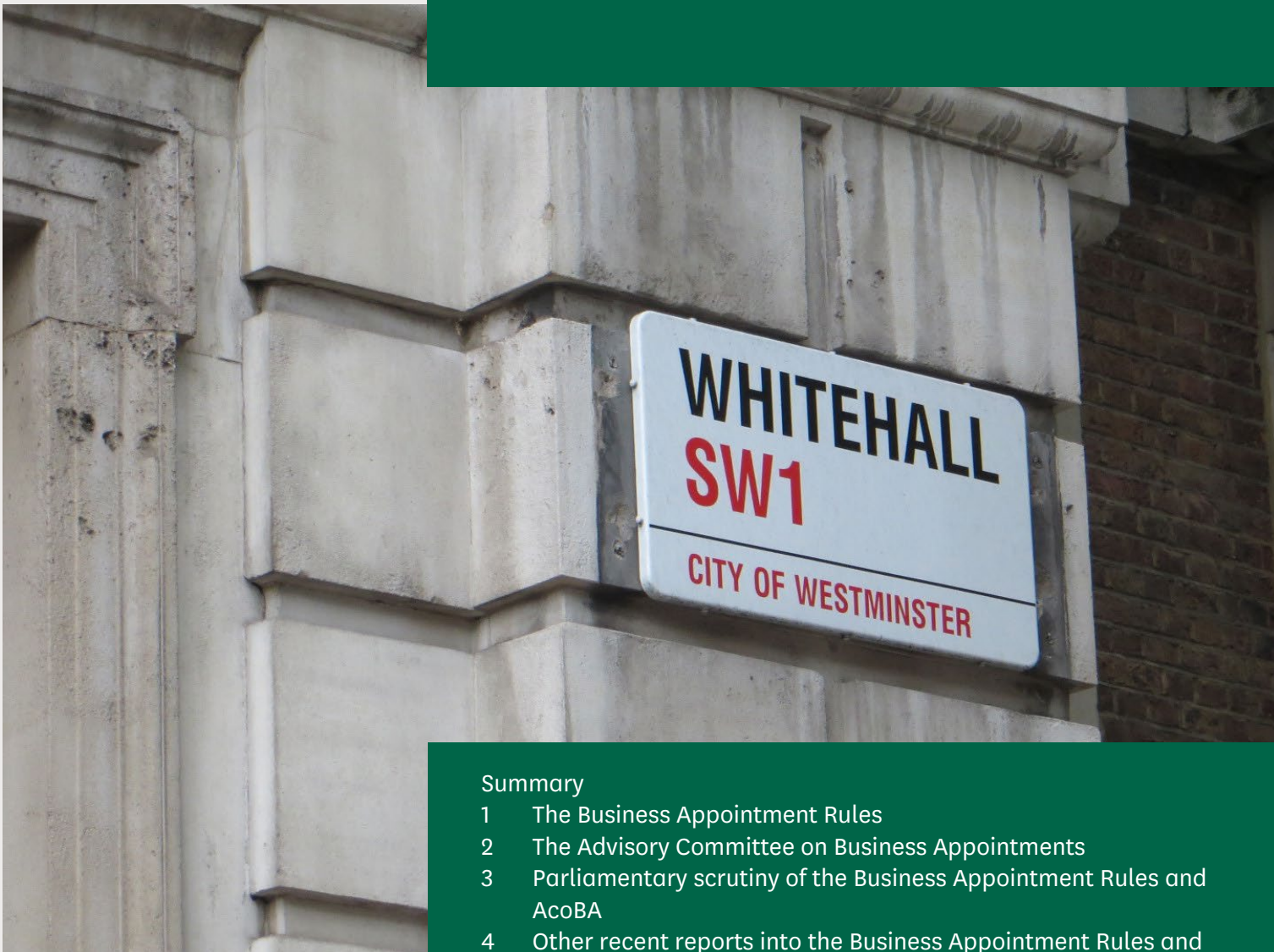


Research Briefing

27 July 2023

By Hazel Armstrong,
Chris Rhodes

The Business Appointment Rules



Summary

- 1 The Business Appointment Rules
- 2 The Advisory Committee on Business Appointments
- 3 Parliamentary scrutiny of the Business Appointment Rules and ACoBA
- 4 Other recent reports into the Business Appointment Rules and ACoBA
- 5 Annex 1: Development of the Business Appointment Rules
- 6 Annex 2: Revisions of the Business Appointment Rules

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Contents

Summary	4
1 The Business Appointment Rules	5
1.1 Former Ministers	5
1.2 Former Civil Servants	9
2 The Advisory Committee on Business Appointments	13
2.1 Role of the Committee	13
2.2 Chair and membership of the Committee	14
2.3 Committee Annual reports and advice	15
3 Parliamentary scrutiny of the Business Appointment Rules and AcoBA	17
3.1 PACAC Inquiry into Greensill Capital 2021-22	17
3.2 PACAC Inquiry 2016	18
3.3 PASC Inquiry 2012	21
4 Other recent reports into the Business Appointment Rules and ACoBA	23
4.1 Strengthening ethics: Government responses 2023 and commentary	23
4.2 Standards Matter 2 review, 2021	23
4.3 Nigel Boardman report, 2020	25
5 Annex 1: Development of the Business Appointment Rules	27
6 Annex 2: Revisions of the Business Appointment Rules	31

Summary

Ministers and civil servants leaving office are subject to rules regarding appointment in other sectors. These rules, known as the Business Appointment Rules, exist to prevent former civil servants and ministers being able to profit from their knowledge of and contacts within Whitehall, and to prevent any perception of wrongdoing. The rules are administered by the Advisory Committee on Business Appointments (ACoBA).

ACoBA considers applications under the Business Appointment Rules about new jobs for former ministers, senior civil servants and other Crown servants. It is an advisory non-departmental public body, sponsored by the Cabinet Office. The Membership includes political party nominees and independent members appointed by the Prime Minister. The current chair is Lord (Eric) Pickles, who took up the post in 2020.

The Public Administration and Constitutional Affairs Select Committee (PACAC), and its predecessor Committee the Public Administration Select Committee (PASC) have held several inquiries on the Business Appointment Rules and ACoBA. In December 2022 the Select Committee recommended, amongst other points, that ACoBA should be put on a statutory basis, and that the Rules should be legally enforceable, with strengthened content.

The Government responded to that Report on 20 July 2023. The response, [Strengthening Ethics and Integrity in Central Government](#), was also a response to reports by The Committee on Standards in Public Life and to a report by Nigel Boardman on Supply Chain Finance related to Greensill Capital in Government. The Government has agreed to make what it describes as “a set of fundamental reforms to the Business Appointment Rules”, although it has not accepted all of the recommendations made in any of the three reports. Consultations will take place on the proposed reforms, so the text of the Business Appointment Rules has not yet changed.

A further report by PACAC published in July 2016 was again critical of the system for regulating business appointments and called for “major reform”. The Committee’s calls for changes to the Civil Service Management Code and Ministerial Code were turned down by the Cabinet Office.

This briefing contains details of the revisions made to the Business Appointment Rules since 1995. It also notes calls made for changes to the status of the Rules and of the Advisory Committee and Government responses. The briefing relates to the UK Business Appointment Rules and processes. Separate Ministerial Codes are in operation in Scotland and Wales.

1 The Business Appointment Rules

Ministers and civil servants leaving office are subject to rules regarding appointment in other sectors. These rules, known as the Business Appointment Rules, exist to prevent former civil servants and ministers being able to profit from their knowledge of and contacts within Whitehall, and to prevent any perception of wrongdoing. The rules are administered by the Advisory Committee on Business Appointments (ACoBA).

This section sets out the rules as they stand for former ministers and civil servants.

1.1 Former Ministers

The Ministerial Code for UK Government Ministers prohibits former Ministers from lobbying Government for two years after leaving office.

