

Strasbourg, 25 March 2007

Greco (2007) 23E
English/French

**Rules and guidelines regarding
revolving doors/*pantouflage***

Presentations and summary record

TOUR DE TABLE
(GRECO 34, 16-19 October/octobre 2007)

**Règles et lignes directrices en matière de
*pantouflage/revolving doors***

Présentations et compte rendu sommaire

INTRODUCTION

At its 34th Plenary Meeting (Strasbourg, 16-19 October 2007) GRECO held a *tour de table* on Rules and guidelines regarding revolving doors/*pantouflage*.

The *tour de table* was structured by presentations by representatives from four countries which have detailed regulations in this field: Serge MAUREL, Service Central de Prévention de la Corruption (France), Inese GAIKA, Corruption Prevention and Combating Bureau (KNAB) (Latvia), Sally PUGH and Lisa HARLOW, Propriety and Ethics Team, Cabinet Office (United Kingdom) and Jane LEY, Office of Government Ethics (United States of America). They presented the plenary with the approach taken in their respective countries with regard to definitions, the positions and situations subject to regulations as well as various good practices for regulating this issue. Subsequently, a number of delegations informed the plenary of specific matters which had been examined in their respective countries and obstacles faced when dealing with recommendations on revolving doors/*pantouflage* issued by GRECO during its Second Evaluation Round.

PRESENTATIONS

UNITED STATES OF AMERICA Jane LEY, Office of Government Ethics

In addition to the presentation which can be found in **Appendix I**, Ms Ley provided the following information:

History of Revolving Door legislation/regulation

In the mid-19th Century, the United States began enacting conflict of interest laws applicable to the activities and financial interests of individuals who moved in and out of public service. These laws were intended to address types of misconduct and corruption that had occurred during the expansion and contraction of the size of the federal government during and following the U.S. Civil War. Additional restrictions followed World Wars I and II for similar reasons. In 1962, as a part of a more general recodification of the criminal code of the federal government, the conflict of interest statutes were amended and combined into one chapter (chapter 11 of Title 18, United States Code). These criminal statutes now cover a range of potential conflicts of interest for individuals entering federal public service, for current federal officials, and for former federal officials: the full revolving door. In 1991, a newly amended code of conduct for the executive branch incorporated administratively-enforced provisions supplementing the criminal code provisions. Topics covered included: the receipt of severance payments from former private employers; current financial conflicts arising from continuing relationships with former employers; conflicts with newly acquired financial interests, outside employment and activities; and conflicts arising from seeking/negotiating for new, private employment.

Public Policy Considerations

In developing this statutory and regulatory framework addressing the entire "revolving door," the U.S. has had to take into consideration the fact that the executive branch of the federal government is Constitutionally designed to change senior leadership significantly and regularly. A Presidential election is required every four years. And, while the President and Vice President are the only elected officials serving in the executive branch, there are approximately 1000 full-time positions which require Presidential appointment and Senate confirmation. Presidential appointees often leave positions before a full Presidential term has expired, so while there is a peak in the number of individuals coming into and leaving the executive branch at the beginning and end of a Presidential term, there continues to be change throughout the mid-term years. Furthermore, at the career levels, the U.S. is a technocracy rather than a bureaucracy; fewer individuals make federal public service a career as the technical expertise needs of public service as well as the

availability of private employment opportunities change. In fact, the federal public service pension policy now facilitates this move; the federal pension has been redesigned to be portable: an investment account that “travels” with the individual to other employment rather than an annuity payable only after a specific number of years of service.

In developing conflict of interest policies applicable to the movement of individuals in and out of federal public service, a balance has had to be struck between the need to protect federal governmental processes from misuse of officially acquired information and official position with the need to attract continually the best and the brightest individuals into public service.

Seeking/Negotiating for future employment

The U.S. statutory and regulatory scheme recognizes that while post-public service activities are of concern, a critical period for real conflicts of interest is the time the individual still is in public service but beginning to take steps to acquire private sector employment. During public service, the individual has official authority to wield in favour of a potential employer, has access to non-public information acquired by reason of public service, and usually has more immediate access to other public officials. Thus, in the executive branch, the code of conduct provides guidance and restrictions for officials who wish to begin seeking employment (such as sending an application or a resume to a prospective employer) or who are approached by a prospective employer rather than simply reiterating the criminal code restriction on negotiating for employment, an activity that typically occurs later in the process.

Post-public service employment restrictions.

The post-public service employment restrictions at the U.S. federal level are found in the criminal code. The restrictions focus on prohibiting a former official from making certain types of representations on behalf of private parties back to the federal government. These restrictions are not employment bans; for the most part, they focus on what types of representational activities the former official may not engage in, not on whose behalf the former official makes the representation. With some narrow exceptions and waiver authorities, the following are the primary restrictions:

For executive branch officials

A former official may not represent another to or before any entity of the federal public service if the representation is on a particular matter involving a specific party or parties in which the individual had personally and substantially participated while a federal executive branch official. In shorthand, this is a “no switching sides” type of restriction. The types of matters to which this restriction applies are such things as contracts, claims, investigations, litigation, or grants—specific matters that have the interest and rights of identifiable parties involved, not just general policy matters. This restriction lasts for the life of the matter involved, which for protracted litigation or certain contract matters, can be any number of years.

There is also a two-year restriction on representing another back to the federal public service on particular matters involving specific parties which were pending under the individual’s official responsibility during his/her last year of public service. This restriction primarily affects senior officials/managers who make/establish the policies for the operations of an office or agency but whose staff actually handle the day-to-day work on specific matters. The higher an official is in an entity, the broader this restriction becomes since the head of an office, department, or agency is considered to have ‘official responsibility’ for all matters pending in his or her office, department or agency. For example, a current Attorney General has official responsibility for every piece of litigation (case) that is pending in the Department of Justice, whether or not he or she is aware of any details about the case.

For senior officials (high level but not Cabinet level), there is a one year, no 'representational' contact ban with officials of any department or agency in which the individual had served during his or her last year of public service. For very senior officials (Cabinet level and the most senior White House officials), there is a one year, no 'representational' contact ban with the officials of the former departments or agencies in which they served as very senior officials during their last year of service and with any individual in the executive branch who holds a position that requires a Presidential appointment with Senate confirmation. Effectively, these very senior political appointees are prohibited from making representations to the highest political levels of administration across the executive branch.

For legislative branch officials

Members of both Houses of Congress and senior Congressional staff also have a one year, no representational contact restriction. To whom these representations may not be made changes with the type of position the former official held. For example, the broadest restriction applies to a former Member of Congress who is prohibited from making representations on behalf of another to any current Member, officer or employee of either House of Congress or any employee of any other legislative office of Congress. (At the beginning of 2008, this restriction for Members increases from one to two years.) For officers and employees of the Congress, the representational restriction applies more narrowly. For example, a former senior member of a committee staff is restricted from making representations to current Members and current staff of the committee where she or he had been employed and to any Member who had been on the committee in the year immediately prior to the date the individual left the committee for private employment.

For both executive and legislative branch officials

There is one restriction that applies to both senior and very senior executive and legislative branch officials including Members of Congress that goes beyond prohibiting representations; it prohibits behind-the-scenes aiding and advising. For one year these former officials may not represent, aid or advise a foreign government or foreign political party with the intent to influence a decision of an official of a federal department or agency.

Private sector liability

For each of the criminal restrictions, the private party negotiating with the executive branch official or the new private employer or client of a former federal executive or legislative branch official can be held liable as a principal when acting with the requisite knowledge and intent. Ms. Ley provided an example of a former Air Force procurement official who was convicted and sentenced to a prison term for continuing to take actions affecting Boeing while negotiating for employment with the company and the large fine paid by Boeing for the actions of the senior corporate official acting on its behalf.

Sanctions/Penalties

The sanctions/penalties for current officials can range from administrative reprimand to dismissal and can also include civil monetary fines, and/or imprisonment and/or criminal fines. For former officials there is a possibility of civil monetary fines and/or imprisonment and/or criminal fines. Other sanctions may be imposed by regulatory Commissions who enforce specific rules of practice for those who represent clients in Commission proceedings, and by agencies as an administrative debarment, cancellation of contracts or other government actions.

The last power point slide includes references and internet links to the laws and regulations that are a part of managing the conflicts of the revolving door as well as to summaries of these materials developed by the Office of Government Ethics for the executive branch.

QUESTIONS AND ANSWERS

In response to a question about the positives and the negatives of this type of system, Ms. Ley mentioned that these representational style restrictions (as opposed to employment bans) allow for more ease of movement in and out of public service and can apply generally to a broad range of public servants, but only actually affect the conduct of former officials in risk situations. Representational restrictions, however, require more extensive and continual education and training resources to ensure that officials and former and future employers understand them. In addition, representational restrictions also do not generally address concerns for behind-the-scenes assistance.

UNITED KINGDOM

Sally PUGH and Lisa HARLOW, Propriety and Ethics Team, Cabinet Office

PRESENTATION:

The **Propriety and Ethics Team** in the Cabinet Office is responsible for advising officials and Ministers on propriety and conduct issues. The work of the team includes publishing and advising on key codes of conduct, including the *Civil Service Management Code* and *Ministerial Code*, which set out expected standards of conduct and behaviour.

Rules on the acceptance of outside appointments are specified in these codes and are an integral part of the ethical regulation landscape in the UK. The overriding principle is that when a former Crown servant or former Minister take up an outside appointment there should be no cause for any suspicion of impropriety.

The principle of there being a need for public servants to avoid any conflict between their public and private interests goes back a long way in the UK. The requirement for senior public servants to seek permission to take up business appointments after retirement or leaving the service was first introduced in 1937.

The rules for public servants were last amended and updated in 1995. At that time, parallel arrangements were introduced to cover Government Ministers.

RULES FOR CROWN SERVANTS

The rules for Crown servants are set out in the *Civil Service Management Code*. The *Code* lays down detailed instructions for the management of the civil service and form part of the terms and conditions of service to the Crown.

The aim of the rules is to maintain public trust in Crown services. In the UK, there is an increasing rate of interchange between the public and private sectors which we are keen to support and encourage, but this needs to be in balance with the reassurance to the public that when a Crown servant leaves and takes up an outside appointment there is no **suspicion** that a job might:

- be a reward for past favours granted by the applicant to the organisation;
- be one which could enable a particular employer to gain an improper advantage by employing someone who had access to what competitors might regard as their own trade secrets or proposed developments in government policy which might affect that firm or its competitors;
- be sensitive for other reasons.

Who do they cover?

- All civil servants (officials in central government departments and agencies);
- members of the Armed Forces;
- members of the diplomatic service.

incorporating:

- staff on secondment from the civil service to other organisations;
- staff on secondment to the civil service from other organisations;
- special advisers (who are employed as temporary civil servants appointed by Ministers as a source of political assistance);
- staff working in areas of procurement are additionally required to report any approaches of employment from outside organisations whether considering to accept the offer or not.

