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POST-PUBLIC EMPLOYMENT: GOOD PRACTICES FOR PREVENTING CONFLICT OF INTEREST

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The Public Governance Committee is invited to approve the revised report without discussion. Delegates may provide written comments by 15 November 2008.

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POST-PUBLIC EMPLOYMENT: GOOD PRACTICES FOR PREVENTING CONFLICT OF INTEREST

Introduction

1. Post-public employment was identified as an emerging concern in the review of progress made in implementing the OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service. Consequently, the Public Governance Committee decided to review governance arrangements for preventing and managing conflict-of-interest situations involving officials who have left public office.

2. In 2007 the Expert Group reviewed key problem areas related to post-public employment that were outlined in a scoping paper[1] and discussed principles and framework for managing post-public employment conflict of interest. At its last meeting the Expert Group reviewed elements of selected regulations, policies and elements of good practice for inclusion in the report.

3. This document provides the revised report that takes into account the results of the discussions at the Expert Group meetings and written comments received on the draft report[2] and identified good practices for preventing and managing conflict of interest in post-public employment. The revised report provides a practical guidance to policy makers and managers in OECD and non-member countries.

Action

4. The Committee is invited to **approve** the revised report without discussion. Delegates may also provide written comments by 15 November 2008.

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1 *Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH(2007)3 prepared by Professor Kenneth Kernaghan, Brock University, Ontario, Canada.

2 *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, GOV/PGC/ETH(2008)3.

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ACRONYMS

APS	Australian Public Service
CSO	civil society organisation
EU	European Union
FAA	Federal Accountability Act, Canada
HLOGA	Honest Leadership and Open Government Act, U.S.
OGE	Office of Government Ethics, U.S.
IMF	International Monetary Fund
PASC	Public Administration Select Committee, UK
PPP	public private partnership
SSZ	State Services Commission, New Zealand
UK	United Kingdom
US	United States
USD	United States Dollar
WBG	World Bank Group

EXECUTIVE SUMMARY

5. New public management methods have encouraged movement of personnel between public and private sectors to support labour market dynamism in OECD countries. When officials leave public office – either permanently or temporarily – to work for the private or non-profit sectors, however, concerns of impropriety, such as misuse of 'insider information' and position, could put at risk trust in the public service. Among the causes of **increased concerns** about post-public employment conflict of interest could be mentioned that:

- the public sector has developed close interactions with other sectors resulting increased risks to integrity, for example public officials may have unduly cosy relationships with business and non-profit organisations; and

- public officials are moving much more frequently, either permanently or temporarily, between public and private sector jobs.

6. Consequently, reviewing and modernising arrangements for effectively preventing and managing conflict of interest in post-public employment has become an **emerging priority** in many countries. Most post-public employment offences occur when public officials use information or contacts acquired while in government to benefit themselves, or others, after they leave government. However, despite use of the term post-public employment, these offences can also occur before officials actually leave government.

7. Major post-employment **problem areas** involve public officials when they:

- seek future employment outside the public service;

- conduct post-employment lobbying back to government institutions;

- switch sides in the same process;

- use 'insider information'; and

- are re-employed in the public service, for example, to do the same tasks.

8. The challenge for governments is to strike an **appropriate balance** between fostering public integrity through adequate post-employment instruments and preserving a reasonable employment freedom to attract experienced and skilful candidates for public office. Experience shows how influential the context is in designing, implementing and enforcing adequate post-employment measures tailored to properly address the particular problems countries face. Ensuring compliance with post-employment measures could indeed be particularly difficult because most post-employment offences are committed by public officials who, by leaving the public sector, move somewhat beyond administrative government control unless through their pension or other government benefits.

9. The principles for managing post-public employment conflict of interest provide a point of reference for policy makers and managers to **review and modernise post-public employment policy and practice**. The principles were designed to support efforts for preventing actual or potential conflict of interest in public office, for example by requiring in the decision making that "public officials should not enhance their future private sector employment prospects by giving preferential treatment to potential

employers". In reviewing actual arrangements, policy makers first may examine systematically the extent to which existing regulations, policies and practices can meet the requirements of the principles.

10. Moreover, policy makers may consider the **post-public employment good practice framework** when developing options for instruments and measures for their implementation and enforcement. The framework addresses strategic aspects of managing a post-public employment system and it also provides a structure for developing coherent and comprehensive post-public employment policy and practice. Selected elements of good practices are also presented in the framework to give concrete examples of options that could be considered as benchmarks.

11. Key **pillars** of the post-public employment good practice framework include, in particular, the followings:

- The post-public employment system contains the instrument(s) needed to deal effectively with its current and anticipated post-employment problems and emerging concerns.
- The post-public employment instrument(s) is linked, where feasible, with instrument(s) dealing with conflict of interest in the public sector and with the overall values and integrity framework.
- The post-public employment system covers all of entities for which post-employment is a real or potential problem and meets the distinctive needs of each entity.
- The post-public employment system covers all of the important risk areas for post-employment conflict of interest.
- The restrictions, in particular the length of time limits imposed on the activities of former public officials, are proportionate to the gravity of the post-employment conflict of interest threat that the officials pose.
- The restrictions and prohibitions contained in the post-employment system are effectively communicated to all affected parties.
- The authorities, procedures and criteria for making approval-decisions in individual post-public employment cases as well as for appeals against these decisions are transparent and effective.
- The enforcement sanctions for post-public employment offences are clear and proportional, and are timely, consistently and equitably applied.
- The effectiveness of the policies and practices contained in each post-employment system is assessed regularly and, where appropriate, is updated and adjusted to emerging concerns.

12. Dealing with post-public employment problems has been a relatively recent challenge in many OECD countries. However, even countries with established post-public employment framework, they have faced newly emerging concerns – driven by constantly evaluating socio-political contexts – that have forced governments to adjust existing regulations, policies and practices. The paper draws attention to **reviewed elements of good practices** – identified across OECD countries mainly at the national level but also some examples from the sub-national level – to help future efforts by outlining alternative options as valuable benchmarks and sharing experiences and lessons learned.

13. A further challenge is to provide evidence on the extent to which formal instruments are implemented and daily practices are effective. As this requires good understanding of the context, Part 2

provides further insights on emerging concerns related to post-employment in a **country context of Norway**. This part explains the approach taken by the government and steps for developing post-employment guidelines for both the politicians and public servants.

14. Ambiguity in transition from political to senior civil service positions and from civil service to the private and non-profit sectors **pushed post-employment issues to the Parliament**. The *Storting* requested reports on existing arrangements and considered it significant to introduce possible restrictions in post-employment in order to maintain integrity in government. Consequently, the *Post-employment Guidelines for the Public Service* was issued for public servants in July 2005 followed by the *Ethical Guidelines for the Public Service* in September 2005 to modernise the wider framework for promoting integrity in the public service.

15. In addition to the public servants, a separate guideline, the *Post-employment Guidelines for Politicians* was developed for ministers, political secretaries and political advisers. These Guidelines came into force almost immediately to cover post-employment cases of former senior officials after the government transition in November 2005. The case study summarises the **main features of the three Guidelines** and explains how they fit into the Norwegian socio-political and administrative context. It also presents implementing mechanisms as well as highlights emerging experiences learned in their application in the first years.

16. Although, the provisions on prohibitions and restrictions in the post-employment guidelines are almost identical for the politicians and public servants, the **approval-decision-making process on post-employment cases substantially differs**. While approval-decisions for public servants remain in the administrative hierarchy, an independent body – the Standing Committee on Outside Political Appointments – was established with the authority to decide in post-employment cases of ministers, political secretaries and political advisers. As key documents of this procedure are available on the Internet site, it makes information on post-employment cases of former politicians highly visible thus enabling public scrutiny and supporting compliance.

PART 1. POST-PUBLIC EMPLOYMENT: PROBLEM AREAS, PRINCIPLES AND GOOD PRACTICE FRAMEWORK FOR PREVENTING CONFLICT OF INTEREST

INTRODUCTION

17. This introductory section provides an overview of context and examines concerns about post-public employment and their relationship with conflict of interest. It also defines important terms used and outlines the content and organisation of Part 1.

Post-employment: A practice on the rise

18. A growing challenge across OECD countries has been how to **attract the "best and brightest"** workforce to serve the public interest in public organisations. In line with new public management practices several countries have encouraged movement of personnel between the public sector and the private sector and opened up recruitment in middle and higher level positions. As a result, for example over three quarters of new entrants in senior positions came from outside the civil service in the United Kingdom and after a period of 4-5 years they sought to return to the private or non-profit sectors. Facilitating the development of civil servants' skills and competencies through gaining experience in the private sector is supported by public opinion in many countries.[3] Skill development and "removing barriers to labour market participation has become the key priority for most OECD countries".[4]

19. In the past twenty years, most countries have opened up the recruitment of their public services, either through the move towards more position based systems, with all positions open to outside applicants, the move of parts of their systems to more position based employment systems (such as in agencies in some systems), or the opening of senior positions to more lateral entries. Even in countries that traditionally have relatively closed career based systems, for example France, Ireland, Belgium, and Korea, the recruitment of large parts of senior level positions has been open to staff coming from the private sector. 20. Leaving public office, however, also raises **legitimate questions about the potential use or misuse of the special knowledge and insights** of public officials when they leave office and – either temporarily or permanently – work in the private or not-for-profit sectors. The knowledge of commercially sensitive information, for example, could provide unfair advantage over competitors. Suspicion of impropriety, such as the potential misuse of "insider information"[5] for the illicit benefit of former public officials is a widely shared concern across OECD countries, as it could endanger confidence in public decisions and public service in general. Post-public employment could become a particularly highly sensitive issue during government transitions or periods of outsourcing and downsizing.

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3 For example, a French survey indicated 70% support for putting in place a system that obliges civil servants to get experience in the private sector during their career: *Les Français et la Fonction publique, Sondage de l'Institut CSA,* February 2006.

4 *Towards More and Better-Paid Jobs: A Reassessment of the OECD Jobs Strategy*, OECD, Paris 2006.

5 Information not available to the public, such as classified government information (*e.g.* on policy intention, national security, etc), data on personal privacy as well as commercially sensitive information (*e.g.* trade secrets).

21. Maintaining citizens' trust in government – a key concern across OECD countries[6]– requires ensuring that officials persistently serve the public interest. What instruments and mechanisms could achieve this virtuous aim when public officials leave their office? Identifying, preventing and managing conflict of interest[7] in post-public employment is a critical accomplishment for **defending the public interest** and controlling potential breaches to integrity when officials leave either temporary or permanently the public sector.

22. Post-employment offences occur when public officials use, or appear to use, information or contacts acquired while in government to benefit themselves, or others, after they leave government. However, conflict of interest related to *post*-employment **can also occur before** officials actually leave public office. For example, a serving public official can give preferential treatment to a business firm with a view to obtaining employment with that firm after leaving government. If the official is successful in obtaining that employment and leaves government, he or she had an actual conflict-of-interest situation related to post-employment. The former official, for example, can also use confidential information obtained while in government to the benefit of his or her new employer. In consequence, conflict of interest related to post-employment can arise both from:

- the use of someone's *current* public office for private gain (*e.g.* making biased decision to benefit prospective employer); and

- the wrongful exploitation of someone's *previous* public office (*e.g.* misusing sensitive official information for illicit benefit of the former public official).

23. For the most part, however, the focus of this chapter is on the behaviour of former public officials in their relations with public organisations.

Structure and scope

24. Based on the experience of OECD countries, this part reviews relevant aspects and components of a comprehensive framework for preventing conflict of interest in post-public employment. Specifically, it will:

- outline **concerns** driving the policy review and update;

- analyse current **approaches and existing standards** (*e.g.* prohibitions and restrictions) for preventing conflict of interest in post-public employment; and

- **review existing solutions** – for example by examining their strengths and weaknesses – to measure the effectiveness of arrangements for implementing and enforcing post-employment prohibitions and restrictions, in particular the procedures, incentives and sanctions.

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6 *Strengthening Trust in Government: What Role for Government in the 21st Century?* was the central theme of the Ministerial meeting of the Public Governance Committee in 2005 in Rotterdam. Further detail on the meeting is available at *www.modernisinggovernment.com*/.

7. The OECD *Guidelines for Managing Conflict of Interest in the Public Service* define conflict of interest as "a conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities." OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences,* OECD, Paris, p. 15.

25. The first chapter explains the nature and implications of major types of **post-employment problems**. The second chapter examines the management of these problems: it begins by providing principles and a framework of post-employment guidelines for developing an effective post-employment system that includes instruments, procedures and structures in the forms of policies and practices for managing post-public employment.[8] This chapter provides explanation of pillars of the good practice framework for implementing the principles as well as presenting examples of selected good practices to highlight options for consideration. Among the good practices discussed are those relating to the selection of implementation instruments, the coverage of risk areas and enforcement of sanctions.

26. Post-employment offences involve activities primarily by **former** rather than current public officials. In some countries post-employment is described as 'post-*office* employment' or 'post-*separation* employment'. While politicians are not included in the term public 'employees', the term post-public *employment* is applied in common usage – and in this part – to cover both politicians and public servants. The term 'public officials' is used throughout this paper to include both public servants and politicians either elected or appointed.

Concerns: Undermining the public interest

27. There are several **causes** of increased public and governmental concern about post-public employment conflict of interest.

28. First, concern about post-public employment is part of a broader concern in countries around the world about **integrity** of public officials and, in particular, about conflict-of-interest resulting bias in public decision making. The OECD recognised this concern and developed principles and policy recommendations approved by the OECD Council in the form of *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* (see Box 1) in 2003. Moreover, a set of practical tools[9] was designed to assist governments putting conflict-of-interest and integrity policies into daily practice. In reviewing progress made in implementing the 2003 *Recommendation*, post-public employment conflict of interest and lobbying were identified as emerging issues that need to be addressed by the OECD because there had been no comparative studies of post-employment policies and practices.

8. Post employment policies and practices consist of an essential part of the Integrity Framework in public organisations as outlined in *Towards a Sound Integrity Framework: Instruments, Mechanisms, Actors and Conditions for Implementation*, OECD, GOV/PGC(2008)21.

9 *Managing Conflict of Interest in the Public Sector: A Toolkit*. Paris: OECD, 2005.

Box 1. Managing conflict of interest in the public service: OECD Guidelines

The OECD Guidelines for Managing Conflict of Interest in the Public Service help policy makers review and modernise existing conflict-of-interest policy and practice for public officials, including public servants, civil servants, employees and public office holders. The Guidelines reflect, in particular, policies and practices that have proved effective in OECD countries, and are designed to:

- Help government institutions and agencies to develop an effective conflict-of-interest policy that fosters public confidence in their integrity, and the integrity of public officials and public decision-making.
- Create a practical framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries.
- Promote a public service culture where conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned.
- Support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' responsibilities for integrity.

The Guidelines provide a suite of core principles, policy frameworks, institutional strategies and management tools for managing conflict of interest, arranged in three sections:

- managing conflicts of interest: Aims, approach, definitions and principles;
- developing the policy framework; and
- implementing the policy framework.

Source: Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences. OECD, Paris, 2005:.

29. A significant concern about post-public employment offences, like conflict-of-interest in general, is that they could significantly **undermine public trust** in government. In democratic societies, potential decline of citizens' trust in public institutions and confidence in public decision making justify strong and concerted actions to promote good public governance. The development and implementation of effective measures to prevent breaches to integrity, such as post-public employment offences, can help maintain or re-establish public confidence in the integrity of governmental activities.

30. This task is made more difficult by an increased concern about post-public employment, namely the citizens' perception that certain public sector reforms have brought some public officials into unduly cosy relationships with business and non-profit organisations and **created grey areas with risks to integrity**. New approaches to public sector management, including the substantial expansion of public-private partnerships, sponsorship, privatisation, concession and contracting out arrangements, have resulted close interactions with the private sector and increased opportunities for conflict-of-interest situations, especially those related to post-employment of public officials. Moreover, urging public servants to treat citizens as 'customers' or 'clients' may prompt some of them to provide 'special service' in the hope of improving their post-public employment prospects.

31. Last but not least, making use of 'insider information' and improperly employing formal public officials during their 'cooling-off' period may also result in "**unfair advantage" over competitors** and could endanger competition in the private sector.

Public sector career: Changing patterns

32. Emerging concerns about post-public employment are also related to the ongoing changes in the career patterns of public servants **moving out from traditional life-long public service career**. In growing number of countries, the traditional notion of career public service in the sense of security of tenure has diminished or disappeared[10] as a result of substantial public sector reforms as well as staff cutbacks associated with government downsizing. The consequent decrease in public servants' perception of their probable job security encourages them to pay much more attention to employment opportunities arising outside the public sector.

33. At the same time, encouraged by many government initiatives to develop skills and acquire broader knowledge and experiences, the concept of a modern career increasingly includes employment in both the public and private sectors. Employees are **moving much more frequently between public and private sector jobs**, both as a normal aspect of their working lives and, in some jurisdictions, as part of government-sponsored exchange programmes. This means that more and more public servants will be open and attentive to emerging private-sector job opportunities in order to develop new skills and obtain unique experiences as well as to boost their career prospect. However, many of them do not expect to leave permanently the public sector. Contrary, they intend to return to the public sector after working years in the private sector that may raise new possibilities for conflict-of-interest situations.

Employment freedom *versus* post – employment restrictions: Striking a balance for maintaining attractiveness of the public sector

34. The need for improved identification, prevention and management of **more frequent post-public employment problems** resulting from the above discussed various developments is obvious. Less obvious, however equally important, is the need to strike an appropriate balance between promoting integrity[11] in the public sector through strict prohibitions and restrictions in the post-employment system on the one hand and preserving a reasonable measure of employment freedom for current and former public officials on the other.

35. Given the **increasing competition** between the public and private sectors for knowledge workers in order to attract the 'best and brightest' and the increasing motivation of and need for public servants to enhance their skills and knowledge through private sector experience, governments must be careful to find adequate balance and not to impose post-public employment prohibitions and restrictions that are unduly stringent. Consequently, prohibitions and restrictions may be considered as temporary solutions, and policy makers seek to establish reasonable time limits – for example in the form of 'cooling-off' period – tailored to the gravity of actual and potential risks.

10 *The State of the Public Service*, 2008: OECD GOV/PGC/PEM(2008)4/FINAL.

11. Integrity is defined here as "the proper use of funds, resources, assets, and powers, for the official purposes for which they are intended to be used." OECD (2005) *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD, Paris, p. 7.

1. POST-EMPLOYMENT PROBLEM-AREAS

36. This chapter reviews major types of post-public employment offences. These involve public officials when they:

- seek future employment outside the public service;
- conduct post-employment lobbying back to government institutions;
- switch sides in the same process;
- use 'insider information'; and
- are re-employed in the public service, for example, to do the same tasks.

37. It begins with examining a problem area that arises before the official actually leaves government. The chapter also includes the problem resulting from the re-employment or re-engagement of former officials by public organisation.

1.1. Seeking future employment

38. While individuals are still working for public organisations and expected to promote the public interest, they can take measures to improve their future employment prospects outside the public sector. They can **give preferential treatment**, in such forms as contracts, grants, subsidies or lax rule enforcement, to outside organisations. This offence is often described as "going soft" on particular clients in the performance of one's official responsibilities. Officials performing regulatory roles (*e.g.* bank and assurance, environmental protection, workplace safety, police) are in an especially good position to take advantage of their public office in this fashion. Involvement in this offence is facilitated by the well-known phenomenon of "**regulatory capture**" according to which regulatory officials whose mandate is to seek the public interest end up favouring the interests of those being regulated – and in some cases favouring their own interests in future employment over their official duties.

39. **Offering reward** in the form of post-employment job can often occur in such a subtle fashion that a public official's colleagues may not suspect wrongdoing or, if they do, be unable to prove it. What appears to be special treatment for a client is often difficult to distinguish from what is simply good service. However, even suspicion of rewarding favourable decisions in the past – in particular in public procurement, including the tendering or contract management stage, or in privatisation – which may have substantially benefited a prospective employer could similarly endanger trust in public decision making.

40. Consequently, appropriate care must be taken to control bias through ensuring that public officials' emphasis on customer-centred or client-centred service, pursued in part through their close contacts with employees in private and non-profit organisations, does not gradually develop into unduly favourable treatment. Commission of this offence is often evidenced by the granting of treatment to certain clients that is not fairly and equitably available to all clients.

1.2. Post-employment lobbying

41. Lobbying is a worldwide practice that can provide policy makers with **invaluable insight and data for more informed decision making**. Consequently, in modern democracies lobbying politicians and public servants to influence the development and implementation of public policies and programmes is

considered a legitimate activity. However, lobbying is often perceived negatively across the globe, as giving special advantages to vocal vested interests. Concerns that negotiations carried out behind closed doors could override the interests of the whole community have pushed lobbying to the political agenda in many societies.

42. It is increasingly acknowledged that former public **officials with knowledge and access to other public officials are an asset in the lobbyists' world**. Lobbying government by former public officials is the most highlighted form of post-public employment problems by the media that scrutinises public life. Improper conduct, even corrupt activities by some lobbyists, especially in respect of government decisions on the awarding of contracts, grants and subsidies increased public concern and drove decision makers to establish or strengthen specific restrictions, such as adequate 'cooling-off' periods during which former public officials should not lobby back their former government organisations. However, only a few OECD countries and non-members have responded to this concern by adopting rules and disclosure procedures for lobbyists that are designed to prevent and control possible misconduct by requesting increased transparency and accountability in lobbying (*e.g.* through registration and disclosure by lobbyists).

43. There is a close connection between lobbying and conflict of interest, particularly post-employment conflict of interest. A post-employment problem arises when persons who have left government seek to lobby their former employer on behalf of themselves or their new employer. Their former government colleagues may feel pressured or obliged to grant them preferential treatment. This treatment can take such forms as **privileged access** to decision makers, private or secret consultations, improper access to information and even biased decisions. These special opportunities are not available to the lobbyist's competitors – if the lobbyist is running his or her own business – or to the competitors of the lobbyist's new employer. As a result, the fact or the appearance of fairness and transparency in government decision making come into question.

44. Moreover, post-employment lobbying back to former government institutions is **related to the previous offence**: public officials who are contemplating leaving the public sector to become lobbyists may be tempted to give preferential treatment to potential employers in the private and non-for profit sectors.

45. As explained below, a common remedy in such cases is the imposition of a 'cooling-off' period – a designated period of time during which former public officials cannot accept employment with certain private sector organisations or cannot represent any entity in dealings with specified parts of the government where those representations are likely to constitute a real or apparent conflict of interest. For many public servants who have left government, it may be adequate to restrict their access to their former departments or agencies, but for senior officials, especially ministers with extensive contacts, information and influence, government-wide prohibitions may be considered necessary. Furthermore, restrictions may also prohibit using information obtained during public office that has been classified as 'confidential' until that information loses its classification or is otherwise disclosed by the government.

1.3. Switching sides

46. In the normal course of government operations, there are many disputes between public officials and non-governmental actors over such matters as compliance with regulations, the adjudication of claims, and the awarding of contracts, grants and subsidies. A post-public employment problem arises when former public officials "switch sides", that is, when they **represent themselves or their new employer to government in an ongoing procedure** or negotiation on a contentious issue for which they had responsibility when they worked for the public sector.

