

Unclassified

GOV/PGC/ETH(2006)4

Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

19-Jan-2006

English - Or. English

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE  
PUBLIC GOVERNANCE COMMITTEE**

GOV/PGC/ETH(2006)4  
Unclassified

**DESIGNING AND IMPLEMENTING POST-PUBLIC EMPLOYMENT REGULATIONS  
FOR CIVIL SERVANTS AND POLITICIANS: THE NORWEGIAN INITIATIVE**

**Expert Meeting on Managing Conflict of Interest in the Public Service**

**26-27 January 2006  
Château de la Muette, Paris**

*This paper supports discussion in Session II by outlining recent initiatives in to design and implement post-public employment regulations in Norway.*

For further information, please contact János Bertók: E-mail: [janos.bertok@oecd.org](mailto:janos.bertok@oecd.org);  
Tel: +33 1 45 24 93 57; Fax: +33 1 45 24 85 63.

**JT00197209**

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format

English - Or. English

## DESIGNING AND IMPLEMENTING POST-PUBLIC EMPLOYMENT REGULATIONS FOR CIVIL SERVANTS AND POLITICIANS: THE NORWEGIAN INITIATIVE

Ms. Cecilie Fauchald Rygg<sup>1</sup>

### *Introduction*

#### *1. Background*

Since the 2003 OECD Recommendation on Managing Conflict of Interest in the Public Service, the Norwegian Government has reviewed issues significant to maintaining integrity in government and approved the following three documents:

1. Post-employment Guidelines for the Public Service
2. Post-employment Guidelines for Politicians
3. Ethical Guidelines for the Public Service.

The Ethical Guidelines were published and distributed in September 2005 after extensive consultation, including a seminar in Spring 2005 for top central governmental executives.

The process before launching the guidelines regarding post-employment for the public service took several years. The Parliament (Storting) asked the Government twice to clarify problems and ambiguity that can arise with transition between a political position and a position in the senior civil service, and with transition from a position in the civil service to a position outside the government administration. In a report to the Storting (St. meld. Nr 11 2000-2001) and in the following Recommendation (Inst. St. Nr 175 200-2001), different solutions were considered. An important issue was whether a clause of “temporary disqualification” or “abstinence from involvement in certain cases<sup>2</sup>” in connection with transition to a new job 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 legal expertise, the final solution was to use the clause only in certain cases or for certain positions.

The completion of the Post-employment Guidelines for the Public Service was almost finalised when the former Norwegian Government decided that parallel rules should be considered for politicians. The Post-employment Guidelines for Politicians were applicable from 17 October 2005. With the change in government in September 2005, the Guidelines have already been put to use.

---

1 . This paper was prepared and edited by Ms. Cecilie Fauchald Rygg, Adviser, Department of Employers Affairs, Ministry of Government Administration and Reform, Oslo, with some help from Ms. Ottil Fasting Tharaldsen, Deputy Director General, Department of Employers Affairs, Ministry of Government Administration and Reform, Oslo. It is based on the original, translated documents - the Guidelines - prepared by a working group in the Ministry and led by Ms. Cecilie Fauchald Rygg.

<sup>2</sup> For definitions and details see p. 4 in section 1.2.

## ***2. Changes in the Norwegian Government Administration***

Why this activity on the part of the Norwegian government last years? Even though there have been few cases of corruption in Norway, compared with other countries, the ones that have occurred have got a great deal of publicity and opened up for a broader discussion about the fundamental mission of government and public institutions. It has also revealed the need for more information about the existing rules, statutory and non-statutory, impacting values and ethics in the public service.

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 amount of reforms have taken place, and are still continuing in the public sector, and the government sector has been 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 and 1998.
- 70 units have undergone major restructuring between 2000 and 2004.

It is an open question as to 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, the possibility for public officials to allow their private interests and affiliation is growing. The level of trust in public sector has been traditionally high in Norway, and surveys show that the trust was higher when citizens had direct contact with the public service.

However, last year's exposure of fraud and bribery especially in the local communities can have affected citizens' thinking about corruption. A recent survey indicates that only one out of 10 has confidence in the authorities' ability to clear up such events. 40 percent say that they have little confidence in the authorities' ability, and 50 percent think that corruption has increased in the public sector in Norway.