Which appointments are covered?

The rules do not solely apply to appointments to commercial organisations. They also cover “any form of full, part-time or fee paid employment in the UK, overseas in a public or private company or in the service of a foreign government or its agencies”.

They do not cover:

- unpaid appointments to non-commercial organisations;
- appointments in the gift of a Minister, for example to an organisation in the public sector such as the Board of the Bank of England, as it is unlikely to be a real or perceived conflict of interest;
- in the case of part-time staff, appointments that they already hold that have been agreed with their government department.

All staff covered by the rules need to obtain government approval before accepting an outside appointment within a 2 year period of leaving Crown Service.

What’s the process?

The application process will depend on the seniority of the Crown servant and the sensitivity of the case. All applications will initially go to the employing government department. Applicants are asked to detail any official dealings they have had with the prospective employer and a countersigning officer will also add their own comments.

Most senior appointments: Permanent Secretaries, Heads of Departments and most of the senior appointments in the tier below.

These need the approval from the Prime Minister (or the Foreign Secretary if in the diplomatic service) who take advice from an oversight committee, titled the Advisory Committee on Business Appointments. This is an independent body. It currently has seven members, all of whom have long-standing experience across a spectrum of organisations in the public and private sectors. The Committee is provided with secretariat support by the Cabinet Office.

Officials below the most senior appointments

The employing department will approve applications in consultation with the Head of the Home Civil Service or Cabinet Office as appropriate. The Minister in charge of the employing department is responsible for approval, but this, in effect, is usually delegated to departmental officials.

Special Advisers

Ministers are not involved in these approvals. Applications go to the Head of the Home Civil Service or departmental Permanent Secretary (Head of Department) and the Advisory Committee on Business Appointments is engaged in the most senior cases.

Any case can be referred to the Cabinet office or the Advisory Committee if the Head of the Home Civil Service and departmental Minister agree.

What conditions can be imposed?

It is important to emphasise that applications are considered on a case by case basis to take account of the particular circumstances of that application – there is no blanket approach. If unconditional approval is not granted, the sanctions that can be requested are:

- a waiting period before taking up the appointment;
- an absolute or qualified conditional ban on dealings between the prospective employer and the Government or the prospective employer and a competitor of that employer.

A frequently imposed condition by the Advisory Committee is that a former Crown servant should not be personally involved in lobbying Government for twelve months. All Permanent Secretaries and their equivalents have an automatic waiting period of three months before taking up an outside appointment, although the Advisory Committee has the power to waive such a requirement if they consider that there is no risk of actual or perceived impropriety.

RULES FOR MINISTERS

The *Ministerial Code* sets out the core principles and practice which should underpin the way in which holders of Ministerial office discharge their duties. The *Ministerial Code* is the Prime Minister's personal guidance to his Ministers. In relation to the rules on outside appointments, it states:

"On leaving office, Ministers must seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office, apart from unpaid appointments in non-commercial organisations. Ministers will be expected to abide by the advice of the Committee".

The rules apply to all Ministers whether of Cabinet or junior rank. As with most senior civil servants, Ministers of Cabinet are normally expected to observe a three month waiting period from the date of leaving office. There may be exceptions, for example where the Minister is returning to a family business or the practice of a former profession, if unconnected with his or her former Ministerial portfolio. As with Crown servants, the rules apply for up to two years after leaving office. The Advisory Committee will consider each case on its merits against the same tests used when considering applications from Crown servants, that is, could there be the suggestion that the appointment was a reward for past favours, or has the Minister been in a position where he or she has had access to information that would give his or her company an unfair advantage. Again, the Advisory Committee can impose a range of conditions such as a waiting period of up to two years or a 'no lobbying' condition for a given period.

DO THE RULES WORK?

The main strength of the rules in relation to Crown servants is that they form part of the terms and conditions of service and there is consequently a high level of compliance. The case by case approach is also important, ensuring the rules can be applied flexibly and appropriately.

For Ministers, there is a high level of public interest and media scrutiny. Non compliance with the rules is likely to surface publicly, therefore causing embarrassment and risking adverse publicity for the Minister and outside organisation involved.

There is a high degree of transparency in relation to Ministers and the most senior public servants. The Advisory Committee publishes details of its advice on its own website and in an annual report. Indeed, there is already an entry on the website relating to an application from our former Prime Minister Tony Blair:

Name, former department & date of leaving office	Appointment	Advice & date tendered	Date taken up
The Rt Hon Tony Blair Prime Minister June 2007	Speaking engagements Washington Speakers Bureau Inc.	Take up forthwith, the automatic three months waiting period for former Cabinet Ministers having expired, provided that he did not draw on privileged information that was available to him as Prime Minister October 2007	First engagement October 2007

Reference materials provided on the acceptance of outside appointments by Crown Servants and Ministers can be found at **Appendix II**.

QUESTIONS AND ANSWERS

In response to questions, the speakers informed the Plenary that the rules have never been legally tested. However, the Legal Counsel advised that the rules are not unreasonable given the standards expected of public servants and in public life in general and would likely withstand any legal challenge.

Advice given by the Advisory Committee on Business Appointments is very rarely not followed. Final decisions on cases involving high-ranking officials rest with the Prime Minister or, in respect of diplomats, with the Foreign Secretary. However, as the advice is published and attracts a lot of media interest and scrutiny, any decision by the Prime Minister or Foreign Secretary not to follow the advice of the Advisory Committee on Business Appointments would have to be justified in some way.

It is difficult to get a full picture of the magnitude of movements between the public and the private sector as published statistics tend to concentrate on cases of high-ranking officials.

There is no overarching requirement on local government to have parallel regulations in place – arrangements can therefore vary from one local authority to the other. Regarding other types of public bodies: in the UK there are quite a number of so-called ‘arms length bodies’ where government services are carried out by public sector bodies. Such bodies are encouraged to have their own rules but ultimately they can decide for themselves whether parallel rules are needed.

FRANCE

Serge MAUREL, Service Central de Prévention de la Corruption

L’origine du terme ‘pantouflage’ est liée à l’argot d’une des plus anciennes grandes écoles françaises, créée par Napoléon Bonaparte – l’Ecole Polytechnique. Le pantouflage fait référence aux sorties de cette grande école d’ingénieur. Les élèves qui sortent bien classés sortent historiquement dans ‘la botte’ (ce qui représente l’armée). Les élèves plutôt mal classés sortent dans ‘la pantoufle’ et devaient se résigner à être embauchés dans le secteur privé. Par extension, le terme de pantouflage désigne la migration d’un agent public dans le secteur privé.

La pantouflage désigne également une somme due à l’Etat (somme engagée pour la formation) dans l’hypothèse du départ anticipé dans le secteur privé d’un fonctionnaire diplômé d’une école de formation de l’Etat qui est dans l’obligation de servir l’Etat pendant un certain nombre d’années – en général 10 ans.

Dans sa présentation (voir **Annexe III**), l'intervenant décrit l'arsenal juridique, législatif et réglementaire strict appliqué en France ainsi que quelques imperfections et limites du régime. Il apporte également les précisions suivantes:

Depuis début 2007, les avis donnés par la Commission de déontologie lient obligatoirement l'Administration.

En ce qui concerne le Bilan de 2006 de la Commission de déontologie de la Fonction Publique Territoriale, elle a rendu 825 avis. Cela ne couvrirait qu'une partie des dossiers qui auraient dû réellement passer devant cette commission.

Un fonctionnaire qui quitte l'Administration ne va pas forcément aller d'emblée dans le secteur privé. Il peut aller, par exemple, dans une organisation internationale ou une association et après aller dans le secteur privé. Et c'est seulement à ce moment-là que pourra éventuellement se poser un problème de conflit d'intérêts mais il sera trop tard pour le contrôler.

Les membres des cabinets ministériels sont assimilés à des agents publics - ce qui n'est pas le cas des ministres - et donc ils peuvent également être passibles du délit de pantouflage. Mais le problème qui se pose est le fait qu'il n'y ait pas de statut de membre de cabinet ministériel et que les fonctions ne soient pas précisément définies. Un membre de cabinet ministériel peut avoir eu affaire à des entreprises sans, pour autant, avoir eu de façon opérationnelle un rôle de surveillance ou de passation de marchés.

Le statut des magistrats est régi par une ordonnance ancienne (1958) qui prévoit qu'un magistrat de l'ordre judiciaire qui souhaite aller dans le secteur privé doit simplement informer le ministre de la Justice et ce dernier peut, éventuellement, s'il juge que les nouvelles fonctions portent atteinte à l'honneur ou à la probité de la fonction de magistrat, s'y opposer. Il n'y a pas de commission de déontologie pour les magistrats de l'ordre judiciaire.

QUESTIONS - REPONSES

En réponse à une question, l'intervenant informe la plénière qu'en ce qui concerne le déclenchement de l'action publique/de la poursuite pénale, elle peut se faire très facilement en France parce qu'il existe une disposition du Code de Procédure Pénale - Article 40 - qui oblige toute autorité constituée (par exemple, un élu), tout officier ministériel, tout agent public, qui a connaissance d'un délit à le signaler au Procureur de la République. Dans le cas d'un agent qui ne respecte pas un avis de la Commission de Déontologie, une dénonciation peut être faite à la Commission, auquel cas la Commission a l'obligation de saisir le Procureur de la République. L'autorité constituée, voyant un fonctionnaire partir dans une entreprise qu'il a contrôlée, a elle même l'obligation de dénoncer ce fait au Procureur de la République.

FRANCE

Serge MAUREL, Central Department for the Prevention of Corruption
(English translation)

The origin of the term '*pantouflage*' is linked with the slang of one of the oldest French *grandes écoles* (special colleges), created by Napoleon Bonaparte, the Ecole Polytechnique. It refers to the career outlets from this superior engineering college. Graduates with a good placing have historically gone into the 'boot' (representing the army). Those who were poorly placed have gone into the 'slipper' (*pantoufle*), having to resign themselves to recruitment in the private sector. By extension, the term *pantouflage* denotes a public official's migration to the private sector.

It also denotes a sum owed to the State (the amount committed for training) in the event that a civil servant who holds a diploma from a State training college and who is therefore required to serve the State for a certain number of years (generally 10 years) leaves the service for the private sector before the end of this term.

In his presentation (see **Appendix III**), the speaker described the stringent system of legal, legislative and regulatory provisions applied in France, together with some of its imperfections and limitations. In addition, he provided the following particulars:

Since the beginning of 2007, the opinions given by the Ethics Committee have been binding on the administration.

The 2006 activity record of the Ethics Committee shows that it delivered 825 opinions. However, it was believed that this number only covered a part of the cases that should actually go before the committee.

A civil servant leaving the administration will not necessarily go straight into the private sector but may, for example, join an international organisation or an association, and then move to the private sector. It is possible that a problem of conflicting interests will only arise at that point, but it will then be too late for scrutiny.