Should a former Minister wish to take up an appointment or employment, including any consultancy work, within two years of leaving office, the Code requires that individual to seek advice from the [Advisory Committee on Business Appointments](#) (ACoBA):

On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments (ACoBA) about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee has been able to provide its advice. To ensure that Ministers are fully aware of their future obligations in respect of outside appointments after leaving office, the Business Appointment Rules are attached at Annex B. Former Ministers must abide by the advice of the Committee which will be published by the Committee when a role is announced or taken up.¹

In the December 2022 edition of the Ministerial Code, a further mention was made of the Business Appointment Rules and their applicability to former Ministers:

1.5 The Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations. It applies to all members of the Government and covers Parliamentary Private Secretaries in paragraphs 3.7 –

¹ Cabinet Office, [Ministerial Code](#), December 2022, para 7.25

3.12. The Business Appointment Rules (paragraph 7.25) and Radcliffe Rules (paragraph 8.10) continue to apply to former ministers after they leave office.²

The Business Appointment Rules for former Ministers govern the process whereby former Ministers seek advice from ACoBA, and the advice ACoBA may provide.

The Rules are drafted and issued by the Cabinet Office. They were most recently issued in December 2016.³

The Rules are brief and are supplemented by a Guidance document which gives more detail on how ACoBA makes decisions on advice and gives examples on common types of activity such as speaking engagements and media appearances.⁴ Each Minister is also given a letter by their Departmental Permanent Secretary reminding them of the terms of the Rules.

These provisions of the UK Ministerial Code are repeated in the Scottish Ministerial Code⁵ and the Welsh Government Ministerial Code.⁶

Purpose of the Rules for former Ministers

The Rules for former Ministers seek to counter suspicion that:

- the decisions and statements of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
- an employer could make improper use of official information to which a former Minister has had access; or
- there may be cause for concern about the appointment in some other particular respect.⁷

The application process

Former Ministers contemplating accepting appointments or employment within two years of leaving office are required to complete and submit an application form to ACoBA.

ACoBA does not normally accept retrospective applications for advice.

ACoBA will consider the details provided and will, if necessary, seek further information from senior officials of the relevant Department on contacts with the prospective employer or the nature of any relationships with that employer. Any ongoing work undertaken by the former Minister for the

² Cabinet Office, [Ministerial Code](#).(pdf), December 2022, para 1.5

³ The [Business appointment rules for ministers](#) can be downloaded from the ACoBA pages of the gov.uk website, [Business appointment rules](#), December 2016

⁴ Cabinet Office, [Business appointment rules: guidance for ministers](#), December 2016.

⁵ Scottish Government, [Scottish Ministerial Code](#), February 2018, para 11.25

⁶ Welsh Government, [Ministerial Code](#), December 2022, para 5.26-5.27

⁷ [Business appointment rules for ministers](#), para 1

Government (such as a representative or advisory role) may also be taken into account. With the applicant's permission, the Committee may also approach the prospective employer for clarification of the proposed appointment or employment.

ACoBA considers each request it receives on its merits, against the following tests:

- 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?
- has the former Minister been in a position where he or she has had access to trade secrets of competitors, knowledge of unannounced Government policy or other sensitive information which could give his or her new employer an unfair or improper advantage?
- is there another specific reason why acceptance of the appointment or employment could give rise to public concern on propriety grounds directly related to his or her former Ministerial role?⁸

ACoBA “will need to balance any points arising under these tests against the desirability of former Ministers being able to move into business or other areas of public life, and the need for them to be able to start a new career or resume a former one”.⁹

Restrictions in ACoBA advice

ACoBA may recommend restrictions on the activity to be undertaken by the former Minister if it considers that the proposed appointment could give rise to public concern. In such circumstances it may recommend that the former Minister should stand aside from involvement in certain activities for a period of up to two years after leaving office, or that there should be a delay in taking up the appointment.

In exceptional circumstances ACoBA may advise that a particular appointment or employment is unsuitable.¹⁰

The prohibition on **lobbying** is taken to mean that “a former Minister should not engage in communication with Government (Ministers, civil servants, including special advisers, and other relevant officials) with a view to influencing a Government decision or policy in relation to their own interests or the interests of the organisation by which they are employed, or to whom they are contracted”.¹¹ However, the length of the ban may be reduced by ACoBA if circumstances are considered to be justified. ACoBA may also recommend that the ban need not prevent communications with Government

⁸ [Business appointment rules for ministers](#), 2016, para 5

⁹ As above, para 6

¹⁰ [Business appointment rules for ministers](#), 2016, para 7

¹¹ As above, para 8

which are “an integral part of the normal course of business for the organisation concerned.”¹²

The Business Appointment Rules explain that the waiting period can be waived in some circumstances, and also that it can be extended up to the maximum period of two years:

A **minimum waiting period** of three months from the date of leaving office to taking up an appointment or employment will be expected when the former Minister was a member of Cabinet, and may also be applied to other former Ministers if the Advisory Committee believes this to be warranted by the circumstances of the individual case. The Committee may waive this minimum waiting period if, in its judgement, no question of propriety or public concern arises from the appointment or employment being taken up earlier. Equally, the Committee may consider that public concern about a particular appointment or employment could be of such a degree or character that a longer waiting period is appropriate up to the maximum period of two years that may be applied.¹³

Advice given by [ACoBA to individual ministers is published on the Gov.UK website](#), in chronological order and soon after issue.

The Chair of ACoBA expressed some frustration with the current process in a letter to the Cabinet Office Minister, Oliver Dowden, on 27 June 2023, in regard to the failure of former Prime Minister, Boris Johnson to seek advice from ACoBA before publicising a new journalistic appointment:

Mr Johnson’s case is a further illustration of how out of date the government’s Business Rules are. They were designed to offer guidance when “good chaps” could be relied on to observe the letter and the spirit of the Rules. If it ever existed, that time has long passed and the contemporary world has outgrown the Rules. This forces ACOBA to spend time on low-risk applications at the expense of more complex and challenging cases. New areas of corruption are not monitored because they were not envisaged when the Rules were drawn up.

ACoBA has recommended to the government well in excess of two years that a modern framework for considering business appointments is needed. This must include sanctions for non-compliance and greater clarity about what is and is not acceptable to enable resources to be focused on complex cases. As part of these recommendations is the proposal that cases with a known low risk profile be removed from the current process.¹⁴

Government proposals for reforms of the Business Appointment Rules and their enforcement, published in July 2023 included:

Ministers are not employees and do not have contracts. The Government is instead committed to developing a ‘ministerial deed’ which will be designed to

¹² [Business appointment rules for ministers](#), 2016, para 9

¹³ As above, 2016, para 10

¹⁴ ACoBA, [Decision Johnson, Boris-Prime Minister-ACoBA advice](#), 27 June 2023.

legally commit ministers to the Rules, and any resulting conditions, in the same manner as civil servants.¹⁵

1.2 Former Civil Servants

The [Civil Service Code](#) has no explicit provision concerning former civil servants seeking to take up private sector appointments upon leaving office, but the Business Appointment Rules for civil servants indicate that they are designed to uphold the Civil Service Code core values of integrity, honesty, impartiality and objectivity.¹⁶

Possible sanctions

Government proposals for changes to the procedures, published in July 2023, will introduce clauses in contracts of employment stating clearly what can and can't be done on leaving public office. This clarity in contracts is also seen as a way to “offer more scope when considering sanctions in light of breaches of the rules”. Such sanctions could potentially include financial penalties.¹⁷

No explicit sanctions are included in the proposals and no timescale for consultations nor agreement with ACoBA was given in the Government proposals. In a letter of response, the Chair of ACoBA, Lord Pickles welcomed the proposals and stated that he looked forward to “a clear timeline for implementation.”¹⁸

The procedures remain as set out below.

Purpose of the Rules for former civil servants

ACoBA states that the aim of the rules for former civil servants is to “avoid any reasonable concerns” that:

- a. a civil servant might be influenced in carrying out his or her official duties by the hope or expectation of future employment with a particular firm or organisation, or in a specific sector; or
- b. on leaving the Civil Service, a former civil servant might improperly exploit privileged access to contacts in Government or sensitive information; or

¹⁵ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, para 1.3

¹⁶ The [Business appointment rules for Crown servants](#) can be downloaded from the ACoBA pages of the gov.uk website, December 2016

¹⁷ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, Executive Summary.

