

PUBLIC SERVICE (INTEGRITY AND ETHICS) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Public Service (Integrity and Ethics) Bill [HL] as introduced in the House of Lords on 7 December 2023 (HL Bill 32).

- These Explanatory Notes have been provided by Lord Anderson of Ipswich KBE KC in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The main objective of this Bill is to put three of the public standards regulators—the Independent Adviser on Ministers’ Interests, Public Appointments Commissioner and Advisory Committee on Business Appointments (ACOBA)—and their codes of conduct, into legislation.
- 2 In doing so, this Bill would give effect to recommendations by the Committee on Standards in Public Life (CSPL), a non-departmental public body sponsored by the Cabinet Office which advises the Prime Minister on arrangements for upholding ethical standards of conduct across public life.
- 3 As recommended by CSPL (see *policy background* further below), this Bill would put into legislation the following aspects of the framework for each of the three standards regulators:
 - **The government is obliged to produce the codes of conduct.** Currently, the Ministerial Code and the Business Appointment Rules only exist at the discretion of the executive, and the Governance Code for Public Appointments by an Order in Council
 - **Each code’s guiding principles or purpose is outlined.** The Ministerial Code will be based on the Seven Principles of Public Life, the Governance Code on the Principles of Public Appointments and the Business Appointment Rules on the need to manage potential conflicts of interest.
 - **The process for amending each code is defined.** The government will be required to consult with each regulator when preparing or revising their code of conduct.
 - **The appointments process for each regulator is defined.** An enhanced appointment process will increase the level of the regulators’ independence from government.
 - **The length of term for each regulator is defined.** The individuals appointed to these standards regulators will serve a single, non-renewable five-year term.
 - **The role and responsibilities of each regulator to enforce its code is outlined.** See below.
- 4 CSPL further recommended that specific aspects of the role and remit for each of the three standards regulators should be in primary legislation, to strengthen the regulators’ independence. This Bill therefore includes the following:
 - The Independent Adviser’s role is to advise on and oversee the production of the List of Ministers’ Interests; and he or she has the remit to initiate investigations, conduct investigations and determine breaches of the Ministerial Code.
 - ACOBA’s purpose is to rule on applications under the Business Appointment Rules for Ministers, the most senior civil servants and special advisers, investigate potential breaches of the Rules and to provide guidance on the Rules to any potential applicants.
 - The functions of the Public Appointments Commissioner are as currently set out in the Order in Council.¹ This includes, among other things, ensuring that appointing authorities act in accordance with the Governance Code on Public Appointments.

¹ Commissioner for Public Appointments (10 April 2019)

