attempt to deal with the problem that, by the very nature of their employment, consultants may deal with a variety of clients, and clients may come forward at any time during the two years in which the business appointments rules apply. Departments are able to "impose a requirement to seek official approval before accepting commissions of a particular nature or from named employers"⁴² and that "the basis of our (the Government's) approach to consultancies" is that departments should require that consultants do not work for an employer with whom they have had contact whilst in Crown service which would have led to the imposition of conditions if an application to work directly for that employer was to be approved⁴³. **But there is no monitoring of consultants' observance of such conditions. We consider that monitoring is important and that the changing nature of a consultant's clientele makes such monitoring still more desirable.**

Consultants re-employed by their former departments

32. The rules do not deal explicitly with the position of consultants re-employed by their former departments, either directly as self-employed individuals, or as members of a consultancy firm, nor do they consider the possibility that consultants may find themselves dealing with matters for which they previously had responsibility. The Cabinet Office told us "the only circumstances in which a possibility that a former Crown servant may become involved in working as a consultant on matters for which he or she had responsibility as a Crown servant may not be addressed as a result of an application under the business appointments rules are . . . where the individual concerned was in a grade lower than Grade 3 or its equivalent and had no recent or significant dealings with the prospective employer or any recent dealings of a commercial nature with any outside body or organisation."⁴⁴ However, grades beneath Grade 3 often carry a great deal of responsibility, and the nature of a consultant's previous work within the department might make his re-employment as a consultant inadvisable, regardless of any contact with outside organisations. There are occasions on which consultants are employed to "provide assistance in identifying and investigating problems and/or opportunities concerned with policy, organisation, procedures and methods"⁴⁵ or even to shed a fresh light on a particular departmental decision. In these cases, particularly the last, re-employment of a former Crown servant with experience in the department so recent that the business appointments rules still applied would be inappropriate.

⁴⁰In the last 5 years, behavioural conditions have been applied in only 5 cases in the Ministry of Agriculture, Fisheries and Food; 9 cases in the Foreign and Commonwealth Office, 10 cases in the Departments of Health and Social Security, 24 cases in the Department of Trade and Industry and 4 cases from the Inland Revenue. See Evidence, pp10-12.

⁴¹Evidence, p1.

⁴²Evidence, p2.

⁴³Q44.

⁴⁴Evidence, p2.

⁴⁵HM Treasury, *Seeking Help from Management Consultants*.

33. The Treasury guidelines on the employment of consultants indicate that it would only be appropriate to re-employ a former Crown servant as a consultant "where . . . a former civil servant has subsequently acquired knowledge and expertise relevant to the appointment and has acted as consultant to other organisations".⁴⁶ We are of the opinion that the business appointments rules should also address the possible problems that could arise from the re-employment of former Crown servants. **The redrafting of the rules to make clear that they are intended to guard against any impropriety which may arise because of conflict between the applicant's proposed employment and the nature of the applicant's responsibilities while in Crown service, as we have recommended in paragraph 17 above, should bring such cases within the ambit of the rules.**

CASEWORK REVIEWS

34. Not only do the rules require that "all applications which are likely to attract conditions should be seen by the Cabinet Office (OMCS)"⁴⁷ but, in addition, the Cabinet Office now conducts retrospective reviews of departmental casework. In turn, a sample of the cases dealt with by the Cabinet Office is reviewed by the Advisory Committee. Such a system will only succeed if the monitoring of departments by the Cabinet Office is rigorous enough to ensure that all cases where there is doubt will be referred to it and if the monitoring by the Advisory Committee is extensive enough to give a clear lead to the Cabinet Office.

Reviews conducted by the Cabinet Office

35. The Cabinet Office receives quarterly statistical returns from each department which give the name and grade of the applicant; whether or not the application was referred to the Cabinet Office; the company the applicant wished to join and the outcome of the application, including details of any conditions applied.⁴⁸ The Cabinet Office checks this information against its own database of cases on which it has given advice. We are satisfied that this monitoring, in itself, should ensure that all cases in which departments are aware of the possibility of impropriety are referred to the Cabinet Office.

36. The Cabinet Office also uses the statistical returns provided to it as the base for conducting reviews of cases dealt with by departments. These reviews enable "differences of interpretation between departments and between departments and the Cabinet Office (OMCS) to be identified and discussed",⁴⁹ as well as enabling the Cabinet Office to ensure that departments are applying the rules correctly. Our witnesses told us that particular departments are targeted; for example

"One of the things we will be interested to look at next year . . . is the fact that one or two departments have had a considerable rise in the number of applications at SEO level and below, which they have dealt with and approved unconditionally . . . We are not surprised necessarily that lots of the applications have been approved unconditionally, but we want to look at it to make sure."⁵⁰

Reviews are also occasionally triggered by applications which the Cabinet Office sees itself.⁵¹ The number of cases reviewed varies; in 1989, when the Cabinet Office undertook a major review of the way in which departments were handling cases below Grade 3, over 100 cases were seen; in 1990, eight departments were targeted and around thirty applications reviewed, from a total of 611 cases which had not been referred to the Cabinet Office.⁵²

37. While we welcome these reviews, two things concern us. The first is that the number of cases reviewed must represent a significant proportion of the cases dealt with by a particular department. Our second concern is that excessive adherence to the principle of targeting departments whose quarterly returns have shown anomalies might lead to the neglect of departments which deal with very few cases, and which may accordingly be less accustomed to applying the rules. **We recommend that the Cabinet Office ensures that practice in each department is reviewed on a regular basis.**

⁴⁶Evidence, p31.

⁴⁷Evidence, p26.

⁴⁸Evidence, p6.

⁴⁹Evidence, p26.

⁵⁰Q20.

⁵¹*ibid.*

⁵²Q20; Evidence, p8, Table A.

Reviews conducted by the Advisory Committee

38. The reviews of the work of the Cabinet Office undertaken by the Advisory Committee are less extensive, as their purpose is rather to "ensure that those responsible for the handling of cases are acting in accordance with the wishes of the Committee"⁵³ than to monitor the Cabinet Office's performance of its duties. The reviews are conducted by the Chairman of the Advisory Committee and, in recent years, he has been joined by the Deputy Chairman.⁵⁴ We were encouraged to hear one witness describe a review as "a very bracing experience".⁵⁵ **Both the reviews conducted by the Cabinet Office and those of the Advisory Committee were introduced in response to the Report of our predecessor Committee in 1985; we are pleased that they appear to be successfully fulfilling the purpose envisaged in our predecessor Committee's recommendations.**⁵⁶

STATISTICS

Annual Reports

39. Since 1986, as our predecessor Committee recommended, the Cabinet Office has published an annual statistical report on the workings of the system.⁵⁷ These statistics are not full enough to enable us to assure ourselves that there have been no disturbing developments in particular departments. We are concerned that departments do not always seem to have given preparation of their statistical returns to the Cabinet Office the priority they should, although it appears that the situation has improved in recent years.⁵⁸ We recommend that departments should regard the provision of prompt and accurate returns to the Cabinet Office as a matter of the highest priority.

40. We note that the Cabinet Office is currently undertaking a search through the statistics "to clear up any minor discrepancies and re-present them in a clearer format which would facilitate year-on-year comparisons".⁵⁹ While we recognise that the desire to make statistics more useful can result in making them unmanageable, the statistics provided by the Cabinet Office are part of the measures intended to promote public and Parliamentary confidence in the business appointments system. They cannot perform this function unless they contain more information than they do at present. There are three specific improvements we would like to see:

- (i) it should be possible to set applications under the business appointments rules in the context of total wastage from Crown service;
- (ii) it should be possible to identify the number of applications from those who resign or seek early retirement as opposed from those who retire at the end of a career in Crown service; and
- (iii) more information should be given on a departmental basis.

⁵³Evidence, p27.

⁵⁴While the number of cases reviewed varies, a minimum of twelve are examined and although the Chairman initially selects a random sample, this sample is added to if it does not contain a representative selection of cases. (Evidence, pp26-27).

⁵⁵Q64.

⁵⁶HC(1983-84)302, paras 5.11, 5.12.

⁵⁷The most recent of these reports, that for 1989, gives details of the number of applications referred to the Cabinet Office for the years 1980 to 1989, broken down in each case to show applications from all Crown servants, from Civil Servants and from members of HM Forces, and dividing applications into three bands depending on whether they are received from those from grades 1 to 3 (the level at which applications are automatically referred to the Cabinet Office), Grades 4-7 or SEO and below. It gives similar details of the outcome of those applications and of the number of individuals who submitted applications. The report also contains a summary of applications considered by the Advisory Committee between 1985 and 1989, and analyses the type of job and company which applicants sought permission to join. It gives a summary of all applications from Crown servants, including cases not referred to the Cabinet Office, between 1985 and 1989, a similar summary of all applications dealt with by the Ministry of Defence and figures showing the proportion of business appointment applications referred to the Cabinet Office in each of the three grade bands for each year from 1985.

⁵⁸For example, Tables 6 and 7 of the 1989 Cabinet Office Report explain that some of the figures that they contain may not be comparable with those elsewhere in the report "because not all Departments were able to provide complete and accurate returns"; Q21.

⁵⁹*ibid.*

(i) Relationship between applications under the rules and total wastage from Crown service

41. The first Cabinet Office statistical report on the acceptance of outside appointments by Crown servants contained a table giving the number of those submitting applications under the business appointments rules and the total wastage from the Civil Service but this was not continued since there were statistical difficulties in relating the two sets of figures.⁶⁰

42. The Cabinet Office subsequently provided us with a table showing for each of the financial years from 1985–86 to 1989–90 the number of individuals who retired or resigned from the Home Civil Service, and the number of individuals from the Home Civil Service who submitted applications under the business appointments rules which were submitted to the Cabinet Office.⁶¹ While we accept that tables such as these do not enable precise comparisons to be made—for example, individuals may make applications under the rules for up to two years after they have left Crown service—they at least set the number of individuals submitting applications in context. This would enable those interested to identify any trends that might occur in the numbers of such individuals. We recommend that in future, statistical reports should contain tables on the lines of that provided to us by the Cabinet Office, but relating the total number of individuals who submitted applications under the business appointments rules in the Civil Service and in the Armed forces to the total wastage from those bodies.