47. The following **practical example** can highlight the concerns related to the problem: a revenue official dealing with a tax dispute with a private firm could leave his or her office and then represent that firm's side against the government in the same dispute. Many countries employ strict rules against switching sides. For example, in Canada, no former public office holder is permitted to "act for or on behalf of any person or organisation in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown".[12]

48. Switching sides draws attention to an **evident form of post-public employment problem**. This offence is similar to, but narrower than, the lobbying problem discussed above. Similarly to lobbying, this problem is handled by imposing a 'cooling-off' period during which former public officials are prohibited from switching sides. However, the applied timeframe is linked to the life of the matter, therefore the ban remains valid until the matter is completed (a life of the matter restriction).

1.4. Using insider information

49. Collecting, analysing and **processing information is a fundamental activity** of governments and a crucial aspect of public decision making. All democratic governments impose restrictions on public officials' use of confidential information, often by such means as requiring officials to take an oath of office and secrecy. In addition, officials' use of confidential information for personal or private benefit is widely viewed as a conflict of interest issue.

50. A post-public employment conflict of interest arises when public officials who leave government **take unfair advantage of confidential information** that they acquired while in government to benefit themselves or their new employer. The broad term 'insider information' is commonly used to refer not only to information that is formally classified as confidential but also to information to which public officials have access by virtue of their official position and which has not been made available to the general public. The OECD definition of insider information characterizes "[i]nformation not available to the public, such as classified government information (*e.g.* on policy intention, national security, etc.), data on personal privacy as well as commercially sensitive information (*e.g.* trade secrets)".[13]

51. OECD countries in general **prohibit the misuse of insider information**: for example in Canada, a former public office holder is prohibited from giving "advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public".[14]

12. Canada, *Conflict of Interest Act*, December 2006, sec. 34(1).

13. *OECD Guidelines for Managing Conflict of Interest in the Public Service. Report on Implementation,* OECD*,* 2006, p 10. *www.oecd.org/dataoecd/18/35/39691164.pdf.*

14. Canada, *Conflict of Interest Act*, December 2006, sec. 34 (2).

Box 2. Concerns leading to the development of the *Post-Employment Guidelines for the Public Service* in Norway

Although Norwegian State administrative agencies do not regularly operate in a competitive market, they may have justifiable needs for post-employment clauses in the employee's contracts similarly to private sector companies. Concerns related to post-employment reached the Parliament which debated them. Following the recommendations of the Parliament, the following three reasons were considered to develop the Post-Employment Guidelines for the Public Service:

- **The need to protect internal information** -- The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategy and plans, *e.g.* on the formulation of policy and regulations. Such knowledge could result in illegal competitive advantage.

- **The need to protect other organisations' trade secrets** -- The State must seek to prevent an organisation from gaining access to confidential information about other organisations, including trade secrets, etc. Such knowledge could also result in illegal competitive advantage.

- **The need to safeguard public confidence in the public service** -- The State administrative agencies must seek to prevent suspicions that a civil servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could weaken public confidence in the integrity and impartiality of the administration.

These concerns may be considered to justify preventive actions such as "*temporary disqualification*" and/or "*abstinence from involvement in certain cases".*

Source: *Post-Employment Guidelines for the Public Service*, 2005, Norway; and *Post-Employment Guidelines for Politicians*, 2005, Norway.

52. In practice, governments have to distinguish between former officials' misuse of insider information and their legitimate use of knowledge and skills gained from their work experience in government. Moreover, **achieving an appropriate balance** between counter measures against misuse of insider information and providing a reasonable employment freedom for current and former public officials is necessary if governments want to uphold sufficiently attractive conditions for experienced knowledge workers.

53. The **imposition of a 'cooling-off' period**, noted above as a means of managing the problems of post-employment lobbying and 'switching sides', can also be applied to prevent misuse of 'insider information' because that information tends to have a limited 'shelf life'. This prohibition generally remains valid until the 'insider information' becomes unclassified or it is made public.

1.5. Re-engaging or re-employing former officials

54. A final type of post-public employment problem arises when **former public officials are re-engaged by public organisations to do substantially the same work** that they did when they were employed there. Public officials are sometimes re-engaged by being brought back to public organisations as consultants on contract to perform the same tasks as they did previously. Given the increasing mobility of individuals between the public and private sectors and the specific expertise of former officials, the magnitude of this problem is likely to increase.

55. Clearly, **there are circumstances in which such arrangements are appropriate** and necessary. A public servant, for example, may leave at the normal retirement age but then can be hired back on a contract basis – even at a higher pay level – because of a pressing need for his or her expertise and the public organisation's inability to find an adequate replacement.

56. There is somewhat less concern about re-engagement or re-employment if a former official is hired to work in a part of the public sector that is not directly connected with his or her former job. However, conflict of interest may appear when former public servants are engaged on a contractual basis to provide services for public organisation they worked before, in particular when they are re-hired or engaged on a contractual basis for the same task. They may be seen as benefitting from connections to their former colleagues. Consequently, appropriately competitive and transparent hiring process for engaging former colleagues is critical to prevent potential or actual conflict of interest in specific and ensure fairness of the hiring process in general.

2. MANAGING POST-EMPLOYMENT PROBLEMS: PRINCIPLES

2.1. Introduction

57. This chapter outlines principles for preventing and managing the post-public employment problems reviewed in the previous chapter.

58. Developing effective legal framework, policies and practices for preventing and managing post-public employment problems is a **particular challenge for governments** as these types of misconducts are generally committed by former public officials who, by leaving the public sector, have moved somewhat **beyond the control** of government.

59. Experience shows that there is **no one-best-approach** to foster integrity by building an effective Integrity Framework. This is also proper to say when dealing with post-employment problems as each country needs to develop its own post-employment system for dealing with actual post-employment problems and also anticipate emerging issues. Consequently, each country's post-employment system must be tailored to the particular problems it faces and to the demands of its political, legal and administrative systems.

60. The relative importance of the **five problem-areas – examined in the previous chapter – varies** both within a single public sector and from one country to another. However, it is commonly shared view that managing and monitoring post-employment offences is more difficult than managing other types of conflict-of-interest as restrictions can be imposed much more easily on current officials than on former ones. Therefore, alternative solutions – such as incentives for encouraging voluntary compliance with high standards of integrity -- are more important in managing post-employment problems than other conflict-of-interest situations. A key objective of this paper is to outline a range of alternative solutions that can be considered by policy makers to prevent and manage post-public employment conflict of interest and also counter probable offences.

2.2. Principles for managing post-public employment conflict of interest

61. This section introduces the principles for managing post-public employment conflict of interest in the public service – hereafter described as the *post-employment principles* – which identify essential components of a comprehensive post-employment system. The principles were designed to provide a point of reference against which policy makers and managers in public sector organisations can assess the strengths and deficiencies of current post-employment system in light of their existing and anticipated needs. As explained later, policy makers and agency managers can choose those principles that best meet their specific requirements and then implement them through appropriate regulations, policies and practices.

62. The principles are fundamentally based on the problem-areas reviewed in the previous chapter and on the restrictions and prohibitions on post-employment examined in the OECD survey on *Avoiding Conflict of Interest in Post-Public Employment*.[15] The post-employment principles have been influenced by the core principles contained in the *OECD Guidelines for Managing Conflict of Interest in the Public*

15. *Avoiding Conflict of Interest in Post-Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*, OECD, 2006. GOV/PGC/ETH(2006)3.

Service (hereafter described as the *OECD Conflict of Interest Guidelines*)[16] that provide a common framework for managing conflict of interest situations in the public service.

63. Several of the principles shown under the four core principles of the *OECD Conflict of Interest Guidelines* indeed **pertain in a general way to the post-employment issue**. For example, under "Supporting transparency and scrutiny" a principle notes that "[p]ublic officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution". One specific principle, under "Serving the public interest", addresses directly the post-public employment issue by stating that "[p]ublic officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office". The following box lists the principles included in the 2003 *OECD Guidelines for Managing Conflict of Interest in the Public Service* under the following **core principles**:

- serving the public interest;
- supporting transparency and scrutiny;
- promoting individual responsibility and personal example; and
- engendering an organisational culture which is intolerant of conflicts of interest.

Box 3. OECD principles for managing conflict of interest

The *OECD Guidelines for Managing Conflict of Interest in the Public Service* contain the following principles that public officials are expected to observe when dealing with conflict of interest matters in order to promote integrity in the performance of official duties and responsibilities:

Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (*i.e.* be "disinterested"). The integrity of official decision-making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.
- Public officials should avoid private-capacity action which could derive an improper advantage from 'inside information' obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.

16. OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD, Paris, pp. 21-37.

- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

Supporting transparency and scrutiny

- Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.

- Public officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.

- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict of interest situation.

- Public officials and public organisations should promote scrutiny of their management of conflict of interest situations, within the applicable legal framework.

Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.

- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.

- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.

- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective Conflict of Interest policy and practice.

Engendering an organisational culture which is intolerant of conflicts of interest

- Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict of interest situations.

- Organisational practices should encourage public officials to disclose and discuss conflict of interest matters, and provide reasonable measures to protect disclosures from misuse by others.

- Public organisations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.

- Public organisations should provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

Source: *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experience*, 2003: OECD, Paris.

64. While the post-employment principles are **tailored to meet the specific challenges** posed by post-employment problems, they share the spirit and intent of the broader *OECD Conflict of Interest Guidelines*. The post-employment principles provide a general reference that can be given more detailed and tailored expression by policy makers and managers to fit their specific public sector or agency context. The post-employment principles are grouped into **four functional categories**, namely:

1. The first category involves problems that arise primarily while officials are *still working in the public sector* (Principles 1-5).

2. The second category entails problems that arise primarily *after officials leave government* (Principles 6-9).

3. The third category focuses on the duty of current officials to *avoid preferential treatment* of former public officials in Principles 10-12

4. Finally, Principle 13 involves non-governmental employers and underlines the *responsibility of private firms and non-profit organisations to avoid post-public employment problems* when employing former public officials.

65. Some of these principles – for example prohibiting the use of insider information – are aimed at a particular problem-area whereas others, such as announcing an official's intention to leave the public sector, pertain to more than one problem-area. Thus, each problem-area should be carefully assessed in terms of relevant principles that could prove useful in preventing, managing, monitoring and enforcing it.

Box 4. Post-employment principles

The principles for managing post-public employment conflict of interest in the public service organise essential components of a post-public employment system to a comprehensive and coherent structure. The principles provide a point of reference against which policy makers and managers in public sector organisations can review strengths and weaknesses of current post-employment system and modernise it in light of their specific context including existing needs and anticipated problems.

Problems arising primarily while officials are still working in government

1. Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers.

2. Public officials should timely disclose their seeking or negotiating for employment and offers of employment that could constitute conflict of interest.

3. Public officials should timely disclose their intention to seek and negotiate for employment and or accept an offer of employment in the private and non-profit sectors that could constitute conflict of interest.

4. Public officials who have decided to take up employment in the private and non-profit sectors should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.

5. Before leaving the public sector, public officials who are in a position to become involved in conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

Problems arising primarily after public officials have left government

6. Public officials should not use confidential or other 'insider' information after they leave the public

sector.

7. Public officials who leave public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or 'cooling-off' period may be imposed.

8. The post-employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or 'cooling-off' period may be required.

9. Public officials should be prohibited from 'switching sides' and represent their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

Duties of current officials in dealing with former public officials

10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

11. Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when they worked in public organisation should ensure that the hiring process has been appropriately competitive and transparent.

12. The post-employment system should give consideration to how to handle redundancy payment received by former public officials when they are re-employed.

Responsibilities of organisations that employ former public officials

13. Private firms and non-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

Source: OECD.

3. IMPLEMENTING THE POST-EMPLOYMENT PRINCIPLES: GOOD PRACTICE FRAMEWORK

3.1. Introduction

66. This chapter introduces the post-employment good practice framework and discuss its key pillars by which the post-employment principles can be implemented. Elements of good practices are also included to enrich the framework with concrete examples from various jurisdictions in order to support policy makers and managers with alternative options and benchmarks.

67. Putting the post-employment principles in practice may **raise large number of implementation questions**. In the review of the implementation and effectiveness of post-public employment measures, policy makers and managers could examine systematically what extent the existing post-public employment measures can meet the requirements outlined by the principles. The Post-Employment Good Practice Framework (hereafter described as the Good Practice Framework) provides a range of measures that could be considered for comprehensive, effective and transparent implementation of the principles. The framework contains the key policies and practices to prevent, manage and control post-public employment conflict of interest.

68. The Framework can be used to **assess the current state of post-employment systems** both by managers in individual public sector organisations and by policy makers at the national and sub-national levels on a comparative basis. An effective post-public employment system encompasses the following key **pillars** and **characteristics**:

1. The post-public employment system contains the instrument(s) needed to deal effectively with its current and anticipated post-employment problems and emerging concerns.

2. The post-public employment instrument(s) is linked, where feasible, with instrument(s) dealing with conflict of interest in the public sector and with the overall values and integrity framework.

3. The post-public employment system covers all of the entities for which post-employment is a real or potential problem, and meets the distinctive needs of each entity.

4. The post-public employment system covers all of the important risk areas for post-employment conflict of interest.

5. The restrictions, in particular the length of time limits imposed on the activities of former public officials are proportionate to the gravity of the post-employment conflict of interest threat that the officials pose.

6. The restrictions and prohibitions contained in the post-employment system are effectively communicated to all affected parties.

7. The authorities, procedures and criteria for making approval-decisions in individual post-public employment cases as well as for appeals against these decisions are transparent and effective.

8. The enforcement sanctions for post-public employment offences are clear and proportional, and are timely, consistently and equitably applied.

9. The effectiveness of the policies and practices contained in each post-employment system is assessed regularly and, where appropriate, is updated and adjusted to emerging concerns.

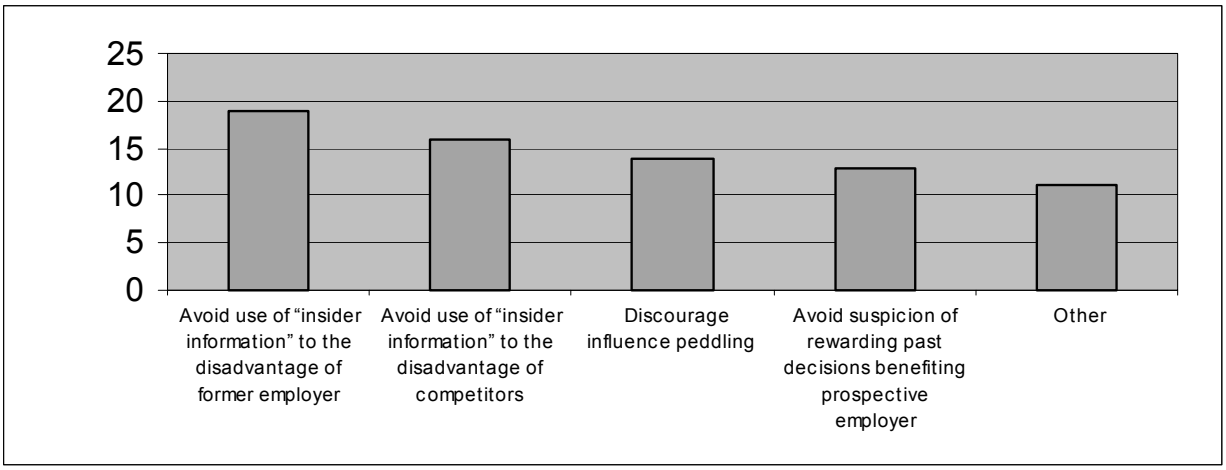
69. In the following sections each of the components of the *Good Practice Framework* are discussed. References to **elements of good practice** – drawn from OCED countries that are reported (in research results) or reputed (by experts in the field) to work well – provide illustration of available policy options and benchmarks. Careful choice among available instruments is critical for the effective management of post-employment. Consequently, more details on elements of good practices are highlighted in boxes to provide further information on the context. However, policy makers and managers should carefully integrate post-employment system in the broader Integrity Framework and also ensure a balance with the need to provide sufficient employment freedom to former public officials. Post-employment prohibitions and restrictions should not discourage well-qualified persons from entering the public sector or unduly reducing their employment prospects after they leave public organisations.

3.2. Implementation instruments

The post-public employment system contains the instrument(s) needed to deal effectively with its current and anticipated post-employment problems and emerging concerns.

70. Governments are generally aware of potential risks to integrity in post-public employment and the vast majority of OECD countries set out prohibitions and restrictions to avoid conflict of interest in post-public employment[17] In order to maintain trust in government and public decision making, post-employment systems **prohibit the use of 'insider information'** and also discourage the inappropriate use of personal influence, for example to avoid suspicion of rewarding past decisions which may have benefited a prospective employer.

Figure 1. Aims of prohibitions and restrictions



Source: OECD.

71. Post-employment prohibitions and restrictions predominantly **focus on officials** leaving public office. However, few countries, for example France and the United States, can impose restrictions in the criminal code for the potential or new employer of former public officials.

72. According to the formal sources a **variety of instruments** has been used for preventing and managing post-employment conflict of interest, including primary legislation as the most common instrument followed by codes of conduct, secondary legislation, other legal documents and non-legal documents. Each category of instruments is examined briefly below.

Primary legislation

73. The **principal source** of post-employment prohibitions and restrictions is primary legislation. Primary legislation dealing with post-employment conflict of interest, like that dealing with conflict of interest in general, can take various forms, including:

- general laws on **civil and public service** or the public administration – for example the *General Statute of Officials* in Belgium and France, the Acts on Federal Civil Servants in Austria and

[17] Details on figures, trends and identified elements of good practice can be consulted in *Avoiding Conflict of Interest in Post-public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*, OECD, GOV/PGC/ETH(2006)3.

Germany, the Act on Civil Service in Slovakia, the *National Public Service Act* in Japan and the *Public Administration Act* in Denmark;

- laws on **specific groups** of public officials – for example *Act on the Legal Status of Soldiers* in Germany and Act on Judges in Austria as well as electoral codes in France and Ireland; and

- **criminal codes** – for example in Denmark and the United States.

74. Some countries enacted acts specifically aimed at setting standards of integrity that also include provisions on post-public employment, such as:

- the *Federal Accountability Act* toughened the *Lobbyist Registration Act* by introducing a five-year ban on lobbying for ministers, ministerial staffers and senior public servants in Canada;

- the Law on Prohibitions of Post-Public Employment (Law No: 2531) in Turkey;

- *Limitation on Conducting Business Activity by Persons Performing Public Functions Act*, 1997 in Poland;

- the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001 in Ireland; and

- *Act on Conflict of Interest* approved in May 2006 in Spain that replaced the 1995 *Law on Incompatibilities of High-ranking Public Officials*.

75. An attractive feature of the primary legislation is that it provides **strict standards for sanction** and can, therefore, be a more effective deterrent than other instruments. However, while primary legislation may be a powerful deterrent to post-employment conflict of interest, it can also be a strong disincentive to prospective public officials who may view these prohibitions and constraints as unduly restrictive of their rights.

Secondary legislation

76. Secondary legislation – in the form of directives, rules, regulations and decrees – is usually authorised by, and directly related to, a piece of primary legislation in order to **provide further specificities**. Secondary legislation would, for example, elaborate on the provisions of a statute dealing with conflict of interest in general or with post-employment conflict of interest in particular. In Japan, primary legislation in the form of the **National Public Service Act** is supplemented by secondary legislation in the form of the rules of the National Personnel Authority. Secondary legislation is generally issued by the central organisation in charge of the implementation of the post-employment restrictions, such as the above mentioned National Personnel Authority in Japan or the Federal Ministry of Defence in Germany that issued the Ordinance of 2 September 2002.

77. Secondary legislation enhances the deterrent value of primary legislation by giving greater specificity to its application and enforcement. An advantage of using secondary legislation to implement primary legislation is that the former can be **amended relatively easily** to take account of desirable changes in a country's post-employment system.

Box 5. Addressing post-employment in secondary legislation: Portugal

Top public office holders in Portugal have been traditionally prohibited by law to act as an arbitrator or expert in any procedure where the State and other public legal entities are an intervening party during their tenure and for one-year period after termination of their functions. Breach of such prohibition results the annulations of acts committed by higher management office holders or equivalent level officials.

In addition, a **recent decree on the public manager statute**[18] – approved in 2007 – proscribes public managers during the performance of their terms of office to sign any employment contracts with prospective employers or for the provision of services with companies in the same sector after the termination of their functions. The decree, however, allows exceptions provided by the specific authorisation of the member of the Government responsible for the finance area and the member of the Government responsible for the relevant sector.

Breach of rules related to incompatibilities and prohibitions by public managers may be sanctioned according the decree by dismissal that implies not only the termination of the term of office but also release the obligation to grant any subsidy or compensation due to any termination of functions.

Source: Portuguese response to OECD survey.

Other legal instruments

78. Other legal instruments can take a variety of forms, including orders, circulars, collective agreements and contracts. They are potentially useful in dealing with specific post-employment problem-areas where there are objections to legislative solutions.

Box 6. Including post-employment clause in contracts

Including clause on post-public employment restrictions in contracts is an emerging trend. Specific clauses on post-employment could provide a [tutored?] response to address potential post-employment problems. In addition, a signed contract provides a solid basis for enforcing the prohibitions defined by the clause for instance in a judicial procedure. Examples of using post-employment clauses in contracts include:

- The employment contracts of chief executives in New Zealand. They prescribe a 'cooling-off' period that limits their paid activities in which they can engage after they leave the State Service.
- Norway adopted in 2005 separate *Post-Employment Guidelines for the Public Service* and *Post-Employment Guidelines for Politicians* that are only applicable if they are incorporated into the employment contract of a particular employee.
- Many agencies in the Australian Public Service include references to their post-employment rules in contracts with private sector organisations.

Source: Response of APSC, New Zealand SSC and Norway to OECD survey.

[18] Decree-Law 71/2007, 27th March.

Codes of conduct

79. Legislation is often described as 'hard law' as opposed to the 'soft law' status of codes of conduct. Codes of conduct take a remarkable variety of forms and there are, in addition, instruments that are similar to codes of conduct that are described as codes of ethics or statements of values or principles[19]. Several countries include post-employment provisions in code of conduct or code of ethics, including:

- *Code of Ethics* issued by the Civil Service Office in Slovakia;
- bylaw on *Codes of Ethics for Public Servants* in Turkey;
- *Code of Good Government* in Spain; and
- *Civil Service Code of Standards and Behaviour* in Ireland (Section 20-21).

80. Some countries, for example, Australia, have both a statement of values and a code of conduct. Politicians and public servants can be covered together by **a single code or they can be subject to separate codes**. Moreover, the legal status of the instruments can be different for each group as the examples indicate in Australia and Canada in the following box.

Box 7. Separate codes of conduct for politicians and public servants in Australia and Canada

In **Australia**, post-employment for public servants is covered by the *Australian Public Service (APS) Values* and *Code of Conduct.* In addition, to assist APS employees to understand the practical application of the *APS Values and Code of Conduct* relevant to post-employment, the *APS Values and Code of Conduct in Practice* provides a specific chapter on post-separation employment[20]

For ministerial conduct, the Prime Minister issued *Standards of Ministerial Ethics*[21] in December 2007 to replace relevant part of the *Prime Minister's Guide on Key Elements of Ministerial Responsibility* last issued in December 1998. This Guide did not impose any legal restrictions on ministers' post-employment activity, but it did provide that "Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another". The *Standards of Ministerial Ethics,* however, includes a specific section on "post-ministerial employment" in which:

- "Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office.
- Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to

19 For further details on distinctions between the code of conduct and code of ethics, see *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, OECD, GOV/PGC(2008)21.

20 Chapter 14 of *APS Values and Code of Conduct in practice* on Post-separation employment can be consulted at *www.apsc.gov.au/values/conductguidelines16.htm*.