Ministers' personal staff members are treated as public officials (while ministers are not) and thus may also be liable for the commission of a *revolving doors/pantouflage* offence. The problem, however, is that the position of these personal staff members is unregulated and their duties are not precisely defined. They may, for example, have had dealings with enterprises but not carried out supervision or arranged transactions in an operational capacity.

Conditions of service for members of the judiciary are governed by an old order (1958) providing that those wishing to enter the private sector need simply inform the Minister of Justice who may object if the new functions are deemed injurious to the repute or rectitude of judicial office. There is no ethics committee for members of the judiciary.

QUESTIONS AND ANSWERS

In reply to a question, the speaker informed the plenary that prosecution/criminal proceedings could be actuated very easily in France because there is a provision in the Criminal Procedure Code (Article 40), which requires any 'constituted authority' (i.e. person granted authority by law, for example an elected representative), any ministerial officer or any public official who knows of an offence to report it to the Public Prosecutor. An official who does not abide by an opinion of the Ethics Committee may be reported to the Committee, in which case the Committee must refer the matter to the Public Prosecutor. The constituted authority itself, when aware that a civil servant is leaving to join an enterprise which he/she has supervised, must report the fact to the Public Prosecutor.

LATVIA

Inese GAIKA, Corruption Prevention and Combating Bureau - KNAB

PRESENTATION:

Prevention of conflict of interest in the activities of public officials is a central element in the fight against corruption in Latvia. This area is regulated by a special law "On Prevention of Conflict of Interest in the Activities of Public Officials" adopted in 2002. Prevention of the phenomenon of revolving doors is part of restrictions, incompatibilities and control mechanisms to prevent conflict of interest set out in this law.

According to GRECO evaluation reports, "revolving doors" is the improper movement of public officials to the private sector. The Revolving Door Working Group in the United

States defined this phenomenon as movement of individuals back and forth between the private sector (industry or lobbyist organisations) and the public sector.

By introducing special rules to prevent conflict of interest in Latvia the aim is to ensure that public officials take action only in public interest, promote transparency in their activities and accountability to the public, as well as to avoid improper influence of personal interests or interests of relatives or counterparties.

Article 10 of the above-mentioned law on Restrictions to Commercial Activities provides for specific rules in this area; there are stricter restrictions for high ranking public officials and officials with specific functions and general rules for all public officials:

- the President, Deputies of the Parliament, Prime Minister, Ministers, State Secretaries, heads of certain public agencies and certain other high-ranking officials and their relatives are allowed to be members and shareholders of enterprises that receive public contracts, public resources, state-guaranteed credits and privatisation funds only through an open bidding. This restriction applies for 2 years after leaving the respective public position;
- members of governing bodies of public enterprises are allowed to receive income from enterprises receiving public contracts from the respective public enterprise only if these enterprises benefit from public contract after an open bidding. This restriction applies for 2 years after leaving the respective public position;
- elected officials in municipal councils and executive directors of municipal councils are not allowed to be members or stake-holders of enterprises getting public contracts of respective municipalities, credits and privatisation funds, unless it is received through an open bidding. This restriction applies for 2 years after leaving the respective public position;

Another stricter restriction applied to high-ranking officials in that this possibility to receive public contracts or other benefits through open bidding does not apply if the public official is head of state or municipal institution announcing the open bidding or that this official has appointed a member of the respective procurement commission or a member of this commission is under his supervision.

- Generally for all public officials the rule is that it is not allowed for 2 years to receive goods from an enterprise in relation to which he has, by carrying out his duties, taken decision regarding a procurement contract, allocation of public resources or has carried out functions of supervision, control or sanctioning.

This last general rule was introduced in the law more recently.

Persons who become public officials after working in a private enterprise, namely in supervising, executing or controlling bodies of these enterprises, are not allowed for 2 years to issue administrative acts in relation to these enterprises (Article 11, part3).

There is a restriction to issue administrative acts, carry out supervision, control, enquiry and sanctioning functions, conclude contracts or take any other action by a public official who previously worked in a private enterprise 2 years after interrupting these contractual relations. Also an official who was member of the governing body of an enterprise less than 50% owned by the State for 2 years is not allowed to issue administrative acts relevant to this enterprise (Article 11).

Public officials representing public interests in state and municipal enterprises – usually heads of municipal councils, state secretaries and their deputies – 3 years after finishing their duties are not allowed to receive material benefit, gifts, shares and goods from this enterprise and hold there any other duties (Article 9, part 4).

The law sets out rules restricting the receipt of gifts (Articles 13¹, 13²). An official representing state- and municipality-owned shares is not allowed to receive gifts from this

enterprise or members of the governing body of this enterprise while on this duty and 2 years after. Outside his public duties an official is not allowed to accept gifts from a donor relating to whom he has prepared an administrative act, carried out supervision, control, enquiry or sanctioning functions, concluded contracts or taken any other relevant decision for 2 years. If he has accepted a gift then he is not allowed to take the above listed decisions with regard to the donor for 2 years.

It should also be mentioned that in Latvia public officials are not allowed to receive income from shares of enterprises registered in offshore or low tax countries (Article 9, part 3).

Information received while on public duty should not be disclosed for purposes that are not related to public duty (Article 19).

Finally there are rules governing outside or additional employment. These rules are stricter for high-level officials and less binding for others. Generally, a public official in a senior position is additionally allowed to do only educational, scientific and research work and to be a doctor or professional sportsman, but other officials are allowed to have other work contracts, if they receive a written permission. This permission is given after assessing whether there is not a conflict of interest risk. For example, it will not be possible to work in an enterprise controlled by this official.

Other laws. There is often a reference to the rules in specific laws of public institutions, for instance, in the Law on Civil Service. Civil servants also have to respect the Instruction of the Cabinet of Ministers "On Principles of the Conduct of Civil Servants", which stipulates that civil servants while on duty should not take into account their personal interests and should use his position and information received while on public duty only for the good of society.

In most of the state institutions and to a lesser extent also in municipal institutions codes of ethics and codes of conduct have been recently introduced. That was part of the National Anti-Corruption Programme for 2004-2008 adopted by the government in 2004. For example, the Code of Professional Ethics and Conduct of the State Police states that a policeman shall not use his position or public property, as well as information obtained on his duty to gain a personal or material benefit. The Code of Ethics of the State Income Service states that officials of the State Income Service should not take outside employment when for ethical reasons their impartiality and neutrality could be undermined and they should not use information obtained on public duty for personal interest.

Awareness and efficient enforcement are key to successfully prevent corruption. Enforcement in itself helps to raise awareness about the existing rules, ensure that they are actually respected and violations are not repeated.

The law "On Prevention of Conflict of Interest in the Activities of Public Officials" provides that first of all heads of public institutions are responsible for prevention of conflicts of interest in their respective institutions. During the conference "Corruption Prevention and Combating – Current Trends and Future Challenges" on 9 October in Riga the responsibility of heads of institutions and improvement of internal control mechanisms were recognised to be among the main priorities to prevent corruption in the coming years. Meanwhile, there is also independent supervision. Proper application of the described restrictions and limitations, including on "revolving doors", is monitored by the Corruption Prevention and Combating Bureau. This is one of the most extensive parts of the work of the Bureau. Our Bureau systematically carries out checks related to activities of specific public officials and, for example, in 2006 held 105 public officials administratively liable, mostly for violation of restrictions to take decisions when the official or his relatives are personally interested.

To promote awareness of the existing rules on conflict of interest, in 2004 the Corruption Prevention and Combating Bureau also has issued guidelines "Prevention of Conflict of

Interest for Local Officials". More recently three new guidelines were developed for policemen, civil servants and heads of public institutions, as well as officials representing state and municipal interests in public companies and sea ports. It is planned to publish and disseminate these guidelines – mostly through personnel divisions and seminars conducted by the Bureau – this year.

From practice the "revolving doors" problem in Latvia is comparatively less common than other violations in the area of conflict of interest prevention. As already mentioned, mainly restrictions regarding taking decisions in personal interest while on public duty are violated. However, while this is not a typical violation, this problem exists.

Practice shows that certain public officials hide their participation to enterprises bidding for public contracts under offshore enterprises or companies owned by their relatives and counterparties. It makes it difficult, especially for ordinary citizens, to understand who the actual beneficiaries of the given public contract are. In the long-run this creates a problem as to how to determine afterwards whether the public official went to the private company related to companies which got public contracts in his institution. Therefore, it would be necessary for companies receiving public contracts to reveal their actual owners and beneficiaries.

Another problem is that some public officials moving to the private sector do not go to an enterprise that participated in a public procurement organised by him, but creates a new enterprise in this area, using his connections and information; often it becomes a successful business in an area closely related to his former public function.

Officials can also move to other sectors of activities, for example, from a senior job in a municipal council, given various connections and general information gained on public duty, an official can move, for example, to the real estate market.

Also, an official can take decisions in benefit of certain business interests, not specially related to enterprises bidding for public contracts, but in a long-run creating more advantageous conditions for successful business of close persons of the official that in the long-term would, as mentioned in one of the previous examples, allow the official to move from the public sector to this business himself.

Despite these risks, restrictions should not be too strict. They should not undermine development of enterprises and professional development of citizens. Not in all situations where there could be a conflict of interest it will actually occur. It is important to regulate in a way that the focus is on whether an official moving to a private company had supervision or control functions over it or has taken relevant decisions. For example, the fact that an official has shares in an enterprise does not in itself create a problem – problems may come from actions with these shares. For example, an official in the Ministry of Defence owns an enterprise producing chocolates – this should not be restricted, since there is no actual conflict of interest and few possibilities that this enterprise will bid for a contract with this ministry. Another example: an inspector of pharmaceutical industry moves to a pharmaceutical enterprise, restriction should be considered as violated only if the inspector controlled the respective enterprise.

An important challenge in this area is representation of state and municipal capital shares in public enterprises. Appointment of these representatives in Latvia unfortunately is politicised. There are cases when one person is represented in 10 councils. Studies carried out by NGOs show that money received for representing public interests in these councils is later transferred as donations to political parties. It would be necessary to introduce clear rules for appointment of representatives in the councils of public enterprises, in order to generally increase transparency and create an open vacancies system that would allow professionals and civil servants to occupy these positions as opposed to members of political parties.

QUESTIONS AND ANSWERS

In response to a question, the speaker informed the Plenary that there are four types of sanctions applicable in Latvia. First, following the administrative check carried out by the KNAB a monetary fine ranging from 70-350 euros can be imposed on the public official. Furthermore, restrictions can be imposed on occupying a public office. The most important sanction is, however, the return to the State budget of losses caused by an action through civil law procedures which often leads to the official paying back to the state the salary gained during the illegal occupation of a post. Approximately ten such decisions have been taken by the courts. Criminal liability is also provided for, but criminal sanctions are very rarely imposed in these situations.