¹⁸ ACoBA, [Response to the Deputy Prime Minister regarding government response to CSPL, Boardman and PACAC reports](#), 20 July 2023.

c. a particular firm or organisation might gain an improper advantage by employing someone who, in the course of their official duties, has had access to:

- i. information relating to unannounced or proposed developments in Government policy, knowledge of which may affect the prospective employer or any competitors; or
- ii. commercially valuable or sensitive information about any competitors.

The rules apply to all civil servants, including those employed on fixed term contracts, those on secondment to other organisations, and special advisers, though their precise application differs according to the seniority of the individual making the application.

Government proposals for reform of the Business Appointment Rules, published in July 2023, included:

While the Rules already form part of civil servant terms and conditions, this can be strengthened by increasing the detail in the contractual clauses so they, in conjunction with the Rules, make clear what people can and cannot do after leaving Government.¹⁹

The Government stated its commitment to developing procedures which would not “act as a fetter on porosity between the public and private sectors” [in Civil Service recruitment].

Consultation will take place on the detail of these contractual clauses. There are no immediate changes to the Rules. It is not yet clear whether any changes to the Rules themselves will be required to implement the proposed changes in contract terms.

The application process

Government proposals for reforms of the Business Appointment Rules and their enforcement, published in July 2023 included:

Therefore, for those on these new terms and conditions, the proposal will change from one where they apply to ACoBA for advice to one where they consult the Rules and their contract for the resulting conditions. In such cases, it will be the contractual clauses - rather than ACoBA advice - that will be binding on individuals.²⁰

It was acknowledged that consultation would be needed on these proposals:

¹⁹ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, para 1.3

²⁰ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, para 1.4

The Government will consider introducing these reforms in a staged manner - addressing the most senior civil servants, and ministers, before rolling this out to all staff. We will work with ACoBA to introduce these reforms.²¹

It was also anticipated that a Memorandum of Understanding or Framework Document would be essential to clearly set out the roles and responsibilities for the Government and ACoBA. The process as set out below continues to apply.

Permanent Secretaries and others at payband Senior Civil Service 3²² (including special advisers of equivalent standing) are required to apply to their Department for any new appointment or employment contemplated during the two years from the date of leaving office.

Application is referred by the Department to ACoBA, which advises the Prime Minister (or relevant First Minister) on the final decision. (The final decision on an application from a special adviser rests with the departmental permanent secretary, not ACoBA.) Permanent secretaries are subject to a three-month cooling off period before taking up any new appointment, though this may be waived if ACoBA finds no questions of “propriety or public concern”: equally ACoBA may advise an extension of the period, and may, exceptionally, advise the Prime Minister that the appointment is unsuitable.

In general, there is a two-year ban on all permanent secretaries and those at equivalent posts lobbying Government on behalf of their new employer after they leave the Civil Service. The time period may be reduced on advice from ACoBA. The definition of lobbying is identical to that in operation for Ministerial appointments, and with the same proviso (see above).

For officials at Senior Civil Service (SCS) paybands SCS2 and SCS1 and below, an application is only required if the applicant falls into one or more of the following categories:

- i. They have been involved in developing policy affecting their prospective employer, or have had access to unannounced Government policy or other privileged information affecting their prospective employer, at any time in their last two years in the Civil Service.
- ii. They have been responsible for regulatory or any other decisions affecting their prospective employer, at any time in their last two years in the Civil Service.
- iii. They have had any official dealings with their prospective employer at any time in their last two years in the Civil Service.
- iv. They have had official dealings of a continued or repeated nature with their prospective employer at any time during their Civil Service career.

²¹ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, Executive Summary.

²² Pay Band 3 is the highest pay band within Senior Civil Service.

v. They have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties.

vi. The proposed appointment or employment would involve making representations to, or lobbying the Government on behalf of a new employer.

vii. The proposed appointment or employment is consultancy work, either self-employed or as a member of a firm, and they have had official dealings with outside bodies or organisations in their last two years in the Civil Service that are involved in their proposed area of consultancy work.²³

The Rules continue to apply for two years after the last day of paid Civil Service employment. For those below the Senior Civil Service the rules continue to apply for one year after leaving the Civil Service, unless that role has been specifically designated as one where a longer period of up to two years will apply.

Departmental application process

In evidence to the Public Administration and Constitutional Affairs Committee (PACAC) in 2023 the Chair of ACoBA, Lord Pickles, pointed out that over 30,000 civil servants left office in an average year and only about 200 senior staff were considered by ACoBA. Some others made applications for advice to their own Departments, but procedures for dealing with such applications varied and overall figures were not recorded.²⁴

Departmental decisions on Business Appointment Rules applications are [published quarterly, by the Departments, on the Gov.uk website](#). These Departmental decisions and advice, and are separate from the advice offered by ACoBA.

Government proposals for reform of the Business Appointment Rules, published in July 2023, included a positive response to a CSPL recommendation that Government departments should publish anonymised and aggregated data on how many applications under the Business Appointment Rules were submitted, approved, or rejected each year.

The Government also accepted ACoBA's recommendation that there should be improvements in the way Departments handled applications and promised "a new departmental training programme, supplemented as needed with other support, in collaboration with ACoBA".²⁵

²³ [Business Appointment Rules for Civil Servants](#), para 13

²⁴ PACAC, [The Advisory Committee on Business Appointments, Oral Evidence](#), HC 1350 2020/21, 21 April 2021.

²⁵ [Cabinet Office, Strengthening ethics and integrity in Central Government](#), CP900, 20 July 2023, para 1.7 & 1.8

2

The Advisory Committee on Business Appointments

The Advisory Committee on Business Appointments (ACoBA) considers applications under the Business Appointment Rules about new jobs for former ministers, senior civil servants and other Crown servants.

ACoBA is an advisory non-departmental public body, sponsored by the Cabinet Office. The Membership includes political party nominees and independent members appointed by the Prime Minister. The current chair is Rt Hon Lord Pickles, who has held the position since April 2020.

ACoBA was set up in 1975 to provide advice on applications from the most senior Crown servants, who wished to take up outside appointments after they left Crown service. Since 1995 it has also provided advice to former Ministers on their employment in the two years after leaving office.

2.1

Role of the Committee

ACoBA considers applications under the Business Appointment Rules about new jobs for former ministers, senior civil servants and other Crown servants. It describes its functions in its annual report as follows:

2. The Committee's role today is to provide independent advice on applications submitted under the Government's Business Appointment Rules (Rules). In doing so it advises on the conditions that should apply to appointments or employment under the Rules for Crown Servants at the most senior level* (Crown servants at Director General level and above, and their equivalents) and under the Rules for Former Ministers (of the UK, Scottish and Welsh Governments), which both apply for two years after the individual has left office. It is not within the Committee's remit to pass judgment on the appointment/ employment with regard to other matters.

3. The Rules apply to both paid and unpaid appointments.

* Advice is provided to the Foreign Secretary if the applicant is from the diplomatic service or SIS; to the Defence Secretary for most Ministry of Defence staff, both civilian and military; to the First Ministers of Scotland and Wales in the case of staff working in those Devolved Administrations; to the relevant Permanent Secretary if the applicant is a Special Adviser; and to the Prime Minister for all other Crown servants.²⁶

²⁶ Advisory Committee on Business Appointments, [Annual Report 2017-18](#), July 2018, p5

2.2

Chair and membership of the Committee

The current Chair of ACoBA is Lord (Eric) Pickles, who took up his appointment in April 2020.²⁷ He had formerly been the Conservative Party nominee to ACoBA.