21 *Standards of Ministerial Ethics* can be consulted at *www.pmc.gov.au/guidelines/index.cfm*.

the public.

- Ministers shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament."[22]

In **Canada**, the post-employment activities of political executives and the administrative heads of departments are covered by the 2006 *Conflict of Interest Act* to which compliance is a condition of employment. Moreover, the *Conflict of Interest and Post-employment Code for Public Office Holders*[23] includes post-employment compliance measures. In addition, the House of Commons (the lower house of Parliament) and the Senate (the upper house) each has a separate code of conduct for its members

Public servants are covered by the post-employment provisions of the V*alues and Ethics Code for the Public Service*. This instrument is defined as a policy; compliance with its provisions is a condition of employment for most public servants.

Source: *APS Values and Code of Conduct in Practice, Standards of Ministerial Ethics, Australia; Conflict of Interest Act, Conflict of Interest and Post-employment Code for Public Office Holders, Values and Ethics Code for the Public Service, Canada*.

81. Codes of conduct can be worded in very general language (the Ten Commandments or 'principle-based' approach) or they can provide in detail for a wide range of possibilities (the Justinian Code or the 'rule-based' approach). Some public service codes – or value statements – strike a balance between these two approaches by setting out core public service values, such as integrity and fairness, as a foundation for prescribing specific principles and rules dealing with several types of conflict-of-interest situations, including the post-employment. Finally, some codes do provide for their enforcement, for example the Code of Conduct for the executive branch in the United States has a section on the early stages of merely "seeking" employment which is administratively enforced, whereas restrictions involving actually "negotiating for employment" are governed by criminal statute.

Box 8. Code of Conduct for Federal Public Officials: Belgium

The Code of Conduct for Federal Public Officials, adopted in August 2007 in Belgium, used the 2003 OECD Recommendations on Managing Conflict of Interest in the Public Service as a basic source.

The Code of Conduct includes measures for post-public employment without regulating them in details. In particular, federal public officials are obliged to report to their superior whenever they consider a situation a conflict of interest, including when they intend to leave the federal public service. Once public officials have left the public service, their contacts with the federal public service staff cannot benefit from particular favors (e.g. insider information received from the administration).

Public officials can have recourse to the Bureau of Ethics and Professional Conduct which is in charge of the coherent implementation of the provisions of the Code of Conduct. The Bureau provides official advice on the of interest and accumulation of mandates cases submitted by federal public officials.

Source: *Code of Conduct for Federal Public Officials*, Belgium.

22 Post-ministerial employment, p. 5 in *Standards of Ministerial Ethics,* Australian Government, December 2007.

23 The *Conflict of Interest and Post-employment Code for Public Office Holders* can be consulted at *www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp*.

82. In general, codes of conduct have a weaker deterrent effect than legislation. Codes are likely to be especially ineffective in regulating the post-employment activities of *former* officials. Whereas legislation is designed largely to prevent and punish wrongdoing, codes –and value statements– are often designed to foster 'right doing' through the use of aspirational and inspirational language and gently worded admonitions. Codes play a central role in encouraging integrity as opposed to combating corruption. Individual departments – and other public organisations – can use public sector wide codes as a framework for developing their own codes, rules and guidelines, especially to deal with specific risk areas and take into consideration specific context of individual public organisations.

Non-legal instruments

83. The use of non-legal instruments for handling post-employment problems is less common than that of other instruments described above. The non-legal instruments take various forms such as guidelines (*e.g.* Guidelines set out by the Prime Minister's Office in Denmark), memoranda, advice and summary of post-employment restrictions (*e.g.* provided by the US Office of Government Ethics). These non-legal instruments can **help implementation by explaining** and prescribing proper post-employment conduct and complement to other instruments but, like many codes of conduct, they do not usually provide enforcement mechanisms and are, therefore, less likely on their own to restrain post-employment offences.

Box 9. Guidelines on post-employment: Finland

The Office of the Government as Employer in the Ministry of Finance issued the Guidelines on the transfer of officials in November 2007. The Guidelines primarily focus on movement to another employer, self-employment or outside working life of officials working with information of a particularly sensitive nature.

The Guidelines describe the general context of post-employment and also highlight relevant provisions on public official's obligation to observe secrecy and non-disclosure, violation and misuse of business secret, breach and negligent breach of official secrecy, etc. These provisions are included in primary legislations such as:

- *State Civil Servants' Act* (750/1994);
- *Act on the Openness of Government Activities* (621/1999);
- *Unfair Business Practices Act* (1061/1978); and
- Penal Code.

In addition, the Guidelines suggest public authorities consider the merits of individual cases when deciding whether they include a special clause in the employment contract of public officials handling information of a particularly sensitive nature. When public officials are in possession of specific information, knowledge and expertise on the interests of business or the government that is not generally available to businesses, the public authorities may draw up a contract on the terms of employment together with the public official including a special period of non-availability after the period of notice. The contract may be drawn up during the recruitment process or together with the public official already appointed.

The maximum period of non-availability is one year during which time the former official may not perform work for another employer. During the agreed period of non-availability, former public officials receive the equivalent sum of their former salary[24].

The Guidelines also provide contacts where public organisations could attain further information from the Office of the Government as Employer.

Source: *Guidelines for the transfer of an official to the service of another employer*, 16 November 2007.

[24] In accordance with Section 44 of the *State Civil Servants' Act.*

84. Post-employment systems may utilise more than one of these non-legal instruments. The Australian system for the public service, for example, uses several different, but related, instruments as outlined in the box 10. To explain the requirements relating to post-separation contact with government, a specific circular was issued by the APS Commission (see following box).

Box 10. Circular on post-separation contact with government

The Australian Public Service Commission regularly issues circulars to support implementation of important policies. Recent circulars address post-employment issues, namely:

- *Circular No 2007/3 on Post Separation Employment: Policy Guidelines*[25] provides an update on the APS-wide policy on managing possible conflict of interest situations and other probity issues when employees leave the APS to take up employment in fields that are aligned to their APS responsibilities.

- *Circular No 2008/4 on requirements relating to the Lobbying Code of Conduct ad post separation contact with Government*[26] *was issues f*ollowing the release – by the Special Minister of State and Cabinet Secretary – of the *Lobbying Code of Conduct* on 13 May 2008. This circular sets out new policies for public servants in relation to post-separation employment as lobbyists and contacts with professional lobbyists. The Circular describes the scope and key features of the *Lobbying Code of Conduct* in particular its application to the APS.

Circulars are distributed to heads of APS departments and agencies as well as members of the Corporate Management Forum. Circulars provide contact information to get further details or ask more complex or sensitive queries from the APS Commission's Employment Policy Adviceline.

Source: Web site of the Australian Public Service Commission.

85. There are two major rationale for consideration when selecting amongst available options, such as legislation, codes of conduct or other instruments – legal or non-legal – as preferable remedy for post-public employment problems. First of all, the implications of adopting one instrument rather than another will depend on each country's or public organisation's historical tradition and its current legal, administrative and management framework. Selected specific instrument(s) should fit into the wider integrity framework in order to ensure its coherence by mutually supporting other elements already in place for managing conflict of interest in specific and fostering integrity and resistance to corruption in general. The following three examples underline the **close relationship between specific instruments** on post-employment in different country contexts:

- The **United Kingdom** has a brief *Civil Service Code* that says little about conflict of interest, but has developed an extensive *Civil Service Management Code* that has a great deal to say about post-employment in particular. Adherence to the codes is a condition of employment for public servants.

- **France** traditionally relies on hard law and sanctions contained in legislation to set standards of integrity for the whole public sector. Given existing legislation in this area, together with longstanding post-employment practice involving public officials moving to the private sector –

[25] Circular No 2007/3 on Post Separation Employment: Policy Guidelines *www.apsc.gov.au/circulars/circular073.htm*.

[26] Circular No 2008/4 on Requirements relating to the Lobbying Code of Conduct and post separation contact with Government can be consulted at http://www.apsc.gov.au/circulars/circular084.htm .

known as the *pantouflage* system – French authorities have favoured legislative solutions over codes of conduct.

- The approach in **Germany** differs from those of both France and the United Kingdom. To combat corruption, Germany has traditionally relied on legislation. In 1998, however, it adopted a detailed code of conduct that takes the form of administrative guidelines, including coverage of post-employment, that are designed to inform employees as to what constitutes unethical conduct and how to prevent or manage it.

86. Second, limited evidence is available on the effectiveness of specific instruments in the post-employment system. Therefore, careful selection of instrument is advisable to be followed up by its assessment of functioning and impact in order to review its interaction with other components of the overall values and integrity framework.

Box 11. FAQ on Post-Employment Restrictions: New York City

The Conflicts of Interest Board of the City of New York developed a special website to provide information on rules related to conflict of interest in general, and post-employment restrictions in specific. The site includes guidance and training materials such as examples of cases. The following two examples highlight post-employment problems and point out rules together with expected standards of behavior:

"**Job seeking in general**

While it is possible to seek a second job when working for the City, there are several basic restrictions: Your job search must be conducted on your own time, and you may not use your City position (or letterhead) to promote your job search.

Q. I am looking for a new job outside City service. May I send my resume to a firm that does business with my City agency?

A. Yes, unless you are personally involved with that firm in your City job. In that case you will have two choices:

- Ask your supervisor to have someone else deal with the firm, or
- Wait until the work with the firm is over.

Remember: You may not discuss a possible job with a firm or even send them your resume as long as you are dealing with them in your City job.

Post-Employment Restrictions

Q. I am leaving my City job to work for a private company. Are there any City ethics rules that will apply to my new job?

A. Yes. No matter what your position with the City is, there are certain rules regarding post-City employment that you must follow:

- You may not appear before your old agency on business for a period of one year.
- You may never work on a particular matter or project that you were directly involved in while employed by the City.
- You may not divulge confidential City information to benefit yourself or your new employer".

Source: *www.nyc.gov/html/conflicts/downloads/pdf/postemp.pdf*.

3.3. Post-public employment and the overall values and integrity framework

The post-public employment instrument(s) is linked, where feasible, with instrument(s) dealing with conflict of interest in the public sector and with the overall values and integrity framework.

87. Post-employment conflict of interest is only one of several forms-of-conflict of interest situations, and conflict of interest is in turn only one of several areas of risk to integrity in the public sector. It is not surprising, therefore, that **post-employment prohibitions and restrictions are included in various instruments** dealing with conflict of interest in general or other instruments of the overall integrity framework in public organisations. In the same way that the *Post-Employment Principles* outlined above are closely linked to the *OECD Conflict of Interest Guidelines*, the post-employment system in each public sector in general or public organisation in specific should be connected to existing broader policies and practices for managing conflict-of-interest situations.

88. On the other, an emerging trend is that specific instruments, such as the post-employment guidelines for politicians and public servants in Norway, are dedicated solely to post-employment conflict of interest. The virtue of this approach is that it gives higher visibility to the issue and provides prohibitions, restrictions and sanctions geared to the particular challenges each public sector or public organisation faces. In those countries, **post-employment is treated separately** from other types of conflict of interest because it has emerged more recently as a matter of public concern that encouraged the development of specific instruments. Moreover, as noted at the beginning, post-employment is in several ways a **distinctive variation** of conflict of interest.

89. A growing problem of the integrity framework is that they are composed of a variety of instruments and mechanisms scattered throughout the public sector that have been added over time to deal with specific integrity problems. Consequently, ensuring that the overall integrity framework is both comprehensive to cover all integrity issues as well as **coherent** pose a major challenge for policymakers and managers in public organisations.

Box 12. Values statement, code of conduct and guide: Consistency of post-employment measures in Australia

The *APS Values* and *Code of Conduct* are both enshrined in primary legislation, in the *Public Service Act*. The *APS Values* statement emphasises the importance of high ethical standards. This underpins provisions in the *Code of Conduct* against real or apparent conflict of interest in connection with APS employment and against "improper use of (a) insider information or (b) the employee's duties, status, power or authority; in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person".

These broad prescriptions are followed by detailed elaboration on the specific problem-area of "Post-Separation Employment" contained in a document entitled *APS Values and Code of Conduct in Practice*.[27] This publication is promulgated by the Public Service Commission as a "Guide, not a rulebook" to assist agency heads in managing post-employment situations. This guide notes that Australia Public Service has few legal provisions on post-employment, but there are some restrictions on those who want to be re-engaged after accepting a redundancy package.

Source: APS response to OECD survey.

90. Countries seeking to adopt post-employment prohibitions and restrictions should adequately integrate them into their overall conflict of interest system – as shown in the Canadian example in the box below – as well as in the broader integrity framework.

27. Australian Public Service Commission's web site: *www.apsc.gov.au/values/conductguidelines.htm*.

Box 13. Including post-employment measures in codes of conduct: Canada

An example how the post-employment measures can be integrated into the wider conflict-of-interest and integrity measures is shown in Canada. In addition to the legislative framework, such as the *Conflict of Interest Act*, post-employment measures are included in codes of conduct for both the whole public service and the most senior office holders:

- The *Public Service Values and Ethics Code* has a dedicated chapter on post-employment. Chapter 3 on Post-Employment Measures[28] establishes rules of conduct related to post-employment. These measures complement the core public service values outlined in Chapter 1 and the general conflict-of-interest measures contained in Chapter 2 of the Code.
- The *Conflict of Interest and Post-employment Code for Public Office Holders* -- reissued by the Prime Minister in 2006 – includes a specific part on post-employment[29] specifying the object, compliance measures, exit arrangements and how to deal with former public office holders.

Source : Canadian response to OECD survey.

[28] See post-employment measures for the public service at *www.psagency-agencefp.gc.ca/pol/vec-cve01-eng.asp#_Toc46202811.*

[29] Part III on Post-Employment Compliance Measures *www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp.*

3.4. Coverage of public sector organisations

The post-public employment system covers all of the entities for which post-employment is a real or potential problem, and meets the distinctive needs of each entity.

91. Post-employment restrictions can potentially be **applied to all public sector officials**: elected officials, notably ministers of the government and members of the legislature, and appointed officials, including political appointees as well as the many employees working in operating ministries and departments, agencies, public enterprises, and a wide variety of other public sector organisations. Governments are understandably tempted to impose post-employment restrictions across the entire public sector – and this is the common pattern. Once again, however, it is important to provide sufficient flexibility and to avoid imposing unnecessarily tough restrictions on the employment rights of certain officials, or groups of officials. In Canada separate codes were developed for the public service and public office holders while separate guidelines on post-employment were adopted for politicians and public servants in Norway as the following box indicates.

Box 14. Separate codes and guidelines for politicians and public servants

In **Norway** separate guidelines were developed to provide measures for politicians in specific – the *Post-Employment Guidelines for Politicians* – and for the public service in general – the *Post-Employment Guidelines for Public Service* – that were both adopted in 2005. These measures are applicable if they are incorporated into the employment contract of the particular employee.

For the most senior officials in **Canada**, post-employment compliance measures were re-issued in 2006 in the *Conflict of Interest and Post-employment Code for Public Office Holders* and then enacted in the *Conflict of Interest Act of 2007*. For public servants, the *Values and Ethics Code for the Public Service* is an employer policy managed by Canada Public Service Agency and contains the post-employment measures for the whole public service.

Source: Norwegian and Canadian response to OECD survey.

92. There are ways by which **more flexibility** in the post-employment system can be introduced and the negative effects of post-employment prohibitions and restrictions can be minimised, in particular:

- Imposing different restrictions on different public sector entities **depending on the nature and extent of the threat** they pose. In New Zealand, for example, conflict of interest, including post-employment conflict of interest is defined differently for public servants, ministers, board members of Crown companies, and other board members. It is notable also that each of these entities is regulated by a different instrument – a code of conduct, a Cabinet manual, a statute, and guidelines respectively.

- Another possible approach is to have, **for each entity, a gradation of post-employment constraints** depending on the official's level and position in the organisation. In the United States, for example, the post-employment restrictions vary depending on the level of the official; the more senior the official is, the stricter the restraints are. However, the restraints on the matter of "negotiating for employment" are the same for all executive branch officers and employees, regardless of the level of their position (although the more senior the official the broader the practical effect of the restraint).

93. The revolving door also raises concerns in international organisations, in particular the use of confidential information after leaving multilateral development banks. The following box highlights rules

for senior officials and staff members in international financial institutions and the post employment provisions of the code of conduct for commissioners at the supranational level in Europe.

Box 15. Post-employment rules in international level: IMF, WB and the European Commission

The **International Monetary Fund** includes post-employment provisions in its Code of Conduct for Staff[30]. IMF *employees* are expected to observe rules on confidential information, in particular, after leaving the IMF, former employees should not:

- use or disclose confidential information known to them by reason of their service with the IMF; and
- contact former colleagues to obtain confidential information. IMF employees are also prohibited from providing confidential information to former colleagues, who should be treated like any other outside party.

The IMF also includes post-employment provisions for executive directors in the *Code of Conduct for the Members of the Executive Board*[31]. The Code, similarly to employees, requires executive directors who leave IMF not to use or disclose confidential information known to them by reason of their service with the IMF. Former executive directors should neither contact executive directors or other IMF officials – other than through official channels ad – to obtain confidential information. In addition, the Code requires executive directors when they negotiate for, or enter into an arrangement concerning a post-Fund employment, that such circumstances should not affect the performance of their duties. Where involvement in an IMF matter could be, or could be perceived as, benefitting the prospective employer – regardless of whether there is detriment to the IMF or their constituents – executive directors should recuse themselves.

The **World Bank Group** set limitations on the type of work a *former staff* can perform upon leaving or retiring from the WBG. After separation from the WBG, former staff members may not use not public information gained while employees of the WBG for personal gain. Moreover, within two years of separation from the WBG, a staff member is not allowed to:

- perform services for any entity related to an activity in which the World Bank Group has an interest; and
- participate in any project in which former employee participated personally or substantially during employment with the WBG.

Furthermore, former WBG employees cannot apply for vendor status for a period of one year after the end of their WBG employment to allow for a 'cooling-off' period. The WBG introduced specific provisions to prohibit *consultants* of the WBG to participate in project implementation for which the consultant was substantially involved in the design phase.

The *Code of Conduct for Board Officials*[32] requires board officials not to influence the performance of their duties the prospective employment outside the WB for themselves or for their immediate family members. Board officials are requested to disclose such negotiations or arrangements to the Ethics Committee, and also recuse themselves from involvement in or influence on matters related to that prospective employer. Moreover, within a period of one year after leaving the Board, former board officials should recuse themselves from matters related to WB dealings with their future employers. In addition, executive directors and alternate executive directors are prohibited to seek, apply for, or take up appointment to the staff of the WBG including consultant appointments and any other remunerated assignments while they serve as executive directors and alternate executive directors as well as within one year period

30 Point 34 of IMF Code of Conduct for Staff July 1998, *http://imf.org/external/hrd/code.htm*.

31 Section on Post-Fund Employment in the Code of Conduct for the Members of the Executive Board of the International Monetary Fund revised in December 2003, *http://imf.org/external/hrd/edscode.htm*.

32 See in 9. Outside Activities and Other Employment, Section B: Conflict of Interest Policy, Code of Conduct for Board Officials (effective since November 2007) at *http://siteresources.worldbank.org/BODINT/Resources/CodeofConductforBoardOfficialsDisclosure.pdf*.

following the end of their service.

For the **European Commission**, at its first meeting the Barroso Commission adopted a code of conduct for commissioners on 24 November 2004. The code addresses risks of a conflict of interests, including after leaving office, in order to maintain independence of commissioners[33]. The code states that the general interest requires that in their official and private lives commissioners should behave in a manner to keep dignity of their office. In specific, when commissioners intend to engage in an occupation during the year after they left their office, whether this is at the end of their term or upon resignation, they should timely inform the European Commission that examines the nature of the planned occupation. If it is related to the content of the portfolio of the commissioner during his or her full term of office, the Commission will seek the opinion of an *ad hoc* ethics committee. The Commission will decide in the case in light of the committee's findings to determine whether the planned occupation is compatible with the last paragraph of Article 213(2) of the Treaty.

Source : *Code of Conduct for Staff*, *Code of Conduct for the Members of the Executive Board*, IMF; Code *of Conduct for Board Officials,* WB*; Code of Conduct for Commissioners*, European Commission.

[33] See Section 1 on Independence and dignity: Ethical issues of *Code of conduct for Commissioners*, SEC(2004) 1487/2 at *http://ec.europa.eu/commission_barroso/code_of_conduct/code_conduct_en.pdf*.

3.5. Focus on risk areas

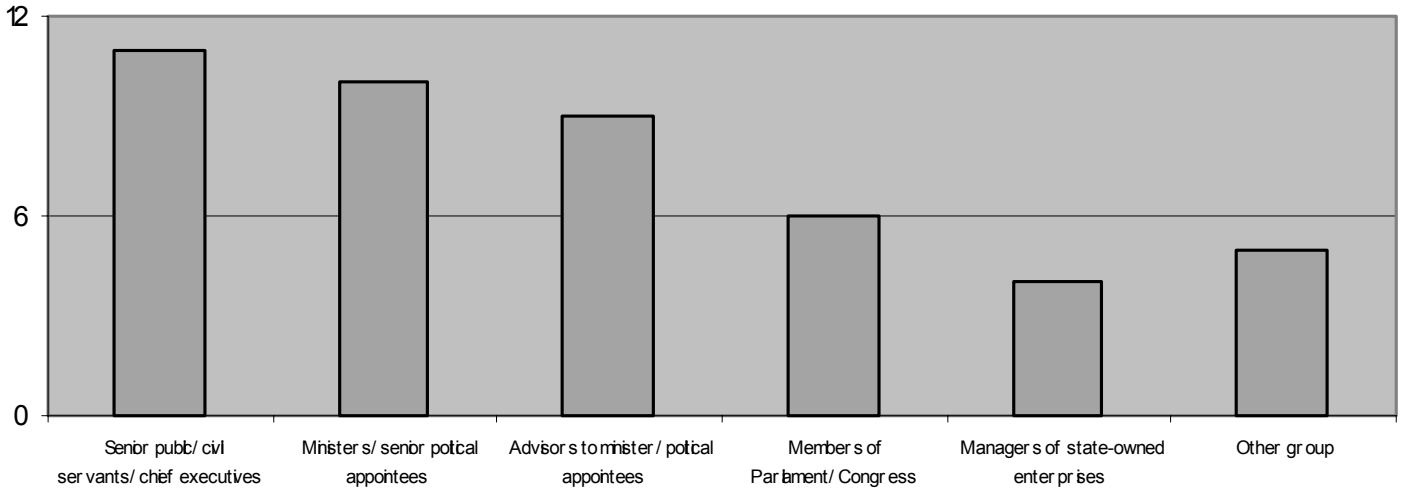
The post-public employment system covers all of the important risk areas for post-employment conflict of interest.

94. As discussed earlier, post-employment conflict of interest is itself a risk area of increasing importance within the broad field of conflict of interest. All types of conflict of interest pose their own risks and must be managed accordingly. The specific field of post-employment conflict of interest has **two major risk areas**, namely:

- First, post-employment conflict of interest situation related to the **interactions between the public and private sectors**. Policy makers and managers may first ask whether the existing post-employment system is sufficiently tailored to adequately address those government activities involving relations with the private sector. Only a minority of OECD countries developed specific post-employment measures for such risk areas as procurement and contract management, regulators, customs and tax administration, inspection, police, etc.

- Second, **top level public officials** including decision makers as ministers and members of legislation, political advisors, senior public servants, chief executives, etc.

Figure 2. Officials with specific post-employment prohibitions and restrictions



Source: OECD.