INFORMATION PROVIDED BY DELEGATIONS

Iceland : When Iceland received a recommendation to consider appropriate rules on movements of public officials to the private sector the question was considered by the Ministry of Finance which reached the conclusion that rules were not needed. Subsequently, Iceland provided GRECO with information illustrating that this matter had been seriously considered. Since then, however, the private sector has rapidly expanded and there is a huge demand for specialists in the private sector, which has made this issue very topical. Within the financial sector there have been discussions on how to restrict direct movements of public officials to the private sector. The Financial Supervisory Authority and the Competition Authority - from which a significant number of officials have moved to the private sector over a short period of time – discussed implementing six month employment bans and proposed that officials receive higher remuneration during the last three months of employment in the public body. However, the proposals were not supported by the trade unions. The Ministry of Finance will again look at GRECO's recommendation and report back in the spring of 2008.

Slovenia : Slovenia does not have any rules concerning revolving doors/*pantouflage*. Regulations were included in the draft Law on integrity in the Public Sector sent to parliament in September but the law was not adopted. Article 33 of the draft law stated: "the functionary whose office has been terminated shall not represent or act as mandatory for the legal entity that has or is establishing business contacts with his former office during a two year period". It should be noted that the proposed article 33 did not, itself, cause any problems. The draft law was blocked because of some other articles. Therefore, there is hope that a regulation on revolving doors/*pantouflage* will be passed in the future.

Cyprus: In Cyprus a special law has recently been adopted to control the recruitment of former state officials and certain former civil servants to the private sector. In the preamble of this law, it is stated that so as not to endanger public interest persons who have privileged information must be controlled. The law establishes an independent special committee composed of three senior attorneys from the Attorney General's Office who have a duty and the power to examine applications submitted by former state officials and civil servants in order to establish whether the person concerned can be recruited to the private sector with or without any restrictions. It should be underlined that recruitment back to the public service within two years from resignation/retirement from the public service is prohibited. Another article of the law imposes an obligation on former state officials and civil servants to apply for permission before taking up employment in the private sector, providing details on the nature and duties of the future employment, terms of employment, etc. Sanctions can be imposed on persons who omit to apply to the special committee for permission.

Sweden: The Swedish government is currently examining the possibility of developing guidelines on revolving doors/*pantouflage*, but the Swedish delegation wishes to achieve an understanding of the specific problems faced by Sweden in dealing with this question. The main reason for the fact that there are no rules in Sweden governing movements of public officials to the private sector is the country's tradition of transparency. The

administrative model originates from the early 17th century. It consists of four fundamental laws that together form the Constitution, two of which are the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression. The Freedom of the Press Act (1766) includes rules on transparency. The principle of access to official documents originates from the 18th century and is said to have already been created in the 13th century. Sweden was the first country in the world to have a law on freedom of the press. In order to understand the approach of the Swedish government and public to the issue of revolving doors/*pantouflage*, it is important to understand that the law gives all individuals a fundamental right to express their opinions and to disseminate them without prior censorship. The right of free access to official documents, enshrined in the Freedom of the Press Act, means that anyone is entitled to contact the government, public authority or agency to request access to any document held by this body. Requests can be anonymous and do not need to be justified. This means that government officials and other central and local government employees are free to divulge official information – with some rare exceptions provided for in legislation.

In this context it is doubtful how restricting movements from the public to the private sector in order to prevent knowledge/information being passed on can be justified.

Difficulties can occur if information is spread during ongoing processes such as public procurement. However, such situations are regulated in the Administrative Procedures Act, the Secrecy Act and the Act on Protection of Trade Secrets. Notwithstanding, any official can share information with the media during the process without being convicted if the information is not included under one of the two aforementioned acts.

In ITS Second Round Compliance Report on Sweden, GRECO takes the view that “possible additional rules or guidelines do not have to take the form of a general ‘quarantine’, but may entail a more tailored format, for example concerning public officials in certain positions or as regards particular situations where conflicts of interest may arise”. In Sweden there are at present no obstacles for public agencies to incorporate certain conditions of relevance to this issue into the employment contracts of a particular employee. It is however impossible to regulate every ethical dilemma. Ethical questions need to be dealt with through ongoing discussion among public sector employees.

The discussion generated in Sweden as a result of GRECO’s recommendation highlights the need for a better understanding of the systems in each country in order to find the right way to recommend change.

Belgique : Un code de conduite pour les agents publics fédéraux a été adopté récemment, publié au *Moniteur Belge* le 27 août 2007 et diffusé à tous les fonctionnaires fédéraux, accompagné d’un article explicatif. Dans ce code, on trouve deux règles particulières par rapport au *pantouflage*. Ces règles abordent la question, sans pour autant la réglementer en détail. En particulier, la question des contacts entre les agents qui restent dans l’administration et ceux qui viennent de quitter l’administration est traitée, avec une interdiction de leur accorder des faveurs - notamment en ce qui concerne des renseignements et informations privilégiés détenus par l’administration. Egalement, l’agent qui compte partir doit informer son supérieur hiérarchique le plus rapidement possible pour éviter qu’il y ait des conflits d’intérêts possibles. Le Code de conduite ne fait qu’aborder la question qui sera, par la suite, développée au niveau du Bureau d’Ethique et de Déontologie qui va établir un plan de travail. Le *pantouflage* constituera un des points de ce plan pour 2008.

Belgium (English translation) : A code of conduct for Federal public officials was adopted recently and was published in the *Moniteur Belge* on 27 August 2007 and circulated to all Federal civil servants, with an explanatory text. Two specific provisions relating to revolving doors/*pantouflage* can be found in this code. Both provisions address the issue without regulating it in detail. In particular, the question of contacts between staff

remaining in the administration and those who have just left is addressed: the former not being permitted to do the latter favours (particularly with regard to insider information held by the administration). Also, an official intending to leave is required to inform his/her immediate superior as promptly as possible to avert a possible conflict of interest. The code of conduct thus does not regulate the issue of revolving doors/*pantouflage* in detail. It is however planned that this will be further elaborated upon by the Bureau of Ethics and Professional Conduct within its working plan which, for 2008, includes revolving doors/*pantouflage* as one of its topics.


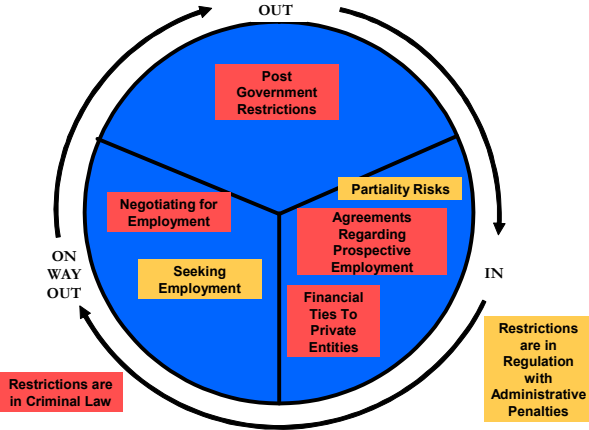
Norway: This is a very difficult area to regulate and also a very dynamic area requiring solutions sufficiently flexible to evolve over time.

Norway's guidelines in this area have been elaborated in the context of administrative law and unwritten principles of public administration that carry a heavy weight (i.e. the duty of loyalty, duty of professional secrecy, the employer's management prerogative, etc). However, in 2005, post-employment guidelines for the public service were adopted, which include the possibility to impose a six-month period of 'disqualification' or a one-year period of 'abstinence from involvement in certain cases' upon public sector employees moving to the private sector. Whether to apply such a disqualification or abstinence period is left to the discretion of the employer. A contract between the employer and the employee would form the legal basis for any such measure and also for the application of subsequent sanctions, including a fine of up to six month's salary and liability for paying damages.

In addition, in 2005, guidelines were adopted which introduce an obligation upon political appointees (ministers, deputy ministers, political advisers) to inform a government appointed committee of any possible conflict of interests which may arise from their move to the private sector, in case their activities in the private sector would involve certain commercial interests related to their former field of responsibility. The specially appointed committee has been functioning since 2005. By the end of December 2006, it had handled 42 cases and had decided on a total ban or a temporary disqualification in 13 cases, while 29 other cases had not lead to a decision. There are therefore indications that this system is functioning and that politicians themselves take this new obligation seriously and report situations in which a conflict of interests might arise.

Moreover, separate guidelines deal with people transferring from a political post in a ministry back to an administrative post in the same or another ministry . Under these guidelines, a quarantine period can be imposed during which a former political appointee who has taken up an administrative post in a ministry would be prohibited from taking certain actions or dealing with specific cases. This is a new system, but initial results show that it may bear fruit in the future.

APPENDIX I
Presentation : Jane LEY, Deputy Director, Office of Government Ethics
(United States of America)

 <p align="center">Post-Employment and the Revolving Door</p> <p align="center">Jane S. Ley Deputy Director U.S. Office of Government Ethics</p>	<p align="center"><u>Public Policy Consideration</u></p> <p align="center">Balance</p> <ul style="list-style-type: none"> • Need to protect government processes from misuse of government information and official position <p align="center">with</p> <ul style="list-style-type: none"> • Need to attract the best and the brightest into the government
	<p align="center"><u>Negotiating/Seeking Employment Restrictions</u></p> <p>Applicable to all executive branch officials:</p> <ul style="list-style-type: none"> • Requires recusal or abstention from any particular matter in which the person or organization has a financial interest <ul style="list-style-type: none"> – Seeking employment covered by administrative regulation and can be unilateral action (sending resumes, applications or even being approached by a prospective employer) – Negotiating for employment covered by criminal law and requires bilateral action
<p align="center"><u>Post Employment Restrictions</u></p> <p>Applicable to all executive branch officials:</p> <ul style="list-style-type: none"> • Lifetime Restriction (no switching sides) <ul style="list-style-type: none"> – Particular matters involving specific parties in which one has personally and substantially participated (contracts, claims, investigations, litigation, grants, etc.) • 2 Year Restriction <ul style="list-style-type: none"> – Particular matters involving specific parties under official responsibility during last year of gov't service 	<p align="center"><u>Post Employment Restrictions</u></p> <p>Applicable to only senior positions (both career and non career officials):</p> <ul style="list-style-type: none"> • 1 Year “no [representational] contact” ban with officials of former department or agency in which one worked <ul style="list-style-type: none"> – Applies to all matters in which there is an intent to influence government action on behalf of another