ACoBA has eight members. Three are nominated by the main political parties and the remaining five are independent members appointed by the Prime Minister. All members are appointed for a single, non-renewable term of five years, although on occasion members appointments have been extended to cover General Election hand-overs.²⁸ Independent members are appointed through the regulated process of the Commissioner for Public Appointments, following public advertisement.²⁹

Table 1 Member of ACoBA 2023

Conservative member	Lord Pickles (Chair) (appointed April 2020)
Labour member	Lord (Larry) Whitty (appointed July 2019)
SNP member	Mike Weir (November 2019)
Independent members	Jonathan Baume (February 2018)
	Andrew Cumpsty (January 2021)
	Isabelle Doverty (January 2021)
	Sarah de Gay (January 2021)
	Dr Susan Liautaud (February 2018)
	Richard Thomas CBE (February 2018)

Source: [ACoBA](#)

Following a recommendation of the Public Administration Select Committee, payment to the ACoBA Chair and members by way of an honorarium was introduced in April 2009.³⁰ The honorarium paid to the Chair in 2017-18 was £8,000, while each other member received £3,000.³¹ In 2023 the

²⁷ The Public Administration Select Committee's report on the appointment of Baroness Browning: Public Administration Select Committee, [Appointment of the Chair of the Advisory Committee on Business Appointments](#), 12 December 2014, HC 759 2014-15

²⁸ [ACoBA minutes](#), 4 December 2019.

²⁹ [Independent members \(x3\), Advisory Committee on Business Appointments](#), deadline 6 June 2023.

³⁰ Public Administration Select Committee, [Lobbying: Access and Influence in Whitehall](#), 9 December 2008, HC 36 2008-09

³¹ Advisory Committee on Business Appointments, [Nineteenth Annual Report 2017-2018](#), 17 July 2018, p7

remuneration for Committee members is £6,000, plus travel and subsistence expenses.³²

In oral evidence given to the Commons Public Administration and Constitutional Affairs Committee, the Chair of ACoBA, Lord Pickles, mentioned that during the 2020 round of recruitment of independent members, around 120 applications were received, of which over 60 were considered potentially appointable and following interviews six names were sent forward to the Prime Minister. Three of those six were appointed.³³

2.3 Committee Annual reports and advice

ACoBA began to publish annual reports on its activities in 1998 (covering the years 1996 to 1998). Reports covering the period 1 April to 31 March are normally compiled and submitted to the Prime Minister, who usually lays each report before Parliament before the summer adjournment each year and causes it to be published. ACoBA's nineteenth annual report was published in July 2018.³⁴

In 2019 the Committee website was updated:

Owing to staffing changes in our small secretariat team, the Committee's annual report for 2018-19 will now be included in a two year report to be published in 2020. The Committee's advice letters to individuals can be found listed on the ACOBA website in the usual way.³⁵

No Annual Report has been published since July 2018.

Each report set out the approach taken by the Committee in the reporting period and summarised the matters considered in respect of applications from former Ministers and Crown servants. Summaries of the advice provided during the reporting period are annexed to each report.

ACoBA also publishes a summary of each application to the Committee, and the advice given, [on its website](#) in circumstances where the application has been approved (with or without conditions) and the appointment has been taken up.³⁶

³² Independent Members, ACoBA, [Candidate Pack](#), June 2023.

³³ PACAC, [The Advisory Committee on Business Appointments, Oral Evidence](#), HC 1350 2020/21, 21 April 2021.

³⁴ Advisory Committee on Business Appointments, [Nineteenth Annual Report 2017-2018](#), 17 July 2018

³⁵ ACoBA, [Appointments taken up by former ministers](#) 2019-, [Accessed May 2023]

³⁶ Advice letters on appointments taken up by former Ministers have been published on the ACoBA pages of the gov.uk website since August 2014. Advice letters on appointments taken up by former Crown servants in the same period are also published.

Correspondence with the relevant Permanent Secretary has also been published in circumstances where ACoBA has determined that an appointment has been accepted and taken up without the benefit of ACoBA advice. In such circumstances ACoBA does not offer advice retrospectively.

In its annual report for 2017-18 the Chair reported that ACoBA had dealt with 93 appointments of former Ministers and 137 appointments of former Crown servants during the reporting period.³⁷ In oral evidence given to the Public Administration and Public Affairs Committee in April 2021 the Chair, Lord Pickles, reported that the numbers of former Crown servants dealt with had increased so that in 2018-19 142 applications were dealt with, in 2019-20 204 and in 2020-2021 240 (by April 2021).³⁸ Numbers of Ministers' applications were not given during this hearing.

Lord Pickles also pointed out that ACoBA was a small organisation, with three or four full time staff.

Since 2021 ACoBA members have met virtually twice a week to discuss cases. Records of these meetings are not published. Formal meetings on non-case issues are typically held two or three times a year. Minutes of these formal meetings, held since 2010, have been published on the ACoBA pages of gov.uk.³⁹

³⁷ Advisory Committee on Business Appointments, [Nineteenth Annual Report 2017-2018](#), 17 July 2018, p2

³⁸ PACAC, [The Advisory Committee on Business Appointments, Oral Evidence](#), HC 1350 2020/21, 21 April 2021.

³⁹ Advisory Committee on Business Appointments, [ACoBA minutes](#). In May 2023 the most recent set of minutes available were of the meeting of 20 May 2021, published on 7 February 2022.

3 Parliamentary scrutiny of the Business Appointment Rules and AcoBA

3.1 PACAC Inquiry into Greensill Capital 2021-22

In April 2021 the Public Administration and Constitutional Affairs Committee (PACAC) opened an inquiry in the wake of the collapse of financial services firm Greensill Capital, and revelations about its closeness to Government and its lobbying activities. The Committee set out its initial findings in an interim report in July 2021.⁴⁰

The Select Committee continued to take evidence and published their final report in December 2022. This considered in more detail the propriety of governance in the areas of public life impacted by the Greensill affair and the role of the ethics watchdogs charged with oversight of standards in public life, including ACoBA.⁴¹

In the area of Business Appointment Rules the Committee commented and recommended:

- contractual mechanisms to ensure that the Business Appointment Rules are legally enforceable [should be introduced];
- [enforcement] could be achieved by the Government pursuing those who do not comply with their obligations through the courts;
- ACoBA should be placed on a statutory basis as soon as possible;
- extend the Rules to prohibit employment in sectors where the applicant has had “significant and direct” responsibility for policy, regulation or the award of contracts;
- those subject to the Rules [need] to consider narrow compliance with them when considering future employment opportunities, alongside exercising judgement about what is appropriate [...].

⁴⁰ Public Administration and Constitutional Affairs Committee, [Proprietary of governance in light of Greensill-Interim report](#), 22 July 2021, HC 59 2000-21.

⁴¹ Public Administration and Constitutional Affairs Committee, [Proprietary of governance in light of Greensill](#), 2 December 2022, HC 888 2022-23.

In oral evidence to this inquiry Lord Pickles, the Chair of ACoBA, drew attention to his ongoing concerns on the monitoring of business appointments by Government Departments:

Government Departments are rubber-stamping things that are plainly wrong, so you almost have to go through a process of explaining to the Departments themselves that there is a problem and they need to address it. If we are seeing that at the very top, it makes you wonder about what is going on further below the surface. [...]

The lack of procedures that exist within Departments is deeply worrying. Some Departments have a structure set up and are very good. You may remember I offered to do an audit of Departments. We [ACoBA] offered to do training. We offered for the members of the committee to go in, which we would have done at no cost. That was rejected by the civil service, which said it would do it itself, but it has not. It keeps talking about setting up training schemes, but it has not.⁴²

The Government's response to this report was published on 20 July 2023, together with responses to a report by Committee on Standards in Public Life and a report by Nigel Boardman on Supply Chain Finance.⁴³

The Cabinet Office Minister, Alex Burghart, made a Written Statement on 20 July in which it was stated that:

In addition to their response to these recommendations, the Government are also delivering further reforms to the business appointment rules beyond the scope of these reports, to both improve the experience for applicants and ensure a more consistent, risk-based approach. As part of this work, the Government will also be integrating into legally binding agreements its other obligations on former office-holders and employees, namely the Radcliffe Rules on books and memoirs, and the rules on the return of, and access to, papers from time in office.⁴⁴

3.2 PACAC Inquiry 2016

In July 2016 the Public Administration and Constitutional Affairs Committee (PACAC) opened an inquiry into ACoBA and the Independent Adviser on Ministers' Interests. The inquiry followed up on the PASC recommendations from its 2012 report.⁴⁵

The report, published in April 2017, was again critical of the system for regulating business appointments and consequently recommended “major

⁴² Public Administration and Constitutional Affairs Committee, [Proprietary of governance in light of Greensill](#), 2 December 2022, HC 888 2022-23. Oral evidence Q356.

