



Business Appointment Rules

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This note explains how the rules operate which regulate the appointment of former Permanent Secretaries (and deputy secretaries) and former ministers to posts in the private sector. The independent Advisory Committee on Business Appointments reports to the Prime Minister on applications from former senior civil servants and advises former ministers directly. The Prime Minister ordered a review of the rules by Sir Patrick Brown make it easier for civil servants to move into the private sector and back again and an announcement on proposed changes is expected shortly.

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A. Background

The independent Advisory Committee on Civil Service Appointments was established by the Prime Minister in 1975. . Long-standing non-statutory rules required permanent secretaries and deputy secretaries to submit any job plans in the private sector for approval by the Committee. The Committee on Standards in Public Life recommended that a similar advisory system be applied to former ministers in May 1995. Its report stated:

We believe that a transparent advisory system will achieve the necessary liberty of movement for individuals but nevertheless secure public confidence and ministerial compliance without the complication of a statutory power.¹

The guidelines for former ministers were reviewed and re-issued at the beginning of the 1998-99 parliamentary session. The Committee offers its advice directly to the former minister.

Crown servants whose applications are considered by the Advisory Committee or the Head of the Home Civil Service must apply for permission to take up any outside appointment in the two years after they leave the service. Other Crown servants need only apply in the circumstances set out in the rules. Applications from civil servants at the next level down are dealt with by the head of the Home Civil Service and below that by the Cabinet Office. The rules are set out the Civil Service Management Code, available from the Cabinet Office web site and in the reports from the Advisory Committee.²The Committee also gives advice to the Foreign Secretary on applications from the most senior diplomats. Similar rules apply to former Ministers.

The Committee is currently chaired by Lord Mayhew of Twysden and is a Non Departmental Public Body. A secretariat is provided by the Cabinet Office. It has a separate website at <http://www.acoba.gov.uk/>

The latest report of the Committee was published on 21 July 2005 which reviewed its work over the previous year. Four former ministers sought advice about a total of seven appointments. All appointments were taken up, but one former minister, Helen Liddell, was advised to observe restrictions in her new role for two years. The names of the former ministers and a summary of the Committee advice is given in Annex B of the report. The Committee also considered 70 applications from civil servants and of these it recommended that 8 should be subject to a waiting period. It also considered that 32 of the remaining 62 cases should be subject to restrictions. Names and advice are given in Annex D. The recommendations were accepted by the Prime Minister.

The previous Committee report covering the period 2002-2004 was published in July 2004 revealed that 18 former Ministers consulted the Committee on a total of 46 appointments during the two-year period. The Committee saw no issues causing difficulty in 25 of the 46

¹ Cm 2850 Chapter 3, para 30

² See Chapter 4 Conduct and Discipline at http://www.civilservice.gov.uk/management_information/management/management_code/publications/doc/cs_mc_march05.doc

appointments, and in the remaining 21 considered that the former ministers should give undertakings or observe certain restrictions for a period of time.

The Committee also considered 87 applications from senior civil servants during the same time period and recommended that 27 should be subject to a waiting period. In the remaining 60 it saw no need to delay the appointments, although it considered that conditions should be imposed on the approval of 19 of these.

All of the Committee's advice on civil service appointments was accepted by the Prime Minister during this period with one exception. The advice of the Committee on the application by Air Chief Marshal Sir John Day to take up an appointment as Military Adviser to BAe Systems was overridden in accordance with paragraph 23 of the Business Appointment Rules: that the appointment was in the national interest.³

B. Reviews of the Rules

The Committee did not produce a report in 2003 since it was undertaking an internal review to refine its approach. It looked in particular at the issues that can arise when applicants seek to take up appointments in a sector with which they or their Departments have had official dealings. Its report of 2004 concluded:

It is Government policy to encourage greater interchange between the public and private sectors. The Committee recognise that increasing Government involvement and interchange with the private sector is a continuing trend, and an important context in which the *Rules on the Acceptance of Outside Appointments* have to be applied. We are conscious, too, of the position of individuals attracted into the Crown service on short-term contracts who might then have difficulty returning to the sector for which their experience most qualified them.

In our view, there is a heightened risk that impropriety will be suspected when individuals take up appointments in a sector with which they (or their Departments) have had any significant official relationship. We believe that the risk of such a suspicion is increased where there is a regular passage of significant numbers of staff, for example to defence contractors, such as to create a foreseeable expectation of post-retirement jobs in an industry where applicants have had close contact with their prospective employers.

In the light of these considerations, we may be seeking from applicants and their Departments information in greater depth on, in particular

- whether there has been any earlier suggestion or inference that a company was offering or would/might offer the applicant a job?
- if so, when and in what manner did the suggestion or inference arise?
- what work was the applicant involved in at that time (eg any contractual or other dealings of interest to the company) and have they had any subsequent contacts or dealings with, or of interest to, the company?
- whether any recent predecessor in the applicant's post has accepted the same or a similar job from the company?

³ See paragraphs 50-52 of the Advisory Committee on Business Appointments Sixth Report 2002-2004 and 'Blair overruled on RAF Chief's defence job', *Daily Telegraph*, 26 July 2004.

Departments will need to ensure that they are similarly informed when dealing themselves with more junior applicants.⁴

The 2004 report noted that a separate review of the rules had been ordered by the Prime Minister ' to ensure that they are compatible with a public service that is keen to encourage greater interchange with the private and other sectors, which is essential for effective delivery in today's public service.'⁵

The Review had first been trailed during the Prime Minister's speech on Civil Service Reform on 24 February 2004 when he stated that:

"We intend to continue to recruit extensively from outside the Civil Service to senior posts, including at the highest levels. We also need to examine the business rules to make it easier for civil servants to move into the private sector and back again."

However, according to press reports, the Head of the Home Civil Service, Sir Andrew Turnbull, reportedly blocked Sir Nigel Wicks of the Committee in Standards in Public Life from carrying out an independent inquiry into whether the rules should be changed.⁶

Sir Patrick Brown was asked to undertake the review. He was a civil servant from 1972-1997. During his career he worked on a number of privatisations in the 1980s including the National Freight Corporation, the ports and National Bus Company, the water industry, the Property Service Agency and the rail operating companies. After his retirement in 1997 he worked for the Kvaerner Group 1998-99. In 1999 Sir Patrick became a non-executive director of the Go-Ahead Group plc and its Chairman in 2002, a post that he currently holds. He is also Chairman of Amey plc. and a non-executive director of Northumbrian Water Group plc. The review undertaken by Sir Patrick has now been completed, but not published. An announcement by the Prime Minister is expected shortly when the House returns from its summer recess.

⁴ Advisory Committee on Business Appointments, Sixth Report July 2004 paras 23-25

⁵ Cited by Alan Doig "Sleaze and Trust: Labour Trades Mistrust for Sleaze" *Parliamentary Affairs* April 2005

⁶ See 'Plan to end Whitehall sleaze rule', *The Guardian*, 16 August 2004.