(ii) Applications on resignation

43. There is a case for increased scrutiny of applications to take up an appointment on resignation from Crown service. We believe that the extent to which Crown servants wish to make mid-career moves into employment to which the business appointments rule apply should be kept under review. At present, no figures are kept showing the number of individuals who made applications to take up employment after they had resigned from Crown service, as opposed to those who made applications to take up posts after retirement. The Cabinet Office were able to provide figures distinguishing between resignations and retirement for those cases with which they themselves had dealt but not others. Although the figures supplied to us did not show any marked increase in the number of resignations in the recent past, they did not distinguish between early retirement and retirement at the end of a career. Since an early retirement might mask a mid-career move, this is unsatisfactory. There should be figures available which would reveal trends in the number of Crown servants who resign or take early retirement after making an application under the rules. We recommend that such figures should be collected and published in the Cabinet Office Reports.

(iii) Breakdown of statistics by department

44. The figures currently published by the Cabinet Office distinguish between cases dealt with by the MoD and cases dealt with by other departments but the tables which appear give only a summary of applications aggregated over a number of years. This can be misleading.⁶² Since the figures are collected on a departmental basis we do not see why, in future, they should not be given on such a basis. This would enable our colleagues on other departmental Select Committees to monitor the working of the rules in relation to their own department, if they so wished.

CONCLUSIONS

45. We are pleased to note the recent attempts to make the system more effective by changing both the business appointments rules, and the way in which departments implement them. But there are still ways in which we believe the drafting of the rules should be improved. The particular problems of which we have become aware have arisen not so

⁶⁰For example, the figures given for those making applications under the rules gave only those whose cases were referred to the Cabinet Office, not all those making applications; the figures for applications under the rules included applications from Members of the Armed Forces and from those who had previously left Crown service while the figures for wastage covered only wastage from the Civil Service in any one year. See QQ4–8; Evidence p23.

⁶¹We were told that in the case of Grade 4 and below 'information on the number of applicants whose cases are considered by departments and approved without reference to the Cabinet Office (OMCS)—as opposed to the number of applications so considered—is not available centrally', although we were told that such information would be collected in future. (Evidence, p23, emphasis added).

⁶²The summary of applications dealt with by the MoD gives the impression that applications from those at or below Grade 4 dealt with by the MoD were slightly less likely to attract conditions than those dealt with by other departments. However, in the last three years at least, the MoD has applied more conditions to such applications than have other departments. (Evidence, p27).

much because of deficiencies within the rules themselves but because of difficulties in implementing them and monitoring their conditions. The devolution of responsibility to departments means that the onus of ensuring that applications are made whenever they are appropriate, and that those applications are dealt with appropriately, rests upon them. Nevertheless, departments have many responsibilities, and there is a danger that the business appointments rules will not be treated as seriously as they should be, however great the theoretical commitment to their implementation, without constant monitoring by the Cabinet Office.

46. We were concerned to learn that the section of the Cabinet Office which deals with the business appointments rules contains only four staff.⁶³ This section not only considers applications referred to it by departments, and conducts retrospective reviews of departmental case work but also staffs the Prime Minister's Advisory Committee and prepares the annual statistical reports on the working of the system. Its head also has other responsibilities as we noted in paragraph 13 above. At present, it is the principal body ensuring departments apply the rules properly, and its responsibilities will be increased by the implementation of our recommendations. We recommend that the staffing of this section is reviewed, since, if the Cabinet Office is to respond to the recommendations of this Committee and continue to give a clear lead to departments, it will need the resources to do so.

47. The Cabinet Office is one source of pressure on departments to ensure that they accord the business appointments rules the priority they should have, but it is clearly inappropriate for it to attempt to replicate the personnel sections of each department. The Prime Minister's Advisory Committee on Business Appointments exerts influence, and is independent, but its members are appointed by the Government, its recommendations are only advisory and its influence on the system indirect. We believe, as our predecessor Committee and the Defence Committee have both held in the past, that the real problem with the business appointments rules is the secrecy with which they are applied.

48. Openness in the administration of the rules is especially important in cases dealt with on the advice of the Prime Minister's Advisory Committee. In such cases, if the applicant accepts a particular employment, it is desirable that the conclusions of the Advisory Committee are made public. Again, it has been argued by the Government in response to previous inquiries that this would infringe the privacy of individuals. However, in view of the importance of maintaining public confidence in the operation of the business appointments rules we believe that recommendations of the Advisory Committee should be made public and any delay imposed or behavioural conditions applied should be generally known.

49. In any case, the system will become more open if our recommendations on the presentation of statistics are implemented. The knowledge that a Select Committee would be able readily to identify any unexpected trends in applications under the rules and to ask for them to be explained should provide an incentive to departments to ensure that the rules were properly implemented. However, the business appointments system would be far more effective if our colleagues or ourselves were able to ask for details of the conditions imposed on particular movements from Crown service to outside employment. The Defence Committee's investigations into the acceptance of outside appointments have frequently been hindered by the Government's refusal to reveal the conditions on which an individual is given permission to accept a particular appointment.⁶⁴ While we are pleased that behavioural conditions are made known to those in a position to provide informal monitoring of an individual's adherence to them, we agree with the Defence Committee that it is unsatisfactory that details of applications under the rules are passed to commercial rivals of the organisation that an applicant wishes to join, but not given to Select Committees of this House.⁶⁵

50. We understand that the Government has so far been reluctant to allow this, on the grounds that it infringes the privacy of those involved. Nonetheless, we note the Defence Committee's recommendation that, in future, "details of all applications to take up an appointment in industry should be available to the appropriate Select Committee. Those who make applications to take up such appointments will do so knowing this condition."⁶⁶ At the very least, the outcome of those applications should be revealed.

⁶³Q23.

⁶⁴See, for example, HC(1987-88)392.

⁶⁵HC(1987-88)392, para 50.

⁶⁶HC(1987-88)392, para 84.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

51. For the sake of convenience we have listed the conclusions and recommendations contained in our Report. These should not be considered in isolation but read in the context of the parts of the Report to which they relate.

- (i) The greater openness in the application of the business appointments rules desired by our colleagues and ourselves would not only increase public confidence in the system, but make its workings more efficient. (para 4)
- (ii) We agree that the automatic three month waiting period for those appointed to Grade 1 or 1A posts on fixed term contracts from outside Crown service should be waived. This is on the understanding that the Advisory Committee will continue to see all such cases and apply the rules as stringently to those seconded into Crown service as to career Crown servants in all cases where there could be any suspicion of impropriety. (para 8)
- (iii) We are pleased that the Government has increased Parliamentary representation on the Prime Minister's Advisory Committee on Business Appointments. (para 9)
- (iv) The latest text of the [business appointments] rules is far superior to that which preceded it. (para 14)
- (v) In our view, it would clearly be improper for a former Crown servant to take employment in which he dealt with a particular project for which he had previously had responsibility and the rules must ensure that this does not happen. (para 15)
- (vi) We recommend that the rules should be revised to make it clear that they are intended to prevent any impropriety which may arise from possible conflict between the nature of the proposed employment and the nature of the applicant's responsibilities while in Crown service, whether those responsibilities were for a specific project or were more general in their nature. (para 17)
- (vii) At the very least, we recommend that Crown servants employed in sections involving procurement or contract work should once again be obliged to report all approaches that seem likely to lead to offers of employment which would fall within the business appointments rules. (para 19)
- (viii) It is unsatisfactory [that no formal checks are made to ensure that Crown servants at grades below Grade 3 make applications under the business appointments rules when it is appropriate for them to do so]. (para 24)
- (ix) The requirement to consider whether an application under the rules is necessary when a reference is sought is welcome. Even if, on resignation, the vast majority of Crown servants do not go to employment to which the business appointments rules apply, asking for details of any employment they intended to take up would provide the means for a simple and effective check which would show if there was a need to enquire further. (para 27)
- (x) To increase public confidence in the system, we recommend that formal checks on the observance of behavioural conditions are made. (para 29)
- (xi) There is no monitoring of consultants' observance of such conditions [placed upon them]. We consider that monitoring is important and that the changing nature of a consultant's clientele makes such monitoring still more desirable. (para 31)
- (xii) The redrafting of the rules to make clear that they are intended to guard against any impropriety which may arise because of conflict between the applicant's proposed employment and the nature of the applicant's responsibilities while in Crown service should bring such cases [when former Crown servants are re-employed as consultants by Departments in which they had worked] within the ambit of the rules. (para 33)
- (xiii) We recommend that the Cabinet Office ensures that practice in each department is reviewed on a regular basis. (para 37)
- (xiv) Both the reviews conducted by the Cabinet Office and those of the Advisory Committee were introduced in response to the Report of our predecessor Committee in 1985; we are pleased that they appear to be successfully fulfilling the purpose envisaged in our predecessor Committee's recommendations. (para 38)
- (xv) We recommend that departments should regard the provision of prompt and accurate [statistical] returns to the Cabinet Office as a matter of the highest priority. (para 39)



Ke.01754

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270 0170

R Gozney Esq
Private Secretary to
The Foreign Secretary
Foreign and Commonwealth office
LONDON SW1A 2AH

13 August 1991

Dear Sir,

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

I am writing on behalf of the Chairman of the Advisory Committee on Business Appointments, Lord Carlisle, to inform you that the Committee has considered an application from Sir Alan Donald, the former Grade 2 Ambassador in Peking, who retired in May 1991. He seeks permission to accept an appointment with The Fleming Far Eastern Investment Trust plc.