⁴³ Cabinet Office, Strengthening ethics and integrity in Central Government: [Government response to Propriety of governance in light of Greensill](#), CP 900, 21 July 2023.

⁴⁴ [HC Deb 20 July 2023 c79 WS](#)

⁴⁵ Public Administration and Constitutional Affairs Committee, Press notice - [Role of ACoBA and Independent Adviser on Ministers' Interests Inquiry](#), 20 July 2016

reform”. The Committee made reference to the appointment of the former Chancellor of the Exchequer, George Osborne, as editor of the Evening Standard noting that:

We disapprove of the announcement of Mr Osborne’s appointment as Editor of the Evening Standard without waiting for ACoBA’s advice. This demonstrates disrespect for ACoBA and for the Business Appointment Rules and sets an unhelpful example to others in public life who may be tempted to do the same.⁴⁶

The Committee concluded that:

... The regulatory system for scrutinising the post public employment of former Ministers and civil servants is ineffectual and does not inspire public confidence or respect. Our inquiry has revealed numerous gaps in ACoBA’s monitoring process with insufficient attention paid to the principles that should govern business appointments. The failures of governments in this regard have damaged public trust in politics and public institutions and led to repeated scandals. Consequently, we are recommending major reform.⁴⁷

The report called ACoBA a “toothless regulator” and also made calls for substantial changes to the Ministerial and Civil Service Codes.

The Government’s response was sent to the Committee in December 2017. The Committee published the response in January 2018, along with their comments that:

The Committee considers that the Government’s response is inadequate given the seriousness of the issues raised in the report and their potential to undermine public confidence.⁴⁸

The Government disagreed with the Committee, which had recommended that the Rules should be amended to include “a clearly defined principle that at a minimum, public servants should avoid taking up appointments within a two-year time period that relate directly to their previous areas of policy and responsibility when they have had direct regulatory or contractual authority within a particular sector”.

The Government stated that they considered the current framework was “sufficient” and that “an overly rigid approach will deter people from coming into the Civil Service which will be to the detriment of taxpayers and the Civil Service”. They concluded that:

Applying the restrictions advocated by the Committee risks imposing a covenant in restraint of trade which is unenforceable. It would also make it highly unlikely that individuals would take a risk and join the Civil Service with such uncertainty for their future employment after leaving. We have to be

⁴⁶ Public Administration and Constitutional Affairs Committee, [Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action](#), HC 252 2016-17, para 75

⁴⁷ As above, page 3

⁴⁸ Public Administration and Constitutional Affairs Committee, [Government Response to the Committee’s Thirteenth Report of Session 2016-17: Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action](#), HC 731 2017-19, January 2018, page 1

mindful that individuals will have on-going financial commitments (household bills, mortgages) and would not want to be in a position where they might struggle to pay those bills in the future.

In the private sector, often staff who leave to join a competing employer within a set period are subject to “gardening leave”, to wait out a period before they can take up their new post. Whilst this would avoid the unreasonable restraint of trade issue, the Government does not believe it would be a good use of taxpayers’ money to adopt gardening leave as a widespread practice across the Civil Service. Indeed, the Government has sought to reduce the cost of exit payments in the public sector.

In response to the changes recommended to the Civil Service Code and Ministerial Code, the Government stated that:

The principles set out in the Civil Service Code and the Ministerial Code already capture the essence of what the Committee is recommending here. The Government does not consider that setting this out in further detail in these Codes is necessary. Moreover, as noted above, we will be looking to make amendments to the Civil Service Management Code to ensure that individuals are clear on their obligations. This document, which underpins civil servants’ terms and conditions of service, is a more appropriate vehicle for such guidance, and we will look at the Committee’s recommendations as part of this review.

The Government did agree to make several other changes to the Civil Service Management Code. For example:

- We will also look to make clear in the Code that individual decision letters should be shared with a prospective employer as a matter of routine, to ensure the employer is aware of the requirements placed on the individual, and to ensure compliance with any conditions. This will be done by HR Directors, direct with the future employer.
- We will also seek to amend the Code to make clear that all applications from former permanent secretaries should be countersigned by the Cabinet Secretary. We will also seek to insert this requirement in the contracts of Permanent Secretaries.⁴⁹

It appears that the Civil Service Management Code has not been updated since November 2016.⁵⁰

⁴⁹ Public Administration and Constitutional Affairs Committee, [Government Response to the Committee’s Thirteenth Report of Session 2016–17: Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action](#), HC 731 2017-19, January 2018, pages 1-2

⁵⁰ [Civil Service Management Code](#), accessed June 2023.

3.3

PASC Inquiry 2012

In January 2012, the Public Administration Select Committee (PASC) undertook an inquiry into the operation of the Business Appointment Rules.

The Committee concluded that although interchange between sectors was in the public interest, the existing Business Appointments system had lost public confidence and needed reform. In particular they suggested that ACoBA lacked adequate powers and resources, and that its membership was not in keeping with its role. The Committee was “not persuaded that the appointment of political nominees to ACoBA is necessary purely because of its role in ‘providing advice direct to former Ministers’”.⁵¹

ACoBA was subject to criticism for making its processes “opaque to applicants” and for doing “nothing to deter misleading and damaging mis-reporting of individual cases”.⁵²

The Committee recommended ACoBA should be abolished and that legislation should be brought forward “to establish statutory ethics regulation in the UK”:

We are persuaded that the existing Advisory Committee is not well suited to taking on this role, and so we recommend that it be abolished. The Government should bring forward new legislation to establish statutory ethics regulation in the UK, which would reflect the importance that the UK attaches to the ethical conduct of its public office holders. We propose a model based on the Canadian system of combined legislation and codes of conduct, and overseen by an independent Commissioner, who would also take over the role of the Prime Minister's Adviser on Ministers' Interests and have the power to initiate investigations into the Ministerial Code on his or her own initiative. We recommend that enforceable statutory penalties be introduced for failing to comply with the Commissioner's recommendations.⁵³

The Government Response was published in July 2014.⁵⁴ The Government noted that following the publication of the Committee's report, the Cabinet Office had undertaken a comprehensive review of the Business Appointment Rules in consultation with departments, and had agreed a number of revisions to the current Rules for Crown servants, some of which reflected recommendations set out in the Committee's report.

Issues of Membership were deferred to the next Triennial Review of the ACoBA. In response to the recommendation for a statutory system, the Government stated that they did not believe that a statutory approach was necessary:

⁵¹ Public Administration Select Committee, [Business Appointments Rules](#), July 2012, HC 404, 2012-13, paragraph 48

⁵² As above, page 3

⁵³ As above, page 3

⁵⁴ Public Administration Select Committee, [Business Appointment Rules: Government Response to the Committee's Third Report of Session 2012-13](#), HC 563, 2014-15

The Rules for civil servants derive their authority from the Civil Service Management Code and the Rules for former Ministers from the Ministerial Code, and the principles outlined by the Committee are already incorporated into these documents. The Government does not believe that a statutory approach to this issue is necessary. The Codes and Business Appointment Rules already make clear the duty of former Ministers, civil servants and special advisers with regard to subsequent employment, and the Government believes that some of the criticisms of the existing regulations will be mitigated by the plans for increased transparency.⁵⁵

⁵⁵ Public Administration Select Committee, [Business Appointment Rules: Government Response to the Committee's Third Report of Session 2012–13](#), HC 563, 2014–15, paragraph 27

4 Other recent reports into the Business Appointment Rules and ACoBA

4.1 Strengthening ethics: Government responses 2023 and commentary

The Government published [Strengthening Ethics and Integrity in Central Government](#) on 20 July 2023. This was a combined response to the Committee on Standards in Public Life [23rd report-Upholding Standards in Public Life](#), to the Commons Public Administration and Constitutional Affairs Select Committee report [Propriety of Governance in Light of Greensill](#) and the Nigel Boardman report into Supply Chain Finance.