<https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/orders-in-council/>

Policy background

- 5 In November 2021, CSPL published a report about the regulation of ethical standards, *Upholding Standards in Public Life: Standards Matter 2*, following an extensive consultation process.² A key finding was that “...the degree of independence in the regulation of the Ministerial Code, public appointments, business appointments, and appointments to the House of Lords falls below what is necessary to ensure effective regulation and maintain public credibility.” (pg. 8)
- 6 CSPL identified that “Perhaps the most important element of a regulator’s independence is its statutory basis. Those regulators which exist solely as the creation of the executive are potentially liable to be abolished or compromised with ease.” (pg. 45) CSPL recommended that three regulators - the Independent Adviser, Public Appointments Commissioner and ACOBA - should be put into primary legislation. CSPL concluded that this new legislation would, “...allow the powers and remits of the relevant standards bodies to be strengthened and standardised, creating a clearer, simpler and more independent model of ethics regulation across government.” (pg. 46)
- 7 CSPL also recommended that the codes these bodies oversee—respectively, the Ministerial Code, Governance Code on Public Appointments and Business Appointment Rules—should also be put into primary legislation, noting that “...a legal obligation on the government to produce each code would better reflect the constitutional importance such codes have in regulating ethical standards.” (pg. 45) CSPL did not consider it necessary to define the specific content of each code.
- 8 On 27 May 2022, the Government published their *Statement of government policy: standards in public life*.³ The Government did not consider it appropriate to legislate for the Ministerial Code or the office of Independent Adviser. The Government asserted that this would undermine the constitutional settlement by conflating the executive and legislature, and provide a potential route to draw the judiciary into political matters which the Government considered non-justiciable.
- 9 On 2 December 2022, the Public Administration and Constitutional Affairs Committee (PACAC) published a report as part of its inquiry into *Propriety of Governance in Light of Greensill*.⁴ Like CSPL, PACAC identified a “strong case” for primary legislation for some of the standards regulators. In particular, PACAC recommended that the Commissioner for Public Appointments and the Independent Adviser should be placed on a statutory basis at the earliest opportunity.
- 10 In July 2023, the Government published *Strengthening Ethics and Integrity in Government*, its response to these reports by CSPL and PACAC, as well as to an independent review by Sir Nigel Boardman which the Government commissioned in the wake of the Greensill scandal.⁵ The Government opposed putting the Independent Adviser, Commissioner for Public Appointments and ACOBA and their codes into legislation. They considered the current constitutional balance to be correct, and reiterated the concern that legislation risks drawing the courts into political matters.
- 11 The Government’s position would mean that these scrutiny bodies and their codes of conduct continue to exist at the discretion of the executive, and that the bodies lack sufficient independence and powers to effectively regulate standards in Government.

² Committee on Standards in Public Life (November 2021) <https://www.gov.uk/government/publications/upholding-standards-in-public-life-published-report>

³ Cabinet Office (27 May 2022) <https://www.gov.uk/government/publications/revisions-to-the-ministerial-code-and-the-role-of-the-independent-adviser-on-ministers-interests/statement-of-government-policy-standards-in-public-life>

⁴ PACAC (29 November 2022) <https://committees.parliament.uk/publications/31830/documents/178915/default/>

⁵ Cabinet Office (July 2023) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172005/CP_900_-_Strengthening_Ethics_and_Integrity_in_Central_Government_Accessible.pdf

Commentary on provisions of the Bill

Part 1: Introductory

Clause 1: Overview

- 12 Clause 1 provides an overview of the Bill.

Part 2: Ministerial Standards

Clause 2: Appointment of the Independent Adviser

- 13 Subsection (1) of clause 2 establishes the requirement for an Independent Adviser on Ministers' Interests. Subsection (2) provides that His Majesty may appoint an Independent Adviser on the recommendation of the Prime Minister.
- 14 Subsection (3) provides that, in recommending a person to be Independent Adviser, the Prime Minister must follow the selection process in subsection (4) to (6): selection must be on merit on the basis of fair and open competition; in accordance with the process for significant appointments in the Governance Code on Public Appointments, with a majority of independent members on the assessment panel and a senior independent panel member; and the Prime Minister must have regard to any pre-appointment hearing by the appropriate parliamentary committee.
- 15 Subsection (7) provides that the Independent Adviser will hold office for a single, non-renewable term of five years.

Clause 3: Resignation or removal of the Independent Adviser

- 16 Clause 3 provides that the Independent Adviser may resign by giving notice, or may be removed from office by His Majesty if the appropriate parliamentary committee is satisfied that the Independent Adviser should not be in post for any of the reasons specified in this clause.

Clause 4: Investigations of the Independent Adviser

- 17 Subsection (1) of clause 4 requires the Independent Adviser to investigate any alleged breach of the Ministerial Code referred by the Prime Minister. Subsection (2) allows the Independent Adviser to initiate investigations into alleged or possible breaches of the Ministerial Code.
- 18 Subsection (3) requires the Independent Adviser to produce a report following an investigation, including any: findings of fact, determination of breaches of the Ministerial Code and recommendations. Subsection (4) and (5) require the Independent Adviser to send the report to the Prime Minister as soon as possible and, within 8 weeks of sending it, to publish that report on their website and send it to the Speaker of the Commons to publish it in the House library.