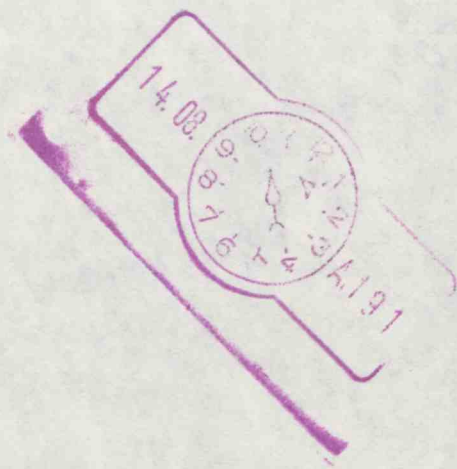
2. The Committee recommends that the application be approved unconditionally.

3. I am copying this letter to Andrew Turnbull (Number 10) for information.

*Yours sincerely,
Hugh Taylor*

H H TAYLOR

AT



CONFIDENTIAL



File
PMM

Subject re MATEY

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

PROPOSED CHANGE TO THE BUSINESS APPOINTMENT RULES

You discussed with the Prime Minister today your minute of 22 February. You said there was a case for abandoning the automatic three-month waiting period altogether so that all cases should be judged on their merits. Those moving to posts which had no connection whatever with their Civil Service job would be allowed to do so immediately. You recommended, however, that it was prudent to proceed step by step. You proposed, therefore, to abolish the automatic three-month waiting period only for those on fixed term contracts for the time being. The change in rules would be applicable to the new Chief of Defence Procurement.

The Prime Minister agreed with this approach. You will now inform the Treasury and Civil Service Select Committee and the Defence Select Committee.

AT

ANDREW TURNBULL

25 February 1991

CONFIDENTIAL

AT

Ref. AO91/454

PRIME MINISTER



Prime Minister
This is the minimum. It to
TCSC are considering the whole question
should it be use the clause to
push for abolition and consideration
on merits. The argument at X 2nd
applies to this as well.
I hope the TCSC don't press for
any tightening. There would be a great
deal of resentment - to civil service
given the speed with which some ex-Cabinet
have got straight into the trough.

AT 24/2

Proposed Change to the Business Appointment Rules

The purpose of this minute is to propose a limited change in the business appointments rules designed to exempt Crown servants appointed to Grade 1 or 1A posts on a fixed contract basis from the general requirement that officials in those grades should serve an automatic minimum waiting period of three months before taking up any outside appointment after leaving Crown employment.

2. The case for such a change has emerged from consideration of Sir Peter Levene's application to join Wasserstein Perella. When Sir Peter was appointed he accepted the rules as they now stand and he has agreed to serve out the automatic three month waiting period before he takes up his new appointment. But his case has raised concern about the implications of this requirement in the special - and very unusual - circumstances of an appointment such as his.

3. As I mentioned to you last week, there is a case for abandoning the automatic three-month waiting period altogether. There is no just reason for imposing a three month waiting period - and the loss of pay involved - when someone is moving to a post which has no connection whatever with their Civil Service job. The just course is to judge each case on its merits. But I do not suggest abolishing the automatic waiting period altogether at this stage. In view of the sensitivity of the Select Committees on this subject, I think it better to tackle it by stages and deal just with people brought in on short term contracts now.



4. The circumstances of Grade 1 or 1A officials recruited from outside the Civil Service on a fixed term contract are different from those of permanent civil servants in those grades who retire at the end of their career or resign at their own choice. They will have come in from other employment and will be expecting to return to employment. A minimum waiting period amounts to a forced period of unemployment, normally with no lump sum to cushion the blow. Of course, the nature of the employment to which the person returns may make a waiting period of more or less than three months necessary but that should be considered on its merits. It is in the public interest that the Civil Service should be able to attract people of high quality and vigour from the private sector to key jobs. This is already far from easy, given the problems there are over remuneration. Telling possible candidates of this kind that there will be an automatic delay and consequent financial loss when the time came to resume their private sector career irrespective of their choice of employment is at least an irritation and may be a crucial obstacle to interesting them in the appointment.

5. Subject to your approval I propose to amend the rules in the way set out in the attached Annex, which I should like to apply to Sir Peter Levene's successor. We have consulted the Chairman of the Advisory Committee on Business Appointments and his colleagues and they have raised no objection to the proposed change.

6. If you agree to the proposed change, there seems no need to make any general public announcement; but we should inform the Treasury and Civil Service Select Committee (TCSC) and the Defence Select Committee, both of whom take a close interest in the operation of the rules. Indeed the TCSC are conducting an inquiry into the business appointment rules at the moment; and although it would be wrong to put the proposed amendment in commission to the TCSC, we will be criticised if we make a change to the rules after they have conducted their inquiry without



having brought the issue to their attention. I would therefore propose to tell the TCSC of the change in the rules during their inquiry, having brokered it with the Chairman first.

7. Are you content that we should make a change to the rules in the way proposed and inform the TCSC and the Defence Select Committee accordingly?

R.B.

ROBIN BUTLER

22 February 1991

PROPOSED CHANGES TO THE BUSINESS APPOINTMENTS RULES

Paragraph 5.2A "Applications from individuals in Grade 1 or 1A (or equivalent) posts to which they have been appointed from outside the Civil Service on a limited period contract may be approved subject to conditions in the same way as any other application, but such applicants will not be required to serve an automatic waiting period of three months."

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 (Llinell Union)

Oddi wrth yr Ysgrifennydd Parhaol



Call for X
AS 815
RLS

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 (Direct Line)

From The Permanent Secretary

Sir Richard Lloyd Jones KCB

Our ref: CT/8/90

7 March 1990

Sir Robin Butler KCB, CVO
Secretary of the Cabinet and
Head of the Home Civil Service
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

Dear Robin,

RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

X At one of our recent meetings, a colleague (Derek Andrews, as I recall) drew attention to Hugh Taylor's letter to Richard Hastie-Smith, of 14 December 1989 which he was being advised to circulate to staff.

We here had been looking at our guidance to staff and were in consultation with your people. It came therefore as a surprise, to me at any rate, to find that the portcullis had come down.

I hasten to say that the new rules are in our view very much better drafted, and for that I am grateful. For my part, I intend to circulate them to all members of staff. Nevertheless, I would like to leave some comments on the record for any future revision, and they are in the Annex to this letter.

I am sending copies of this letter to those who attend our Wednesday meetings.

Yours ever,

Richard

RICHARD LLOYD JONES



ANNEX

COMMENTS BY WELSH OFFICE

The last sentence of paragraph 6.9, if taken literally, would rule out many appointments of able people who are respected because it is they who will know how policy is made and how the machine works. When tax legislation is being prepared, the issue is very much sharper, but not all legislation will be so sensitive. Had the words "where policy is developing or legislation is being prepared" been deleted the guidance would in our view have been more realistic.

As regards paragraph 6.11, we were uneasy that it had been felt necessary to advise "strongly" that competitors should be consulted as a matter of course (as to whether trade secrets might be involved). It smacks of wishing to be on the safe side, and to cover the department; and the company that is being consulted might be tempted to object as a matter of principle, it being no skin off their nose to do so. Where there is clear evidence that the applicant knows something to the material disadvantage of a competitor, ~~it~~ have no quarrel; but in cases of uncertainty departments should be cautious about consulting, not least because in other contexts the Government is seen to be encouraging increased contact and mobility between the Civil Service and industry. (Incidentally, has thought be given to the possibility that by informing the competitor of the intention to recruit a particular civil servant we might be disclosing something commercially confidential to the recruiting firm? This is a point of substance, in our view).

On consultancies, we doubt whether it is feasible to ensure that suspensions of impropriety (our underlining) are countered. It is often the essence of brass plate consultancies that one does not know just what one's previous employee will be doing, and our experience suggests that any attempt to make him or her keep the department informed will be impracticable, and possibly unenforceable.

Departments are in effect invited to consider ruling out the appointment of consultants who intend to employ, during the assignment, former members of the department. Is this advice intended to dissuade such consultants from tendering, or departments from awarding the consultancy if the firm in question has put in the lowest and/or best tender? Might there be legal implications.

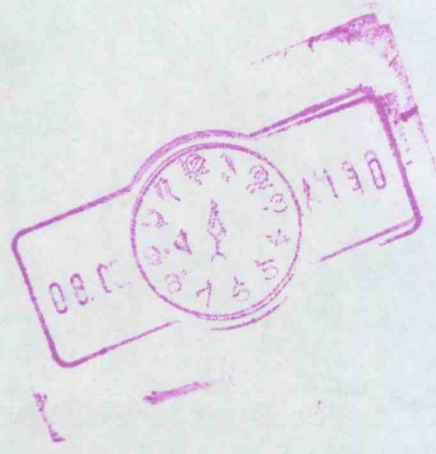
The Welsh Office has experience of losing staff from departments or divisions administering financial assistance of one sort or another to enterprises or voluntary organisations. Industry and agriculture



are cases in point. People have resigned or retired in order to put up "brass plate consultancies" whose purpose is self-evidently to advise and assist the customer in applying for grant aid from the Welsh Office. There is little that can be done to allay suspicions that previous knowledge of the department and existing contacts are being used, and the question "when did you know" quickly arises. On circulating these guidelines, and in order to minimise the risk of false allegations of collusion, we shall be advising staff to report to their line manager immediately they receive any hint that an offer of outside employment may be made, and not to await a formal offer.

7 March 1990

WELSH OFFICE





CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-270 0170

R M Hastie-Smith Esq CB
Ministry of Defence
DUS (CM)
Room 7225
Main Building
Whitehall
LONDON SW1A 2HB

14 December 1989

Dear Mr Hastie Smith,

THE BUSINESS APPOINTMENT RULES

You will recall that in July this year Sir Robin Butler wrote to Permanent Secretaries about the review which the Cabinet Office (OMCS) carried out into the application of the rules at grades below the senior Open Structure. Action plans were enclosed for the Cabinet Office (OMCS) and for Departments to follow.