Most of the Government proposals for changes relating to the Business Appointment Rules and ACoBA have been mentioned in Section 1 of this briefing. Consultations will follow between the Cabinet Office and ACoBA and across Departments on the implementation of changes to procedures.

A report by the Institute for Government (IfG), published in July 2023, set out the main recommendations of the three reports (although the title mentions only one) and compared them to the Government response, in a useful tabular format.⁵⁶

Further commentary by the IfG, in a second publication, included:

Being up front about the restrictions that civil servants and ministers will need to follow on leaving office should make public service more attractive to those with commercial, academic and other professional experience. Removing uncertainty should also make officials more honest and confident in their advice while in government, knowing that the prime minister cannot (however theoretical the power) veto their future appointments.⁵⁷

4.2 Standards Matter 2 review, 2021

In December 2021 the Committee on Standards in Public Life published the final report of its widespread review of the rules, guidance and bodies

⁵⁶ Institute for Government, [The government's response to the Committee on Standards in Public Life](#), Explainer, 21 July 2023.

⁵⁷ Institute for Government, [Rishi Sunak's ethics plan won't silence his critics](#), Comment, 23 July 2023.

working in this area.⁵⁸ A number of its recommendations applied to the Business Appointment Rules and the powers of ACoBA. These included:

Recommendation 2. The government should pass primary legislation to place the [...] and the Advisory Committee on Business Appointments on a statutory basis.

Recommendation 11. The Business Appointment Rules should be amended to prohibit for two years appointments where the applicant has had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.

Recommendation 12 The Business Appointment Rules should be amended to allow ACOBA and government departments to issue a ban on lobbying of up to five years.

Recommendation 13 The lobbying ban should include a ban on any work for lobbying firms within the set time limit.

Recommendation 14 The government should make adherence to the Business Appointment Rules an enforceable legal requirement for ministers, civil servants, and special advisers, and set out what the consequences for a breach of contract may be.

Recommendation 15 ACOBA rulings should be directly binding on applicants.

Recommendation 16 ACOBA should have the power to undertake investigations into potential breaches of the Business Appointment Rules, and be granted additional resources as necessary. The Cabinet Office should decide on sanctions or remedial action in the case of a breach.

Recommendation 17 Government departments should publish anonymised and aggregated data on how many applications under the Business Appointment Rules are submitted, approved, or rejected each year.

Recommendation 18 The Cabinet Office should ensure the Business Appointment Rules are applied consistently across all government departments, and work with ACOBA to promote best practice and awareness of the rules.

The Government provided an update on its work on this report, along with others, in a Written Statement on 15 July 2022.⁵⁹ In relation to the Business Appointment Rules this included:

Mechanisms are now in place for breaches of the rules to be taken into account in the award of honours. Agreement on a similar approach is being sought with the independent House of Lords Appointment Commission and the government is now considering how to implement the same approach in relation to public appointments. Alongside this, the government is considering

⁵⁸ Committee on Standards in Public Life, [Upholding standards in public life](#): Final report of the Standards Matter 2 Review (pdf), November 2021.

⁵⁹ Written statement [UIN HCWS208](#), 15 July 2022.

consequences for prospective employers including through the procurement process.

4.3 Nigel Boardman report, 2020

In December 2020 Nigel Boardman, a non-executive board member of the Department for Business, Energy and Industrial Strategy (BEIS), was asked to review government procurement activity during the response to the COVID-19 pandemic. The review final report was published in two parts in July and August 2021, one which looked at the facts of the procurement activity and one which made recommendations and suggestions for changes to processes.⁶⁰

In the second part, Nigel Boardman made a number of recommendations on pre-appointment conditions for civil servants, secondary employment by serving civil servants and post-employment restrictions for former civil servants. He also made recommendations on the commitments for Ministers and former Ministers.

On the role of ACoBA his recommendations were:

I recommend that government makes post employment restrictions on civil servants and ministers legally binding (Recommendation 11).

For civil servants their post-employment restrictions could be a straightforward contractual arrangement of restrictive covenants in the same way as the private sector, with ACoBA used as the enforcement body. Ministers are office holders and not employees, and as such have no formal written contract of employment, but ministers could on appointment be required to sign a legally enforceable Deed of Undertaking which binds them to follow the Business Appointment Rules process and to abide by ACoBA's ruling at the end of their ministerial term. This should be enforceable by ACoBA by obtaining an injunction if the former minister does not comply.

I recommend that government develops with ACoBA a Memorandum of Understanding that sets out more clearly how they can work more effectively together (Recommendation 12), including a service level agreement imposing time limits on ACoBA from the receipt of relevant information to giving its verdict.

If the restrictive covenant method is adopted, those covenants relating to civil servants should be reviewed in consultation with ACoBA and ACoBA's approval should be obtained for any waiver, amendment or decision not to enforce a covenant. While detailed policy on restrictive covenants should be developed in consultation with ACoBA, it should be standard practice for those in the commercial function to have a time-limited restriction on taking up roles with entities where they have been involved in a relevant procurement.

⁶⁰ Cabinet Office, [Independent report: A review into the development and use of Supply Chain Finance in Government](#), 22 July 2021.

The Government issued a written statement on the response to the Boardman report and other reviews in June 2022.⁶¹ In April 2023 the Cabinet Office Minister Baroness Neville-Rolfe stated:

The Government's work on reforms to strengthen ethics and integrity in central government is now nearing conclusion and we hope to publish our response soon. There have been a number of reports, including Upholding Standards in Public Life, the recommendations of Sir Nigel Boardman's report on supply chain finance, and PACAC's fourth report, so we can look forward to a response.⁶²

⁶¹ Written statement [UIN HCWS208](#), 15 July 2022.

⁶² [HL Deb 25 April 2023](#), col 1111

Establishment of ACoBA, 1975

ACoBA was first established by the then Prime Minister, Harold Wilson, in 1975. Its purpose then was to provide advice in respect of appointments sought by senior civil servants only. Non-statutory rules were established to require permanent secretaries and deputy secretaries to submit any employment plans in the private sector for approval by the Committee.

Extension to former Ministers, 1995

In its first report, published in May 1995, the Committee on Standards in Public Life recommended that a similar advisory system should be applied to former ministers:

A transparent advisory system will achieve the necessary liberty of movement for individuals but nevertheless secure public confidence and ministerial compliance without the complication of a statutory power.⁶⁵

The recommendation was accepted, and the system envisaged came into effect at the start of the 1995-96 Parliamentary Session.

Sir Patrick Brown's review of the rules, 2004

On 22 July 2004 the then Prime Minister, Tony Blair, announced that he had appointed Sir Patrick Brown to review the Business Appointment Rules. Sir Patrick was a former Permanent Secretary who had, since leaving the Civil Service in 1997, worked in the private sector and had held chairmanships and non-executive directorships.

The terms of reference for this review were:

To review the Business Appointment rules to ensure that they are compatible with a public service that is keen to encourage greater interchange with the private and other sectors which is essential for effective delivery in today's public service. The review will consider the operation of the system, taking account of practice overseas. It will also consider the current machinery for dealing with applications and the necessary resources.

The report of Sir Patrick Brown's review was not published until 20 December 2005.⁶⁶ It recommended a review of the rules relating to civil servants and the transfer of supervision to the Civil Service Commission. It suggested that individuals leaving the Crown service should be required to sign an affirmation that they were aware of their duty of confidentiality, and that there should be a single test of propriety: "has the individual during the last

⁶⁵ Committee on Standards in Public Life, *Standards in public life*, Cm 2850 Chapter 3, para 30

⁶⁶ Review of the business appointment rules. [Brown Report], Deposited Paper, DP 05/1677

three years of State Service had a material influence on a decision to deliver a benefit to the prospective employer?”. If this was the case, there was to be just one sanction: a two-year ban on that employment.