<p style="text-align: center;"><u>Post Employment Restrictions</u></p> <p>Applies to “very senior” officials (Cabinet members, Senior White House officials):</p> <ul style="list-style-type: none"> • 1 Year “No [representational] contact” bar <ul style="list-style-type: none"> – With officials of former department or agency in which one worked – With any Presidential appointee requiring confirmation in any department or agency 	<p style="text-align: center;"><u>Post Employment Restrictions</u></p> <p>Applies to Members of Congress (and senior Congressional staff):</p> <ul style="list-style-type: none"> • 1 Year “No [representational] contact” restriction with Members, officers and employees either Senate or House of Representatives. (Members—soon to be 2 years) <ul style="list-style-type: none"> – Senior Congressional staff 1 yr. restriction but does not apply to the entire Congress
<p style="text-align: center;"><u>Post Employment Restrictions</u></p> <p>Applies to both senior and very senior executive and legislative employees and Members of Congress:</p> <ul style="list-style-type: none"> • 1 year restriction on representing, aiding or advising a foreign government or foreign political party with the intent to influence a decision of an employee of a federal department or agency 	<p style="text-align: center;"><u>Private Actor Liability</u></p> <ul style="list-style-type: none"> • For each of the criminal restrictions the private party negotiating with the government official or the new private employer of a former government official can be held liable as a principal when acting with the requisite knowledge and intent.
<p style="text-align: center;"><u>Sanctions/Penalties</u></p> <ul style="list-style-type: none"> • Current employees <ul style="list-style-type: none"> – Discipline—reprimand to dismissal – Civil monetary fines – Imprisonment and/or criminal fines • Former employees <ul style="list-style-type: none"> – Civil monetary fines – Imprisonment and/or criminal fines 	<p style="text-align: center;"><u>Other Sanctions</u></p> <ul style="list-style-type: none"> • Regulatory agency rules of practice • Administrative debarment • Cancellation of contracts or other government actions
<p style="text-align: center;">Employment Bans</p> <ul style="list-style-type: none"> • Limited number based on specifically identified risks <ul style="list-style-type: none"> – Federal auditors of regulated banks and financial institutions one year employment ban on institutions audited. – At State levels will occasionally see employment bans for state regulators of specific industries 	<p style="text-align: center;"><u>Resources</u></p> <ul style="list-style-type: none"> • Seeking Employment <ul style="list-style-type: none"> – 18 U.S.C. § 208 www.usoqe.gov/pages/laws_regs_fedreg_stats/statutes.html – 5 C.F.R. §§ 2635.601-606 www.usoqe.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html • Post-Employment <ul style="list-style-type: none"> – 18 U.S.C. 207 www.usoqe.gov/pages/laws_regs_fedreg_stats/statutes.html Summary of Post-Employment Restrictions www.usoqe.gov/pages/daeograms/dgr_files/2004/do04_023a.html

APPENDIX II

United Kingdom: Reference materials

RULES ON THE 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 such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former Crown servant takes up an outside appointment there should be no cause for any suspicion of impropriety.

2. The Business Appointment Rules provide for the scrutiny of appointments which former Crown servants propose to take up in the first two years after they leave the service. To provide an independent element in the process of scrutiny, the Advisory Committee on Business Appointments is appointed by the Prime Minister, comprising people with experience of the relationships between the Civil Service and the private sector. The Committee gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.

3. The aim of the rules is to maintain public trust in the Crown services and in the people who work in them, and in particular:

a. to avoid any suspicion 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; or

b. to avoid the risk that a particular firm might gain an improper 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 or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

4. Most applications submitted under the rules are approved without condition. In some cases approval may be given subject to a waiting period or other conditions. The imposition of conditions does not imply anything improper in a Crown servant's relationship with the prospective employer. Rather, it is an indication that an immediate move from Crown service to the employer, or one without conditions, might be open to criticism or misinterpretation. Experience has shown that employers generally are content to accept such constraints as being reasonable in an open society which places a high premium on the integrity and impartiality of its civil and military services.

5. This version of the rules applies to the Home Civil Service. There are corresponding requirements for other Crown servants including the Armed Forces, the Diplomatic Service, and certain office holders. There are different requirements and different procedures for staff at different levels.

Who must apply?

6. Within two years of leaving Crown employment, and in the circumstances set out in the following paragraph, civil servants must obtain Government approval before taking any form of full, part-time or fee-paid employment:

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.

7. Applications for approval must be made by civil servants:

– if they are in the Senior Civil Service in salary band 4 or above and in a post attracting a minimum JESP score of 13; or if they are specialists or Special Advisers of equivalent standing; 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 have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or

– if their official duties during the last two years of Crown employment have involved advice or decisions benefiting their prospective employer, for which the offer of employment could be interpreted as reward,

or have involved developing policy, knowledge of which might be of benefit to the prospective employer;
or

– if they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.

8. The rules do not apply to:

- a.** unpaid appointments in non-commercial organisations;
- b.** appointments in the gift of Ministers; or
- c.** in the case of part-time staff, appointments held with their department's or agency's agreement while they were civil servants.

9. Approval is required for:

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

10. Staff on secondment from the Civil Service to other organisations are subject to the rules in the same way as other civil servants.

11. Staff on secondment to the Civil Service from other organisations are also subject to the rules in the same way as civil servants unless they return to their seconding organisation at the end of their secondment and remain there for two years.

12. Special Advisers are subject to the rules in the same way as other civil servants unless they are offered a post by the same employer which they left on being appointed as advisers and remain there for two years. The rules do not apply to Special Advisers appointed before 1 April 1996 on terms exempting them from the rules, unless they have volunteered to be subject to them.

Reporting offers of employment

13. Departments and agencies must require staff considering any approach from an outside employer offering employment for which approval would be required under the rules (or which seems likely to lead to such an offer) to report the approach as follows:

- Heads of Department: inform the Minister in charge of the Department;
- Other members of the Senior Civil Service (or their equivalents): inform the Head of the Department or his or her deputy as appropriate;
- Other staff: inform a senior member of staff in the reporting chain.

14. Staff in sections concerned with procurement or contract work should report any such approach, particularly where it emanates from an outside employer with whom they or their staff have had official dealings, whether or not they are considering taking it up.

Applications

15. Departments and agencies must ensure that application forms are completed for all requests for approval for appointments under the rules. For this purpose:

- a.** 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 organisation, including any competitors of the prospective employer; and
- b.** departments must ensure that they seek the comments of a countersigning officer who can verify, as far as possible, the information supplied by the applicant.

Departments are strongly recommended to adopt the Cabinet Office model form for applicants.

Terms of approval

16. Applications under these rules will be approved either:

- a.** unconditionally; or
- b.** subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate.

Conditions may include:

- a waiting period before taking up the appointment¹;
- an absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government;
- a ban on the 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.

17. In view of their access to policy issues at the highest levels, all applications from Permanent Secretaries, including second Permanent Secretaries, and their direct 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, unless they have been appointed from outside the Civil Service on a limited period contract. The Advisory Committee has the discretion to recommend waiving the minimum waiting period if, in the Committee's view, the appointment is one which is entirely unconnected with the applicant's official knowledge and no questions of propriety arise. Although applicants serving on limited period contracts will not be required to serve the automatic waiting period, approval of applications may be subject to waiting periods or other conditions in the same way as any other application.

18. Appointments approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments which are subsequently taken up may be the subject of a public announcement. Staff at those levels are required to confirm to their department (or former department) their intentions to take up any appointment for which an application has been considered by the Committee. The new employer may wish to include a reference to the Prime Minister's approval in their own announcement of the appointment, and applicants should discuss with the department and the new employer the terms of the statement; in other cases, the Government reserves the right to publish the terms of the Prime Minister's decision. A consolidated record of all appointments taken up will be included in the Advisory Committee's annual report.

Procedures for Departments and Agencies

Making staff aware of the rules

19. Departments and agencies must:

- a. draw the attention of staff to the existence of the rules in letters of appointment. Departments and agencies are advised to take special care to explain to staff recruited from outside the Crown service either on secondment or on a limited period contract their position under the rules on appointment;
- b. include a copy of the rules in departmental and agency staff handbooks;
- c. issue regular reminders to staff at all levels about the rules and the circumstances in which they apply, concentrating on particular areas as necessary;
- d. require members of the Senior Civil Service in signing their contracts of employment to acknowledge in writing that they have seen and are conversant with the rules - and ask them to provide a further, similar acknowledgement on retirement or resignation from the Crown Service or at the end of a period appointment;
- e. remind 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 limited period appointment this should normally take the form of providing them with a copy of the rules and an application form. The Cabinet Office model application form incorporates the relevant extracts from the rules for this purpose.)

20. Departments and agencies are advised:

- a. 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
- b. to ensure that personnel and line managers of 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 applications are made where necessary.

¹ if the Advisory Committee believes that the appointment is unsuitable, it may add that advice to its recommendation that the application be subject to a waiting period of two years, and that advice will be available for publication.

Approval of applications

21. Decisions on applications, other than those referred to the Prime Minister through the Advisory Committee and those by Special Advisers, rest with the Minister in charge of the Department after taking advice of the Cabinet Office as appropriate. The Minister may, however, approve arrangements under which defined categories of cases may be decided without reference to the Minister. Decisions on applications by Special Advisers taken at departmental level are the responsibility of the permanent Head of the Department after taking advice of the Cabinet Office, as appropriate, which may consult the Head of the Home Civil Service or refer the application to the Advisory Committee.

22. 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.

23. There may be occasions when a Minister decides 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.

24. Departments and agencies must:

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

Procedure for dealing with applications

25. *All Permanent Secretary posts; other posts in departments which satisfy all of the following criteria: have a JESP score of 18 or more, have a pay range within the top three pay bands, and where the post reports direct to a Permanent Secretary or is itself the Head of a Department or Agency; and specialists and Special Advisers of equivalent standing*

Applications are normally approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments (apart from those from Special Advisers). All cases must be referred to the Cabinet Office which will refer them to the Advisory Committee unless the Head of the Home Civil Service agrees that such reference would be inappropriate, for example where the appointment is to a non-commercial body, such as a university. Applications from Special Advisers of equivalent standing will be approved by the Head of the Home Civil Service on the advice of the Advisory Committee.

26. *Other Heads of Department; other postholders in the Senior Civil Service in salary band 4 and above and in a post attracting a minimum JESP score of 13; and specialists and Special Advisers of equivalent standing.*

All applications must be referred to the Cabinet Office which will consult the Head of the Home Civil Service.

27. *Other members of the Senior Civil Service; and specialists and Special Advisers of equivalent standing.*

Departments and agencies must consult the Cabinet Office unless:

- the applicant has had no official dealings with the prospective employer at any time during his or her period of Crown Service and there appears to be no risk of criticism; or
- the employment is with a non-commercial organisation.

28. *Staff outside the Senior Civil Service.*

Departments and agencies 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.

29. Departments and agencies may refer any application to the Cabinet Office for advice. Any application may be referred to the Advisory Committee if the Head of the Home Civil Service and the Departmental Minister so agree.

30. When referring cases to the Cabinet Office departments must submit:
a. a copy of a completed and countersigned application form;
b. 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.

31. Guidance for departments and agencies preparing assessments of applications for submission to Cabinet Office and considering applications for departmental approval is provided in Section 4.3 Annex B.

4.3 ANNEX B: GUIDANCE FOR DEPARTMENTS AND AGENCIES ON THE RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

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 employer, or that a particular employer might gain an unfair advantage over its competitors by employing someone who had access to what they might legitimately regard as their own “trade secrets”.