2. The most substantial task to be undertaken by the Cabinet Office (OMCS) was to redraft the rules with the aim of encouraging a better understanding of them and a more consistent approach to them. Our redraft is attached at Annex A.

3. In accordance with the review recommendations, there are no changes of substance in the revision. The most obvious change is in the presentation of the rules. This now follows the kind of format used in the Personnel Management Handbook which we found a number of Departments favoured. It separates out more clearly the different elements of the rules: their scope, the procedures to be followed; and the guidance to be followed in assessing applications. One of the aims of this, as noted in the action plan, is to enable Departments to 'extract' more readily the relevant part of the rules for applicants. Indeed, we propose to print sections 1, 2 and 3 of the revised rules at the end of the new standard application form, which will be issued to Departments in the next week or so, thus discharging another element of the action plan.

4. In redrafting the rules we paid particular attention, as required by the action plan, to the following points:

(i) the need to clarify the guidance on how to deal with applications involving consultancies, now provided in paragraphs 6.12 - 6.16;

(ii) the need to make explicit the rules governing the reference of cases involving Grades 4-7 to the Cabinet Office (OMCS). These are now set out in paragraph 4.3.

5. We have also taken the opportunity:

(i) to incorporate in the revision a number of points of procedure which Departments are required to follow but which have not found their way into the rules and are dotted about in various works of reference. The main 'inserts' of this kind are paragraphs 4.1 and 5.6. This has the advantage that, in future, Departments will be able to find all the central guidance on the question of business appointments in one document;

(ii) to revise slightly the rule on reporting offers of employment. The aim of this amendment at paragraph 3.1 is to ensure that staff bring to the attention of their employer only offers of employment which they are considering and which may lead to an application under the rules and not in tentative offers which are ignored.

6. On the other points of action to be pursued by the Cabinet Office (OMCS), we have revised the standard application form in the way proposed and are issuing a model letter for Departments to use in consulting competitors about a case in which trade secrets might be at risk. These are just being printed and will be issued to Departments in a week or so.

7. I am aware that we are issuing the revised rules, standard application form and letter rather close to the end of the year, which was the date originally set for completion of action by Departments as well as Cabinet Office (OMCS). Since some of the work for Departments to undertake may have been delayed until the revised rules were issued, I am more than happy to extend the reporting deadline for Departments to the end of January 1990.

8. I am copying this letter to those on the attached list.

Yours sincerely
Hugh Taylor

H H TAYLOR

J W Hepburn Esq
Ministry of Agriculture,
Fisheries and Food

P Jefferson Smith Esq
HM Customs and Excise

M M Capey Esq
Department of Education
and Science

E C Whybrew Esq
Department of Employment

M Buckley Esq
Department of Energy

P C McQuail Esq
Department of the
Environment

P S Draper Esq
Department of the
Environment
(Property Services Agency)

D J Wiblin Esq
Crown Prosecution Service

D Moss Esq CMG
Foreign and Commonwealth
Office

J F Mayne Esq
Department of Health

M J Moriarty Esq CB
Home Office

S C T Matheson Esq
Inland Revenue

B H Cousins Esq
Lord Chancellor's
Department

D Chesterton Esq
Northern Ireland Office

J V Kerby Esq
Overseas Development
Administration

A C Beer Esq
Office of the Parliamentary
Commissioner for Administration

S R Davie Esq
Cabinet Office

P Mackay Esq
Scottish Office

N Montagu Esq
Department of Social
Security

J W S Dempster Esq
Department of Transport

B M Fox Esq
HM Treasury

G C G Craig Esq
Welsh Office

D A Truman Esq
Central Office of Information

M V Hawtin Esq
Export Credits Guarantee
Department

D T J Rutherford Esq
Forestry Commission

G Wynn Esq
Government Communications
Headquarters

J Hodder Esq
HM Land Registry

D W Ray Esq
HM Stationery Office

E G Beardsall Esq
HM Land Registry

D F W Pickup Esq
Treasury Solicitor's
Department

D S Speedie Esq
Department for National
Savings

B Smith Esq
Office of Population Censuses
and Surveys

W M Knighton Esq CB
Department of Trade and
Industry

K Nolan Esq
Ordnance Survey

D R L Breed Esq OBE
Paymaster General's Office

B Hatcher Esq
Royal Mint

Mrs S D Brown
Office of Arts and Libraries

Miss C Banks
Office of Fair Trading

Dr D F Renn
Government Actuary's Department

RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN
SERVANTS

1. INTRODUCTION

1.1 The rules on the acceptance of outside appointments by Crown servants are designed to avoid any suspicion, no matter how unjustified -

- . that the advice and decisions of serving officers might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
- . that a particular firm might gain an unfair advantage over its competitors by employing someone who, in the course of their official duties, has had access to technical or other information which those competitors could legitimately regard as their own trade secrets.

1.2 While it is in the public interest that people with experience of public administration should be able to move into business or other bodies and that such movement should not be frustrated by unjustified public concern over a particular appointment, it is also important whenever a Crown Servant accepts a particular outside appointment that there should be no cause for any suspicion of impropriety. The rules provide for waiting periods and behavioural conditions to be applied to appointments which may give rise to such suspicions, thereby safeguarding the public service and individual officers against criticism.

1.3 The Advisory Committee on Business Appointments advises on applications from the most senior officials. The Committee is appointed by the Prime Minister and comprises people with experience of the relationship between the Civil Service and the private sector. In arriving at a recommendation, the Committee considers the views of the Department and the Cabinet Office (OMCS), and then reports direct to the Prime Minister, with whom the final decision rests. Applications from other officials are handled either by departments alone or in consultation with the Cabinet Office (OMCS).

2. THE SCOPE OF THE RULES

2.1 The rules do not apply to -

- . unpaid appointments in non-commercial organisations; or
- . appointments in the gift of Ministers.

2.2 Civil servants **must** obtain Government approval before taking any other form of full, part-time or fee-paid employment -

- . in the United Kingdom, or overseas in a public or private company or in the service of a foreign Government or its agencies;
- . within two years of leaving Crown employment -

in the following circumstances:

- . if they are Grade 3 or above; or
- . if they have had any official dealings with their prospective employer during the last two years of Crown employment; or
- . if they have had official dealings of a continued or repeated nature with their prospective employer at any time during their period of Crown employment; or
- . if they had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
- . if they are to be employed on a consultancy basis - either for a firm of consultants or as an independent self-employed consultant - and they have had any dealings of a commercial nature with outside bodies or organisations within the last two years of Crown employment.

2.3 Approval is required for -

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

2.4 Staff on secondment from the Civil Service to the private sector are subject to the rules in the same way as other members of the Civil Service.

2.5 Staff on secondment to the Civil Service from the private sector are also subject to the rules in the same way as civil servants **unless** they return to their seconding company at the end of their secondment and remain with that company for two years.

2.6 Equivalent rules apply to members of the Armed Services and the Diplomatic Service.

2.7 The rules do not apply to Special Advisers.

3. THE PROCEDURES: for staff

Reporting offers of employment

3.1 Staff considering any approach from an outside employer offering employment for which approval would be required under these rules - or which seems likely to lead to such an offer - must report that approach as follows:

- . Grade 1 (or equivalent): report to the Minister in charge of the Department;
- . Grade 3 (or equivalent) or above: report to the Head of the Department;
- . staff below Grade 3 (or equivalent): report to a senior member of staff at least two grades higher.

Applications

3.2 Staff who need to get approval before taking up an outside appointment must apply to their Department (or former Department), using the standard form available from the Department.

4. THE PROCEDURES: for Departments

4.1 Departments must ensure that staff are made aware of the rules in the following ways:

- . by drawing the attention of staff to the existence of the rules on appointment. There is a paragraph about the rules in the schedule to the model letter of appointment which may be used for this purpose. Departments are advised to take special care to ensure that staff recruited from outside the Crown Service either on secondment or to a limited period appointment are made aware of their position under the rules on appointment;
- . by including a copy of the rules in Departmental Staff Handbooks;
- . by issuing regular reminders to staff about the rules and the circumstances in which they apply at all levels, targetted on particular staffing areas as necessary;
- . by asking staff at Grade 3 level (or equivalent) and above to acknowledge in writing that they have seen and are conversant with the rules - and to provide a further, similar acknowledgement on retirement or resignation from the Crown Service or at the end of a period appointment;
- . by reminding all staff of the rules
 - on retirement
 - on resignation
 - at the end of a limited period appointment

In the case of staff who resign or come to the end of a period appointment this should normally take the form of providing them with a copy of the rules and an application form. Departments may find it helpful to use the OMCS model application form, which incorporates the relevant extract from the rules, for this purpose.

4.2 Departments must ensure that application forms are completed for all requests for approval of outside appointments under the rules.

- . The applicant must be asked to supply
 - full details of the proposed employment;
 - details of any official dealings with a prospective employer or with any other company, including any competitors of the prospective employer.

- . Departments must ensure that they seek the comments of a counter-signing officer who can verify, as far as possible, the information supplied by the applicant.

Departments are strongly recommended to adopt the revised Cabinet Office (OMCS) model form for applicants.

4.3 The procedure for dealing with applications varies according to the grade of the applicant.

- **Grades 1, 1A and 2.** All cases must be referred to the Head of the Home Civil Service.

The application may be approved without reference to the Advisory Committee if the Head of the Home Civil Service and the Departmental Minister agree that such reference would be inappropriate, for example where the proposed appointment is to a non-commercial body, such as a university.

The Head of the Home Civil Service, on behalf of the Prime Minister, will refer all other cases to the Advisory Committee.