The report was silent on arrangements for former ministers seeking business appointments.

The Government asked the Public Administration Select Committee to reflect on the implications of Sir Patrick Brown’s report. The Committee reported that the single test and single sanction approach was “not satisfactory”: “it might prevent straightforward corruption, but would not deal with more insidious uses of influence, and would not command public confidence”.⁶⁷ The Committee also stated that the body which considers applications to take up business appointments from Crown servants should also be responsible for advising former Ministers on such appointments.

In response the Government agreed that “the present system provides for a flexible approach which enables decisions under the Rules to take account of the particular circumstances of each individual case” and that the more narrow approach proposed by Sir Patrick Brown of a single sanction applied against a single test would not be adequate to protect the public interest in ensuring that when a former Crown servant takes up an outside appointment there should be no cause for concern of impropriety.”⁶⁸

The Government also accepted the Committee’s recommendation that former Ministers should be required to submit applications to ACoBA and act on the advice given: these provisions were added to the Ministerial Code published in 2007 (see below).

Making the rules binding on former Ministers, 2007

Further problems with the rules had become evident in November 2005 when the former minister David Blunkett was found not to have sought the advice of ACoBA before taking up positions after leaving office.⁶⁹ It was established that the Ministerial Code did not require ex-Ministers to abide by ACoBA advice, even if they had to seek it.⁷⁰

In June 2007, the then new Prime Minister, Gordon Brown, published The Governance of Britain Green Paper. This announced that former Ministers would be bound by the rulings of the Business Appointments Committee:

Ministers wishing to take up outside appointment on leaving office will be required to seek the advice of the Advisory Committee on Business Appointment

⁶⁷ Public Administration Committee, [The Business Appointments Rules](#), HC 651 2006-07, June 2007, paragraph 25

⁶⁸ Public Administration Committee, [The Business Appointment Rules: Government Response to the Committee's Sixth Report of Session 2006-07](#), HC 1087 2006-07, October 2007, page 3

⁶⁹ BBC News, [I am not resigning, says Blunkett](#), 1 November 2005

⁷⁰ Advisory Committee on Business Appointments, [Eighth Report 2005-06](#), para 8

Rules. Former Ministers will be expected to follow the advice of the Committee. This has, until now, been voluntary.⁷¹

The Government made amendments to the Ministerial Code to clarify that on leaving office, Ministers must seek the advice of ACoBA about any appointments or employment they wish to take up within two years of leaving office, apart from unpaid appointments in non-commercial organisations. The Code also made it clear that Ministers would be expected to abide by the advice of ACoBA.

“Dispatches” programme allegations, March 2010

In March 2010 a “Dispatches” programme (Channel 4) made allegations that former cabinet ministers and opposition backbenchers had offered to influence policy for a fictitious public affairs firm. Harriet Harman made a statement to the House of Commons on lobbying and paid advocacy, summarising the current rules on former ministers.⁷²

A report from the Public Administration Select Committee into lobbying in 2009 had found that there was some inconsistency in the advice given on lobbying, and how this might be interpreted by applicants. The Committee recommended that the rules should be reviewed:

We are strongly concerned that, with the rules as loosely and as variously interpreted as they currently are, former Ministers in particular appear to be able to use with impunity the contacts they build up as public servants to further a private interest. We think that this is unacceptable, particularly where they continue to be paid from the public purse as sitting Members of Parliament. The rules need to reflect this.

The Government had taken issue with the suggestion that former Ministers were using contacts made in office inappropriately:

The Government does not agree with the general assertion that former Ministers in particular are able to use improperly and with impunity contacts built up while in office. The Government agrees with the Committee that it would not be desirable to prevent former Ministers, or Crown servants, making use of their expertise once they leave office. It is in the country’s interests that they should be able to use their skills and experience in work outside Government provided there is no reasonable cause for concern about propriety when they take up such appointments. Nevertheless, the Government agrees that the “Guidelines for former Ministers” and the “Rules for Crown Servants” (including the associated Guidance to Departments) need revision so as to bring them up-to-date and to ensure that they can be interpreted as unambiguously as possible. The Advisory Committee is an independent body, but the Government has no doubt that the new membership will wish to consider its procedures in the light of the Government’s revised regulations on which it will consult the Advisory Committee in advance of publication.

⁷¹ Ministry of Justice, [Governance of Britain](#), Cm 7170, July 2007, p39

⁷² [HC Deb 22 March 2010, c25-7](#)

The Coalition Government, May 2010

In May 2010, the new Government issued an updated version of the Ministerial Code which included the provision that former Ministers would be prohibited from lobbying the Government for two years. As leader of the Official Opposition, in February 2010 David Cameron had warned that lobbying was “the next big scandal waiting to happen” and had stated that under a Conservative Government, any former minister who did not follow the guidelines should lose their ministerial pensions.⁷³ He also committed a Conservative Government to doubling the amount of time former ministers had to wait before lobbying government to two years after leaving office.

⁷³ Daily Telegraph, [David Cameron warns lobbying is next political scandal](#), 8 Feb 2010

6

Annex 2: Revisions of the Business Appointment Rules

There have been four principal revisions of the Business Appointments Rules for Ministers and Civil Servants since 1995, which is the point at which Ministers became subject to the rules and the point at which ACoBA annual reports begin to be published.

Revisions to the Rules as they stood in 1995 were made in 1998, 2011, 2014 and 2016.

The 1998 version differs little from the 1995 version. Most of the changes were drafting revisions in light of concerns raised following the first application of the rules to former ministers.

The rules remained unchanged between 1998 and 2011, even though the Ministerial Code was reissued at the start of Gordon Brown's administration in 2007.

1998 revision of the 1995 guidelines

The 1995 version of the rules was the first in which former Ministers were subject to the Business Appointment Rules (at that point, generally referred to as guidance rather than rules). In the Committee's second report, they indicated that there had been "a problem over the interpretation by former Ministers of the Guidelines".⁷⁴

Ministers

The 1995 guidelines said that they existed to "seek to counter suspicion, however unjustified". "[H]owever unjustified" is removed from the 1998 version. The general case of "there may be cause for concern about the appointment in some other respect" was also added as one of the suspicions which the guidelines seek to counter.

The guidance advised former Ministers that they "should" ask the Committee, strengthening the language from "may ask the Committee", used in the prior version.

Clarification on the term "appointment" was added in 1998, specifically excluding unpaid roles:

⁷⁴ Advisory Committee on Business Appointments, [Second Report 1998-1999](#), November 1999, p 5

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.

The guidance also begins to explicitly state that the Committee may “advise that an appointment is unsuitable”, which was not present in the 1995 guidelines.

Civil Servants and special advisers

The rules for civil servants were entirely unchanged in this revision.

The rules for when appointments or employment by former civil servants were subject to the rules were both the 1995 and 1998 rules are set out in Table 1.

Applications for approval must be made by civil servants or any grade in the following circumstances under these rules:

1. If they have had any official dealings with their prospective employer during the last two years of Crown employment; or
2. If they have had official dealings of a continued or repeated nature at any time during their period of Crown employment; or
3. If they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
4. 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
5. If they are to be employed on a consultancy basis (either for a firm of consultants or as independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisation in their last two years of Crown employment.

Table 1: 1995 (and 1998) civil servant appointment referral rules

	Rules apply for?	Decision made by?	All appointments require application?
Permanent & Second Permanent Secretary	Two years	PM, advised by ACoBA	Yes
SPAD equivalent	Two years	Head of Home Civil Service, advised by ACoBA	Yes
SCS Band 4+/JESP13+ (including equivalent Special Advisers)	Two years	Department, consulting Cabinet Office in certain Circumstances	Consultation not required if the applicant has had no official dealing with the prospective employer at any time while a civil servant and there appears to be no risk of criticism. Or, where the employment is with a non-commercial organisation.
Outside the SCS	Two years	Department, consulting Cabinet Office in certain Circumstances	Consultation not required where the applicant has had no official dealings with the prospective employer in the last two years, or only casual dealings, and there appears to be no risk of the disclosure of commercially sensitive information. Or, where the employment is with a non-commercial organisation.