## **1. Post-Employment Guidelines**

### ***1.1 Introductory remarks***

In the introductory comments to both the guidelines for the public service and for the politicians, the importance of having mobility between the public and the private sectors is underlined. No unnecessary impediments should exist. It is also assumed that very few situations will arise that might call for the use of instruments such as temporary disqualification or abstinence from involvement in cases in connection with moving to a new position outside the public service. Nonetheless it will be profoundly important to take advantage of such options in cases in which special circumstances merit their use.

In connection with transitions from public to private sector, it is important to maintain public confidence in the State administration and in civil and public servants. Integrity and impartiality are basic prerequisites for undertakings. The public service must be impartial and independent relative to outside players and it is equally important that citizens perceive the public service as acting fairly, objectively, impartially and in compliance with established rules.

The guidelines for 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 Public Administration Act's competency rules, rules on employees' obligation of loyalty, the public service's general fairness requirement (including the doctrine on the abuse of authority), the obligation of professional secrecy and employers' management prerogative.

However, the Public Administration Act's competency rules refer to a situation when conflict of interest is present at the time the decision is made by the public service. When an employee moves to a new position, any conflict of interest situation will typically arise at some future point in time, when the Public Administration Act's competency rules no longer apply.

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 scope of 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 that is subject to the obligation of secrecy.

### ***1.2. The Post-Employment Guidelines for the Public Service***

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

- **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. for the formulation of policy or rules. 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. 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.

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. Also positions in close contact with the positions mentioned above could have a need for such a clause. The same is true for positions with authority to negotiate or purchase.

The term "temporary disqualification" refers to a ban for up to six months after leaving office, laid upon 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. 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.

The term "abstinence from involvement in certain cases" 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.

The clause in the contract states that the employee shall report to the employer about offers of new positions that he or she might consider. The employer can grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee.

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

An employment contract shall also 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.

### ***1.3. The Post-Employment Guidelines for Politicians***

The Post-employment Guidelines for Politicians are almost homogenous with the ones elaborated for the public service with some exceptions primarily regarding the decisive authority. The Standing Committee on Outside Political Appointments has the authority to decide that a politician cannot work or provide services for an organisation outside the public service after his engagement as a minister, political secretary or political adviser. The Committee has been appointed by a royal decree, and cannot be given instructions from the Government.

The temporary disqualifications (up to six months) will be requested only 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 conjunction with the persons' 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 protects the interest that must be protected.

The term "abstinence from involvement in certain cases" refers here to a ban on the politician's getting involved in a case or in a field in which the person in question has been directly involved by virtue of being a politician.

At least two weeks before starting the new job, the politician is required to voluntarily give the Committee information about starting a new job or accepting a position outside the public service, or starting a business. Such an obligation to provide information 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 within one year after leaving political office.

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

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.

#### ***1.4. Administrative procedures in the Standing Committee on Outside Political Appointments and the experience of their application***

On 17 October 2005, when the new Government came into office, about 70 politicians from the former Government left their offices, namely:

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

Until 5 January 2006, 29 of them raised formal cases for the Standing Committee on Outside Political Appointments. Five of them 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 some of the other politicians.

Eight politicians, including three ministers have so far been given restrictions in the form of temporary disqualifications – ranging from three to six months – and/or abstinence from involvement – up to nine months– in certain cases.

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

The experience so far, after only three months, is 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.

It could be assumed that beyond the successful application of 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 indicate how the implementation of the whole system is perceived.

## **2. The Ethical Guidelines for the Public Sector**

### ***2.1. Aims of Guidelines***

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.

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.

Norway has many rules of law (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 the existing rules of law.

## **2.2. *Consequences of breaching the Guidelines***

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

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. Given that the 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.

## **2.3. *Employers, managers and employees***

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.

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.

## **2.4. *The legal context: Relationship with legislation***

The Guidelines complement to the existing rules of law, and some of the most important rules of this area are mentioned in the Guidelines:

- *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 has also competency rules intended to engender 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 rules regarding transparency and public access to government papers. 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. Gross corruption has a sentencing framework of up to 10 years. The Code contains rules about "Felonies in the public sector".

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

It is also a paragraph in the Civil Service Act that forbid the public official to accept gifts, commission, service or the like that is appropriated to, or intended by the donor to influence his or hers service-capacity actions.

- *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 whistleblowing in the Working Environment Act. The proposal 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 whistleblowing.