- . **Heads of Department below Grade 2 (or equivalent).** The procedure must follow that set out for Grades 1, 1A and 2, except that the Minister for the Department may decide the application without reference to the Advisory Committee where the Head of the Department and the Head of the Home Civil Service agree on the course to be followed.
- . **Grade 3 (or equivalent).** All applications must be referred to the Cabinet Office (OMCS), who will then consult the Head of the Home Civil Service.
- . **Grades 4 to 7 (or equivalent).** The Cabinet Office (OMCS) must be consulted unless
 - the applicant has had no official dealings with the prospective employer and there appears to be no risk of criticism; **or**
 - the employment is with a non-commercial organisation.
- . **SEO (or equivalent) and below.** The procedure must follow that set out for Grades 4 to 7, except that Departments do not need to consult the Cabinet Office (OMCS) where:
 - the applicant has had no official dealings with the prospective employer in the previous two years, or at most dealings of a casual nature; **and**
 - there appears to be no risk of the disclosure of commercially sensitive information; **or**
 - the appointment is with a non-commercial organisation.

4.4 When referring cases to the Head of the Home Civil Service or to the Cabinet Office (OMCS) Departments must submit -

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

5. APPROVAL OF APPLICATIONS

5.1 Applications under these rules will be granted either

- . unconditional approval; or
- . approval subject to conditions. These may apply for up to two years, the duration depending on the circumstances of the case. They may include:
 - a waiting period before taking up the appointment;
 - an absolute or qualified ban on involvement by the applicant in dealings between the prospective employer and the Government;
 - a ban on involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer;
 - in the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature or from named employers.

5.2 All applications from Grade 1 and 1A (or equivalents) which are referred to the Advisory Committee are subject to an automatic minimum waiting period of three months between leaving Crown

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

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

5.4 Decisions on all applications, other than those referred to the Prime Minister through the Advisory Committee, rest with the Minister in charge of the Department. The Minister may, however, approve arrangements under which defined categories of cases may be dealt with at a specified level without reference to the Minister.

5.5 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 must first be followed, including reference to the Advisory Committee where that is appropriate. A decision that the national interest should override other considerations may only be taken by the Minister in charge of the Department or, in the case of applications referred to the Advisory Committee, by the Prime Minister.

5.6 Departments must ensure that they:

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

6. GUIDANCE TO BE FOLLOWED IN ASSESSING APPLICATIONS

6.1 The rules are designed primarily to counter any suspicion that an appointment might be a "reward for past favours" granted by the applicant to the firm, or that a particular firm might gain an unfair advantage over its competitors by employing someone who had access to what they might legitimately regard as their "trade secrets".

6.2 An appointment might also be sensitive because of the employer's relationship with the Department and the nature of any information which the applicant possesses about Government policy.

The employer and the applicant

6.3 In most cases, problems will only occur if the applicant has had some degree of contact with the prospective employer, giving rise to possible criticism that the post is a "reward for past favours". Departments are advised to take the following into account:

- . how much of this was in the course of official duties;
- . how significant a degree of contact was involved;
- . the nature of the proposed employment;
- . the connections between the new job and the applicant's previous official duties.

6.4 In order to establish whether the applicant was able to exert any degree of influence over the outcome of contractual or other dealings with the prospective employers, Departments are advised to establish:

- . whether the individual was acting as a member of a team, taking sole or joint responsibility;
- . whether the employer benefitted substantially from such dealings;
- . whether contact was direct;

- . whether it was indirect (ie through those for whom the applicant was responsible, whether or not they normally worked for him or her).

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

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

6.6 Departments are advised to consider in particular, whether the applicant has been:

- . dealing with the receipt of tenders from the employer;
- . dealing with the award of contracts to the employer;
- . dealing with the administration or monitoring of contracts with the employer;
- . giving professional or technical advice about such contracts whether before or after they were awarded;
- . involved in dealings of an official but non-contractual nature with the employer (important where the employer operates in a field where the Government as a whole or the applicant's Department has a financial, policy or other special interest).

The employer and the Government

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

- . has a contractual relationship with the department;
- . receives subsidies or their equivalent from the Department;
- . receives loans, guarantees or other forms of financial assistance from the department;
- . is one in which the Government is a shareholder; or

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

Overseas employers

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

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

Government policy or business

6.9 Many civil servants, members of the Armed Services and members of the Diplomatic Service deal with private interests on behalf of the Government. They have special knowledge of how the Government would be likely to react in particular circumstances. Departments are advised to consider whether the applicant could be, or could be thought to be, significantly helpful to the employer in dealing with matters where policy is developing or legislation is being prepared in a way which might disadvantage competitors of that employer.

6.10 This applies, less generally, to specific areas where:

- . there has been a negotiating relationship between the Department and the employer, or
- . the applicant has been involved in policy discussions within the Department leading to a decision of considerable benefit to the employer.

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

The employer and competitors' trade secrets

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

Consultancies

6.12 Individuals who are to be employed on a consultancy basis - either for a firm of consultants or as independent, self-employed consultants, competing for commissions in the open market ("brass plate" consultancies) - should be treated in the same way as other applicants under the rules. Extra care is needed, however, in dealing with such applications.

6.13 In the case of applicants wishing to set up a "brass plate" consultancy the question of "rewards for past favours" does not arise in the usual way. But Departments will wish to keep in mind the need

- . to counter any suspicion of impropriety that might arise if such individuals were to be given lucrative contracts by employers with which they or their former Department had dealings;
- . to protect "trade secrets" to which such individuals may have had access. There may be circumstances in which it would be undesirable for an independent consultant to offer services to a particular employer where he or she has had access to the trade secrets of a competitor of the employer. The fact that the competitor might also

be free to use the same consultant, but did not choose to do so, would not make the information any less sensitive or negate the potential advantage which could be gained by the other employer.

6.14 In approving applications to set up "brass plate" consultancies Departments will, therefore, need to consider carefully the application of conditions in cases where such considerations arise.

6.15 In the case of applicants wishing to take up a **salaried appointment with a firm of consultants**, the "rewards for past favours" question will relate almost exclusively to the question of any previous dealings between the applicant and the firm he or she is seeking to join. Departments will, however, need to consider the "trade secrets" question both from the point of view of any competitors of the consultancy firm and then, more generally, from the point of view of the service which the applicant will be offering on behalf of the consultant. As in the case of self-employed consultants it may be necessary to impose conditions on the appointment to protect the "trade secrets" of firms with which the applicant or the Department has had dealings.

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



*Mr Harris
To note*

Ref. A089/1558

MR TURNBULL

Business Appointments: Statistical Report 1988

The third in a series of statistical reports concerning the number of applications made under the business appointments rules, is to be published on Friday 16 June. Publication will be by means of a written Parliamentary Question to the Minister for the Civil Service. Copies of the Report will be placed in the libraries of the House of Commons and House of Lords. No Press Notice will be issued. Indeed we hope to minimise publicity as the subject is unlikely to receive favourable treatment in the media.

2. The Government's commitment to publishing these reports was given in a White Paper in March 1985 entitled 'Acceptance of Outside Appointments by Crown Servants' (Command 9465, paragraph 47). The first report was published in December 1986 and the second in March 1988.

3. If the report receives coverage in the weekend Press, we will provide a line to take for Prime Minister's Questions early next week.

Trevor Woolley

T A WOOLLEY

14 June 1989

dti

the department for Enterprise

NBPM

gepu

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon George Younger TD MP
Ministry of Defence
Main Building
Whitehall
LONDON
SW1A 2HB

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref JW5ADR
Your ref
Date 19 December 1988

Mr George,

at least

Thank you for sight of your letter of 2 December enclosing the draft Command Paper of the Government's response to the House of Commons Defence Committee's (HCDC) Ninth Report. I think that the draft Command Paper lights upon the essential themes in rejecting the HCDC's recommendation, and argues the case admirably.

I am copying this letter to the Prime Minister and to recipients of yours.

*Yours,
David*

CIVIC SERVICE: Business Appts

Pg 2 ●

AM 9

2015

PRIME MINISTER

You saw the attached papers on business appointments over the weekend, and I think you discussed it briefly with the Lord President on Monday. He has now come back to say that he is discussing the detailed tactics with the Defence Secretary, but that it will probably be after Christmas before they make their formal response. Both of them are entirely content that this is the right thing to do, but the Lord President just wanted to check that you were not going to be unduly offended by the delay.

PSB

Spud nt

TJM Alim

PSB
15/12

P. A. BEARPARK
14 December 1988



CP
AS

FCS/88/220

DEFENCE SECRETARY

Business Appointments Rules

1. Thank you for sending me a copy of your minute of
2 December to the Prime Minister.

2. As you say, the maintenance of confidentiality is essential if we are to be able to operate a system which has no legal basis and which depends for its success on the goodwill of individuals and industry. I agree with your proposed reply to the House of Commons Defence Committee.

3. I am copying this minute to the Prime Minister and those colleagues to whom you copied your minute.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
13 December 1988



FILE

SLHBCT

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

12 December 1988

Lee Brian

BUSINESS APPOINTMENTS RULES

The Prime Minister has seen the Defence Secretary's minute of 2 December in which he seeks approval for the publication of a Command Paper responding to the House of Commons Defence Committee's Ninth report in the 1987/88 session. The Prime Minister has also seen the Lord President's minute of 9 December about the Parliamentary handling of the proposed Command Paper.

The Prime Minister agrees that the Government should reply to the Defence Committee's report in the terms of the draft Command Paper attached to your Secretary of State's minute. On Parliamentary handling, she fears that the procedure suggested by the Lord President would lead the Select Committee to presume to change the Government's decision. She suggests that the Lord President and the Secretary of State for Defence should see the Chairmen of the relevant Select Committees, Mr. Mates and Mr. Higgins, to convey to them, in the form of a pre-briefing, the Government's decision which would be formally conveyed in the Command Paper. They should make clear to the Select Committee Chairmen that the Government's decision was immutable and that the Command paper was being printed. There would be advantage in seeing Mr. Terence Higgins before Mr. Mates.

I am sending a copy of this letter to the Private Secretaries to the Foreign Secretary, the Chancellor of the Exchequer, the Secretaries of State for the Environment, Trade and Industry, Health and Social Security, the Lord President, Chief Whip, Attorney General, the Minister of State, Privy Council Office and to Sir Robin Butler.