Box 16. Specific post-employment restrictions in Italy and Spain

Specific prohibitions and restriction primarily focus on decision makers in the executive branch, in particular members of government as the following examples in Italy and Spain indicate:

- **Italy** introduced specific prohibitions for "holders of government office", including members of government, deputy ministers, under-secretaries and extraordinary government commissioners.

- The **Spanish Code of Good Government** and the Act on Conflicts of Interest cover high-ranking officials, including members of government and state secretaries. Similar rules are used at the sub-national level by the autonomous communities.

Moreover, in Italy specific prohibitions also cover at-risk areas – such as regulators in the telecom and energy sectors – as well as applied for members of the National Centre for Government Information Technology. Furthermore, specific restrictions focus on procurement and contract management for officials overseeing public works.

Source: Italian and Spanish response to OECD survey.

95. Interaction between the public and private sectors is a pervasive feature of government, but some aspects of this relationship are especially problematic. For instance, public officials performing **regulatory functions** have relatively more post-employment opportunities than most other officials. And, within the regulatory sphere, such risk areas as the gaming and liqueur industries require special attention. Similarly, officials involved in customs or tax administration or in procurement and contract management, in public private partnerships (PPP) or sponsorship are well placed to take advantage of post-employment opportunities.

96. To ensure adequate safeguards against post-employment offences in risk areas related to the **interactions between the public and private sectors**, governments may need to supplement instruments providing broad post-employment coverage with instruments designed to minimise or manage certain risks. An example of this approach is Australia's *Strategies to Deal with Conflict of Interest in Market Testing and Outsourcing* that is outlined in the following box.

Box 17. Strategies to deal with post-employment conflict in market testing and outsourcing

The Australian Public Service (APS) Commission recognised that employees managing outsourcing or undertaking market testing are at greater risk of conflicts of interest. Consequently, the Commission provides updated Guidelines[34] that require APS agencies to develop specific guidelines to assist employees working in these areas. The followings provide an indicative list of post-employment issues and measures relevant to outsourcing and market testing:

- While it is not inappropriate for an employee to approach a successful tenderer about future employment, they must ensure they do not disclose commercially sensitive information. Information provided to tenderer should be limited to the employee's skills, competencies, training and personal attributes. Current working arrangements should not be discussed.
- For probity, it is best that employees who occupy positions that will be outsourced be excluded from the decision making process. Employees involved in the decision making process should not seek to negotiate employment until the decision making process is finalised.
- An employee managing outsourcing or undertaking market testing who is offered employment should inform their agency in writing.
- An employee should not solicit the employment of other employees on behalf of a tenderer or contractor.
- Employees must not solicit gifts, favours, or other benefits from tenderers or contractors.
- An employee should not favour former APS employees who work for tenderers or contractors.

Source: APS Circular No 2007/3 on Post Separation Employment: Policy Guidelines

97. In addition, the APS *Human Resource Management Guide for Market Testing and Contracting Out*[35] includes specific sections on "ethical management of the process" and "restrictions on key decision makers" that require the inclusion of a contractual provision in the requests for tender and in the services agreements that restricts the subsequent employment, or engagement as a contractor, of key decision makers in the outsourcing process for a certain period. Another example comes from the United States where generally applicable post-employment restrictions for federal employees are supplemented by **specific provisions for those involved in procurement and contract administration** as well as in financial institution regulatory agencies as indicated in the following box.

34. *APS Circular No 2007/3 on Post Separation Employment: Policy Guidelines www.apsc.gov.au/circulars/circular073.htm.*

35 See in *Human Resource Management Guide for Market Testing and Contracting Out*, APSC, *www.apsc.gov.au/publications02/MTACOHRguidefinal.doc.*

Box 18. Specific post-employment prohibitions for procurement, contract management and financial regulators in the United States

In addition to the generally applicable post-employment restrictions for federal employees in the executive branch, certain post-employment prohibitions are applied for specific group of employees involved in procurement functions and contract administration, and for certain officials in the financial institution regulatory agencies.

Procurement and contract administration – former officials may not accept compensation from a contractor for one year as an employee, officer, director or consultant of the contractor if they:

- served, at the time a contract exceeding USD 10 million was awarded, as a procuring contracting official, or a source selection authority, or a member of the source selection evaluation board, or chief of a financial or technical evaluation team; or
- served, for a contract exceeding USD 10 million, as administrative contracting officer, or programme manager or deputy programme manager; or
- personally made a decision to award a contract, subcontract, task order or delivery order over USD 10 million; establish overhead or other rates in excess of USD 10 million; approve issuance of contract payment(s) in excess of USD 10 million; or pay or settle a claim for more than USD 10 million.

Financial institution regulatory agencies – officers and employees of Federal banking agencies, a Federal Reserve Bank or the National Credit Union Administration who have, for at least two months of the last 12 months of employment, served as the senior examiner with continuing broad responsibility for the examination of a specific depository institution or depository institution holding company ("examined entity"), are prohibited for one year following termination of employment with the regulatory body from accepting compensation as an employee, officer, director or consultant from the examined entity, or any other holding company or other company that controls or is controlled by the examined entity.

Source: OGE response to OECD survey.

98. Another risk area, as noted before, is that of politicians and public servants working at the **senior echelons of government** and the public service. In general, these officials enjoy comparatively attractive post-employment opportunities because of the power they exercise, the information and experience they possess, and the public funds they allocate. Post-employment offences by such senior officials tend to receive considerable public attention and **media publicity** and thereby to reduce public confidence in the integrity of government. Moreover, since setting personal example by an organisation's leaders has a major influence on the conduct of its employees, post-employment breaches by senior officials undermine respect for ethical behaviour in the organisation as a whole.[36]

99. While OECD countries in general tend to focus on post-employment prohibitions and restrictions at the senior levels of government, much less efforts are paid to officials well below these top levels, including **specific at-risk areas**, such as regulators and procurement officials mentioned above, who can also take advantage of post-employment possibilities. Even lower-level officials such as secretaries and clerks have access to confidential information that they could exploit for private gain. This consideration strengthens the argument for covering employees below the most senior levels of the various public sector

[36] *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, OECD GOV/PGC (2008)21, pp. 10.

organisations, albeit with differing degrees of restraint tailored to the risk of conflict of interest in their post employment.

100. An emerging trend in OECD countries is to establish or strengthen specific restrictions on lobbying back to government, for example in Australia (see details in the following box), Canada, France, Korea, Mexico, the Netherlands, Portugal, Turkey, the United Kingdom and the United States (see box below).

Box 19. Establishing prohibitions for post-employment as a lobbyist: Australian Lobbying Code of Conduct

The *Lobbying Code of Conduct* that was released in May 2008 in Australia to establish prohibitions on engaging in lobbying activities by former officials in the public service, namely:

- In the **public service** senior executives and equivalents have a one year 'cooling-off' period in which they are prohibited to engage in lobbying government representatives on any matters on which they have had official dealings as public servants over their last 12 months of employment. Similar rules will apply to members of the defence force at the level of colonel and above.

The Code also places post-separation employment restrictions on other categories of Government representatives, including:

- Former **ministers**, and parliamentary secretaries must not engage in lobbying activities for a 18 month period after they leave on any matters on which they have had official dealings over the last 18 months in office.

- Former **ministerial staff** employed in the offices of ministers and parliamentary secretaries at adviser level and above must not engage in lobbying activities for a year period after they leave on any matters on which they have had official dealings over their last year in employment.

Source: *Lobbying Code of Conduct*, Australia, 2008.

Box 20. Strengthening post-employment restrictions for senior government officials and legislators in Canada and the United States

Although restrictions related to post-employment lobbying had been established for many years in North America, higher expectations of transparency and integrity brought this issue back to the political agenda. Recent legislations further strengthened existing provisions on post-employment lobbying in order to close the revolving door respectively in the executive and legislative branches:

- In **Canada**, the Prime Minister issued in February 2006 the *Conflict of Interest and Post-Employment Code for Public Office Holders* which toughened the prohibition of post-employment lobbying for certain public office holders for a period of five years after leaving public office. The *Federal Accountability Act (FAA)*, one of the Government's top five priorities on taking office in February 2006, made substantive changes to 45 statutes including the *Lobbyist Registration Act.* In the implementation of the FAA, several new legislations addressed post-employment issues, including the new *Conflict of Interest Act* and the new *Lobbying Act.* The latter, came into force in July 2008, extends the five-year ban on lobbying to a broader group of individuals named "former designated public office holders" (DPOHs). This category includes both politicians such as ministers, minister of state, ministerial staffers and former designated members of the Prime Minister's transition team as well as senior executive positions in the public service, for example deputy minister or chief executive officer.

- In the United States, the *Honest Leadership and Open Government Act* (HLOGA) was enacted in

September 2007. HLOGA includes amendments to the post-employment restrictions by extending the one-year 'cooling-off' bar for Senators and Cabinet level officials to two years and require the House and the Senate to post on the Internet the beginning and ending dates of the restrictions for each departing Legislator and staff member covered by the restriction.

Source : *Lobbying Act, Conflict of Interest Act,* Canada, Office of Government Ethics, US.

101. An emerging concern in countries is the private use of results of scientific research (*e.g.* resulting in a pattern) that may also raise copyright issues. Another emerging concern is publishing memoires by former senior officials.

Box 21. Publishing memoirs and commentary by former ministers and civil servants: The United Kingdom

A series of publications of memoirs by former senior officials, including ministers and their special advisers as well as diplomats resulted in two inquiries in 2006-6 and 2007-8 by the Public Administration Select Committee (PASC) of the House of Commons in the United Kingdom. The second inquiry reviewed the shift from a former liberal regime to a more restrictive one by focusing on following two questions, namely:

- "whether it is right that the Government should have the final say on what information can be included in memoirs; and
- whether revisions made by the Foreign Office to its rules have unduly limited former diplomats' ability to contribute to public debate.

The PASC's fourteenth Report of the Session 2007-8 on *Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants*[37] states the following conclusions and recommendations:

1. Where there is a dispute between an author of memoirs and the Government, it does not seem right that the Government should be the arbiter of that dispute as well as a party to it. (Paragraph 6)

2. We do not accept that the government of the day is best placed to judge whether it is in the public interest for particular information to be published. This does not seem consistent with the principle of freedom of information. We are disappointed, therefore, that the Government did not concede the logic of some form of appeal of its decisions, along the lines of an Advisory Committee for Memoirs. The application of our suggestions on confidentiality clauses and copyright without a commensurate appeals process shifts too much power from putative memoirists to Government. (Paragraph 10)

3. The approach taken to judging public interest in publication of memoirs should be consistent with the approach taken to judging public interest in disclosure of information under the Freedom of Information Act. By passing that Act, the Government has accepted the principle that it cannot be the Government which is the ultimate arbiter of whether it is in the public interest for a particular piece of information to be published. It is indefensible to deny that principle in the specific circumstances of political memoirs. Indeed, we are not sure that the courts would uphold any bid by the Government to pursue remedy for breach of copyright when the decision to prohibit publication of certain information had not been tested independently of government. (Paragraph 12)

4. We continue to believe that a new Advisory Committee on Memoirs would make for expert and specialised arbitration of issues around the publication of public service memoirs. However, although this argument was not put to us by the Government, we can see that one argument against such an Advisory Committee would be that it would involve the creation of yet another new regulatory body, with all the expense and bureaucracy that entails. Given the rarity of disputes over the content of memoirs, it may well be disproportionate to create a new body. However, there is another possible solution readily to hand. If we accept the principle that an independent body should judge the public interest in publication of particular

37 *www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/664/664.pdf*

information in memoirs, then there is already an independent body which specialises in applying public interest tests to disclosure of information which Government does not want to reveal. That body is the Office of the Information Commissioner. (Paragraph 13)

5. An alternative to an Advisory Committee on Memoirs is that the Information Commissioner could arbitrate where there are disputes in the negotiation of the content of memoirs. The Commissioner is experienced at balancing competing public interests in openness and necessary confidentiality. In applying the Freedom of Information Act, the Commissioner is accustomed too to the entirely appropriate bias towards publication. Although the Commissioner would not necessarily have the nuanced understanding of issues around memoirs which an Advisory Committee could provide, allocating this role to the Commissioner would be simple, consistent and cost-effective. Whatever model is preferred, we call on the Government to make one final reform to complete a fair, practical system for approving memoirs. (Paragraph 14)

6. The revised version of Diplomatic Service Regulation 5 is another example of the Government replacing a regime that may be too liberal with one that may be too restrictive. It is too stringent to expect people to seek clearance for anything they say that draws on any experiences they had in their entire careers. Were the rules to be applied literally, they would (among other things) prevent any live TV or radio commentary from former diplomats for the rest of their lives. They would thus substantially diminish informed discussion of major world events. The contribution of former diplomats to our understanding of what is going on in Zimbabwe, or Kenya or Pakistan, should not be underestimated. Nor should it be curtailed. (Paragraph 23)

7. We cannot judge the intent behind the new rules, but the results do indeed appear to be excessively wide-ranging and oppressive. Their only saving grace is that they seem to be unworkable. In practice, the Foreign Office continues to rely on the good sense of its former staff. It should say so. There is no sense in maintaining a rule that is both wrong in principle and manifestly unworkable in practice. (Paragraph 24)

8. Both in respect of memoirs and in respect of public commentary by former diplomats, a pendulum has swung since our inquiry in 2006. Government was understandably concerned that a too liberal regime was having deleterious effects on trust and frankness between politicians and officials; but in tackling this problem, it has created new ones. In this report we have drawn out two important respects in which, having once been too liberal, the Government has now set up a regime which may instead be unduly restrictive. (Paragraph 25)".

Source: Fourteenth Report of the Select Committee on Public Administration of the House of Commons, UK.

3.6. The 'cooling-off' period

The restrictions, in particular the length of time limits imposed on the activities of former public officials are proportionate to the gravity of the post-employment conflict of interest threat that the officials pose.

102. Earlier discussion noted the desirability of time limits or a 'cooling-off' period for managing the contacts of former officials with public sector organisations. Time limits are a frequent feature of efforts to **deal with the problem-areas of post-employment lobbying, switching sides and using insider information**. Although, the overall aim of the 'cooling-off' period is to maintain confidence in government and public decision making, it could also provide a learning period for both former officials and those in the government to become used to their new relationship *vis-à-vis* one another, and ensure that decisions on matters on which a former official may represent someone are not influenced on the basis of friendship or animosity.

103. There is substantial **variation** from country to country and also within countries in the length of the time limits adopted to ward off post-employment offences. As the following example in Mexico shows, the application of conflict-of-interest legal provisions for public officials may be extended for one year period after leaving the public service.

Box 22. Post employment prohibitions for public officials in Mexico

The Federal Law on Public Officials' Administrative Responsibilities in Mexico[38] extends the application of general conflict-of-interest provisions[39] for one more year for public officials after they leave their functions. The Law also establishes the following **specific prohibitions** for public officials for one year after leaving public office:

- "In no case will he use his influence or obtain any advantage derived from the function he performed, for himself or for his spouse or blood relatives up to the fourth degree, his in-laws, or for third parties with whom he has professional, labour or business relations, or for partners or companies that the public official or the above-mentioned persons are or have been a part of.
- He will not make advantageous use for his own or another's benefit, of the information or documentation he has had access to during his employment or commission and that is not within the public domain."

Additional restrictions exist for **specific groups** leaving for other public organisations, namely:

- Public officials holding top-level management posts in the Federal Electoral Institute, its Board Members, and the Magistrates of the Federal Judicial System's Electoral Court should abstain from participating in any public office of the administration that is headed by whoever won the election that they organised or processed.
- Heads of internal control units in the federal agencies and entities, and in the Attorney General's Office, as well as heads of auditing and complaints must abstain from accepting employment in the public institution they supervise, evaluate, investigate and control in order to avoid incurring conflicts of interest.[40]

Source: *Federal Law on Public Officials' Administrative Responsibilities*, Mexico, response to OECD survey.

38 Article 8 and 9, paragraph XII of the Federal Law on Public Officials' Administrative Responsibilities.

39 According to the general conflict-of-interest provision public officials shall abstain from soliciting, accepting or receiving personally or through other person, money, personal or real property via transfer at a price much lower than in the market, donations, services, employment, offices or commissions for themselves personally or for individuals with whom they have family, personal or business relations, that originate from any individual or legal entity whose professional, commercial or industrial activities are directly tied to, regulated or supervised by the public official involved, in the performance of employment and that implies conflict of interest.

40 This standard was issued by the Minister of Public Administration in Official Bulletin No. SP/100/0329/2003 on 30 May 2003.

104. Although debates often focus on the length of the 'cooling-off' period, it is less important than whether the **limits are effective** in preventing and managing post-employment conflicts of interest and whether the limits are **fair, proportionate and reasonable** in light of the seriousness of the potential offence. In the problem-areas of 'switching sides' and using 'insider information', fixing time limits in terms of months or years is usually inappropriate because the duration of the threat cannot be predicted in advance. It is linked to the life of the matter and lasts until the relevant procedure or negotiation on a contentious issue is ended in the first case. Concerning the 'insider information', the ban remains valid until the information becomes unclassified or it is made public.

105. As **senior officials** pose a greater risk, time limits are more commonly applied, or are applied more strictly, to decision makers, politicians and senior public servants than to other officials. It is notable that Canada's experience with post-employment offences has resulted in a longer disqualification period for Cabinet ministers (extended from two years to five years) than for other public office holders and for public servants in executive position (one year) as shown in the following box.

Box 23. One year limitation period for executives in the Canadian Public Service

For a period of **one year** after leaving their office, public servants in executive positions cannot:

- **Accept an appointment** to a board of directors of, or employment with, entities with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service.
- **Make representation** for, or on behalf of, persons to any department or organisation with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service.
- **Give advice** to their clients using information that is not available to the public concerning the programmes or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

Source: *Values and Ethics Code for the Public Service*[41], Canada.

106. Time **limits in general range from one year** – for example in Ireland, Poland and Slovakia – to two years – for example, in Japan, Korea, The Netherlands, Turkey and the United Kingdom. A six months maximum period was introduced by the post-employment guidelines for politicians and public servants in Norway. Time limits may be tailored to the level of public officials and specific groups or a particular risk area, as the following Canadian examples show:

- for public servants, one year is the general time limit in Canada, while for ministers two-year period is applied; and
- a specific five-year ban on lobbying was introduced recently for ministers, ministerial staffers and senior public servants.

41 See section on "Limitation Period" in *Values and Ethics Code for the Public Service, Canada www.psagency-agencefp.gc.ca/pol/vec-cve01-eng.asp#_Toc46202811.*

107. In Germany the **five year 'cooling-off' period as maximum** can be applied for civil servants if they leave the service before they reach their retirement age, which is 65. However, this time limit is up to three years in the case of retiring civil servants and during the period when they receive a transitional allowance (usually two years but maximum three years) for fixed-term volunteer soldiers. When public officials definitively leave the public service in France, for a period of five years they cannot:

- exercise private activities that are determined by the administration; and
- financially participate in private enterprises that have a relationship with the former public sector employer.

108. While in certain cases a persuasive argument can be made for time limits as long as five years, **allowing some discretion in the application of the limits** will help ensure fairness and avoid unduly strict constraints on the rights of former officials. Providing flexibility in the application of general rules in individual cases is an emerging concern in countries. In Japan the head of the employer government agency can apply for an exception to the post-employment restrictions[42] to the National Personnel Authority, and needs its approval for making an exception to the rules. Members of government and high-ranking officials in Spain will not breach incompatibility regulation when they **return** to the private company in which they worked before being appointed as long as the activity they are going to carry out in the private sector is not directly related to the competences of their previous office, or where they cannot take decisions related to that office.

109. Applying flexibility in concrete cases may require **standards** to ensure fairness in the process and accountability of decisions. However, only few OECD countries have actually developed standards against which post-public employment approval-decisions can be made. Some countries include them in legal provisions, for example in France and Mexico. In the United States both the restrictions and the standards for the exceptions and issuing the waiver are also set forth in statute.[43] Canada, as the following box indicates, spells out in the *Public Service Values and Ethics Code* the criteria that a deputy head – the administrative head of a department – can use as a basis for waiving or reducing the limitation period for public servants.

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42 The *National Public Service Act* stipulates that personnel are prohibited for a period of two years after leaving the service from accepting or serving in a position in a profit-making enterprise which has a close connection with the agency in which they were formerly employed within five years prior to separation from the service, and the agency which is under the restriction are defined by the rules of the National Personnel Authority.

43 18 U.S.C. 207(j) and (k) contain the standards for exceptions to, and the standards required to issue a waiver for the restrictions found elsewhere in section 207.

Box 24. Criteria for reducing time limits for public servants in Canada

In Canada every case is reviewed on a case-by-case basis to determine if there is a real, apparent or potential conflict of interest between the new employment of former public servants and their most recent responsibilities within the federal public service. The *Values and Ethics Code for the Public Service* outlines the restrictions as well as six circumstances under which the one year limitation period could be reduced or waived. The deputy head can waive or reduce the limitation period for a public servant or former public servant taking into consideration the following factors:

- the circumstances under which the termination of their service occurred;
- the general employment prospects of the public servant or former public servant;
- the significance to the government of information possessed by the public servant or former public servant by virtue of that individual's position in the public service;
- the desirability of a rapid transfer of the public servant's or former public servant's knowledge and skills from the government to private, other governmental or non-governmental sectors;
- the degree to which the new employer might gain unfair commercial or private advantage by hiring the public servant or former public servant; and
- the authority and influence possessed while in the public service, and the disposition of other cases.

Source: *Values and Ethics Code for the Public Service*[44], Canada.

110. Public officials in risk areas such as regulation or contract administration may require specific restrictions, including longer time limits too.

[44] Reduction of Limitation Period, *Values and Ethics Code for the Public Service,* Canada *www.psagency-agencefp.gc.ca/pol/vec-cve01-eng.asp#_Toc46202811*.

3.7. Communicating the post-public employment system

The restrictions and prohibitions contained in the post-employment system are effectively communicated to all affected parties.

111. Successful implementation significantly depends on **vigorous dissemination to reach out all relevant parties** with role in the post-employment system both in the public, private and non-profit sectors. There is no single 'magic bullet' for ensuring that public officials and prospective employers understand and follow post-employment rules. Hence, a variety of means in line with relevant components of the Integrity Framework can be considered for communicating the post-employment rules. The *Civil Service Management Code* in the United Kingdom, for example, contains several procedures for "making staff aware of the [post-employment] rules". In the United States, this responsibility is left to the individual federal agencies.

112. The most common communication measures in OECD countries include **briefings**, **counselling and advice**: for example by formally briefing new employees on their post-employment requirements and formally reminding departing employees of post-employment restrictions in exit interviews or by a letter. Current public officials also need to be sensitive to the post-employment rules, in part because:

- post-employment offences can begin before officials actually leave the public sector, for example in the form of negotiation of future employment; and

- current public officials have responsibility for preventing conflict of interest when dealing with former officials (*e.g.* not granting preferential treatment, special access or privileged information to former officials).

113. **Briefing** on appointment and before leaving public office is the most frequently used measure in OECD countries. All new staff receives the *Civil Service Code of Standards and Behaviour* at a briefing session on appointment in Ireland. In the Canadian Public Service a copy of the *Values and Ethics Code for the Public Service* is attached to the letter of offer for all new and subsequent appointments. In Spain the Directorate General of Public Administration sends a reminder to the high-level officials when joining or leaving public office.

