

## Executive Summary

There is increased concern about movement of personnel between the public and the private sectors, in particular in times of economic crisis and downsizing. Increased mobility between the two sectors has supported labour-market dynamism in OECD countries. When officials leave public office – either permanently or temporarily – to work in the private or non-profit sectors, however, concerns of impropriety (such as the misuse of “insider information” and position) can put trust in the public service at risk. Causes of increased public and governmental concern about post-public employment conflict of interest include the facts that:

- the public sector has developed close interactions with other sectors which can result in increased risks to integrity, *e.g.* public officials may have unduly cosy relationships with business and non-profit organisations;
- public officials are moving much more frequently, either permanently or temporarily, between public- and private-sector jobs.

Consequently, many countries are making it a priority to review and modernise arrangements to effectively prevent and manage conflict of interest in post-public employment. 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 the use of the term “post-public employment”, these offences can also occur before officials actually leave government.\*

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

- seek future employment outside the public service;
- conduct post-public employment lobbying back to government institutions;
- switch sides in the same process;
- use “insider information”;
- are re-employed in the public service, for example, to do the same tasks they performed in the private or non-profit sectors.

\* *Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH(2007)3, this scoping paper was prepared by Professor Kenneth Kernaghan, Brock University, Ontario, Canada for discussion at the OECD Expert Group on Conflict of Interest in June 2007 in Paris.

The challenge for governments is to strike an appropriate balance between fostering public integrity through adequate post-public employment instruments and to preserve a reasonable measure of 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-public employment measures tailored to properly address the particular problems countries face.

Survey findings show that the vast majority of OECD countries have established basic post-employment standards to avoid conflict-of-interest situations in the public sector. Several countries have even strengthened restrictions in the past years. However, only a few countries have tailored standards to risk areas when, for example, regulators or procurement officials move to the private sector. Enforcing established standards and imposing suitable sanctions remain a challenge for many countries. Ensuring compliance with post-public employment measures can indeed be particularly difficult because most post-public employment offences are committed by public officials who, by leaving the public sector, move somewhat beyond administrative government control.

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 to prevent actual or potential conflict of interest in public office, *e.g.* by requiring that “public officials should not enhance their future private sector employment prospects by giving preferential treatment to potential employers” in decision making. In reviewing their actual arrangements, policy makers may consider systematically examining the extent to which existing regulations, policies and practices can meet the requirements of the principles, as a first step.

Moreover, policy makers may consider the Post-Public Employment Good Practice Framework when developing options for implementation and enforcement instruments and measures. 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.

Key pillars of the Post-Public Employment Good Practice Framework include, in particular:

- The post-public employment system contains the instrument(s) needed to deal effectively with its current and anticipated post-public 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 entities for which post-public 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-public 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-public employment conflict-of-interest threat that the officials pose.
- The restrictions and prohibitions contained in the post-public 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-public employment system is assessed regularly and, where appropriate, is updated and adjusted to emerging concerns.

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

A further challenge is to provide evidence on the extent to which formal instruments are implemented and daily practices are effective. As this requires a good understanding of the context, a country study provides further insights on emerging concerns related to post-public employment in the political-administrative context of Norway. Chapter 5 explains the approach taken by the government and steps for developing post-public employment guidelines for both politicians and public servants.

Ambiguity in transition from political to senior civil service positions and from civil service to the private and non-profit sectors has pushed post-public employment issues forward to the Norwegian Parliament. The *Storting*

requested reports on existing arrangements and considered it significant to introduce possible restrictions in post-public employment in order to maintain integrity in government. Consequently, the Post-Employment Guidelines for the Public Service were 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.

In addition to the public servants, a separate set of guidelines, 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-public employment cases of former senior officials after the government transition in November 2005. This 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 and highlights lessons learned in their application in the early years.

Although the provisions on prohibitions and restrictions in the Post-Employment Guidelines are almost identical for politicians and public servants, the approval decision-making process on post-employment cases differs substantially. 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 the post-employment cases of ministers, political secretaries and political advisers. As key documents of this procedure are available on the web, information on post-employment cases of former politicians is highly visible: this enables public scrutiny and supports compliance.

This report is integral part of the Public Governance Committee's contribution to the OECD's efforts to promote integrity in the public sector, which involves strategies for mapping governance and corruption risks – *e.g.* procurement, lobbying, conflict of interest and the “revolving door” phenomenon – and develops standards for cleaner, fairer and stronger economies. The Committee is examining the “revolving door” phenomenon in the financial sector.



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