Lee only
Nigel Wicks

N. L. WICKS

Brian Hawtin, Esq.,
Ministry of Defence

CONFIDENTIAL

KIC

PRIME MINISTER

BUSINESS APPOINTMENTS' RULES

Sir Robin Butler's minute below covers a minute from the Defence Secretary proposing a robust reply, in the form of a White Paper, to the Defence Select Committee's request for detailed and specific information on former MOD employees (service and civilian) who intend to take up business appointments. As Robin Butler says in his minute, the MOD's response would represent the position of the Government as a whole since the issue affects all departments.

The Defence Secretary, and Robin Butler agrees, proposes a clear statement to the Committee that the Government do not intend to depart from the present arrangements and do not agree to provide the information sought by the Committee. The Lord President agrees in his minute at Flag D with the substance of the proposed reply but suggests that it should be preceded by a letter to the Committee's Chairman and meetings with the Chairman of the Defence Committee, TCSC and Liaison Committee.

Agree the response proposed by the Defence Secretary subject to discussion with the Lord President on handling?

Yes - but I do not think the Lord President's proposals will help. I think they will lead to pressure to change the decision. However, we will discuss
ms

N.L.W.

N.L. Wicks

9 December 1988

MJ2CZG



C

PRIME MINISTER

BUSINESS APPOINTMENTS RULES

WITH NW?

I have seen Sir Robin Butler's Minute to you of 6 December and the papers he attached from the Defence Secretary.

I agree with the analysis offered by the paper and with the conclusion reached that the Defence Select Committee should not be given details of individual cases referred to the Advisory Committee on Business Appointments. This will, however, be a matter which we will wish to present carefully to the Defence Select Committee, and more generally to the House and to the Treasury and Civil Service Select Committee which has previously looked at this. I am not sure that the straightforward publication of the response in its present form offers the best way forward, and would myself see some merit in an approach in which the initial response to the Committee was in a letter to the Chairman explaining that we did not think it appropriate for individual details to be made available to them; issuing the full response as a Command Paper after a Select Committee request to explain our position more fully. In any event, I believe that George Younger and I should see separately Michael Mates as Chairman of the Defence Select Committee, Terence Higgins, both as Chairman of the Treasury and Civil Service Select Committee and the Liaison Committee of Select Committee Chairmen, before we give any formal written response.

This could lead to pressure to change the decision

I would, therefore propose that, if you are content with the substance of the response, George Younger and I should have an early meeting with Sir Robin Butler to discuss how this might be handled.

I am copying this Minute to the Defence Secretary, the Chief Whip and Sir Robin Butler.

JW

9.12.88

CIVIL SERVICE
Bu. apph. pt 2

CONFIDENTIAL

11/17/60
11/18/60



Ref. A088/3535

PRIME MINISTER

Business Appointments Rules

Flay A
Flay B

The minute of 2 December ^{attached} from the Secretary of State for Defence seeks the agreement of you and other colleagues to the proposed MOD response to the Defence Select Committee about the Business Appointments Rules. Since these rules apply to all civil servants, and members of the armed forces and the diplomatic service, MOD's response must represent the position of the Government as a whole.

2. The point at issue with the Select Committee is a simple one: it is whether the House of Commons should be given details of individual cases. At present we publish very full statistics about permissions given to civil servants to take up posts on leaving the public service; but we do not give individual names and appointments.

3. The arrangements which exist for ensuring that propriety is observed and seen to be observed is, as you know, that all applications from people in Grades 1, 1A and 2 are referred to your Advisory Committee on Business Appointments, which includes people from both sides of the House. Applications from people at Grade 3, and applications from people in lower grades where there has been official contact with the prospective employer or which could raise issues of difficulty, are referred by Departments to the Cabinet Office; and the Chairman of the Advisory Committee, or his deputy, carries out a simple audit every six months of the way in which we handle these.

4. But all this is done in a way which preserves the privacy of the individual cases. The guarantee to Parliament and the



public rests in the independence and standing of the Advisory Committee.

5. The point at issue with the Defence Select Committee, as it was previously at issue when the Treasury Select Committee looked at this matter in 1984, is whether a further safeguard is needed by way of publication of the individual cases. Unless such publication is necessary for the protection of the integrity of the public service, there is clearly a case for privacy. If privacy was not allowed, it is virtually certain that civil servants would not seek permission voluntarily as they do at present and a statutory system would be required (although the Select Committees would probably not see this as an objection). A public system of this sort would be likely to have some effect in discouraging outside employers from employing former public servants; unless it is necessary, such an impediment is undesirable both in the interests of the people concerned and because there is some gain both to the national interest, and often to the public service, if people can move into the private sector. It is particularly important for members of the armed services whose retirements generally occur well before the end of their working life.

6. As the Secretary of State for Defence says, we have considered very carefully whether there is some compromise which would satisfy the Select Committee without jeopardising the present arrangements, for example by publishing after the event a list of names and appointments taken up, without further details. But it seems very unlikely that this would satisfy the Select Committees. What is the point of publishing names and appointments unless the Select Committees can make inquiries about any which prima facie give them cause for concern? We have therefore concluded - and Mr Younger and Mr Luce have come to the same conclusion - that there is no half-way house between retaining confidentiality and enabling Parliamentary Select Committees to examine individual cases.



7. As the Secretary of State says, the Advisory Committee themselves strongly take the view that confidentiality is fundamental to the role which they perform.

8. I therefore recommend that this is a matter on which there is no half-way house between the present position and a public and statutory system. I therefore recommend that you endorse the reponse attached to the Secretary of State's minute. But since this will involve a confrontation with a Select Committee, *at Flag C* you may like to take the view of the Lord President and the Chief Whip, and to this end I am copying this minute, along with a copy of Mr Younger's minute and the enclosure, to them.

TA Wootley
(Private Secretary)

for ROBIN BUTLER

6 December 1988



A

D/S of S/PS/20/181L

PRIME MINISTERBUSINESS APPOINTMENTS RULES

Fly) We have to decide how to respond to the House of Commons Defence Committee's (HCDC) Ninth Report in the 1987-88 session which repeats their earlier criticism of our procedures for handling applications by former MOD employees (service and civilian) who intend to take up business appointments. As this is a matter where there is a fairly basic difference of principle between the Committee and my Department I am writing to seek your approval for our proposed response. Although the HCDC restricted its report to MOD personnel, the business appointments rules embrace the whole of the Crown Service and there can be no question of the MOD acting in isolation. I am therefore copying this minute to colleagues for their views.

2. The issue on which we disagree is that the HCDC want to be given detailed and specific information on what happens in named individual cases; this we have refused to provide. In their report, the HCDC contend that while in most circumstances it would not be necessary to comment on individual cases, the release of such information would ensure that the effectiveness of the system, which was designed to protect the public interest, would for the first time be subject to proper Parliamentary scrutiny. This approach has clearly been concerted with the Treasury and Civil Service Select Committee (TCSC), within whose area of competence this subject really falls, and who made a similar recommendation in 1984.



3. The draft response rejects the HCDC's recommendation. The proposed reply takes as its themes the voluntary nature of the rules, the long-standing principle of confidentiality, the freedom of the individual, and the independent scrutiny role of your Advisory Committee.

4. It is doubtful that this response will satisfy either the HCDC or the TCSC. But I am convinced that the provision of specific information related to named individuals should not be contemplated, even ex post facto. In my view the maintenance of the principle of confidentiality is essential if we are to continue with a system which has no legal basis and which depends for its success on the goodwill of individuals and industry. Without such co-operation it would not be possible to protect the public interest, while respecting individual freedom. I am encouraged in this view by the fact that Lord Diamond and his colleagues consider confidentiality to be of vital importance to their work. Moreover, I believe the Advisory Committee more than adequately provides the independent and effective scrutiny the HCDC seeks to accord to Select Committees of the House.

5. I have nevertheless considered the possibility of going some way to meeting the HCDC's concerns by giving notice to future applicants that we would provide HCDC with details of appointments taken up, though without setting out whether or not they were asked to observe a waiting period, but I believe any concession of this kind would not on its own satisfy the Committee and would inevitably lead to even greater demands to know the detail of the decisions. The attached response therefore takes a robust line and by using, as Select Committees prefer, a Command Paper, we will have a clear statement of the Government policy on the record without the HCDC putting its own gloss on it. Richard Luce has been consulted about this response and agrees with it. If you and colleagues are content, the response would be published before the Christmas Recess.



6. I am copying this minute and its attachment to the Foreign Secretary, the Chancellor of the Exchequer, the Secretaries of State for the Environment, Trade and Industry, Health, and Social Security, the Attorney General, the Minister of State, Privy Council Office and to Sir Robin Butler.

Ministry of Defence

2nd December 1988

A.Y.

B

DRAFT COMMAND PAPER

DEFENCE COMMITTEE SECOND AND NINTH REPORTS 1987-88 - BUSINESS APPOINTMENTS

1. The Government has carefully considered the Defence Committee's Second and Ninth Reports 1987-88 on the Acceptance of Appointments in Commerce and Industry by Members of the Armed Forces and Officials of the Ministry of Defence, and this Command Paper represents the Government's response to the Reports. Annex C addressees some statistical and other specific points raised by the Defence Committee. The rest of this Command Paper addresses the recommendations in paragraph 15 of the Ninth Report which repeated those in paragraphs 53 and 54 of the Second Report.

2. The procedures regulating the acceptance of appointments by former Crown Servants are based on two principles: freedom of movement and the avoidance of, and any suspicion of, impropriety. The first principle is based not only on the positive benefits of interchange between the public and other sectors but on the more fundamental principle of personal liberty. Crown Servants should be no less free to use their skills and abilities after retirement from their main careers. This point is particularly relevant for those Crown Servants, such as members of the Armed Forces, whose retirement occurs long before the completion of a normal working life. The Government, however, is acutely conscious of the need to avoid corruption or impropriety, or the appearance of either, in relation to Crown Service. In the

Government's view, the independent scrutiny of the operation of the rules exercised by the Prime Minister's Advisory Committee maintains the correct balance between the two principles, and provides the most effective way of safeguarding the national interest.