114. **Counselling** public officials about post-employment requirements can be *ad hoc* – when officials require – or on a regular basis, in the form of an annual formal letter or as part of integrity training programmes designed to bolster officials' knowledge of the overall values and integrity framework. Like leadership by personal example, integrity training can substantially influence the ethical climate of organisations and conduct of public officials. Comprehensive integrity training integrates post-employment issues as an integral part of the programme and gives proper consideration to special training measures for employees working in at-risk areas. In the United States, for example, in addition to educational or training materials prepared by individual federal agencies, the Office of Government Ethics (OGE) posts on its website an annual list of conflict of interest prosecutions and a digest of its informal opinions, both of which may have information dealing with post-employment.

Box 25. Communication measures for supporting implementation: United States

Advice given may be kept in written form, depending upon the agency's practice, or at the request of the individual requestor. Depending upon practice, the agency may issue general educational or training materials using sanitised versions of real situations. Current employees who are aware of the post employment restrictions may also be sensitive to any contacts they may have with a former official and may seek advice with regard to those contacts, particularly if they believe the contacts may violate the post employment statute. A public official sensitive to post employment restrictions can both avoid misconduct of their own when leaving government service as well as identify potential misconduct of others.

Each year, the Office of Government Ethics compiles a description of all of the prosecutions of the criminal conflict-of-interest statutes, including 18 U.S.C. 207 and makes that description available on its website[45]. The compilation includes the name of the individual convicted, a short description of the conduct, and any sentence imposed.

Specific prospective employers may request information from the ethics official on the application of the statutes, and general information is provided to the private sector through various training/seminar venues that focus on Government ethics and the private sector. Additionally, OGE maintains a digest of its informal opinions on the OGE website,[46] many of which address post employment restrictions.

Source: OGE response to OECD survey.

115. Another mechanism for communicating post-employment rules is the **inclusion of reference to the rules in contractual and other arrangements** between public sector and private sector organisations. As mentioned above, the strategies and measures used by the Australian Public Service – in particular in the tendering, contracting and market testing procedures – are especially notable. The principal source of guidance for agencies about post-separation employment in specific, and conduct issues in general, is the *APS Values and Code of Conduct in practice*.[47]

45 The Conflict of Interest Prosecution Surveys from 1990 to 2004 can be consulted at *www.usoge.gov/pages/laws_regs_fedreg_stats/other_ethics_guidance.html*.

46 *www.usoge.gov/pages/advisory_opinions/advisory_opins.html*.

47 Chapter 12 of the *APS Values and Code of Conduct in practice: A Guide to Official Conduct for APS Employees and Agency Heads* deals with post-separation employment. The Guide was released in 2003 to update and replace the former *Guidelines on Official Conduct of Commonwealth Public Servants* issued in 1995. Chapter 14 on post-separation employment of the updated *APS Values and Code of Conduct in practice* can be consulted at *www.apsc.gov.au/values/conductguidelines.htm*.

Box 26. Communication of expectations and rules to the private sector in Australia

The communication of rules and expected conduct also targets the private sector in Australia. As a result, 77% of the Australian Public Service (APS) agencies reported defining and communicating agency's expectations to non-public servants to comply with the relevant *APS Values and Code of Conduct*. Of these:

- 75% did so through information set out in tender documentation.
- 78% reported using general clauses in contracts referring to the *APS Values and Code of Conduct*.
- 25% reported including specific contractual clauses regarding only relevant aspects of the *Values and Code of Conduct*.
- 22% of relevant agencies reported using non-contractual arrangements such as briefing sessions, protocols and integrity training.

Source: State of the Service Report 2003-2004, APS.

116. The rules can also be communicated through a government structure, in which **integrity actors**, such as the Office of the Conflict of Interest and Ethics Commissioner in Canada play central role by providing advice on post-employment obligations to former public office holders. In the United States the Office of Government Ethics provides branch-wide regulations and policy guidance and agency ethics officials typically provide the actual advice to departing officials using that guidance. In Ireland, former officers below assistant secretary level must apply to the secretary general or head of office in which they last served before retirement or resignation, whereas officers at and above assistant secretary level must apply to the Outside Appointments Board.

3.8. Authorities and arrangements

The authorities, procedures and criteria for making approval-decisions in individual post-public employment cases as well as for appeals against these decisions are transparent and effective.

117. Although the vast majority of OECD countries set general rules for preventing conflict of interest in post-employment, minority of them established mechanisms to apply these rules in practice. While these countries employ measures for communication, such as briefings on appointment and on leaving discussed in the previous section, only a **few countries have developed clear and effective measures for applying the prohibitions** and restrictions that have been adopted. Canada, Ireland, Portugal and Spain, for example, request officials to disclose future employment and an approval is required before taking up a new appointment.

Box 27. Procedures for providing information on future employment in the United States

Although there is no legal requirement for executive branch officials to report their seeking or negotiations for a non-government position, the criminal provisions on negotiating for future employment require the individual to recuse from matters that have a direct and predictable effect on the financial interests of the prospective employer. Recusal often necessitates an explanation so that others understand why the individual cannot continue to work on particular matters.

Those individuals who are required to file "public financial disclosures" must report any arrangements with future employers on their financial disclosure forms. These arrangements must be disclosed in the disclosure form to the extent an arrangement exists at the time the report is required to be filed.

Source: OGE response to the OECD survey.

118. **Determining the 'integrity actor',**[48] **a specific authority** or authorities to be responsible for implementing a post-employment system at the national level is a complex matter that requires appropriate examination of factors such as the main implementation instrument(s) and mechanisms chosen and the public sector entities and especially the risk areas that are covered. Critically important also is the influence of each government's institutions, structures, processes and culture within which the authorities for handling post-employment matters must be set.

119. **Managers** play a key role as integrity actors in post-employment system in specific and in building a sound integrity framework in general. For example, Agency Heads in the Australian Pubic Service are responsible for ensuring that measures to manage conflicts of interest, including post-employment cases, are applied effectively in their agencies. This also requires that employees need to be made aware of their responsibilities to disclose and take reasonable steps to avoid conflicts of interest, and that procedures are in place to deal with situations where it appears that individuals have not met their responsibilities.

120. A notable emerging trend in OECD countries is that many of them established separate government-wide **integrity agencies** as an integrity actor to administer and enforce integrity standards, including post-employment prohibitions and restrictions.

[48] For description of role and types of integrity actors see *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, OECD GOV/PGC (2008)21, pp 61.

Box 28. Handling individual post-employment cases: The French Ethics Commission

The movement of public servants to the private sector – the so-called "*pantouflage*" – is a highly regulated practice in the French public service as it is subject of judiciary, regulatory and legislative checks and controls. Following up the *Law on the Prevention of Corruption*, approved in January 1993, three ethics commissions – "*Commissions de déontologie*" – have been set up, one for each segment of the public service, namely to:

- the central government service;
- the territorial authorities; and
- the public hospital sector.

It became obligatory for officials to consult these commissions before moving to the private sector for any reason. After almost a decade and a half experience, based on the Public Service Modernisation Law of February 2007 the Decree of 1 June 2007 created a single Ethics Commission with the aim of centralising these three committees and reinforcing the transparency in their functioning. The Ethics Commission[49] – "*Commission de déontologie de la fonction publique*"— handles all individual cases related to post-public employment and the accumulation of activities.

The Commission is headed by a member of the Council of State and contains members from the Court of Auditors, from the courts as well as, from the Inspector General's Office and specialised public servants. The Commission reports to the Prime Minister, which indicates its importance to the government.

Source: French response to OECD survey; *Managing Conflict of Interest in the Public service: OECD Guidelines and Country Experiences*, OECD, 2003.

121. Some of the countries dedicated more than one of these specific integrity offices to deal with different government entities and public sector organisations. Canada, for example, established the Office of Conflict of Interest and Ethics Commissioner for public office holders, including cabinet ministers and the most senior levels of the public service and members of the House of Commons. Moreover, a separate Ethics Officer for the Senate is in charge of the upper house of the Parliament.

Box 29. Integrity actors for post-employment in Canada, Italy and Spain

In **Italy**, the 2004 Conflict of Interest Act assigns independent authorities, including the Competition Authority, to enforce the application of post-employment rules established by the Act. In addition, the High Commissioner for preventing and combating corruption and other forms of illicit conduct could monitor and investigate offences related to post-employment.

In **Spain,** the Office of Conflict of Interest is the central authority for managing the post-employment measures of members of government and senior civil servants when they move to the private and non-profit sectors. The Office, under the supervision of the Minister of Public Administration, collects relevant information for making the approval-decisions in accordance with the 2006 Act on Conflicts of Interest.

In **Canada**, the Conflict of Interest Act, came into force in July 2007, strengthened the role of the new Conflict of Interest and Ethics Commissioner. The Commissioner has judicial or quasi-judicial background with powers to fine violators of the *Conflict of Interest Act* and consider public complaints. In addition, a new independent Commissioner of Lobbying was established in July 2008 with a strong mandate to investigate violations under the *Lobbying Act* and *Lobbyists' Code of Conduct*

Source: Italian and Spanish response to OECD survey, Conflict of Interest Act, Lobbying Act Canada.

[49] http://www.fonction-publique.gouv.fr/rubrique97.html

122. Although the context and pressures for identifying the authorities and arrangements for implementation and enforcement may vary from one country to another, in determining the options all jurisdictions need to take into account the following two general considerations, namely:

- First, **clearly designate the authority** or authorities responsible for administering the main implementation instrument(s). Politicians, public servants and other government entities can be subject to the same authorities or to separate ones. Moreover, a single entity such as a government department or other public sector organisation may have the content of its post-employment system determined by a central government at the national level but receive delegated authority to implement the regime. This approach helps to ensure consistency in the content of the rules and permits flexibility in their interpretation, but cannot guarantee fair and consistent rule application across the whole public sector.

- A second and related point is that the authorities need to **make clear the procedures** to be followed by officials who are contemplating leaving government and the criteria for approval-decisions in individual post-employment cases. In respect of procedures, governments can, for example, require that public officials disclose offers of future employment that involve a risk of conflict of interest and seek the employer's permission to accept an offer.

123. Making the approval-decision on post-public employment cases is generally the **responsibility of the top management of public organisations**: secretary general of departments in Ireland, the head of the organisation for civil servants in Norway, the deputy head of public organisations for public servants in Canada. These deputy heads generally delegate their authority to make approval-decisions on individual post-employment cases, however, they may not delegate their accountability for ensuring that the Code is fully upheld and advanced within their organisation. In Spain the Directorate General of Public Administration centralises approval-decisions on post-employment of high-ranking officials.

Box 30. Measures taken to improve fairness and transparency of post-retirement employment in Japan

Up to the last amendment, the *National Public Service Act* had stipulated that officials shall not, for a period of two years after separation from the service, accept or assume a position with a profit-making enterprise with a close connection to any agency of the State defined by rules of the National Personnel Authority, any specified independent administrative institution, with which such persons were formerly employed within five years prior to separation from the service. This prohibition was exempted only if ex-ante approval of the National Personnel Authority was given to the official concerned.

However, the Act was amended in June, 2007, in order to activate mobility of personnel between the national government and the private sector, as well as to realise fair and transparent employment after the retirement from the public service.

The amendment stipulates that:

- in effect by the end of 2008 each ministry or other equivalent government entity shall not provide assistance to support post-retirement employment to its employees and retired employees;
- the **Centre for Personnel interchanges between Government and Private entities**, which shall be newly established under the Cabinet Office, exclusively provide such services;
- as transition measures up to the full realization of functions of the Centre, within three years beginning from enforcement of the last amendment of the *National Public Service Act*, each ministry and other equivalent government entity could provide post-retirement job placement services, only if the ex-ante approval be given by the Prime Minister, the authority of which shall be delegated to the Re-employment Surveillance Commission;
- the authority to give ex-ante approval for the post-retirement employment mentioned above, previously executed by the National Personnel Authority, shall be transferred to the Cabinet.

Source: Japanese response to OECD survey.

124. Within a period of one year after leaving a state managerial position in Poland, the person concerned is obliged to obtain the consent of a **special commission** responsible to the Prime Minister in order to undertake employment in an entity that was supervised by the applicant.

Box 31. Procedure for approval-decisions in Spain

The new Spanish Act on Conflict of Interest[50] introduced the following administrative process to prepare approval-decisions related to post-public employment conflict-of-interest cases of high-ranking officials, including ministers and secretaries of state:

- first, former high-ranking officials should inform in time the Office of Conflict of Interest before undertaking any future employment activity;
- the Office of Conflict of Interest will analyse the situation and will consider whether or not the activity violates the law;
- the Office of Conflict of Interest will communicate its opinion to the interested party;
- the interested party is allowed to reply and provide further information for consideration; and
- finally, the Office of Conflict of Interest will make an approval-decision and communicate it to the former high-ranking officials.

Source: *Modernising conflict of interest legislation: The Spanish experience*, OECD: 2006.

125. Arrangements can include the requirement that officials making approval-decisions on individual post-employment cases **should consult:**

- A central government agency or a special integrity committee or advisory board – a requirement that will help to promote **equitable and consistent approval-decision** making across the public sector organisations. Central government agencies and entities involved in the consultation include the Legal Affairs Unit in the Ministry of Public Administration in Mexico and the Canada Public Service Agency for federal public servants. Independent committees also take part in consultation, for example the Ethics Commission in France, the Government Ethics Committee and the Anti-Corruption and Civil Rights Commission in Korea or the Outside Appointments Board in Ireland.
- Entities where the public official has worked before – this requirement could substantially help an informed approval-decision on future employment by **defining the types and extent of actual and potential conflict of interest** as the German example shows in the following box.

50 The Act was approved in May 2006, further information on its content can be obtained in *Modernising conflict of interest legislation: The Spanish experience* OECD, GOV/PGC/ETH(2006)2.

Box 32. Gathering information for approval-decision on future employment: Consultation in Germany

In Germany all relevant previous employers – those sections and departments in which the civil servant or soldier has worked during the five years prior to the end of service – are asked to verify whether it may have been possible for the civil servant or soldier to have had an influence on the economic concerns of his/her future employer or contractual partner.

The relevant sections and departments are also asked about the extent of "official knowledge" of the civil servant or soldier concerned.

Source: German response to OECD survey.

126. Appropriate approval-decisions can be fostered also by the **setting of clear standards** not only in regard to whether the official should be permitted to take up a particular post-employment opportunity but also in regard to how stringently the rules should be interpreted and exceptions granted. Such criteria can be set by the law as the following box presents.

Box 33. Granting exemptions for ministerial staff in Canada

In Canada the Ethics Commissioner may provide reduction/waiver of certain restrictions – such as prohibition on contracting and on representations – for former public office holders. The Conflict of Interest Act[51] specifies the criteria for granting exemption to a former reporting public office holder who was a member of ministerial staff and worked on average 15 hours or more a week. Exemption may only be granted on the following criteria:

- the person was not a senior member of ministerial staff;
- the person's functions did not include the handling of files of a political or sensitive nature, such as confidential cabinet documents;
- the person had little influence, visibility or decision-making power in the office of a minister of the Crown or a minister of state; and
- the person's salary level was not commensurate with the person having an important role in that office.

Source: *Conflict of Interest Act,* Canada.

127. A final procedural consideration is the need to permit officials to **appeal against a negative post-employment approval-decision**. An effective post-employment appeal and remedy system will also help to foster core public service values of fairness and accountability. The OECD survey shows that approval-decisions on post-public employment are open to appeal in the minority of member countries. Appeals can be handled by a variety of administrative and judicial bodies. In these cases, approval-decisions on post-employment cases can be appealed to:

[51] See Article 38 under Rules for Former Reporting Public Office Holders at *http://ciec-ccie.gc.ca/resources/Files/English/Public%20Office%20Holders/Conflict%20of%20Interest%20Act/CONFLICT%20OF%20INTEREST%20ACT.pdf*.

- An **independent court or tribunal**, for example in Germany, Ireland, Italy, Japan, Portugal and Turkey. In Ireland, the Secretary Generals' approval-decisions on concrete post-employment cases can be appealed to the Outside Appointments Board. In Italy, the decisions of the Competition Authority on post-public employment cases can be appealed to administrative courts, with two levels of judgement.

An **administrative body** within the public service, for example in Germany, Ireland and Portugal.

128. In the United States, there is no body established to review and approve post employment plans of departing officials. Rather agency ethics officials may give these officials advice on the application of the law; this advice is not open to any formal appeal, although in very large agencies there may be an informal appeal to a centralised ethics office regarding the advice of a regional ethics officer. An individual who objects to advice that a statute may prohibit his or her planned future conduct could seek a declaratory judgement to the contrary through the courts, or decide to engage in the conduct and defend his/her conduct during any subsequent prosecution. If convicted, the individual may appeal the conviction to the next level federal court.

Box 34. Formal and informal appeal mechanisms in Norway and Canada

Although no specific formal appeal procedures exist against individual post-employment approval-decisions in many countries, civil servants may ask for a new decision from the head of an organisation, for example in **Norway**. Politicians may turn to the Standing Committee on Outside Political Appointments for Politicians[52] and can ask for a meeting to discuss the assessment of their case. Experience of the first three years indicates that this appeal has been used rather exceptionally.

In **Canada** public servants or former public servants may apply to the deputy head – the administrative head of a department – for reconsideration of any decision regarding their compliance with the post-employment measures.

Source: *Designing and implementing post-public employment regulations for civil servants and politicians: The Norwegian initiative*, OECD, GOV/PGC/ETH(2006)4; Canadian response to OECD survey.

[52] For further details se Part 2 on "Designing and implementing post-public employment regulations for civil servants and politicians: The Norwegian initiative".

3.9. Enforcing the post-public employment system

The enforcement sanctions for post-public employment offences are clear and proportional, and are timely, consistently and equitably applied.

129. Both the absence and ineffective measures for **tracking and enforcing compliance** signals that the post-employment system has no 'teeth' or public authorities are not serious about applying prohibitions and restrictions. A seemingly comprehensive and sophisticated post-employment system can be rendered ineffective if it does not monitor compliance, have no appropriate sanctions or does not enforce them in a timely manner.

130. Implementation of approval-decisions on post employment generally remains the responsibility of former public officials in OECD countries. However, support measures employed by public organisations for tracking and ensuring implementation of approval-decisions are fairly exceptionally used, as the following box indicates.

Box 35. Measures supporting monitoring of approval-decisions

The following list illustrates the types of measures that could support the tracking of implementation and compliance with approval-decision in individual post-employment cases. These support measures may require, for instance:

- recording the approval-decisions on individual cases for future tracking, for example in Canada, France, Japan, Norway and the United Kingdom;
- making available past decisions for benchmarking, for example in France and Japan;
- informing prospective employers of imposed restrictions and conditions, for example in Germany and the United Kingdom; and
- requesting information on the application of decisions, for example in Ireland and Korea.

Source: *OECD Guidelines for Managing Conflict of Interest in the Public Service: Progress report on Implementation*, 2006, OECD.

131. The nature of the sanctions that can be imposed is closely tied to the implementation instruments discussed earlier. In general, countries employ traditional sanctions including penal and disciplinary measures. For example, legislation can provide **criminal or civil penalties**. The *National Public Service Act* in Japan states that a person who violates post-employment restrictions and prohibitions shall be sentenced to a prison term of up to one year or fined up to five hundred thousand yen. The penal sanction may range up to one year imprisonment in Korea; and in the United States the penalties can extend to up to five years imprisonment and a fine of not more than USD 250 000 or a multiplier of the gain or loss whichever is greater.

132. In contrast to criminal or civil penalties, a code of conduct can be expected to rely on **administrative remedies** in the form of disciplinary measures. These administrative measures can range from such mild sanctions as warnings and fines to such severe penalties as demotion and dismissal. Permitting governments to exercise discretion in choosing from this range of sanctions helps to ensure that the penalty imposed is proportionate to the nature and magnitude of the offence. For example, in the United States, civil penalties are an option to criminal prosecution and a range of administrative sanctions

can be imposed starting from reprimand to dismissal for a violation of the provisions for seeking employment of the standards of conduct.

Box 36. System of sanctions in Italy

The Competition Authority in Italy exercises ex-post control of new employment after leaving public office. After the appointment has been made, the Competition Authority checks its compatibility with the law on conflict of interest. If the appointment is judged 'incompatible' or non-compliant, the following sanctions can be applied:

- removal or disqualification from office or position – by the competent administration or by that responsible for supervising the entity or undertaking;
- suspension of the public or private employment relationship; and
- suspension of registration in professional rolls and registers, for which a request must be addressed to the professional organisations for the actions within their competence.

Source: Italian response to OECD survey.

133. Since the scope of traditional post-employment rules covers officials while in office, it is easier to apply sanctions for conflict of interest offences that occur while officials are still working in the public sector. Penalties connected with codes of conduct are especially difficult to apply to officials who have left the government. Indeed, codes lose their influence at the point where most post-employment offences begin to arise. Nevertheless, **alternative sanctions** such as the cancellation or refusal of contracts with the private sector employer of the offending former official or the reduction of the official's retirement pension should be considered for inclusion in a comprehensive post-employment regime. In Norway, former officials breaching the post-employment guidelines can get a penalty for default.

Box 37. Innovative sanctions for officials left public office and for their employer in the private sector: Spain and Germany

Spain introduced a range of innovative sanctions applicable both for former public officials who breach post-employment rules after left government and the private company improperly employing such a former public official:

- For the private company, the non-compliance with the law is published in the *Official Gazette of the State*. It implies **debarrement** from public contracts: an automatic exclusion of the company from tender procedures during the period of the time limit of prohibitions for the former high-level official.
- For formal public officials, the declaration of very serious or serious violation of the post-employment rules in the *Official Gazette of the State* prevents the person concerned from occupying public office for five to ten years.
- As an additional civil law sanction, former officials may also risk having their public service **pension reduced**.

In Germany, in case of breaching post-employment rules in the federal administration, curtailment of the affected civil servant's or soldier's retirement pension is possible.

Source: Spanish and German response to the OECD survey.

134. The seriousness of sanctions may also depend on the circumstances of how the post-employment obligations were breached. Seniority is a factor used in a few OECD countries.

Box 38. Circumstances for contemplating the seriousness of sanctions in Mexico

In addition to the rank and history, including seniority of the public official who commits a breach of post-employment conflict-of-interest rules in Mexico, the F*ederal Law on Public Officials' Administrative Responsibilities*[53] defines the following circumstances for consideration in the imposition of administrative sanctions:

- the seriousness of the responsibility incurred and the advisability of eliminating practices that in any way violate the provisions of the law or those that are enacted based on it;
- the public official's socio-economic circumstances;
- the external conditions and the means of execution;
- repeated breaching of obligations; and
- the amount of the benefit, gain or damage derived from the breach of official obligations.

Source: *Federal Law on Public Officials' Administrative Responsibilities*, Mexico.

135. Although management measures supporting implementation of approval-decisions are fairly exceptionally used, they may considerably encourage compliance. The communication of approval-decisions on individual post-employment cases, for instance, could enable public scrutiny. The increased media attention on cases of former politicians and high-level officials would encourage compliance with post-employment rules and approval-decisions, as the example of Norway shows in the following box.

Box 39. Enabling public scrutiny to foster compliance

As transparency in public life is a fundamental value in Norway and the Internet provides an efficient tool for monitoring, decisions on post-employment cases of **former politicians**, including ministers, political secretaries and political advisers are directly available on the Internet.

The Secretariat of the *Standing Committee on Outside Political Appointments* provided by the Ministry of Government Administration and Reform prepares the cases for decision of the Committee and also makes information on individual approval-decisions available on its Web site. Public scrutiny – facilitated by high media attention – has played an important role to encourage compliance with the Post-employment Guidelines for Politicians.