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

3. While appointments must not only be but also be seen to be free from reproach and departments must therefore take account of public perception, departments should be prepared to defend an appointment which they were otherwise willing to approve when public concern can be shown to be unjustifiable.

The employer and the applicant

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

- a. how much of the contact was in the course of official duties;
- b. how significant was the contact;
- c. the nature of the proposed employment;
- d. the connection between the new job and the applicant’s previous official duties.

5. 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:

- a. whether the individual was acting as a member of a team, jointly with other individuals in the department or in Government more widely, or taking sole responsibility;
- b. whether the employer benefited substantially from such dealings;
- c. whether contact was direct;
- d. whether it was indirect (i.e. through those for whom the applicant was responsible, whether or not they normally worked for him or her).

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

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

7. Departments are advised to consider in particular whether the applicant has been:

- a. dealing with the receipt of tenders from the employer;
- b. dealing with the award of contracts to the employer;
- c. dealing with the administration or monitoring of contracts with the employer;

- d. giving professional or technical advice about such contracts whether before or after they were awarded;
- e. involved in dealings of an official but non-contractual nature with the employer (this is particularly important in the circumstances set out in paragraph 9 below).

8. Departments should consider the circumstances of an applicant's departure as a component of considering each application on its merits. Staff-reduction policies will not justify reducing standards of propriety, or any weakening of the element of protection which the rules offer to third parties in respect of trade secrets. If a civil servant is asked to retire, or is offered early retirement, at relatively short notice, or is unexpectedly made redundant, any presumption that he or she had been paving the way to subsequent employment by offering favours to potential employers may largely be removed. Conversely a protracted period of uncertainty might heighten concerns that individuals were anticipating redundancy by cultivating potential employers improperly. On balance, where departments and agencies intend to reduce numbers during a relatively short period of a year or so, unexpected departures should normally be considered as a factor mitigating any concerns on grounds of rewards.

The employer and the Government

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

- a. has a contractual relationship with the department;
- b. is regulated by the department;
- c. receives subsidies, loans, guarantees or other forms of financial assistance from the department;
- d. is one in which the Government is a shareholder; or
- e. is one with which departments or branches of Government or the Armed Services are, as a matter of course, in a special relationship.

Overseas employers

10. 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 that would benefit that government to the detriment of HM Government or its allies. This can arise where the person:

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

Government policy or business

11. Many Crown servants 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 application 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. This applies in particular to specific areas where:

- a. there has been a negotiating relationship between the Department and the employer;
- b. the applicant has been involved in policy discussions within the department leading to a decision of considerable benefit to the employer;
- c. the applicant has been involved in policy discussions within the department, knowledge of which might give the employer an improper advantage over its competitors; or
- d. where there is a risk of public criticism that the applicant might have scope to exploit contacts in his or her former department for commercial purposes.

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

The employer and competitors' trade secrets

12. Appointments might be criticised on the grounds that the applicant 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 model letter, to see whether they have any objections to the appointment.

Consultancies

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

14. In the case of an applicant wishing to take up a salaried appointment with a firm of consultants, the “rewards for past favours” issue will relate almost exclusively to the nature 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. It may be necessary to impose conditions on the appointment to protect the “trade secrets” of firms with which the applicant or the department had dealings.

15. Where an applicant wishes 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:

a. to counter any suspicion of impropriety that might arise if such individuals were to be given lucrative contracts by clients with which they or their former departments had dealings; and

b. 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 client where he or she has had access to the trade secrets of a competitor of the client. 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 client.

In approving applications to set up “brass plate” consultancies departments will, therefore, need to consider carefully the imposition of conditions in cases where such considerations apply.

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 levels, where there is a risk of public criticism that they could be exploiting contacts in their former departments for commercial purposes.



APPLICATION FOR PERMISSION TO ACCEPT AN OUTSIDE APPOINTMENT FOLLOWING RETIREMENT OR RESIGNATION FROM CROWN SERVICE

Introduction

- Before completing this application form you should consult the rules governing the acceptance of outside appointments as set out in

An extract from the rules follows overleaf:

- You should complete Parts 1 and 2 of the form and return it to your Personnel/Establishments division who will ensure that Part 3 is completed by the appropriate departmental officer. It is in your own interest to submit the application as soon as possible and to ensure that all relevant information is provided.
- If you are seeking approval to take up more than one appointment, you should complete a separate Part 2 in respect of each appointment. If you are setting up an independent consultancy you should complete a separate answer to sections 6 and 7 for each company from whom you are proposing to accept commissions.
- The form should be completed in black ink. If there is insufficient space on the form continue on a separate sheet of paper.
- Enquiries about this application and requests for extra copies of the form should be made to:

<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

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 equally important that when a former Crown servant takes up an outside appointment there should be no cause for any suspicion of impropriety.

2. The Business Appointment Rules provide for the scrutiny of appointments which former Crown servants propose to take up in the first two years after they leave the service. To provide an independent element in the process of scrutiny, the Advisory Committee on Business Appointment is appointed by the Prime Minister, comprising people with experience of the relationships between the Civil Service and the private sector. The Committee gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.

3. The aim of the rules is to maintain public trust in the Crown services and in the people who work in them, and in particular:

- a. to avoid any suspicion 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; or
- b. to avoid the risk that a particular firm might gain an improper 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 or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

4. Most applications submitted under the rules are approved without condition. In some cases approval may be given subject to a waiting period or other conditions. The imposition of conditions does not imply anything improper in a Crown servant's relationship with the prospective employer. Rather, it is an indication that an immediate move from Crown service to the employer, or one without conditions, might be open to criticism or misinterpretation. Experience has shown that employers generally are content to accept such constraints as being reasonable in an open society which places a high premium on the integrity and impartiality of its civil and military services.

5. This version of the rules applies to the Home Civil Service. There are corresponding requirements for other Crown servants including the Armed Forces, the Diplomatic Service, and certain office holders. There are different requirements and different procedures for staff at different levels.

Who must apply?

6. Within two years of leaving Crown employment, and in the circumstances set out in the following paragraph, civil servants must obtain Government approval before taking any form of full, part-time or fee-paid employment:

- 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.

7. Application for approval must be made by civil servants:
- if they are in the Senior Civil Service in salary band 4 or above and in a post attracting a minimum JESP score of 13; or if they are specialists or Special Advisers of equivalent standing; 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 have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
 - if their official duties during the last two years of Crown employment have involved advice or decisions benefiting their prospective employer, for which the offer of employment could be interpreted as reward, or have involved developing policy, knowledge of which might be of benefit to the prospective employer; or
 - if they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.
8. The rules do not apply to:
- a. unpaid appointments in non-commercial organisations;
 - b. appointments in the gift of Ministers; or
 - c. in the case of part-time staff, appointments held with their department or agency's agreement while they were civil servants.
9. Approval is required for:
- a. the initial appointment; and
 - b. any further appointment within two years of leaving Crown employment.
10. Staff on secondment from the Civil Service to other organisations are subject to the rules in the same way as other civil servants.
11. Staff on secondment to the Civil Service from other organisations are also subject to the rules in the same way as civil servants unless they return to their seconding organisation at the end of their secondment and remain there for two years.
12. Special Advisers are subject to the rules in the same way as other civil servants unless they are offered a post by the same employer which they left on being appointed as advisers and remain there for two years.

Terms of Approval

13. Applications under these rules will be approved either:

- a. unconditionally; or
- b. subject to conditions which may apply for up to two years from the final day in Crown employment, or, where different, the final day in post, as appropriate. Conditions may include:
 - a waiting period before taking up the appointment¹;
 - an absolute or qualified ban on the involvement of the applicant in dealing between the prospective employer and the Government;
 - a ban on the 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.

14. In view of their access to policy issues at the highest levels, all applications from Permanent Secretaries, including second Permanent Secretaries, and their direct 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, unless they have been appointed from outside the Civil Service on a limited period contract. The Advisory Committee has the discretion to recommend waiving the minimum waiting period if, in the Committee's view, the appointment is one which is entirely unconnected with the applicant's official knowledge and no questions of propriety arise. Although applicants serving on limited period contracts will not be required to serve the automatic waiting period, approval of applications may be subject to waiting periods or other conditions in the same way as any other application.

15. Appointments approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments which are subsequently taken up may be the subject of a public announcement. Staff at those levels are required to confirm to their department (or former department) their intentions to take up any appointment for which an application has been considered by the Committee. The new employer may wish to include a reference to the Prime Minister's approval in their own announcement of the appointment, and applicants should discuss with the department and the new employer the terms of the statement; in other cases, the Government reserves the right to publish the terms of the Prime Minister's decision. A consolidated record of all appointments taken up will be included in the Advisory Committee's annual report.

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

¹ If the Advisory Committee believes that the appointment is unsuitable, it may add that advice to its recommendation that the application be subject to a waiting period of two years, and that advice will be available for publication.

PART 1*To be completed by the applicant*

1

Name (including any titles, decorations)

Rank/grade/job title

Date of Birth

Reasons for leaving Crown Service (please tick)

Retirement Resignation

Other (give details)

Address for letters

Post Code:

Daytime telephone number

2

Date of last day in Crown Service

Date of last day in post if different from above

Proposed starting date of outside appointment

3

Please state below posts held during last five years of Crown Service beginning with the most recent.

Unit, Division or Establishment	Job Title	Dates		Rank/Grade	Brief description of duties
		From	To		

Part 2

To be completed by the applicant

Please complete section 4 if you are proposing to join a company or organisation (either full-time or part-time or as a consultant). If you are proposing to set up an independent consultancy you should proceed to section 5. All applicants should answer sections 6 and 7.

4

Appointment with a Company/Organisation

Company/organisation's name

Nature of business

Full Address

Post Code:

Name of contact in Company/organisation

Position Telephone number

Company's parent company or group

Department's relationship with Company/Organisation (please tick)

Contractual Non-contractual None Not known

Job title and description of your proposed duties.

Is the proposed appointment full or part-time? (please tick) Full-time Part-time

If part-time, please state how much time is likely to be involved days per week/month/year
(delete as appropriate)

Will you be paid? (please tick) Salary Retainer Fee Unpaid

Did you apply for an advertised post? (please tick) Yes No

If NO state how the offer of the post arose

5

Independent consultancies

State nature of proposed consultancy work

--

Given the name of the companies/organisations whose commissions you wish to accept and complete a separate answer to 6 and 7 below in respect of each

--

6

Dealings with prospective employerHave you, or those for whom you were responsible, over the last two years of service *(Please tick)*
Yes NoDealt with the receipt of tenders or the awarding of contracts between your
Prospective employer and the Department?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Administered or monitored such contracts?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Advised professionally/technically on contracts before they were awarded?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Advised professionally/technically on contracts after they were awarded?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

If you have answered 'Yes' to any questions above please state how many contracts were
Involved.