3. The reasons for the Government's position are given in the Ministry of Defence Memorandum dated 29 June 1988 (1) and in previous exchanges between the Ministry of Defence and the Defence Committee. But the Government believes it may be helpful to return to the Committee's two main concerns:-

a. Their perception of the need for decisions on applications and the reasons for these decisions to be made public, or at least to be made available to the appropriate Select Committee.

b. Their objection that no outside body has the information necessary to determine whether decisions unreasonably favour the interests of the applicant.

4. In respect of the first of these points, the Government shares the Defence Committee's concern for Parliament to be satisfied that the business appointments system is effective in safeguarding the public interest. To this end the Government

(1) Appendix to Ninth Report.

responded positively to a number of the detailed recommendations made by the Treasury and Civil Service Committee in its Eighth Report 1983-84. These changes - which are described in detail in Annex A - were designed primarily to provide additional reassurance to Parliament and the public, and included the publication of regular statistical reports covering applications by Crown Servants of all grades. But the Government cannot agree to go beyond this and provide detailed information on particular business appointments applications, either in advance or in retrospect, for the following reasons.

5. First, there is the longstanding principle, recorded by the then Lord President of the Council in a letter dated 9 May 1967 to Select Committee Chairmen and adhered to by successive Administrations, that information relating to the private affairs of individuals or individual companies which has been given to Ministers or their officials on a confidential basis cannot be supplied. Even if some individuals and companies were willing that this information should be provided to Select Committees, some would not, making it difficult if not impossible to provide comprehensive and consistent information, and so casting doubt on any attempt to judge the efficacy of the system on that basis.

6. Possibly even more importantly, the introduction of such a procedure could seriously undermine the system's efficacy. It would risk reducing the frankness of information supplied and thus undermining the value of the system at all stages of the process.

Moreover, it is a voluntary system, which the TCSC in 1983-84 agreed is based on the correct approach and should not be replaced by one relying exclusively on a statutory code of conduct. The Government strongly endorses this judgement: the implications of establishing such a code would be far reaching and complex. The system depends upon the readiness of those affected, to see and accept it as being not unreasonably restrictive in its operation; if it were not so regarded, 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.

7. The Defence Committee's readiness to receive information in confidence and to treat it with discretion is in no way questioned, but the Government believes that any Select Committee must retain the right to publish information provided to it. This will certainly be the perception of individual applicants, and could again severely militate against their willingness to furnish the MoD or other Government Departments with all the information necessary for balanced decisions.

8. The Government is clear that the same rules must apply to all Crown Servants and that although it is a fact that more MoD staff, on leaving Government employment, take up appointments in the private sector than from any other Government Department, their business appointments applications must be subject to exactly the same scrutiny as those from other Government Departments. In

cases involving Grade 2 (or equivalent) Crown Servants and above, this scrutiny - except where provided for under paragraph 20 of the rules - invariably involves the participation of the Prime Minister's Advisory Committee on Business Appointments. The Defence Committee's view is that this does not represent outside scrutiny, but the Government wishes to stress that the Advisory Committee is an independent body, and that its Chairman, Lord Diamond, places great importance upon that independence in the Committee's role of providing confidential advice to the Prime Minister. The Committee, whose full membership is described at Annex B, does not include any serving members of the public service or of the Government, and as well as its Chairman, includes two other distinguished Parliamentarians - one of them a senior Opposition back bencher in the House of Commons. The Chairman Designate, Lord Carlisle, is also an eminent Parliamentarian. The Advisory Committee not only considers all very high level applications, but also regularly monitors other applications considered by the Cabinet Office. The fact that the advice which the Advisory Committee gives to the Prime Minister on individual cases must remain confidential, in no way detracts from the Committee's independent status and role.

9. Thus in the Government's view, the Advisory Committee provides the independent scrutiny which the Defence Committee rightly sees as essential. The Government, and the Advisory Committee, remain concerned to maintain the principle of confidentiality of information provided to them, for the reasons

already given. Indeed the Committee regard such confidentiality as essential if they are adequately to fulfil their function, and because of the Committee's central position in the Government's business appointments procedures, there is no way in which the MoD or any other Government Department could singly depart from this principle, even if it so wished. To do so would be to deny the Advisory Committee reasonable assurance that their advice was based on an assessment of all the relevant factors in each particular application and would severely weaken the entire system.

10. The Government regrets the Defence Committee's dissatisfaction at being denied additional information about individual business appointments applications. But the Government has a duty to ensure that the efficacy of the rules, which do not have the force or backing of law, is in no way undermined. The Government is confident that the independent Advisory Committee, which consists mainly of persons other than ex-public servants, can be relied upon to continue to provide impartial advice and to exercise a rigorous scrutiny of the way the rules are operated. Whilst the Government remains willing to continue to provide the statistical information already regularly furnished, it remains of the view that to divulge further details as requested by the Committee must risk invalidating a system which, in the Government's judgement, succeeds in protecting the public interest and the interests of competitive firms while respecting the freedom of the individual.

ANNEX A

THE RULES AND PROCEDURES GOVERNING THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Changes made following Government response to the Report of the Treasury and Civil Service Committee's Eighth Report 1983-84.

- i. The rules were redrafted, in line with TCSC suggestions, to make them more easily understood.
- ii. In addition to Grade 1 and 1A applications, the Advisory Committee on Business Apointments, now see all applications from Grade 2 (or equivalent) Crown servants, unless the Head of the Home Civil Service and the Departmental Minister are agreed that this procedure would be inappropriate.
- iii. All applications from Grade 3 (or equivalent) are now referred to the Cabinet Office (OMCS) who consult the Head of the Home Civil Service.
- iv. Applications are now required in writing, normally using the standard form.
- v. Where a waiting period and/or other condition is to be imposed the applicant is now given an opportunity, if he or she so chooses, of putting his case at an interview with an appropriate departmental officer.

vi. Any approach to a Crown servant, at any level, from an outside employer with whom the individual or his or her staff have had official dealings, which seems likely to result in an offer of employment are now required to be reported to a superior officer. Those at Grade 3 level or above report such offers to the Head of Department or, in the case of a Permanent Secretary, to his or her Minister. Those below Grade 3 level report to an officer at least two grades higher than himself.

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

viii. In the case of applications to set up "brass plate" consultancies approval has now to be sought before accepting, in the first two years after leaving Crown employment, any commission from a company or other organisation, if it is in a relationship (as defined in paragraph 6 of the rules) with a department in which the person concerned has served.

ix. Departments were asked to 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.

x. A written acknowledgement is now required from all

officers at Grade 3 level (or equivalent) and above and those who are promoted to, or appointed to, Grade 3 (or equivalent) that they have seen and are conversant with the rules. For these grades, a similar acknowledgement is also obtained at the time of leaving whether on retirement, resignation, or at the completion of their term of secondment or appointment.

xi. More use is now made 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.

xii. Prospective employers are now informed of any conditions which are attached to the approval of an application.

xiii. Departments have now to provide the Cabinet Office with quarterly statistical returns on all the applications processed and their outcome whether or not they were referred to the Cabinet Office.

xiv. The Chairman of the Prime Minister's Advisory Committee now conducts regular reviews of cases dealt with by the Cabinet Office (OMCS) in conjunction with Departments, but not referred to the Advisory Committee.

xv. The Cabinet Office (OMCS) now regularly reviews cases dealt with by Departments without being referred to the

centre.

xvi. Comprehensive statistical reports are published annually by the Cabinet Office (OMCS).

xvii. The Prime Minister's Advisory Committee membership has been augmented by the addition of a senior backbench member of the House of Commons (The Rt Hon Merlyn Rees).

ANNEX B

The membership of the Prime Minister's Advisory Committee on Business Appointments is:-

Chairman	Rt Hon The Lord Diamond, FCA
Chairman designate	Rt Hon The Lord Carlisle of Bucklow, QC
Vice Chairman	Rt Hon Sir Patrick Nairne, GCB, MC, MA
	Rt Hon The Lord Barber of Wentbridge, TD
	Rt Hon Merlyn Rees, MP
	Sir David Orr, MC, LLB
	Admiral Sir Anthony Morton GBE, KCB
	Sir Trevor Holdsworth

Comments on Defence Committee's detailed observations

- Para 9 asks why appointments made in the national interest, and the grounds for those appointments, should not be publicly announced? The grounds must remain confidential for the reasons already given in respect of the business appointments system generally. Any announcement of a particular appointment should remain the prerogative of the individual and his new employer. The Department approves applications for employment and may well not be informed when/if such applications are taken up.
- Para 11 suggests that even if the grounds for decisions on business appointments must be kept confidential, there is no reason why the decisions themselves should remain so? Because the grounds for decisions on restrictions cannot be provided on individual cases, owing to their confidential nature, announcement of those restrictions; which could vary significantly in relation to apparently similar cases, could well result in hypothesis and suspicion. Many applications are of a speculative nature, and in fact the rules encourage approval to be sought before accepting any offer. Approvals are therefore to allow an individual to take up employment if he wishes. Some individuals may have a number of applications pending and the announcement of approval for any one of them might compromise employment opportunities elsewhere.

Annex on the use of statistics in the Government reply

- Para 3 observes that whilst numbers receiving unconditional approval began to fall after 1982 they dropped 5 percentage points from 82-83 and 8 percentage points from 83-84 but 15 percentage points from 84-85 "the year in which the new system was introduced". The percentage point increase virtually doubled each year from 82-85 which seems to indicate a trend was being established from 1982 as stated in the Government reply, and it should be noted that new measures were not introduced by Government Departments before August 1985.
- Para 4 states that the MOD implies that the decrease in unconditional approvals is in fact matched and explained by the fall in the percentage of applications where the applicant had no contact with the prospective employer. The reply from the Government pointed

out that a pattern was already emerging from 1982 and change could not therefore be wholly attributable to the imposition of outside scrutiny in September 1985.