Regarding **former public servants**, no system exists for reporting on approval-decisions and their implementation as it remains the individual responsibility of former public servants. However, the Ministry of Government Administration and Reform considers assessing the functioning of this system after collecting more information on implementation practice.

Source: Norwegian response to OECD survey.

[53] Article 14 of the *Federal Law on Public Officials' Administrative Responsibilities*, Mexico.

3.10. Measuring effectiveness

The effectiveness of the policies and practices contained in each post-employment system is assessed regularly and, where appropriate, is updated and adjusted to emerging concerns.

136. Almost half of the OECD countries have **reviewed and updated** their post-employment systems in the past decade. Many of them have even further strengthened and reinforced prohibitions and restrictions, for example by:

- setting rules in legislation for providing enforceable sanctions by Conflict of Interest Act in Canada, Czech Republic, Italy and Spain in the past four years; and
- streamlining procedures to reinforce implementation and compliance, for example by a new decree in France.[54]

137. These efforts to modernise post-employment systems are particularly noticeable in light of the fact that countries have been **liberalising their labour market** in general.

138. Countries have been often confronted with the **limitation** of existing general laws on public and civil service or codes of conduct to impose sanctions on former public officials in case of breaching post-employment restrictions. The recognition of this limitation by the traditional scope of the Public Administration Act in Norway led to the solution to include the post-employment measures in the contract of public servants and politicians by the new Guidelines approved in 2005.

139. Another aspect of limitation is related to the **application of restrictions at the sub-national level**. Rules in general focus on public officials working at the national level, although post-employment conflict-of-interest situations could similarly endanger trust in public decision making at the sub-national level.

140. Countries pay more attention to set **general prohibitions and restrictions** for post-employment that are applicable across the whole public service and they pay much less attention to:

- address risk areas by specific measures tailored to the types of vunerabilities; and
- establish mechanisms to put rules into practice.

141. **Enforcing restrictions and imposing suitable sanctions** in the case of breaching obligations remain a challenge for many countries. Existing sanctions have been considered insufficient as they can only be applied for public officials in office. In Spain, the sanctions were considered ineffective and the Government developed a more severe regime of sanction by the new Act on Conflict of Interest approved in spring 2006. Lack of monitoring and control mechanisms to impose sanctions on former public officials is an additional challenge.

142. The current state of knowledge on post-employment conflict of interest is limited largely to data on instruments, procedures and structures. A few countries require reporting on implementation and functioning of post-public employment systems, for example, in the form of an annual report that is available to the public in Canada and France. The following box summarises the practices of providing annual report to the Prime Minister by the French Ethics Commission.

[54] Decree No 2007-611 of 26 April.

Box 40. Ethics Commission in France: Annual report on first year activities

The French Ethics Commission, established in June 2007[55], provides guidance, amongst others, on post-public employment and accumulation of activities. The Ethics Commission – similarly to the previous three Ethics Commissions (for more details see box ..) – submits an annual report to the Prime Minister.

The first annual report[56] of the Ethics Commission gives an overview of the individual cases the Commission treated since its creation but also cases handled by the previous three commissions in the year 2007.

According to the French Criminal Code, public officials who leave the public service permanently or temporary may not work for an enterprise which, during the previous three years (stipulated in the April 2007 Decree as amendment compared to the five years' period that the Criminal Code required previously), they controlled or supervised. Also, public servants are prohibited from exercising a private activity if, by its nature or the conditions under which it is exercised, it undermines the dignity of their former administrative duties.

Cases handled in 2007 by the Ethics Commission cover numerous employment areas such as economy, finance and industry, defence, internal and external affairs, equipment, transport, agriculture and social affairs.

The submission of the cases for treatment to the Commission can be done by the individual whose professional situation is in question or by his HR manager. The opinions of the Ethics Commission on seldom confirm incompatibility – only one negative opinion issued in year 2007. The vast majority – 94% of the opinions -- are favourable under specific conditions. It is important to note that the opinions issued by the Commission are enforceable by the courts.

143. However, there is much **less information available on the performance**, the effectiveness with which the instruments, procedures and structures achieve desired results or outcomes. The data and benchmark initiative[57] offers a new approach and guidance on how to collect data in key aspects of the integrity framework.

Box 41. Measuring effectiveness of prevention and enforcement in the United States

Employee surveys organised by the US Office of Government Ethics have indicated that providing counselling for all types of questions including post employment questions is more effective than simple training and education programmes.

The oversight by the private sector of the private sector and the former government employees who have been hired – as disappointed bidders have the right to challenge government contracts and the issuance of other government benefits if they believe that a conflict of interest has occurred during the process – may serve to support effective enforcement of post-employment provisions. In addition, Government employees themselves provide effective oversight for enforcing post employment restrictions by reporting to their ethics officials or Office of Inspector General improper contacts made by former employees.

55 *http://admi.net/jo/20070602/BCFX0755261D.html.*

56 *www.fonction-publique.gouv.fr/IMG/rapport_deontologie_2007.pdf.*

57 *Components of Integrity: Tracking Trends in Government*, OECD, GOV/PGC (2008)19.

Box 42. Reviewing business appointment rules in the United Kingdom

The United Kingdom, has established long-standing non-statutory rules[58] requiring most senior Crown servants – permanent secretaries and deputy secretaries – to seek permission before they take up business appointments. An independent Advisory Committee on Civil Service Appointments[59], established by the Prime Minister in 1975, provides advice to the Prime Minister, the Foreign Secretary and ministers on the application of most senior Crown servants who wish to take up outside appointments after they leave the Crown service.

The *Rules on the acceptance of outside appointments by Crown servants*[60] were updated in 1996 and accompanied by the G*uidelines on the acceptance of appointments or employment outside Government by former Ministers of the Crown.*

The Committee publishes its annual report[61] on the application of the Rules and Guidelines including statistical data.

The business appointment rules have been reviewed in the past 4 years, by:

- The Committee itself: it undertook an internal review in 2003 to look at, in particular, the issues that can arise when applicants seek to take up appointments in a sector with which they or their Departments have had official dealings. In light of the results of the internal review, the Committee may seek more in-depth information on relevant aspects in the future.

- An independent review: in 2004 the then Prime Minister commissioned Sir. Patrick Brown 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"[62].

- Public Administration Select Committee (PASC) of the House of Commons: in 2006-7 PASC undertook an Inquiry into the role and independence of ethical regulation of government, including the business appointments rules and processes. The Committee published the following conclusions and recommendations:

1. "We agree with Sir Patrick Brown that it would be appropriate for those leaving Crown service for other employment to be reminded of their continuing duty to keep confidential material confidential. However, we do not agree that this alone would be sufficient. We believe it is appropriate for the Advisory Committee to take into account the extent to which former Crown servants have been involved in particular policy issues and, if necessary, to ask applicants to delay taking up particular appointments. It may be helpful to redraft the rules to make clear that special advisers could be caught by this consideration. (Paragraph 19)

2. We believe it is inappropriate for former Crown servants to move almost directly to positions in which they may lobby former Ministers or colleagues. (Paragraph 20)

3. We acknowledge that the current case by case approach means that those who wish to take up appointments will not be sure that they will be approved. Nonetheless we are concerned that a single sanction to be applied against

58 1937 *Memorandum on the Acceptance of Business Appointments by Officers of the Crown services.*

59 For further information on the Committee *www.acoba.gov.uk/*.

60 *www.acoba.gov.uk/~/media/assets/www.acoba.gov.uk/rules%20pdf.ashx*.

61 *www.acoba.gov.uk/publications.aspx*.

62 Terms of Reference of the review, Business Appointment Rules, SN/PC/3745, Library of House of Commons.

a single test would not be adequate. We think there could be cases where the criterion of "material influence" would operate in ways which blocked appropriate appointments but did not prevent inappropriate ones. We do not believe that this will provide the public with reassurance that impropriety is prevented. (Paragraph 22)

4. An approach which is more clearly tailored to individual cases is both more likely to win the assent of those to whom it applies, and is more easily defended on the grounds of public interest. (Paragraph 23)

5. We agree that if the public service ethos is to be maintained, those coming into Crown service from backgrounds in other fields should be properly inducted, and be given a clear explanation of what conduct is considered proper. (Paragraph 24)

6. Although Sir Patrick Brown makes some valuable suggestions for improving the Business Appointment Rules, we consider that his single test and single sanction approach is not satisfactory. It might prevent straightforward corruption, but would not deal with more insidious uses of influence, and would not command public confidence. (Paragraph 25)

7. We believe that, as ACoBA itself proposes, former Ministers should be required to submit proposed appointments to the scrutiny of a Business Appointments Committee. They should accept the advice given to them. (Paragraph 27)

8. We believe that, to ensure consistency, the body which considers applications to take up business appointments from Crown servants should also be responsible for advising former Ministers on such appointments. (Paragraph 30)

9. If the Civil Service increasingly recruits to senior posts from outside the civil service, it will become more important for the Civil Service Commissioners to be aware of the likely career paths of those recruits. It seems at the least odd that Ministers should be formally responsible for taking decisions about what jobs are suitable for former Crown servants, when their involvement in recruitment is so carefully regulated. (Paragraph 36)

10. The Advisory Committee on Business Appointments has operated effectively, and we see little benefit in changing its composition, or its way of working. However, we recommend that the Government considers whether decisions about future business appointments of senior Crown servants would be better taken by the Civil Service Commission than the Prime Minister or Head of the Home Civil Service. We acknowledge there are arguments in favour of the status quo, as well as arguments for change, but we believe the proposal deserves serious consideration. (Paragraph 40)

11. We believe it would be appropriate for the Chairman of the Committee on Business Appointments to be a Civil Service Commissioner, to ensure a coherent and 7 collegiate approach to both appointment and exit from the civil service. (Paragraph41)"

Source: Sixth Report of Session 2006-7 of the House of Commons Public Administration Select Committee, UK, Website of the Advisory Committee on Business Appointments, UK.

Key references

OECD, (2004). *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*. Paris: OECD.

OECD, (2005). *Managing Conflict of Interest in the Public Sector: A Toolkit*. Paris: OECD.

OECD, (2005). *Public Sector Integrity: A Framework for Assessment*, Paris: OECD.

OECD, (2006a). *Avoiding Conflict of Interest in Post-Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*. Paris: OECD.

OECD, (2006b). *OECD Guidelines for Managing Conflict of Interest in the Public Service: Report on Implementation*. Paris: OECD. *www.oecd.org/dataoecd/18/35/39691164.pdf*.

OECD, (2008). *Towards a Sound Integrity Framework: Instruments, Mechanisms, Actors and Conditions for Implementation*. OECD GOV/PGC (2008)21.

PART 2. DESIGNING AND IMPLEMENTING POST-PUBLIC EMPLOYMENT REGULATIONS FOR CIVIL SERVANTS AND POLITICIANS: THE NORWEGIAN INITIATIVE[63]

Following the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, the Norwegian Government reviewed emerging issues considered significant to maintaining integrity in government and approved the following three documents in 2005:

- post-employment Guidelines for the Public Service of 4 July 2005;
- post-employment Guidelines for Politicians of 29 September 2005, in force from 17th October 2005; and
- ethical Guidelines for the Public Service of 7 September 2005.

This part summarises the main features of these three Guidelines, their implementing mechanisms as well as highlights emerging experiences learned in their application.

63 . This part was prepared by Ms. Cecilie Fauchald Rygg, Adviser, Department of Employers Affairs, Ministry of Government Administration and Reform, Norway, with help from Mrs. Ottil Fasting Tharaldsen, Deputy Director General, Department of Employers Affairs, Ministry of Government Administration and Reform, and Mr. Terje Dyrstad, Deputy Director General, Department of Employers Affairs, Ministry of Government Administration and Reform, Norway and Secretary *to the Standing Committee of Outside Appointments.* The chapter takes into account the original, translated documents - the Guidelines - prepared by a working group in the Ministry and led by Ms. Cecilie Fauchald Rygg.

Introduction

144. The process of launching guidelines on post employment for the public service took several years. The Parliament (*Storting*) asked the Government twice to clarify problems and ambiguity that can arise in transition between a political position and a position in the senior civil service, and in transition from a position in the civil service to a position outside the government administration. A report to the *Storting* (St. meld. Nr 11 2000-2001) and the following Recommendation (Inst. St. Nr 175 2000-2001) outlined possible solutions to be considered. An important issue was whether a clause of "temporary disqualification" or "abstinence from involvement in certain cases[64]" in connection with transition to a new post should be included in all employment contracts from the beginning of an employment relationship or only where the nature of the position so requires. Based on advice from legal expertise, the final solution was to use the clause only in certain cases or for certain positions.

145. When the Post-employment Guidelines for the Public Service was almost in place, the Government decided that parallel rules should be considered for politicians. Post-employment Guidelines for Politicians were developed and became applicable on 17 October 2005. The change in government in September 2005 provided the first test for the application of the Guidelines.

146. The Ethical Guidelines for the Public Service were published and distributed in September 2005 after extensive consultation, including a seminar in spring 2005 for top executives in central Government. These three Guidelines can be found in annex.

Norwegian Government Administration: Past reforms and emerging challenges

147. Why has the Norwegian Government shown such a strong commitment in addressing integrity issues in the public sector over the past few years? Even though there have been few cases of corruption in Norway compared with other countries, the cases that have occurred attracted a great deal of publicity and opened up a broader discussion about the fundamental mission of government and public institutions. It has also revealed the need for more information about existing statutory and non-statutory rules, having an impact on values and ethics in the public service.

148. Compared with many other OECD countries, Norway has been looked upon as a rather reluctant reformer, due to the fact that the economic situation has not forced Norway to make big changes in the public sector. However, in recent years a considerable number of reforms have taken place, and are still continuing in the public sector, and the government sector was reduced from 167 000 employees in 1994 to 118 000 employees in 2004. Important reform measures include:

- management by objectives and performance was introduced throughout the State Administration in 1990;
- 60 units changed their form of affiliation between 1988 and1998; and
- 70 units underwent major restructuring between 2000 and 2004.

149. It is an open question whether all these changes, many of them creating new forms of relationship between the public and the business and non-profit sectors, have been a contributing factor to the growing interest in the integrity and conduct of public servants. Giving more managerial freedom also increases the possibility for public officials to pursue their private interests and affiliation.

64 For definitions and details see p. 4 in section 1.2.

150. The level of trust in the public sector has been traditionally high in Norway, and surveys show that citizens' trust is higher when it is based on experience of direct contact with the public service. However, recent exposures of fraud and bribery particularly in local communities could have affected citizens' views on corruption. A 2005 survey indicated that only one out of ten respondents has confidence in the authorities' ability to deter such events in the future, while 40% expressed little confidence in the authorities' ability to prevent corruption in the future. 50% was of the opinion that corruption had increased in the public sector in Norway.

Guidelines to address post-employment concerns

151. The importance of mobility between the public and the private sectors without unnecessary impediments for the public service and for politicians is underlined in the introduction to both Guidelines. It is also assumed that very few situations will arise that might call for the use of such measures in connection with employees moving to a new position outside the public service. Nonetheless, it was considered particularly important to take advantage of such options in cases in which special circumstances merit their use.

152. In connection with public officers moving from the public to the private sector, it is important to maintain the public confidence both in the State administration and in civil and public servants. Integrity and impartiality are basic prerequisites for any undertaking in the public service. The public service is required to be impartial and independent and it is equally important that citizens perceive the public service as acting fairly, objectively, impartially and in compliance with established rules.

153. The post-employment guidelines requiring temporary disqualification and abstinence from case involvement are supplementary to a number of rules intended to protect the integrity and impartiality of the public service, including the provisions in the Public Administration Act, such as:

- competency rules;
- the rules on employees' obligation of loyalty;
- the general fairness requirement in the public service (including the principle against abusing authority);
- the obligation of professional secrecy; and
- the management prerogative of the employer.

154. However, the rules concerning competency in the Public Administration Act refer to a situation where a conflict of interest may arise in the handling of a case and when the decision is made by the public service. After an employee has moved to a new position outside the public service, any conflict-of-interest-situation may arise. Then, this situation will not be covered by the Public Administration Act.

155. The duty of loyalty could also place constraints on using knowledge acquired in a former employment relationship, but it is not clear how far the scope of the duty of loyalty actually extends. The obligation of professional secrecy in Article 13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret that is subject to the obligation of secrecy.

The Post-Employment Guidelines for the Public Service

156. Although State Administrative Agencies do not normally operate in a competitive market, they may, in the same way as an employer in the private sector, have justifiable need for post-employment clauses in the employee's contracts.

Box 43. What circumstances could justify post-employment restrictions?

There are three special factors in Norway that might justify actions such as temporary disqualification and/or abstinence from involvement in certain cases from the State employer:

- T**he need to protect internal information** -- The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans (*e.g.* on the formulation of policies, rules, etc). Such knowledge could result in illegal competitive advantages.

- **The need to protect other organisations' trade secrets --** The State must seek to prevent one organisation from gaining access to confidential information about other organisations, including trade secrets, etc. as such knowledge could result in illegal competitive advantages.

- **The need to safeguard the general public's confidence in the public service --** The State administrative agencies must seek to prevent suspicions that a civil servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could impair the general public's confidence in the administration's integrity and impartiality.

Source: *Post-Employment Guidelines for Public Service*, 2005 and *Post-Employment Guidelines for Politicians*, 2005.

157. Where the nature of the position so requires a clause on temporary disqualification and/or abstinence from involvement in certain cases in connection with transition to a new position will be included in the employment contract from the beginning of an employment relationship. Such a clause will primarily be relevant for:

- key jobs, executive positions or positions with a special responsibility and influence;

- positions in close contact with the positions mentioned above; and

- positions with authority to negotiate or purchase.

158. The Guidelines provide a national framework for post-employment restrictions. However, individual employers may issue complementary post-employment guidelines if necessary.

Box 44. Post-employment prohibitions in Norway

The two Post-Employment Guidelines established new measures for politicians and public servants, namely:

"**Temporary disqualification**" – it refers to a ban for up to six months after leaving office, on an employee being employed by or performing services for an organisation outside the public service that has or can have contact with the employee's sphere of responsibilities as a civil servant or politician. The same applies to organisations outside the public service that for other reasons have or could have special advantages due to the employee's position as a civil servant or politician.

"**Abstinence from involvement** in certain cases" – it refers to a ban for up to one year after leaving, for an employee getting involved in cases or areas that involve the employee's spheres of responsibilities as a civil servant or politician.

Source: *Post-Employment Guidelines for Public Service*, 2005 and *Post-Employment Guidelines for Politicians*, 2005.

159. The clause in the contract requires the employee to inform the employer of any offer of new positions that he or she might consider. The employer may grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee.

160. The employee has the right to remuneration during the period of temporary disqualification. The remuneration shall correspond to the salary on leaving the position plus holiday pay.

161. An employment contract also covers agreed damages if the employee behaves at variance with the temporary disqualification or abstinence from involvement in certain cases, or breaches the obligation for mandatory reporting.

The Post-Employment Guidelines for Politicians

162. The Post-employment Guidelines for Politicians are almost identical to the guidelines for the public service with some exceptions, primarily regarding the process and the decision-making on post-employment prohibitions. The Standing Committee on Outside Political Appointments has the authority to decide that a politician should not work or provide services for an organisation outside the public service after his engagement as a minister, political secretary or political adviser. To ensure the independence of its decision making, the members of the Committee are appointed by a royal decree, and they cannot be given instructions by the Government.

163. The Standing Committee on Outside Political Appointments can determine the following measures:

- **Temporary disqualification** – up to six months – will only be requested in certain cases and when there is a clear connection between the politician's previous spheres of responsibilities or duties and the relevant organisations' interest. The Standing Committee on Outside Political Appointments can also determine that a politician cannot work or provide services for an organisation outside the Norwegian public service for up to six months after leaving if special circumstances exist in connection with the person's earlier duties and responsibilities that have

given or could give the organisation special advantages, or that might undermine confidence in the public service in general.

- Instead of being subject to temporary disqualification, a politician can be ordered to **abstain from involvement in certain cases** for up to one year, provided this adequately safeguards the interest that must be protected. The term "abstinence from involvement in certain cases" refers here to a ban on the politician becoming involved in a case or in an area where he/she has been directly involved by virtue of being a politician.

164. At least two weeks before starting the new position, the politician is required to voluntarily inform the Committee on:

- Starting a new job or accepting a position outside the public service, or
- Starting a business.

165. This requirement does not apply if it is obvious that temporary disqualification or abstinence from involvement would not be a viable option. The obligation to provide information applies to all new positions taken up within one year of leaving public office.

166. Where temporary disqualifications are ordered, the politician – similarly to public servants – shall receive remuneration during the temporary disqualification period corresponding to the net salary he or she received on leaving plus holiday pay and pension costs.

167. If the obligation for providing information is breached or the politician has behaved at variance with an imposed disqualification or abstinence from involvement in certain cases, the Standing Committee on Outside Political Appointments can require agreed damages to be paid to the State.

Standing Committee on Outside Political Appointments: Administrative procedures and experience of their application

168. When the new Government came into office on 17 October 2005, approximately 70 politicians from the former Government left their offices, namely:

- the Prime Minister;
- 18 Ministers;
- 34 State Secretaries; and
- 21 Political Advisers.

169. As of October 2008, 76 politicians raised formal cases for the Standing Committee on Outside Political Appointments. These figures also include politicians from the Government that came into power on 17 October 2005. Six of the politicians were former ministers. In addition to the formal cases, the Secretariat of the Committee has also provided advice on the rules and procedures concerning the Post-employment Guidelines for Politicians to other politicians.

170. Most of the politicians have raised one case, but two of them have raised six and seven cases, mostly related to their membership in boards. In two cases, the politicians have made a statement and asked the Committee to look at their case once more, referring to article 7.2 of the Guidelines.

171. In the first year of application, 13 politicians, including four ministers had been given restrictions in the form of temporary disqualifications – ranging from three to six months – and/or abstinence from involvement – up to12 months – in certain cases.

172. All formal correspondence between politicians and the Committee is open to the public, and copies of letters from the Committee to the politicians are published on the Internet.

173. Experience so far shows that the new Guidelines are taken seriously. There have been discussions in the media about some of the cases, both before and after the Committee takes decisions. In spring 2007 the Committee is scheduled to submit its first report to the Ministry of Government Administration and Reform about its activities in 2005 and 2006, and also give some comments on their experience with the Post-employment Guidelines for Politicians.

174. It could be said that beyond the successful application of the Guidelines in individual cases it is more important that a high degree of transparency be ensured in the handling of these cases. An ongoing public debate about these issues is one of the most important measures to illustrate how the implementation of the whole system is perceived.

The Ethical Guidelines for the Public Sector

Aims of Guidelines

175. High ethical standards for the provision of services and the exercise of authority are a prerequisite if the citizenry is to trust the public service. The goal of these general ethical guidelines is to ensure that all State employees are aware of this. The ethical guidelines are to be of a general nature, rather than providing detailed rules. They are intended to provide general guidelines that call for reflection on the part of the individual employee. For example, the Ethical Guidelines for the Public Service give guidance on how employees should act when former employees contact them.

176. The provisions included in the Guidelines are not always exact, but rather specify legal standards. Norway has a number of legal rules (statutory and non-statutory) that have an impact on values and ethics in the public service. The ethical standards that apply at any given time have an impact on the framing of legislation and other regulations. From this perspective, the Guidelines complement existing legal rules.

177. The guidelines have evolved from ethical values and norms of universal validity such as justice, loyalty, honesty, reliability, truthfulness and the golden ‘do unto others’ rule.