For each contract show:

--

Nature of contract(s)	Value*	Date awarded	Official immediately responsible for letting the contract

* *It is very important to state the value of contract(s)*Have you ever had any official, including non-contractual, dealings with your
Prospective employer, other than those detailed above?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
------------------------------	-----------------------------

If you have answered 'Yes', please give details indicating frequency of contact
(continue on a blank sheet if necessary)

--

Have you been involved in decisions during your last two years of service (other than those about
contracts) which might affect the employer's business with the Department? Yes No

Yes <input type="checkbox"/>	No <input type="checkbox"/>
------------------------------	-----------------------------

If you have answered 'Yes', please give details

--

7

Dealings with other companies

Please give the following information about any other companies with which you have dealt in the last two years of service

Name of Company	The nature of the dealings you have had with the company	Is the company a competitor of your proposed employer?	
		Yes	No

Through your official duties have you had access to commercially sensitive information about any competitors of your prospective employer?

Yes

No

If you have answered 'Yes' please give full details of this information. It would be helpful if you would also give the addresses of competitors and the name of a contact in each, if known.

Please satisfy yourself that you have included all the available details, and then sign and date the form.

Signature of applicant

Date

You should now pass this form to your Personnel/Establishment Division who will arrange for completion of Part 3 by the most Appropriate departmental officer. If you have already left the Crown Service the form should be sent to your former Department or Agency's Establishment Officer.

Part 3

To be completed by the appropriate departmental officer

PLEASE ANSWER THE FOLLOWING QUESTIONS IN AS MUCH DETAIL AS POSSIBLE. YOUR ANSWERS SHOULD MAKE A VALUABLE CONTRIBUTION TO THE DEPARTMENT'S EVALUATION OF THE APPLICATION. CONTINUE ON SEPARATE SHEETS IF NECESSARY.

In making a decision on this application the department has to be satisfied that it could rebut criticism of the appointment, however unjustified, that the applicant had been influenced in his or her official dealings with the company by hopes or offers of employment, or in the course of official duties had been given access to information which the prospective employer's competitors might regard as being commercially sensitive.

It is in the applicant's best interest for you to deal promptly with this application form. When you have completed this part please return it to the address given in the introduction.

1

With the above factors in mind, are you able to confirm that the relevant Particulars in Parts 1 and 2 are accurate and complete? *(please tick)*

Yes

No

If 'No' please give your reasons

[Empty box for reasons]

2

If the applicant's answers to Part 2, question 6, should previous involvement in official dealings with the company, please indicate how much influence he or she had in decisions affecting the prospective employer.

3

Please refer to the applicant's answer at 7 of Part 2. If he or she had access to information which could be regarded as being commercially sensitive, in your view could competitors justifiably object to the appointment and what grounds, if any, would there be for overruling their objections?

4

Have you any reservations about his or her applications being approved? Please explain in full. Your contribution is important in helping the Department reach and defend its decision.

i.

PLEASE SIGN BELOW GIVING THE RELEVANT INFORMATION REQUESTED

Signature	<input type="text"/>
Name in Capitals	<input type="text"/>
Rank/grade/job title	<input type="text"/>
Unit/Division/Establishment	<input type="text"/>
Telephone number	<input type="text"/>
Date	<input type="text"/>

GUIDELINES ON THE ACCEPTANCE OF APPOINTMENTS OR EMPLOYMENT OUTSIDE GOVERNMENT BY FORMER MINISTERS OF THE CROWN

Introduction

1. It is in the public interest that former Ministers with experience in government should be able to move into business or into other areas of public life. It is equally important that when a former Minister takes up a particular appointment there should be no cause for any suspicion of impropriety. Arrangements have been made therefore to enable former Ministers to seek advice from the independent and impartial Advisory Committee on Business Appointments.
2. The use of the term "appointment" in these guidelines should be taken generally to include all forms of employment including the practice of a profession, apart from unremunerated appointments in non-commercial organisations or appointments in the gift of the Government.
3. The guidelines seek to counter suspicion that:
 - a. the statements and decisions of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation;
 - or
 - b. an employer could make improper use of official information to which a former Minister has had access;
 - or
 - c. there may be cause for concern about the appointment in some other particular respect.

The Guidelines

4. Former Ministers should ask the Advisory Committee about any appointment (as defined in paragraph 2) they wish to make up outside Government within two years of leaving office. The Committee will consider details of the appointment and any contact the former Minister (or his or her former department) has had with the prospective employer or with competitors (the attached request form will be a convenient way of providing this information). If necessary, the Committee will seek, in confidence, information from senior officials of a former Minister's former department(s) about the nature of any contractual, regulatory or other relationships which the department(s) have or have had with the prospective employer.

5. The Advisory Committee will consider each appointment on its merits, against specific tests relating to the following:

- (i) to what extent, if at all, has the former Minister been in a position which could lay him or her open to the suggestion that the appointment was in some way a reward for past favours?
- (ii) has the former Minister been in a position where he or she has had access to trade secrets of competitors or knowledge of unannounced Government policy which would give his or her company an unfair advantage?
- (iii) is there another specific reason why acceptance of the appointment would give rise to public concern of a degree or character to justify advising the former Minister that there should be a delay or another condition in taking up the appointment, or that the appointment is unsuitable?

6. The Advisory Committee will need to balance any points under these tests against the desirability of former Ministers being able to move into business or other areas of public life, or the need for them to be able to start a new career or resume a former one.

7. The Advisory Committee may advise that they see no objection to the appointment, or they may recommend a delay of up to two years running from the date of leaving office before it is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer. They may also advise that an appointment is unsuitable.

8. A three-month waiting period from the date of leaving office will normally be expected when the former Minister is of Cabinet rank, unless the Advisory Committee advise a longer waiting period in particular circumstances. The Advisory Committee may waive this automatic waiting period if, for example, the former Minister is returning to a family business or to the practice of a profession (e.g. farming, medicine or teaching) where the appointment is not connected with his or her Ministerial knowledge, and no considerations of improper advantage could apply.

Publicising the Advisory Committee's advice

9. All approaches to the Advisory Committee will be considered in strict confidence, and will remain confidential if the appointment is not taken up. When a former Minister takes up a post which the Advisory Committee have scrutinised, the Committee's advice will be available for publication. The Advisory Committee will produce an annual report, summarising the cases with which they have dealt in the previous year.



REQUEST BY A FORMER MINISTER FOR ADVICE ON AN APPOINTMENT OR EMPLOYMENT OUTSIDE GOVERNMENT

1. Personal details

Name

Address for correspondence

Postcode

Telephone

2. Details of the prospective employer

Please complete this section if you are proposing to join a company or organisation (either full-time, part-time or as a consultant or adviser), or to return to a former occupation. If you are proposing to set up an independent consultancy you should proceed to section 3. All applicants should answer section 4.

The organisation's name

The organisation's full address

Postcode

Name of your contact in the organisation

The organisation's business
Brief description only

Please give your job title, and a description of your proposed duties with the organisation
Any particularly sensitive information about the appointment need not be included here but can be sent in a personal letter to the Chairman of the Advisory Committee c/o the Secretary.

Is the proposed appointment full or part-time? (please tick)

part-time, please state how much time is likely to be involved days per week/month/year (delete as appropriate)

Will you be paid by salary by retainer fee or unpaid?

3. Independent consultancies

Please state the nature of the proposed consultancy work

Please give the name of the companies/organisations whose commissions you wish to accept

4. Dealings with the prospective employer

This section invites you to describe the nature of any contact you may have had with the prospective employer and its competitors. If you intend to set up an independent consultancy, please complete the section for each company or organisation whose commission you wish to accept. The Advisory Committee may ask the department(s) in which you held the office about the nature of any contractual, regulatory or other dealings which they have or have had with the prospective employer.

Please describe the nature of any direct or indirect contact you have had with the prospective employer whilst a Minister

Please describe the nature of any direct or indirect contact you have had with companies or organisations who are competitors of the prospective employer whilst a Minister

Signature

Date

Please send this form to:

The Secretary
Advisory Committee on Business Appointments

Contact:
Tony Nichols

For interested readers, more information can be found at:

Advisory Committee of the Business Appointments - website: www.acoba.gov.uk

Civil Service Code:

http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_code.aspx

Civil Service Management Code: <http://www.civilservice.gov.uk/publications/code/index.asp>

Ministerial Code: http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code.aspx

Propriety and Ethics Team: http://www.cabinetoffice.gov.uk/propriety_and_ethics/

ANNEXE III

Presentation : Serge MAUREL, Service Central de Prévention de la Corruption (France)

Le départ des fonctionnaires dans le secteur privé *Pantouflage et délit d'ingérence*

Serge Maurel, conseiller
Réunion du GRECO- Strasbourg
17 octobre 2007



Un peu de sémantique:

Dans l'argot de l'Ecole Polytechnique:

- La « botte » = l'armée;



- La « pantoufle » = le secteur privé



=> Le "pantouflage" = migration d'un agent public dans le secteur privé.

2

Par extension:

« La pantoufle » = somme d'ue à l'Etat dans l'hypothèse du départ anticipé dans le secteur privé d'un fonctionnaire diplômé d'une école de formation de l'Etat.

3

En France, le «pantouflage» fait l'objet d'un arsenal juridique, législatif et réglementaire particulièrement strict...

4

Cet arsenal juridique:

- ◆ s'applique à l'ensemble des agents publics, titulaires ou non titulaires, de l'Etat et des collectivités territoriales;
- ◆ ne s'applique pas au personnel politique (élus et membres du Gouvernement).

5

Contenu du dispositif applicable:

- ◆ Un dispositif « mixte » à l'articulation du droit de la fonction publique et du droit pénal;
- ◆ Un dispositif comportant deux volets:
 - un volet préventif;
 - un volet répressif.

6

Le volet préventif:

- ◆ La loi du 29 janvier 1993 relative à la prévention de la corruption a créé pour chacune des trois fonctions publiques (FPE, FPT, FPH) une **commission de déontologie**;
- ◆ **Son rôle:** apprécier la **compatibilité** avec leurs fonctions précédentes des activités privées que souhaitent exercer les agents publics qui ont cessé temporairement ou définitivement leurs fonctions.

7

FPE : Fonction publique étatique
FPT : Fonction publique territoriale
FPH: Fonction publique hospitalière

- ◆ La **saisine** de la commission de déontologie est **obligatoire** dans tous les cas prévus par la loi;
- ◆ Le fonctionnaire peut sur sa demande **être entendu** devant elle;
- ◆ Cette commission a seulement un **rôle consultatif**: l'autorité administrative reste libre de suivre ou non ses avis.

8

Bilan 2006 de la Commission de déontologie de la FPE:

- ◆ 1189 avis (+ 21,4 %);
- ◆ Compatibilité dans 74 % des cas et incompatibilité dans moins de 2 % des cas;
- ◆ Administrations à l'origine des saisines: *Economie et finances, Equipement, Intérieur*;
- ◆ Principaux secteurs d'activité envisagés: *banques/finances, juridique/audit/conseil, commerce*.