Para 5

interprets the Government reply as conceding that outside scrutiny has led to greater rigour. Any greater rigour on the part of MOD is considered attributable to a stronger lead taken from the PM's Advisory Committee, that has affected all Government Departments.

CIVIL SERVICE
Business applk pr 2



PERSONAL



Appts

M.

Ref. A087/2343

MR WICKS

Thank you very much for your minute of 3 August.

2. I am very grateful to the Prime Minister for her agreement that I may accept election to membership of the Board of Directors of the Royal Opera House, and take up the appointment from 1 January 1988.

RA

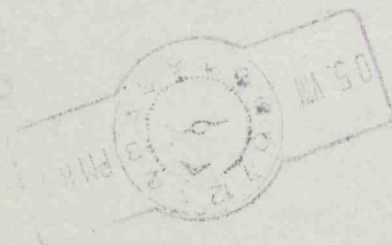
ROBERT ARMSTRONG

4 August 1987

PERSONAL



COMMUNICATION



PERSONAL



MS2BFV

file

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

Thank you for your minute of 30 July about the application of the business appointments rules to the invitation which has been extended to you to accept election to membership of the Board of Directors of the Royal Opera House, Covent Garden Limited.

Before submitting this matter to the Prime Minister I took the advice of the Secretary of the Advisory Committee on Business Appointments.

The Prime Minister has decided that:

- i) this application need not be referred to the Advisory Committee on Business Appointments;
- ii) she gives her consent for you to accept election to membership of the Board of Directors of the Royal Opera House, Covent Garden Limited, when you retire; and
- iii) your assumption of the appointment need not be subject to any delay and it is in order for you to take it up from 1 January 1988.

I am sending a copy of this minute to Mr Davey, Secretary of the Advisory Committee.

(R. Davey
cabinet office)

N.L. Wicks
3 August 1987

AS

PERSONAL

PRIME MINISTER

In his minute below, Sir Robert Armstrong seeks your approval to join the Board of Directors of the Royal Opera House.

at Fly A
I have consulted the Secretary of the Advisory Committee of Business Appointments about this matter. His advice, with which I agree, is that this need not be referred to the Advisory Committee; you can give your consent to the application; and that there needs to be no waiting period before Robert takes up this post.

Agree with this advice?

N.L.W.

Yes

N. L. WICKS

31 July 1987

SLH/74

A

MR WICKS

We spoke about Sir Robert Armstrong's minute to you of 30 July, in which he seeks the Prime Minister's consent to his accepting election to the Board of Directors of Royal Opera House Covent Garden Ltd, and you asked me to let you have some advice. *attachu*

2. The 'rules on acceptance of outside appointments by Crown servants' say, in paragraph 2, that approval is not required in respect of unpaid appointments with non-commercial organisations. I note from Sir Robert's minute that Royal Opera House Covent Garden Ltd is non-profit making, and that the Directors receive no remuneration other than an entitlement to some complimentary tickets for performances. There is, perhaps, a fine distinction between non-commercial and non profit making, but it is, at least, arguable that this application is outwith the business appointment rules. But even if we regard it as within the rules, I do not think we need trouble the Advisory Committee on Business Appointments about it. Paragraph 20 of the rules state that:

"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."

3. As far as the timing of the appointment is concerned, the rules require that all applications from Grade 1 and Grade 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 only exceptions to this are where the Prime Minister decides that the national interest is overriding. But, given that I do not believe reference to the Advisory Committee to be appropriate in this case, it follows that no waiting period is necessary.

P E R S O N A L

4. More generally, there would seem to be no reason to suppose that this appointment would give rise to public concern or suspicion of impropriety - which is what the rules seek to guard against. Sir Robert has been Secretary of the Board since 1968 and the proposed appointment is unlikely to be seen in the public mind as a great change. It is also relevant to note that Sir Claus Moser has been Chairman of the Board of Directors of the Royal Opera House since 1974, ie before and after his retirement as Director of the Central Statistical Office.

5. In all the circumstances, my advice is that the Prime Minister should give her consent to this application and that Sir Robert should be allowed to take up the appointment from 1 January 1988. (I attach a copy of the Rules in case you wish to refer to them.)

Rex Davie

S R DAVIE
31 JULY 1987

RULES ON ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

INTRODUCTION

1. It is in the public interest that people with experience of public administration should be able to move into business or other bodies and that 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 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.

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 dealings 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 applicant's 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 'trades 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.

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 and 27 and reports direct to the Prime Minister; it does not 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 and Second Permanent 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 cases 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 Office 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 of 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.

CIVIL SERVICE : Kulu qa. Am. apph pt 2



Ref. A087/2291

MR WICKS

I have been invited to accept election to membership of the Board of Directors of Royal Opera House, Covent Garden Ltd, to take effect after I retire from the public service at the end of this year. The proposal that I should join the Board has been approved by the Chairman of the Arts Council.

2. Royal Opera House Covent Garden Ltd is a company limited by guarantee. It is non-profit making (you can say that again) and the Directors receive no remuneration, though they are entitled to a limited number of complimentary tickets for performances.

3. As you will know, I have been Secretary to the Board of Directors of the Royal Opera House, with the approval of successive Prime Ministers whom I have served, since 1968.

4. I should like to accept this invitation, and accordingly apply for the Prime Minister's consent to my accepting election to the Board, to take effect after I retire.

5. Sir John Sainsbury, the incoming Chairman of the Board of Directors of the Royal Opera House, has asked whether, if the appointment is approved by the Prime Minister, it may take effect from 1 January 1988: that is to say, without the customary three-month cooling off period.

6. You will no doubt wish to take advice of Mr Davie, to whom I am sending a copy of this minute, as to whether this application needs to be referred to the Advisory Committee on Business Appointments; if not, whether the Prime Minister should give her consent to the application; and (if so) whether, given the



nature of the company concerned and my long and approved association with it in another capacity, it would be in order for me to take up the appointment from 1 January 1988, or whether it should be subject to a delay of three months (or any other period) from the date of my retirement.

REA

ROBERT ARMSTRONG

30 July 1987



(33)

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I have shown the Prime Minister your minute of 21 July in which you provide some precedents for dealing with an academic appointment of the sort which Sir William Fraser has in mind and which was described in your minute of 8 July.

The Prime Minister agrees, in the light of what you say, that you should tell Sir William Fraser that, if he seeks permission to take up appointment as Principal of the University of Glasgow after his retirement from the public service, she will be ready to consider and approve the application without reference to the Advisory Committee.

N.L. WICKS

23 July 1987

Prime Minister

Content with

X in the light of the precedents below?

N.L.W.

Ref. A087/2166

MR WICKS

In my minute of 8 July (Ref A087/2007) I invited the Prime Minister to agree that I should tell Sir William Fraser that she would be ready to consider and approve without reference to the Advisory Committee on Business Appointments an application by him to take up an appointment as Principal of the University of Glasgow.

2. I understand that the Prime Minister asked what the precedents were for dealing with an academic appointment in this way. Two recent precedents are the appointment of Sir Patrick Nairne to be Master of Sir Catherine's College, Oxford, in 1981, and the recent appointment of Professor Sir Richard Norman, the Chief Scientist of the Ministry of Defence, to succeed Lord Crowther-Hunt as Rector of Exeter College, Oxford. An earlier precedent was the appointment of Sir Geoffrey Arthur, a member of the Diplomatic Service, to be Master of Pembroke College, Oxford. All these appointments were cleared without reference to the Diamond Committee.

I understand these names were cleared by H.T.A. He has put Sir William Fraser's case to you because he is a Perm. Sec. and proposes

REA

ROBERT ARMSTRONG

21 July 1987

to retire early. I think that you can safely approve this appointment without reference to the Advisory Committee.

N.L.W.

21.7

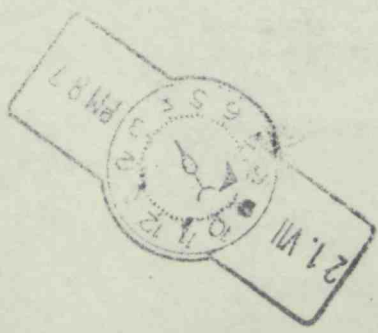


CIVIL SERVICE

BUSINESS APP.

PT 2

CONFIDENTIAL



Ref. A087/2007
PRIME MINISTER

*Are we
precedents?
no*

*Prime Minister
Agree the
approach in §5
below? N.L.W.*

Sir William Fraser, the Permanent Under Secretary of State, Scottish Office, has been approached about the possibility of his taking up the post of Principal of the University of Glasgow from October 1988. He is clearly interested in taking up this appointment; and it seems clear that, if he says that he is available, he will be appointed. The formal decision to appoint would be taken towards the end of September 1987. Sir William Fraser would then plan to retire from the public service on 31 March 1988, six months before taking up his new appointment and just under a year before his sixtieth birthday. He will have been Permanent Under Secretary of State, Scottish Office, for ten years.

8.7

2. The Secretary of State for Scotland is aware of the idea, and is content that Sir William Fraser should say that he is available.
3. Since the Principalship is an academic and not a commercial appointment, you have discretion under the business appointments rules to approve such a proposal without reference to the Advisory Committee on Business Appointments. There are no special features which would call for such a reference in this case.
4. Much though I respect Sir William Fraser, I do not think that we need or should stand in the way of his undertaking this appointment, if he wishes to do so.
5. If you agree, I should like to tell Sir William Fraser that, if he seeks permission to take up appointment as Principal of the University of Glasgow after his retirement from the public service, you will be ready to consider and approve the application without reference to the Advisory Committee.

RA

8 July 1987

ROBERT ARMSTRONG



CIVIL SERVICE

Jan 80



● PART 1 ends:-

NLW to PM. 19.2.87

PART 2 begins:-

RTA to PM 8.7.87



IT8.7/2-1993
2009:02

Image
Access

IT-8 Target

Printed on Kodak Professional Paper

Charge: R090212