Source: Business Appointment Rules 1998

2011 rules

The rules were significantly revised in 2011 for both former ministers and former civil servants.⁷⁵

Lobbying ban

Prominently, the 2011 rules included the introduction of the two year “lobbying ban” for both Ministers and civil servants. Under the 2011 rules (persisting to the current rules, though with qualifications introduced in 2014), there is a default assumption that former ministers and senior civil servants will be subject to a two year lobbying ban, during which they are not permitted to lobby the Government on behalf of their new employers.

However, this may be waived or reduced by the Committee if it considers this to be justified by the particular circumstances on an individual application.

Unpaid roles in non-commercial organisations no longer excluded by rules

For the first time, unpaid roles in non-commercial organisations are not specifically excluded by the rules. This persists to this day.

Ministers

The following test used by the Committee under the 1998 guidelines:

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 Minister that there should be a delay or another condition in taking up the appointment, or that the appointment is unsuitable?⁷⁶

Is rewritten in the 2011 rules:

Is there another specific reason why acceptance of the appointment or employment could give rise to public concern on propriety grounds directly related to his or her former Ministerial role?⁷⁷

Civil servants and special advisers

In common with the new rules for Ministers, the new rules for Civil Servants applied to all appointments and employment, including unpaid appointments in non-commercial organisations, which were previously exempt.

The 2011 rules were the first edition to explicitly state that the Rules are designed to uphold the core values in the Civil Service Code (though the Code was in effect at the time of the previous editions, having been introduced in 1996).

⁷⁵ Advisory Committee on Business Appointments, [Thirteenth Report 2011-2012](#), December 2012

⁷⁶ Advisory Committee on Business Appointments, [Second Report 1998-1999](#), November 1999, p 12

⁷⁷ Advisory Committee on Business Appointments, [Thirteenth Report 2011-2012](#), December 2012, p 23

The rules now have as an explicit aim avoiding a reasonable concern that “on leaving the Civil Service, a former civil servant might improperly exploit privileged access to contacts in Government or sensitive information”. This was absent in the 1998 aims.

The specific circumstances in which a civil servant at grade SCS1 or below needed to make an application for approval under the 2011 rules were as below. The wording was changed throughout – substantive changes have been highlighted:

6. Where they have been involved in developing policy affecting **(change from 1998 Rules, which specified “benefiting”)** their prospective employer, or have had access to unannounced Government policy or other privileged information affecting their prospective employer, at any time in their last two years in the Civil Servant.
7. They have been responsible for regulatory, or any other decisions, affecting **(change from 1998 Rules, which specified “benefiting”)** their prospective employer during that time.
8. They have had any official dealings with their prospective employer during that time.
9. They have had official dealings of a continued or repeated nature at any time during their Civil Service career.
10. They have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties.
11. The proposed appointment of employment would involve making representations to, or lobbying the Government on behalf of a new employer. **This was a new criterion for requiring an application under the 2011 rules, in line with the new ‘lobbying ban’.**
12. The proposed appointment or employment is consultancy work, either self-employed or as a member of a firm, and they have had official dealings with outside bodies or organisations in their last two years in the Civil Service that are involved in their proposed area of consultancy work. **The 1998 rules did not specify “in their proposed area of consultancy work”, instead requiring application if a would-be consultant has had “any dealings of a commercial nature with outside bodies or organisations” in the last two years of employment.**

In addition, special advisers under the 2011 rules were not differentiated according to seniority. All applications from special advisers, regardless of seniority, were referred to ACoBA.

Table 2: Business Appointment Rules for Civil Servants 2011

	Rules apply for?	Decision made by?	All appointments require application?
Special advisers (all)	Two years	PS, advised by ACoBA	Yes
SCS3 and above	Two years	PM, advised by ACoBA	Yes
SCS2	Two years	Permanent Secretary ⁷⁸	Yes
SCS1 and below	Two years	Department officials	Specific circumstances only (see paragraph above)

Source: Business Appointment Rules 2011

⁷⁸ The Permanent Secretary’s written recommendation to the application setting out the decision must be copied to the Advisory Committee’s secretariat

2014 rules

Ministers

The rules for ministers remained unchanged in 2014.⁸⁰

Civil servants and special advisers

Some revisions were made to the rules regarding civil servants and special advisers were made in 2014, though the rules for former ministers were unchanged.

Special advisers now subject to the provisions of their “equivalent standing”

These changes restored the provisions that special advisers be subject as per their “equivalent standing” expressed as a Civil Service grade. As Civil Service and special adviser pay bands do not mirror each other exactly, departments now need to exercise greater judgement as to when certain special advisers’ applications should be referred to the Committee.

Civil servants outside of SCS only subject to rules for one year

In addition, the 2014 revision introduced scaled lengths of time in which the rules applied. For those outside of the SCS, including special advisers of equivalent rank, the rules only apply for one year, rather than the usual two unless, exceptionally, the role has been designated as one where a longer period of up to two years will apply.

Lobbying ban clarification

The 2014 rules permitted the Advisory Committee to qualify the lobbying ban condition to make clear that this restriction need not prevent individuals communicating with Government on matters that are an integral part of the normal course of business for their new employers.

Retroactive applications not normally accepted

The 2014 rules made explicit that retrospective applications will not normally be accepted. While this change was not applied to the rules for ministers, the Advisory Committee noted that they would apply this rule to ministerial applications.

Circumstances in which applications are mandatory altered

The specific circumstances in which appointments at certain grades are required to make an application have now been expanded. Former civil servants at SCS2 were, from 2014, not automatically required to make an application.

⁸⁰ Cabinet Office, [The Business Appointment Rules for Civil Servants](#), October 2014

Civil servants allowed to be paid during mandatory waiting period

Finally, the 2014 rules introduced an allowance for departments to continue to pay former civil servants or special advisers who are required to observe a waiting period before taking up an outside appointment. The Cabinet Office must be consulted when payment is proposed either by the Department or the individual.

The specific circumstances in the 2014 rules were identical to the specific circumstances in the 2011 rules, see above.

Table 3: 2014 (to present) civil servant referral rules

	Rules apply for?	Decision made by?	All appointments require application?
Special advisers (SCS3+)	Two years	PS, advised by ACoBA	Yes
Special advisers (Other SCS)	Two years	Permanent Secretary	Yes
Special advisers (Other)	One year	Permanent Secretary	Yes
SCS3 and above	Two years	PM, advised by ACoBA	Yes
SCS2	Two years	Department officials	Specific circumstances only
SCS1	Two years	Department officials	Specific circumstances only
Below SCS1	One year	Department officials	Specific circumstances only

Source: Business Appointment Rules 2014

2016 rules

The most recent version of the rules for former ministers were published in November 2016, at the same time as the issue of the 2016 version of the Ministerial Code.⁸¹

Ministers

Two changes were made in the 2016 business appointment rules for former ministers which bring them into closer alignment to the rules for former civil servants.

The 2016 rules put into place the provision that retrospective applications will not normally be accepted, which the Advisory Committee had previously stated they were treating as part of the rules, despite not being in the previously published rules for former ministers.

Also in line with the 2014 changes to the rules for civil servants, the 2016 revision of the rules for former ministers gave the Advisory Committee a discretionary power to recommend that the lobbying ban need not prevent communications with Government on matters that are an integral part of the normal course of business for the organisation concerned.

Civil servants and special advisers

The rules for civil servants and special advisers are currently unchanged from the 2014 version.

⁸¹ Advisory Committee on Business Appointments, [New business appointments for ministers and senior Crown servants](#), 21 December 2016

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