9

Le volet répressif:

- ◆ Est prévu à l'article 432-13 du CP= « délit d'ingérence »;
- ◆ *Objectif:* éviter qu'un fonctionnaire chargé de surveiller une entreprise abuse de ses nouvelles fonctions pour favoriser cette entreprise au détriment de l'intérêt public.

10

- ◆ Délit créé par une loi du 16 octobre 1919;
- ◆ *Fondements* de l'incrimination:
 - *obligation de **désintéressement**;
 - *protection de la **dignité** des anciennes fonctions;
 - *protection de la **neutralité et de l'indépendance** de l'administration.

11

Éléments constitutifs de l'infraction:

- ◆ **Les auteurs potentiels:**
 - 1^{er} groupe (art 432-13 al 1):
Fonctionnaires publics, agents et préposés d'une administration publique;
 - 2^{ème} groupe (art 432-13 al 4):
Salariés des établissements publics, entreprises nationalisés, SEM.

12

SEM : sociétés d'économie mixte

◆ **Les fonctions exercées par les auteurs potentiels:**

- assurer la **surveillance** ou le **contrôle** d'une entreprise privée;
- conclure des **contrats de toute nature** avec une entreprise privée;
- exprimer son avis sur les **opérations** effectuées par une entreprise privée.

13

- ◆ **Surveillance et contrôle** = tout acte administratif susceptible de conduire à l'intervention d'une décision favorable (délivrance d'agrément ou autorisation) ou défavorable (refus de subvention)

=> Il n'est pas nécessaire que le mis en cause ait été effectivement ou personnellement en rapport avec l'entreprise privée.

14

- ◆ **Contrats de toute nature** = travaux, fourniture de biens ou de prestations de services;
- ◆ **Opérations** = tout acte de la vie juridique, économique ou sociale.

15

Les faits répréhensibles:

- ◆ **prendre ou recevoir une participation** dans l'une de ces entreprises par travail, conseil ou capitaux;
- ◆ **avant l'expiration d'un délai de trois ans** suivant la cessation de ces fonctions de surveillance ou de contrôle.

16

- ◆ La **prise de participation** => une collaboration prolongée (contrat de travail, activité libérale de conseil ou de formation);

Ex: culpabilité d'un ancien inspecteur des impôts qui avait conclu un contrat de formation avec des compagnies d'assurance qu'il était chargé de surveiller (Cass. Crim 18 juillet 1984).

17

Les entreprises visées:

- ◆ Les **entreprises privées**;
- ◆ Les entreprises publiques exerçant dans le **secteur concurrentiel**;
- ◆ Les entreprises privées possédant 30% de capital commun ou comportant une exclusivité de droit ou de fait avec une entreprise (filiales);
- ◆ Les EPIC.

18

EPIC : Etablissements publics industriels et commerciaux

L'élément moral:

- ◆ La simple conscience de commettre le délit = infraction;
- ◆ L'autorisation administrative obtenue après saisine de la Commission de déontologie n'exonère pas l'agent de toute responsabilité pénale.

19

La sanction de l'infraction:

- ◆ **Peine principale:**
2 ans d'emprisonnement + 30 000 € d'amende;
- ◆ **Peines complémentaires applicables:**
 - Interdiction des droits civils, civiques et de famille;
 - Interdiction d'exercer une fonction publique ou d'exercer une activité professionnelle ou sociale dans le domaine où l'infraction a été commise;
 - Confiscation des sommes ou objets irrégulièrement reçus;
 - ...

20

Tentative, complicité, personnes morales:

- ◆ La tentative n'est pas sanctionnée;
- ◆ La complicité est sanctionnée par les mêmes peines que celles applicables à l'auteur principal;
- ◆ La responsabilité des personnes morales n'est pas susceptible d'être mise en cause.

21

Des sanctions administratives sont également possibles:

- ◆ **Procédure disciplinaire;**
- ◆ Annulation par la **voie administrative** de l'acte de nomination illégal.
Ex: annulation d'une nomination dans un poste de sous-gouverneur d'une banque publique d'un fonctionnaire précédemment chargé de contrôler cette entreprise (CE, Ass.6/12/1996 Société Lambda).

22

Conclusion:

- ◆ Le régime juridique du pantouflage apparaît particulièrement rigoureux...
- ◆ ...mais il comporte des *imperfections* et des *limites*...

23

Les imperfections du dispositif de contrôle:

- La non-saisine délibérée ou de bonne foi;
- L'absence de ciblage sur les fonctions de conception;
- L'insuffisance des contrôles sur le pantouflage des membres des cabinets ministériels et des magistrats;
- La difficulté à apprécier les fonctions de surveillance...

24

Les principales limites du dispositif:

- ◆ L'existence et l'extension de « zones grises » entre secteur public et secteur privé;
- ◆ L'absence de « traçabilité » des carrières et des fonctions exercées;
- ◆ La non prise en compte des risques déontologiques en dehors des statuts: lobbying et jeux d'influence...

25

APPENDIX III
Presentation : Serge MAUREL,
Central Department for the Prevention of Corruption (France)
(English translation)



Leaving the civil service for the private sector
“Pantouflage” and unlawful interference

Serge Maurel, adviser
Meeting of GRECO- Strasbourg
17 October 2007



A word about semantics:

In the slang of the *Ecole Polytechnique*:

- “La botte” (the boot) = the army; 
- “La pantoufle” (the slipper) = the private sector 

=> “Pantouflage” = movement of public officials to the private sector.

2

By extension:

“La pantoufle” = amount owed to the State where a civil servant who has qualified in a State training college leaves the service early for the private sector

3

In France, “pantouflage” is subject to particularly stringent legal, legislative and regulatory constraints ...

4

The legal constraints:

- ◆ apply to all central and local government officials, with or without tenure;
- ◆ do not apply to the political class (elected representatives and members of the executive).

5

Content of the applicable mechanism:

- ◆ A mixed mechanism combining civil service law and criminal law;
- ◆ A mechanism with two elements:
 - a preventive element;
 - a punitive element.

6

The preventive element:

- ◆ Law of 29 January 1993 on prevention of corruption set up an **ethics committee** for each civil service branch (State, local, hospital);
- ◆ **role of this committee:** to determine whether intended private activities are **compatible** with the former duties of public officials who have temporarily or permanently relinquished their office.

7

- ◆ **Referral** to the ethics committee is **mandatory** in all cases prescribed by law;
- ◆ A civil servant may be **heard** by it on request;
- ◆ The committee has a purely **advisory role**: the administrative authority remains free to follow or not to follow its opinions.

8

2006 figures for the State Civil Service Ethics Committee:

- ◆ 1189 opinions (up 21.4 %);
- ◆ Compatibility found in 74 % of cases and incompatibility in fewer than 2 %;
- ◆ Departments responsible for referrals: *Economy and Finance, Public Works, Interior*;
- ◆ Main sectors of future activity: *banking/finance, legal/audit/counsel, trade*.

9

The punitive element:

- ◆ Prescribed by *article 432-13 of the Penal Code* = "unlawful interference";
- ◆ *Purpose*: to prevent a civil servant responsible for supervising an enterprise from misusing his/her new position to assist that enterprise to the detriment of the public interest.

10

- ◆ Offence created by a law of 16 October 1919;
- ◆ *Grounds* for defining the offence:
 - *obligation to be **disinterested**;
 - *protecting the **dignity** of the former office;
 - *protecting the **impartiality and independence** of the administration.

11

Ingredients of the offence:

- ◆ **Potential culprits:**
 - 1st group (art 432-13 para. 1): Civil servants, public officials and other public administration employees;
 - 2nd group (art 432-13 para 4): Employees of public agencies and nationalised and semi-public enterprises.

12

◆ **Duties exercised by potential offenders:**

- ensuring **supervision or control** of a private enterprise;
- concluding **contracts of all kinds** with a private enterprise;
- passing opinions on the **transactions** carried out by a private enterprise.

13

- ◆ **Supervision and control** = any administrative act that may bring about a decision, whether favourable (granting of approval or permission) or unfavourable (refusal of subsidy)
- => Person implicated need not have had actual or personal contact with the private enterprise.

14

- ◆ **Contracts of any kind** = works and supply of goods and services;
- ◆ **Transactions** = any act in legal, economic or social affairs.

15

Wrongful acts:

- ◆ **Acquiring or receiving an interest** in any of these enterprises through work, advice or capital outlay;
- ◆ **before the expiry of three years** following the termination of these supervisory or control functions.

16

- ◆ **Acquisition of interest** => extended cooperation (employment contract, independent consultancy or training activity);

E.g.: guilt of a former tax inspector who had entered into a training contract with the insurance companies for whose supervision he used to be responsible (Cass. Crim 18 July 1984).

17

Enterprises concerned:

- ◆ **Private enterprises;**
- ◆ Public enterprises operating in the **competitive sector** (e.g. energy, transport, ...);
- ◆ Private enterprises owning 30% of joint capital, or having *de jure* or *de facto* exclusive rights with an enterprise (subsidiaries);
- ◆ Industrial and commercial public companies.

18

Moral considerations:

- ◆ Mere awareness of committing the offence = infringement;
- ◆ The administrative authorisation obtained after referral to the Ethics Committee does not absolve the official of all criminal liability.

19

Punishment of the offence:

- ◆ **Principal penalty:**
2 years in prison + € 30 000 fine;
- ◆ **Additional penalties applicable:**
 - Deprivation of civil, civic and family rights;
 - Disqualification from civil service or professional or social activity in the sphere in which the offence was committed;
 - Confiscation of the sums or items improperly received;
 - ...

20

Attempt, accomplices, legal persons:

- ◆ The attempted offence is not punishable;
- ◆ An accomplice is subject to the same penalties as those applicable to the principal offender;
- ◆ Legal persons can not be held liable.

21

Administrative sanctions also possible:

- ◆ **Disciplinary action;**
- ◆ Annulment by **administrative procedure** of an unlawful act of appointment.
E.g.: annulment of the appointment to a post of deputy governor of a state bank of a civil servant previously responsible for supervision of that enterprise (CE, Ass.6/12/1996 Société Lambda).

22

Conclusion:

- ◆ The legal provisions applicable to "pantouflage" appear particularly stringent...
- ◆ ...but they include *imperfections* and *limitations*...

23

Imperfections in the control system:

- Non-referral, whether deliberately or in good faith;
- Early 'conception stages' are not targeted;
- Inadequacy of controls concerning "pantouflage" for members of ministers' private staffs and of the judiciary;
- Difficulty in assessing supervisory functions ...

24

Main limitations of the system:

- ◆ Existence and extension of “grey areas” between the public and the private sectors;
- ◆ Lack of “traceability” of careers and duties performed;
- ◆ Disregard of ethical risks falling outside the conditions of service: lobbying and ‘games of influence’...

25