Consequences of breaching the Guidelines

178. Breaching the general Ethical Guidelines does not carry special sanctions, but, for example, breaches of the provisions that apply to conflicts of interest could result in a decision being declared invalid. An act or failure to act in the service could be considered dereliction of duty, and could lead to service sanctions. An act or failure to act in the service could also be so serious that it could lead to prosecution and punitive sanctions. Clear-cut breaches of statutory provisions will normally also constitute breaches of ethical and administrative guidelines of universal validity.

179. Even if the civil servant does not breach a law or formal regulation, it can be an argument in a case of his/her career if the civil servant breached the Ethical Guidelines. Where Ethical Guidelines have been made known throughout an organisation, not least to individuals, breaches of the Guidelines will be a factor that can be emphasised, for example, in an overall assessment of the relevant public official's suitability for a position or in connection with an internal application for a new position, where it is fair to require compliance with the organisation's Ethical Guidelines.

Employers, managers and employees

180. As an employer (represented by the Ministry of Government Administration and Reform), the State has the ultimate responsibility for providing ethical guidelines and ensuring compliance. Top management in ministries and subordinate organisations bears special responsibility for follow up. This is primarily because managers, through their words, actions and management style, exert a strong influence on the culture and standards of conduct that apply in an organisation. Secondly, it is because top managers can be put in situations where choices and decisions call for ethical reflection and wisdom. Thirdly, it is because top managers are responsible for ensuring that the entire organisation is aware of the ethical standards that apply, and for ensuring that the organisation addresses any breaches of laws or regulations immediately in order to avoid the emergence of unfortunate customs or culture.

181. Individual employees are required to familiarise themselves with the provisions and instructions that apply to their positions at any given time, and they are personally responsible for the best possible compliance with the Guidelines.

The legal context of Guidelines: Relationship with legislation

182. The Guidelines were developed to complement the existing rules of law. Ensuring coherence of Guidelines with relevant pieces of legislation was a particular consideration in the drafting process. Consequently, some of the most important rules of this area are specifically mentioned in the Guidelines, namely:

- *The Public Administration Act* contains a number of administrative procedures that cover ethical aspects. Norway has provisions regarding the thoroughness of administrative decisions, among other things, that a case is to be explained as much as possible prior to administrative decisions. There are provisions about notification of the person(s) to which a case refers. The party shall also have an opportunity to make a statement before any decision is taken and has the right to appeal an administrative decision. The Public Administration Act also has competency rules intended to maintain trust in the public service. In the event that circumstances arise that can serve to weaken the impartiality of decision makers, the person in question must step aside. Moreover, the Public Administration Act contains rules about parties' right of access documents and the duty to provide guidance and confidentiality.

- *The Freedom of Information Act* has provisions regarding transparency and public access to government information and documents. These rules assign responsibilities and rights to administrative bodies and parties and thereby translate ethical principles into practical administrative procedures.

- *Non-statutory administrative principles,* for example knowledge about the misuse of authority, set standards regarding how judgement should be exercised. Public officials shall take into account all relevant considerations, treat identical cases equally, not take extraneous or arbitrary considerations into account and not adopt unreasonable decisions. Moreover, Norway has general non-statutory principles of 'good practice'.

- *The General Civil Penal Code* contains provision on corruption and trading. Serious forms of corruption have a sentencing framework of up to 10 years. The Code contains rules about "Felonies in the public sector".

- In this context, reference is also made to the *Human Rights Act* that gives a number of international conventions the status as Norwegian Law, for the protection of human rights and fundamental freedom.

- It is also a paragraph in the *Civil Service Act* that forbids public officials to accept gifts, commission, service or the like that is appropriated to, or intended by the donor to influence actions in their public service capacity.

- *The Working Environment* Act contains provisions about preserving the lives and health of the individual employees and ensuring the protection of the working environment. Among other things, employees have a duty to inform their employer, safety delegate and, insofar as necessary, other employees about faults or defects that could potentially endanger life and health etc. In December 2005 the Ministry of Labour and Social Inclusion presented a proposal concerning new rules for whistle-blowing in the Working Environment Act. The proposal has now been made law, and gives employees a right to report corruption, breach of safety rules and other critical conditions in the organisation. The proposal also bans employers from punishing an employee for whistle-blowing.

ANNEX II.1. POST-EMPLOYMENT GUIDELINES FOR POLITICIANS[65]

General information about the background of the Post-employment Guidelines

183. As a point of departure, please note that it is important that there be movement of personnel between the public and private sectors and that there should be no unnecessary impediments put in the way of such movement. It is assumed that very few situations will arise that might call for the use of instruments such as temporary restrictions. It will nonetheless be particularly important to take advantage of such options when special circumstances merit their use.

184. In connection with transitions from public to private employment, it is important to maintain confidence of the general public in the public service, and in civil and public servants as well as in the political leadership. Integrity and impartiality are absolute prerequisites in the public sector. Public officials are to act fairly, objectively, impartially and in compliance with established rules, but in order to maintain confidence, it is equally important that the public service be recognised by the outside world as acting so.

185. A public employer will have similar interest in ensuring that trade secrets and other in-house knowledge are not misused when an employee accepts a new position with a competitor. This consideration can warrant a temporary disqualification clause for employees in private organisations. Although State administrative agencies do not normally operate on competitive markets, the public service may also have a legitimate need for clauses on temporary disqualification and/or abstinence from involvement in certain cases. The public service is responsible for ensuring the administration's integrity and impartiality are not impugned when public servants and politicians accept new jobs. There are three factors that might warrant ordering temporary disqualification and/or abstinence from involvement in certain cases for politicians:

The need to protect confidential information

186. The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans, *e.g.* plans for the formulation of policy or rules. Such knowledge could result in illegal competitive advantages.

The need to protect other organisation's trade secrets, etc.

187. The State must seek to prevent an organisation from gaining access to confidential information about other organisations, including trade secrets, etc. Such knowledge could result in illegal competitive advantages.

The need to inspire confidence

188. The State must behave in an orderly fashion to prevent suspicions that politicians have taken advantage of their position to bestow special advantages on an organisation. Such suspicions could impair the confidence of the general public in the political system and in the integrity and impartiality of the public service.

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[65] Laid down by the Ministry of Modernisation on 29 September 2005 and Applicable as from 17 October 2005.

189. The post-employment guidelines are also intended to help avert the risk that a particular organisation will gain an unfair competitive advantage by hiring a particular person. The guidelines are also intended to prevent suspicions that a position might be a reward for earlier services.

190. The post-employment guidelines supplement a number of other rules intended to protect the integrity and impartiality of the public service, including the Public Administration Act's competency rules, rules on employees' obligation of loyalty, the public service's general fairness requirement (including the principle against abusing authority), the obligation of professional secrecy and employers' management prerogative.

191. However, the Public Administration Act's competency rules require that the conflict of interest in question be present already at the time the decision is taken by the public service. When an employee moves to a new position, any conflict of interest will typically arise at some future point in time, *i.e.* when the Public Administration Act's competency rules no longer apply.

192. The duty of loyalty can place constraints on the opportunity to use knowledge built up by a former employer, but it is not clear how far the duty of loyalty actually extends. The obligation of professional secrecy in §13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret subject to the obligation of secrecy.

Post-employment Guidelines for Politicians

1. Temporary disqualification

193. In *certain cases*, the Committee on Outside Political Appointments can decide that a politician cannot work or provide services for an organisation outside the public service for up to six months after leaving his or her public service position. Temporary disqualification will be ordered only in the event of a very direct connection between the politician's previous spheres of responsibility or duties and the relevant organisation's interests.

194. The Committee on Outside Political Appointments can also determine that a politician cannot work or provide services for an organisation outside the Norwegian public service for up to six months after leaving if special circumstances exist in conjunction with the person's earlier duties and responsibilities that have given or could give the organisation special advantages, or that might serve to undermine confidence in the public service in general.

2. Abstinence from involvement in certain cases

195. Instead of being subject to temporary disqualification, a politician can be ordered to abstain from involvement in certain cases for up to one year, provided this would adequately safeguard the considerations that must be protected, *cf.* Section 1. Where special circumstances so indicate, abstinence from involvement in certain cases can be ordered for up to one year in addition to temporary disqualification. Temporary restrictions shall not be imposed for a total of more than one year altogether, calculated from the time the person in question leaves his or her office.

196. The term ‘abstinence from involvement in certain cases’ refers to a ban on the politician’s getting involved in a case or in a field in which he or she has been directly involved by virtue of being a politician.

3. Subsequent transitions

197. Pursuant to Sections 1 and 2 above, temporary restrictions can also be ordered within one year from the time the politician leaves office in the event the politician does not make a direct transition to the position in question, etc.

4. The duty to disclose information

198. Two weeks at the latest before starting any new job, the politician is required to voluntarily disclose to the Committee on Outside Political Appointments the requisite information about starting a new job, accepting an office outside the public service, or starting a business. The duty to disclose information does not apply if it is obvious that temporary restrictions would not be relevant. The duty to disclose information applies to all new positions within one year after the politician leaves office.

5. Remuneration

199. Where a temporary disqualification is ordered, the politician shall receive remuneration during the disqualification period comparable to the net salary he or she had upon leaving office plus holiday pay. The State shall cover pension expenses during the disqualification period, corresponding to ordinary membership in the Norwegian Public Service Pension Fund/pension scheme for cabinet ministers.

200. In addition, during the temporary disqualification period, the person in question will be covered by group life insurance corresponding to the scheme in the Norwegian Public Service Pension Fund.

6. Agreed damages

201. If a politician breaches the duty to disclose information, *i.e.*, fails to report a position, an office or the start-up of a business of such a nature that temporary restrictions might have been imposed, the Committee can require the person in question to pay agreed damages.

202. Where a politician behaves at variance with temporary restrictions, the Committee can require the person in question to pay agreed damages.

203. The term 'agreed damages' refers to a penalty fixed ahead of time and comparable to up to six months' salary, to be paid to the State. The Committee on Outside Political Appointments shall stipulate the amount of the penalty in each individual case.

7. Administrative procedures in the Committee on Outside Political Appointments

204. The Committee on Outside Political Appointments has a deadline of one week, during which a meeting shall be held with the politician if so desired, to decide whether to impose temporary restrictions, calculated from the time when the person in question has disclosed the requisite information about an employment relationship, *cf.* Section 4 on the duty to disclose information. The meeting shall include all or part of the Committee.

205. The politician has a period of four days to make a statement, calculated from the date on which he or she is informed of the decision of the Committee.

206. The Committee on Outside Political Appointments must undertake a new assessment of the case within three days.

Other information

More details about the legal authority for temporary restrictions and the duty to disclose information

207. Temporary disqualification, abstinence from involvement in certain cases and the duty to disclose information can be imposed only if so stated in a royal decree sanctioning the appointment of ministers and state secretaries or in a letter of employment in the case of political advisers.

208. The letter of employment sent to all politicians shall also state that the Committee can require agreed damages if a politician breaches the temporary restrictions or the duty to disclose information.

More details about administrative procedures in the Committee

209. The Committee on Outside Political Appointments consists of four members, and simple majority decides cases. At least three members must be present to constitute a quorum. In the event of a tie vote, the chair shall have the casting ballot. Electronic administrative procedures may be used.

210. The Committee on Outside Political Appointments can authorise the secretariat to handle routine matters, and in such cases the secretariat will take instructions exclusively from the Committee. The Committee on Outside Political Appointments will decide what should be defined as routine matters.

211. Politicians shall also have the opportunity to ask for statements in advance. Such cases will be handled by the secretariat, and they will not have a binding effect on the Committee in future decisions. It is emphasised that the secretariat has a substantial duty to provide guidance.

212. It is also important to point out that the Committee on Outside Political Appointments and the secretariat are subject to the Freedom of Information Act, and also as regards cases involving statements made in advance.

213. The Ministry of Government Administration and Reform has the authority to issue supplementary rules on administrative procedures for the Committee on Outside Political Appointments.

214. For the record, it is important to point out that limitations can be imposed on politicians who return to the civil service in a ministry, and in this context reference is made to "The Guidelines for the Use of Temporary Disqualification upon Transition from a Political Position to a Ministerial Position".

ANNEX II.2. POST EMPLOYMENT GUIDELINES FOR THE PUBLIC SERVICE[66]

Introductory comments

215. As a point of departure, it must be underlined that it is important to have a flow of personnel between the public and private sectors and that there should be no unnecessary impediments put into place. It is assumed that a clause on temporary disqualification and/or abstinence from involvement in certain cases should only be incorporated into employment contracts in certain cases. Accordingly, there will be very few situations in which it will be necessary to take advantage of the instruments at hand such as temporary disqualification or abstinence from involvement in cases in connection with the transition to a new position outside the public service. It will nonetheless be particularly important to have such instruments available in cases in which special circumstances merit their use.

216. In connection with transitions from the public to the private sector, it is important to maintain the confidence of the general public in the State administration and in civil and public servants. Integrity and impartiality are basic prerequisites for public undertakings. The civil service must be impartial and independent in relation to outside players. The public service shall act fairly, objectively, impartially and in compliance with established rules but, for confidence to be maintained, it is equally important that the public service also be perceived by the outside world as doing so.

217. A public employer will also have an interest in ensuring that trade secrets and other internal corporate knowledge are not misused if an employee accepts a new position with a competitor. This consideration can warrant a temporary disqualification clause for employees in private organisations. Although State administrative agencies do not normally operate in a competitive market, State administrative agencies may also have a justifiable need for clauses on temporary disqualification and/or abstinence from involvement in certain cases. The State administration is responsible for preventing the administration's integrity and impartiality from being called into doubt when a civil or public servant accepts a new job. Accordingly, there are three special factors that might justify a temporary disqualification and/or abstinence from involvement in certain cases for civil servants:

The need to protect internal information

218. State administrative agencies must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans, *e.g.* plans for the formulation of policy or rules. Such knowledge could result in illegal competitive advantages.

The need to protect other organisation's trade secrets

219. State administrative agencies must seek to prevent an organisation from gaining access to confidential information about other organisations, including trade secrets, etc. Such knowledge could result in illegal competitive advantages.

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66 Issued by the Ministry of Modernisation on 4 July 2005.

The need to safeguard the general public's confidence in the public service

220. State administrative agencies must seek to prevent suspicions that a civil or public servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could impair the confidence of the general public in the integrity and impartiality of the administration.

221. A special legal provision must be established in an employment contract for an individual employee – a clause regarding temporary disqualification and/or abstinence from involvement in certain cases – if the employer is to be able to take advantage of these instruments. At the time of appointment, the employer must decide whether the position is of such a nature that such a clause will be required. The clause will then be applied throughout the entire employment relationship and for a specific length of time after the employee leaves. In the event the employee wants to move to another position that falls under the clause, the person in question can apply to the employer for an exemption.

222. Similar to a number of other rules, the Post-employment Guidelines for the Pubic Service were created to preserve the integrity and impartiality of the public service*, e.g.* the Public Administration Act's competency rules, rules regarding employees' duty of loyalty, the public service's general fairness requirement (including the principle against abusing authority), the obligation of professional secrecy and employers' management prerogative. In addition, the Ethical Guidelines for the Public Service that entered into effect in 2005.

223. Notwithstanding, the competency rules of the Public Administration Act govern conflicts of interest that already exist at the time decisions are taken in the public service. When an employee moves to a new position, any conflict of interest will typically arise at a future point in time, *i.e.* when the Public Administration Act's competency rules no longer apply.

224. The duty of loyalty can place constraints on the opportunity to use knowledge built up by a former employer, but it is not clear how far the duty of loyalty actually goes. The obligation of professional secrecy in section 13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret subject to the obligation of secrecy.

225. Employers' management prerogative implies that an employer can transfer an employee during the period of notice. This is a fairly non-invasive policy instrument and should be considered first, although it will not be sufficient in all situations.

226. Other than the confidentiality ensuing from the Public Administration Act, an employer can also order an employee to maintain relatively comprehensive confidentiality in connection with any change of position. An order that requires civil and public servants to maintain confidentiality about strategically important information will also apply after the person leaves.

227. As regards current employees' contact with former colleagues, it is important to raise awareness about how employees should act when former employees take contact. In this context, reference is made to the Ethical Guidelines for the Public Service.

228. The individual employer may issue complementary post-employment guidelines as needed.

Post Employment Guidelines for the Public Service

Where the nature of the position so requires, a clause on temporary disqualification and/or abstinence from involvement in certain cases in connection with a transition to a new position will be included in the employment contract from the beginning of an employment relationship.

229. The term 'temporary disqualification' refers to a ban for up to six months after leaving, on the employee being employed by or performing services for an organisation outside the public service that has or can have contact with the employee's sphere of responsibility or responsibilities as a civil servant. The same applies to organisations outside the public service, which for other reasons have or could have special advantages due to the employee's position as a civil servant.

230. The term 'abstinence from involvement in certain cases' refers to a ban for up to one year after leaving on an employee getting involved in cases or areas that involve the employee's spheres of responsibility or responsibilities as a civil servant.

Employment contracts are to cover the duty of an employee to report to his or her employer about all offers of new positions the employee might entertain. Similarly, the obligation to report shall apply to offices and plans regarding the start-up of economic activities.

231. Mandatory reporting shall apply during an employment relationship and for an agreed period of time after the employee leaves.

The employer may in writing grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee.

232. The exemption covers only the one specific position. In the event of a subsequent transition to another position within the period specified in the clause, the temporary disqualification and/or abstinence from involvement in certain cases will continue to apply.

233. An exemption shall be granted unless it refers to particular cases in which there is a very concrete link between an employee's spheres of responsibility and responsibilities as a civil and public servant, and the organisation that the employee would like to be hired into or provide services for.

The employer shall take a decision on the application for an exemption from temporary disqualification and/or abstinence from involvement in certain cases within one week from the time the employee has provided the necessary information about the new employment relationship; **cf.** ***Section 2 on the employee's obligation to report.***

234. The employee may make a statement in the case within one week of the date on which the employer's decision is communicated to the employee. The employee can request a meeting with his or her employer regarding the case, and may elect to be accompanied to the meeting by a union representative or other adviser/representative.

235. The employer must undertake a new assessment of the case within one week after the statement from the employee has been presented.

Where assuming a new position has to be deferred or is forestalled due to a temporary disqualification, the employee shall receive remuneration during the temporary disqualification period corresponding to the net salary the person in question had upon leaving plus holiday pay. The employer covers pension

expenses during the temporary disqualification period, comparable to ordinary membership in the Norwegian Public Service Pension Fund.

236. In addition, the employee will be covered by group life insurance in the Norwegian Public Service Pension Fund during the temporary disqualification period.

An employment contract shall cover agreed damages if the employee behaves at variance with the temporary disqualification or abstinence from involvement in certain cases, or breaches the obligation for mandatory reporting.

237. The term 'agreed damages' refers to agreement in advance about a penalty corresponding to up to six months' salary, calculated on the basis of the salary in the previous position.

The employer shall cancel the clause regarding temporary disqualification and/or abstinence from involvement in certain cases in writing in the event the factors that justified the clause no longer apply.

ANNEX II.3.

ETHICAL GUIDELINES FOR THE PUBLIC SERVICE[67]

Foreword

238. High ethical standards for the provision of services and the exercise of authority are a prerequisite if the citizenry is to trust the public service. The goal of these general ethical guidelines is to ensure that all State employees are aware of this. The ethical guidelines are to be of a general nature, rather than providing detailed rules. They are intended to be general guidelines that call for reflection on the part of the individual employee. The provisions included in them are not always exact, but rather specify legal standards.

239. The guidelines have evolved from ethical values and norms of universal validity such as justice, loyalty, honesty, reliability, truthfulness and the golden 'do unto others' rule.

240. Norway has many rules of law (statutory and non-statutory) that impact values and ethics in the public service. The ethical standards that apply at any given time have an impact on the framing of legislation and other regulations. From this perspective, these guidelines complement the existing rules of law.

The scope of the guidelines, and local responsibility

241. The guidelines shall generally apply to the entire public service, implying that all State government bodies are subject to them. State-owned enterprises and other State enterprises and institutions must consider the need for introducing their own ethical guidelines.

242. The Ministry of Government Administration and Reform requires that each individual organisation applies the guidelines to further develop and improve ethical awareness among its employees, thus establishing a firm foundation for managers and employees to engage in ethical reflection.

243. Each individual organisation must review whether it needs to supplement the guidelines, based on the individual organisation's requirements.

244. Consideration for the employees and the protection of a good working environment are discussed under several sections of the guidelines. It is important that employees have professional and personal development opportunities and that individuals' needs be taken into account when work is organised. Consideration for employees will be embodied in an organisation's personnel policy, but the individual organisation must also be prepared to supplement the general ethical guidelines in this area.

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[67] Issued by the former Ministry of Modernisation on 7 September 2005 (Now: The Ministry of Government Administration and Reform).

245. Behaviour or actions at variance with the general ethical guidelines do not carry special sanctions, but breaches of the provisions that apply to conflicts of interest, for example, could result in a decision being declared invalid. An act or failure to act in the service could be considered dereliction of duty, and could lead to service sanctions. An act or failure to act in the service could also be so serious that it could lead to prosecution and punitive reactions. Clear-cut breaches of statutory provisions will normally also constitute breaches of ethical and administrative guidelines of universal validity.

246. Even if a service-capacity act or failure to act does not entail a clear-cut breach of laws or formal regulations, it can be brought to bear in a personnel case if it entails a breach of ethical guidelines. Where ethical guidelines have been made known throughout an organisation, not least to individuals, breaches of the guidelines will be a factor that can be emphasised, for example, in an overall assessment of the relevant public official's suitability for a position or in connection with an internal application for a new position, where it is fair to require compliance with the organisation's ethical guidelines.

Employers, managers and employees

247. As an employer (represented by the Ministry of Government Administration and Reform), the State bears the ultimate responsibility for providing ethical guidelines and ensuring compliance. Top management in ministries and subordinate organisations bears special responsibility for follow up. This is primarily because managers, through their words, actions and management style, exert a strong influence on the culture and standards of conduct that apply in an organisation. Secondly, it is because top managers can be put in situations where choices and decisions call for ethical reflection and wisdom. Thirdly, it is because top managers are responsible for ensuring that the entire organisation is aware of the ethical standards that apply, and for ensuring that the organisation addresses any breaches of laws or regulations immediately in order to avoid the emergence of unfortunate customs or culture.

248. Individual employees are required to familiarise themselves with the provisions and instructions that apply to their positions at any given time, and they are personally responsible for the best possible compliance with the guidelines.

The structure of the document

249. The guidelines per se are highlighted in grey boxes in this document, while the accompanying text comprises the Ministry of Government Administration and Reform’s comments to the individual guidelines. The introduction to each main section includes comments on its key points.

250. The guidelines generally use the concept ‘citizenry’, also where it might be natural to use concepts such as citizen, audience, customer or user.

ETHICAL GUIDELINES FOR THE PUBLIC SERVICE

1. General provisions

251. Public officials shall be guided by ethical and administrative values and norms of universal validity. Each employee bears individual, independent responsibility for contributing to the confidence and prestige accruing to his or her organisation. State employees shall neither let their own self-interests affect the way in which they deal with cases or other work, nor let consideration for their own or their organisation's convenience or prestige affect their actions or decisions.

Concern for citizens

As the exerciser of authority, provider of services and steward of significant social resources, the central government administration and thus the individual employee is obligated to consider the public interest, to strive to achieve equal treatment and to treat individuals with respect.

Comments

252. Upon performing the duties of office, especially in exercising administrative authority, a balance will often have to be struck between general social considerations, protecting the principles of government for the citizenry (*e.g.* legal safeguards) and the individual citizen's special interests. First and foremost, we must bear in mind that the Public Service exists to serve the citizenry.

253. In both the exercise of authority and the provision of services, each and every public official shall be considerate, friendly, polite, correct and accommodating to the public in written as well as verbal communication. This applies even when the other party does not maintain the same decorum.

254. All communication must be worded so that it is easily understood by the recipients.

255. All legislation and regulation provisions about confidentiality and the protection of privacy shall be observed. An individual public official shall always respect an individual citizen's personal integrity.

256. It is important to be aware of the needs, values, norms and expectations of members of ethnic minorities, both in communication and in the wording of administrative decisions and the delivery of services.

Regard for the State's reputation

The individual employee is required to perform his or her duties and behave in an ethical manner, and thus avoid damaging the State's reputation.

Comments

257. Whether the public official is acting in his or her own organisation, in other public or private organisations in Norway or abroad, the person in question will first and foremost be perceived as a representative of his/her employer, as well as of the State as a whole. The last phrase applies in particular

when the person in question is acting in an official capacity abroad or receives foreign nationals on official visits to Norway. It is important in every context to understand other countries' cultures, religions and political systems. Reference is also made to Sections 4.5 and 4.6 on accepting and being offered gifts and other emoluments.

258. Furthermore, reference is made to the ethical guidelines pertaining to the sale or acceptance of sexual services (State Personnel Handbook 2005, Section. 2.6.11). These guidelines emphasise that an employee should not behave in a manner that can infringe on human dignity or that lends itself to discrediting the organisation or Norway. This entails that an employee on assignment for the State in Norway or abroad shall abstain from the buying, etc. of sexual services.

2. Loyalty

259. The duty of loyalty is a common contractual principle, and it ensues from the employment relationship that there is a reciprocal duty of loyalty between employee and employer. Employees' duty of loyalty implies that employees must behave in the public interest. Among other things, employees shall not groundlessly discuss their employer or the public service in negative terms. For its part, the employer shall ensure that employees' interests are safeguarded insofar as possible, and managers bear special responsibility for helping protect employees who disclose and report wrongdoing.

Duty of obedience

Public officials are required to comply with the legal rules and ethical guidelines that apply to the activities, as well as to follow orders issued by superiors. The duty of obedience entails no obligation to follow orders to do anything illegal or unethical.

Comments

260. It follows from the duty of loyalty that public officials should raise the necessary objections before a decision is taken, meaning the preparatory proceedings must present the most comprehensive picture possible of relevant considerations and values. Once a decision is taken, it also follows clearly from the duty of obedience that the decision shall be implemented swiftly and efficiently within the established parameters, regardless of the public officials' professional and political views of the decision.

261. Public officials shall not assist administrative superiors or the political leadership of the ministries by giving incorrect or misleading information to the media or the general public. The duty of obedience carries no obligation for employees in the State administration to perform duties beyond what would be considered the sphere of the minister's official duties, *e.g.* to prepare election campaign material for those holding political office, or by other means to contribute directly to the activities of political parties.

262. Public officials shall not have contact with parliamentary committees or committee fractions without this being cleared with the ministry in charge, nor shall they order anyone else to act on behalf of the organisation. The *Storting* and its committees and committee fractions must nevertheless be able to question public officials by virtue of their special knowledge and expertise, without the sectoral ministry in question having to clarify which experts the *Storting* would like to call in.

263. Employees' freedom of expression must be assessed relative to the duty of loyalty to the organisation. It is important that public officials take part in an open, independent and comprehensive dialogue on social issues, but the duty of loyalty implies that a public official may have somewhat less

latitude in the right to express opinions in his or her own field of expertise than in other areas. To avoid a public official's personal opinions from being perceived as an expression of an organisation's point of view, an employee who makes statements in an organisation's sphere of responsibility must always point out that the statements are personal opinions.

Duty to report

In order to implement measures to avoid or limit losses or damages, public officials are required to report to their employer any circumstances of which she or he is aware that could cause the employer, employee or the surroundings to suffer losses or damages.

Comments

264. Breaches or well-founded suspicions of breaches of safety regulations or other factors that endanger the life or health of employees or the general public are examples of actions and circumstances that should be reported. The same applies to corruption and crimes or irregularities. As regards corruption, it will be especially important to provide the most accurate and comprehensive information possible about the giver and receiver of bribes, *cf*. General Civil Penal Code § 276 a, 276 b and 276 c. Under the circumstances, one viable alternative to in-house notification might be to contact the police or the supervision or inspection authorities. This will not normally be perceived as a breach of the duty of loyalty, *cf*. Section 3.4.

265. The expression 'other irregularities' indicates that the situation must be of a certain severity and in this context 'gossip' should not be encouraged. How an enterprise's employees should react, for example, to colleagues' bad behaviour towards other colleagues, clients or users in general, is a question that must be clarified through internal dialogue, possibly by issuing special guidelines in the individual organisation.

266. Reports shall normally be made to one's immediate superior, who is responsible for dealing with the matter further. If the employee finds it difficult to go to his or her immediate superior, he or she should report to another superior. See also Section 3.4.

267. Managers bear a special responsibility for ensuring that employees, who in good faith report unlawful or unethical situations or acts, or well-founded suspicions regarding same, are not subjected to reprisals or the like by their employer or colleagues.

Duty of efficiency

Public officials are required to use and preserve the State's resources in the most economical and rational manner possible, and shall not abuse or waste the State's funds. Reaching the established targets in a good and efficient manner requires striking a balance between efficiency and the use of resources, thoroughness, quality and good administrative practice.

Comments

268. Naturally, the concept "State funds" extends beyond budgetary resources, encompassing everything from buildings, vehicles and machinery to office supplies and electronic services. In this connection, it might be natural to refer to the fact that the State has relevant regulations that apply to travel, procurement, food and drink, etc.

269. The duty of efficiency cannot be assessed separately from other considerations the public service must take into account when discharging its authority. Swift and efficient production and goal achievement must be weighed against quality and thoroughness, *cf.* here the Public Administration Act's rules and the unwritten rules for good administrative practice. Requirements for efficiency, thoroughness and quality might vary in different fields. Generally, we must, however, be justified in saying that the more radical an administrative decision is for a party or for a larger group, the higher the standards must be for thoroughness and quality. The quest for efficiency must not preclude the recognition of important administrative principles.

270. The duty of efficiency must also be seen in the light of aspirations regarding an inclusive working life. Employees, and in particular managers, are responsible for counteracting exclusion in working life, and for building health-promoting workplaces and preventing stress and burn out.

3. Transparency

271. The State administration must practise transparency externally in respect of the citizenry as well as within its own ranks and between the different administrative branches. This is a prerequisite for the general public's trust in the public service, and counteracts reproachable behaviour and a lack of culture. Freedom of information and frank discussion are essential for a smoothly-functioning democracy. There is a correlation between the requirement for transparency and loyalty and the obligation to report wrongdoing. To get a general idea of how far the duty to report extends, for example, specific questions must be considered in the light of the requirement for transparency and loyalty, implying that the final answers and any dilemmas that arise will vary from case to case.

Freedom of information

There should be openness and transparency throughout the administration so that the general public can understand the State's activities, and thus gain insight into how the State attends to its responsibilities.

Comments

272. The most important statutory provisions in this context are in the Freedom of Information Act's regulations on transparency and public disclosure. Compliance is mandatory not only with the wording of the provisions, but also with the spirit of the provisions. The provisions ought to be practised as transparently as possible. Consideration for an organisation's reputation will, for example, not be accepted as an argument to support non-disclosure.

Active duty of disclosure

The State has an active duty of disclosure. Public officials should always provide correct and adequate information, whether to other authorities, companies, organisations or the citizenry. In certain contexts, this will mean that one should, of one's own volition, disclose information of significance needed for the processing of a case.

Comments

273. The active duty of disclosure is intended to support citizens' participation in democracy, as well as to accommodate different groups' need for information about their duties, rights and possibilities. The information must be correct as well as adequate. This means that important information must not be held back, neither for the sake of convenience nor for other reasons.

274. Neither administrative nor political superiors shall order or urge subordinates to provide incorrect or misleading information. It is a right, and in some cases it ensues from the duty of loyalty, that a subordinate can bring a matter to the attention of his or her superior. In some cases, it can be right for a public official to go outside the organisation with knowledge or suspicions of incorrect or misleading information that has been given. Otherwise, please see Section 2.2 on reporting and Section 3.4 on notification.

Employees' freedom of expression

Like everyone else, public officials enjoy a fundamental right to express critical opinions about the State's activities and all other matters.

Comments

275. Freedom of expression is a fundamental human right that rests on substantial considerations for society and individuals. Public officials enjoy the same basic freedom of expression as any other citizen, *cf.* §100 of Norway's Constitution. This also applies to fields directly related to the organisation in which a public official works. Owing to the general public's right to insight and information, it is important that public officials, given their expertise, be entitled to cast a critical, competent perspective on the social debate. Public officials must also have the opportunity to express opinions in their own fields of expertise, even though their duty of loyalty to their organisation may place some constraints on their freedom of expression. The quality of the public debate would suffer if those who work specifically with the cases in question were not allowed, or did not want, to participate in the debate.

276. The employer shall lay the foundation for a culture in the workplace that ensures that relevant information – including critical opinions – reaches the correct level internally, and that there is broad acceptance for employees to participate in the public debate based on a liberal interpretation of the concept of loyalty. Any restriction on the freedom of expression must be specially justified. Employees' duty of loyalty to their organisation can constitute such special justification. As a point of departure, only statements that could potentially damage the organisation's interests can be limited based on the duty of loyalty. Any restriction on an employee's freedom of expression must be both relevant and fair in the individual case, and the restrictions must extend no further than necessary.

277. The job or position of the person who makes a statement will also be a factor in deciding whether a statement should be considered a breach of the duty of loyalty to the organisation. The higher the position of the person in question, the stricter the duty of loyalty will be. In the event the person who makes the statement could be perceived as representing the organisation, it is important to make it clear that the statement is the person's personal opinion. As regards ministry employees, the closer the employee is to the political leadership, the more caution he or she must exercise to ensure that the civil service does not publicly express opinions that run counter to those of their own cabinet minister.

278. For employees of universities, university colleges and research institutions, part of their job is to contribute to the social debate, to express expert opinions, etc. Although employees at these institutions also have a duty of loyalty, their responsibilities include contributing to critical debate. Moreover, by virtue of their positions, the employees have an obligation to perform research and communicate their results, meaning they have the right and obligation to make their research results known even if they run counter to adopted policy.

279. Although there must be certain limitations ensuing from the duty of loyalty, public officials, like other members of society, should be encouraged to participate in the public debate. The fact that an

organisation has appointed a spokesperson does not mean the other employees are subject to a gag order. However, it must be completely clear when a public official is expressing his or her own personal opinion and is not speaking on behalf of the public service. When this is managed prudently, neither the employer nor colleagues should cause difficulties of any kind for a person who publicly expresses a critical opinion about the public service in general or their own organisation in particular.

280. Shop stewards are in a special situation since it is their job to defend employees' interests. This can mean that it would take more before statements made by a union representative are considered to breach the duty of loyalty when the person in question is acting as a union representative.

Whistleblowing

Public officials must be able to report circumstances in the public service that are worthy of criticism. Before a report is filed, an attempt should be made to sort the matter out in-house.

Comments

281. The principles of transparency and public scrutiny of the public service require that the general public has access to information on activities in the public service worthy of criticism. In some cases, this means that public officials must be able to give the general public factual information about matters involving wrongdoing. As pointed out in Section 3. Transparency, the question of the right to provide information to the general public is also considered in the light of considerations to loyalty and the duty to report (in-house) about situations in the organisation involving actual or suspected wrongdoing.

282. Experience from Norway and other countries indicates that although whistleblowing is applauded by the public and considered beneficial to society, it can be a great burden for the whistleblower him- or herself, not least in his or her relations with colleagues and superiors. Accordingly, it is important to point out that those thinking about reporting a situation they consider to be serious should ask themselves about their motive for whistleblowing and whether, objectively speaking, the situation must be deemed serious. The individual should also consider whether or not it is possible to deal with the case in-house. One alternative to going to the media might be to contact a public field office or inspection authorities about the matter. This would not generally be perceived as a breach of the duty of loyalty.

283. Although whistleblowing can place a heavy burden on the individual, the introduction of guidelines for whistleblowing and the provisions in the Working Environment Act for protecting the whistleblower could in themselves improve routines for internal reporting and direct more focus towards quality assurance work.

284. A whistleblower's warning must be motivated by a desire to improve the situation in the workplace, to inform the citizenry about conditions in the organisation, or to promote the interests of users, the organisation or society.

285. An employee should normally contact his or her superior before going public with criticism. However, it is not always possible to go to one's superior first. There may, for example, be suspicions of criminal offences committed by leadership. In such a situation, it will usually suffice to report the matter to the police. Any statements should have the actual facts straight. Here, it will be sufficient if the employee has done what he or she can to put the true facts on the table.

4. Confidence in the public service

286. To preserve and enhance the general public's confidence in the public service, it is especially important that decisions not be influenced by extraneous factors.

287. Norway's most important rules for ensuring trust in the public service are the competency rules in §6 of the Public Administration Act. In addition, we have rules relating to second jobs, temporary disqualification provisions in connection with the transition to another job and a ban on accepting gifts in one's professional capacity. Collectively, these rules cover different aspects by ensuring that public officials are not swayed by subjective considerations, and that the State's interests and trust in the public service are maintained intact.

Impartiality

Public officials shall not behave in a manner that might impair faith in their impartiality.

Comments

288. Reference is made to §6, first and second subsections, of the Public Administration Act. The first subsection establishes that a public official is disqualified from preparing a decision or from making any decision in an administrative case, inter alia, when he or she personally, or his or her family is a party to the case, or when he or she is a representative of a party to the case.

289. It is especially important to be aware of the considerations that must be taken into account under the second subsection, which states that a public official is disqualified when circumstances exist that could impair trust in his impartiality. Emphasis should be attached inter alia to whether the decision in the case may entail any special advantage, loss or inconvenience for him or her personally or for anyone with whom he or she has a close personal affiliation.

290. The individual is personally responsible for disqualifying him- or herself, and for stepping aside when a case so requires.

291. Certain combinations of roles could lead to conflicts of interest, or allegations of conflicts, raising questions about a public official's independence and integrity. This can, for example, apply when public officials in the central government administration serve on boards and committees, etc. It is therefore important to avoid combinations of roles that involve frequent disqualification.

Outside and second jobs

A public official cannot have outside or second jobs, directorships or other paid assignments that are not compatible with the legitimate interests of the State as an employer, or that lend themselves to undermining trust in the public service.

There must be transparency about the potential impact of public officials' outside and second jobs, etc. on the discharge of their duties.

Comments

292. According to the duty of loyalty, in some cases, an employee should furnish information about an additional job on his/her own initiative. This is true when there could be doubts about whether the second job is consistent with an employer's legitimate interests.

293. An employer cannot exercise its management prerogative to generally require all employees to provide information about second jobs. However, in specific cases, the employer can request such information if there are doubts about whether an employee is entitled to have such a second job.

294. An individual contract of employment can require that an employee is contractually obligated to provide information about second jobs.

295. It follows from Section 1.1.4 of the Basic Collective Agreement for the Civil Service in the State that public officials cannot have outside part-time positions or other paid assignments that impair or impede their ordinary work, barring special orders or permission. Nor can he or she contribute to disloyal competition with the State organisation in which he or she is employed. Among other things, public officials cannot accept employment or engage in commercial activities that can make them prejudiced more often than just sporadically, or get into a conflict of loyalties with the public organisation by which the person in question is employed. Cases of doubt should be discussed with the employer in advance to avoid potential difficulties for the employee or employer and to preserve confidence in the public service.

296. Reference is also made to administrative provisions regarding outside work, etc., *cf.* State Personnel Handbook 10.13 (2005).

297. As regards the appointment of public officials to boards and committees etc., reference is made to the special provisions in the State Personnel Handbook 2005, Section 10.14. From this, it appears that civil or public servants cannot be appointed, or be nominated or elected to the boards, councils etc., if the person in question is employed by a ministry or the State administration otherwise, and his or her job involves dealing with complaints about decisions made by the entity in question. The same applies if the person in question works with the organisation in question or with other matters of significance for the organisation.

The transition to other organisations

When a public official leaves the public service, it is important to ensure that the citizenry's trust in the public service is not impaired, or that the State's interests in a negotiation or other interaction are not affected. The employer must therefore consider whether certain positions should be subject to a temporary disqualification clause in the employment contract.

Comments

298. Reference is made to the Post-employment Guidelines which entered into force on 15 February 2005. Temporary disqualification and/or abstaining from involvement can only be ordered pursuant to a special clause in a contract of employment. The clause should be included when new contracts of employment are signed if the nature of the job is such that, after closer evaluation, it is considered necessary to include a period of temporary disqualification and/or abstinence from involvement when the person in question leaves the position.

299. The goal of introducing rules for temporary disqualification and abstinence from involvement is to preserve the citizenry's confidence that the public service is neutral and independent in relation to external players, and that public officials behave objectively and fairly, and in keeping with established rules and standards. The rules are also intended to help avert the risk that a particular organisation, by hiring a former public official, gains an undue competitive advantage. In the event a contract of employment does not contain a temporary disqualification clause, the employer can instead, within the parameters of the contract of employment, move the employee to a less central function or to another field during the term of notice.

Contact with former colleagues

All employees must be careful about how they treat confidential information. This includes in respect of former colleagues, especially if they represent an interested party in a matter where the State is the decision-making authority, or if they are employed by an organisation engaged in interaction or negotiations with the State.

Comments

300. As a supplement to the provisions on temporary disqualification and abstinence from involvement, it is important that the employee be careful about how confidential information is treated.

301. Former colleagues are more familiar than the rest of the general public with issues and problems in the organisation, so public officials must therefore be especially careful about the information they share with them. This applies not least to colleagues who have moved to an enterprise engaged in interaction or negotiation with their own organisation, in case these colleagues might want to take advantage of their former network of contacts.

302. Naturally, this does not imply that anyone should avoid social contact with former colleagues.

Accepting gifts and other perquisites

Public officials shall not, on their own behalf or on behalf of others, accept or facilitate the acceptance of gifts, travel, hotel accommodations, hospitality, discounts, loans or other contributions or perquisites that are appropriate to, or intended by the donor, to influence their work.

Public officials must not use their position to gain an undue advantage for themselves or anyone else. This also applies in cases where these advantages would not affect their service-capacity actions.

Comments

303. The ban on gifts also applies to public officials on business trips or assignments abroad. Where special cultural factors or diplomatic exigencies mean that not accepting a gift would be perceived as an

insult to the donor and thus damage the interests of the Norwegian public service, a gift or other perquisite that would be unacceptable in Norway can nevertheless in certain cases be accepted if this is commensurate with accepted local customs. However, such gifts or contributions must be turned over to the public official's employer upon returning home.

304. Money, or assets that can be equated with money, such as loans, discounts, etc., must never be accepted, regardless of the customs in the country in question.

305. In connection with the performance of their duties, public officials might be invited to meals, performances, on trips, etc. Meals, and to a certain extent also entertainment, might be a natural part of a programme for official visits abroad or in Norway, for example. Official dinners and cultural events will not normally present a problem. However, if a visit abroad or in Norway takes place as part of negotiations for contracts or to get demonstrations of products and/or services, the general rule should be that all travel and subsistence expenses be covered by the organisation sending its employees on the business trip.

306. Representatives of State organisations are sometimes invited to sports or cultural events by vendors or parties that are in an application or negotiation process with the organisation. In each individual case, careful consideration should be devoted to whether the organisation should accept such invitations. The general rule is that all expenses in connection with such invitations ought to be covered by the organisation itself if the invitation is accepted. Invitations from State-owned organisations and private enterprises should be treated equally in this context.

307. The State's letterhead and logo shall never be used for personal correspondence.

Offers of gifts and other perquisites

Public officials shall not, as part of discharging their duties, give or offer gifts or other perquisites that are appropriate to, or intended to, sway the recipient's service-capacity actions.

Comments

308. Public officials must not give or offer anyone a gift or advantage as part of the discharge of their duties, with the intent of influencing the recipient's advice or decisions, for example, in connection with contract negotiations or the like. For public officials, it could be considered corruption to accept such a donation or advantage by virtue of one's position. Public officials could also contribute to corruption if, by virtue of their position, they offer someone such a gift or advantage, for example, to gain support in negotiations for the sale or delivery of goods or services. Although the offer was not actually intended to influence the advice or decisions of the person in question, the very fact that a public official has tried to influence someone could impair the general public's trust in the public service. This would be incompatible with current standards for good administrative practice. However, it will still be possible to give tokens of esteem on the occasion of State visits, political visits, delegation visits and the like, when the size or value of the gift is commensurate with the standards of common courtesy.

309. Similarly, it would not be compatible with one's position as a public official to offer someone an advantage to be bestowed at a later date, for example, after the person in question is no longer with the organisation in question, such as a job, bonus or the like.

310. Such actions are punishable by law, *cf.* §§ 276 a-c of the General Civil Penal Code.

5. Professional independence and objectivity

311. Professional independence must be seen in the context of loyalty and neutrality. The requirement regarding professional independence applies to the entire public service with a view to preparing and deciding cases, consultancy and the presentation of information.

Professional independence

The principle of professional independence means that public officials should use their professional knowledge and professional judgement to discharge their duties.

Comments

312. Professional knowledge and professional judgement should form the point of departure for public officials' administrative work. The degree of professional independence will vary somewhat in the public service with a view to the extent of formalisation, *cf.* that some government agencies are more or less independent of instructions from superiors, although the principle nevertheless applies equally to all State employees. Most public officials are engaged in managing adopted policy, so the question of professional independence is not normally put to the test. Public officials must also remain cognisant of the fact that they will probably be required to serve under changing political regimes.

313. The principle of professional independence entails a right and an obligation to raise justified exceptions or objections to the political and administrative views of superiors and to established practice, where so required. The duty to make the administration aware of weaknesses in opinions or practices can nonetheless also be explained by the principle of loyalty.

314. The principle of professional independence does not imply any right to ignore points of view, decisions, practices, etc. that the political or administrative leadership continues to maintain after the subordinate has expressed his or her doubts, unless unlawful or unethical decisions, etc. are involved.

315. Where a case officer's professionally well-grounded proposal for a solution to a case is set aside in favour of a solution that he or she maintains is professionally untenable or poor, the person in question has the right to make his or her view known in the case (for example, by including it in the preparatory documents). The ministries have a special rule pertaining to this. Regardless of working methods, an employee of a ministry bears the obligation and right to make his or her view known in a manner that it can be communicated to the head of the ministry (*i.e.* the cabinet minister), *cf.* Regulations for the ministries' organisation and administrative procedures, §2, no. 3, last subsection.

316. Ministerial employees face special challenges since the ministries also act as secretariats for the political leadership. Ministerial employees serve the cabinet minister in his or her capacity both as head of a ministry and as a member of the government, but not as a party member. On the one hand, ministerial employees give sound advice to the political leadership, regardless of which political colour is at the political helm, while on the other, they implement adopted policy decided by the same political administration. In other contexts, the employees may have to act on behalf of an authority and take a position on orders, permits and complaints, etc. in relation to individuals. It is important that the individual organisation conducts a dialogue regarding the roles the organisation intends to perform, which challenges these roles engender and how the roles should be handled. A well thought through understanding of his or her role could help an individual employee when he or she faces an ethical dilemma or an ethical challenge.