Clause 5: List of Ministers' Interests

- 19 Clause 5 requires the Independent Adviser to advise on and oversee the List of Ministers' Interests. The List must include all interests held by Ministers or their close family members, which are in addition to those already disclosed in the Parliamentary Registers of Interests, and which are, or might reasonably be perceived to be, directly relevant to Ministers' ministerial responsibilities. The List must be kept up to date and published online.

Clause 6: General powers of the Independent Adviser

- 20 Clause 6 gives the Independent Adviser general powers to carry out their functions.

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Clause 7: Additional functions of the Independent Adviser

- 21 Clause 7 provides that the Prime Minister may agree with the Independent Adviser that they may carry out additional functions relating to ministerial standards.

Clause 8: Financial provision for the Independent Adviser

- 22 Clause 8 provides that the Minister for the Cabinet Office must pay to the Independent Adviser an appropriate amount, determined by the Minister, to carry out its functions.

Clause 9: Arrangements for assistance to the Independent Adviser

- 23 Clause 9 enables the Independent Adviser to make arrangements to be provided with assistance, including with the Minister for the Civil Service for civil servants to provide assistance.

Clause 10: Status of the Independent Adviser

- 24 Clause 10 provides that the Independent Adviser is not a servant or agent of the Crown, and does not enjoy any status, immunity or privilege of the Crown.

Clause 11: Reports of the Independent Adviser

- 25 Subsections (1) and (2) of clause 11 require the Independent Adviser to provide the Prime Minister with a report about their activities as soon as practicable after the end of each financial year. Subsection (3) and (4) require the Independent Adviser to publish that report on their website and the Prime Minister to lay a copy of that report before Parliament.

Clause 12: Ministerial Code

- 26 Subsections (1) and (2) of clause 12 requires the Prime Minister to publish a Ministerial Code that is consistent with the Seven Principles of Public Life, and that includes a range of graduated sanctions.
- 27 Subsections (4) and (5) require the Prime Minister to keep the Code under review and revised from time to time, and to consult with the Independent Adviser when preparing or revising it. Subsection (6) requires the Prime Minister to lay the Code and any revisions before Parliament.

Part 3: Public Appointments

Clause 13: Public Appointments Commissioner

- 28 Subsection (1) of clause 13 establishes the requirement for a Public Appointments Commissioner. Subsection (2) provides that His Majesty may appoint a person to that role on the recommendation of the Minister for the Cabinet Office.
- 29 Subsection (3) provides, in recommending a person to be Commissioner, the Minister must follow the selection process in subsection (4) to (6): selection must be on merit on the basis of fair and open competition; in accordance with the process for significant appointments in the Governance Code on Public Appointments, with a majority of independent members on the assessment panel and a senior independent panel member; and the Minister must have regard to any pre-appointment hearing by the appropriate parliamentary committee.
- 30 Subsection (7) provides that the Commissioner will hold office for a single, non-renewable term of five years.

Clause 14: Resignation or removal from office of the Commissioner

- 31 Clause 14 provides that the Commissioner may resign by giving notice, or may be removed from office by His Majesty if the appropriate parliamentary committee is satisfied that the Independent Adviser should not be in post for any of the reasons specified in this clause.

Clause 15: Functions of the Commissioner

- 32 Clause 15 imports the functions of the Commissioner set out in the Public Appointments Order in Council that was made at Privy Council on 10 April 2019.
- 33 Subsections (1) and (2) require the Commissioner to ensure that appointing authorities act in accordance with the Governance Code on Public Appointments, and to audit the procedures and practices followed by appointing authorities in making public appointments.
- 34 Subsections (3) to (5) allow the Commissioner to investigate any aspect of public appointments to improve their quality, to conduct an inquiry into the procedures and practices followed by an appointing authority in relation to any public appointment and to require an appointing authority to publish information relating to public appointments.
- 35 Subsection (6) requires appointing authorities to provide the Commissioner with any information the Commissioner reasonably requires, for the purposes of this clause.
- 36 Subsection (7) requires the Commissioner to report the result of an audit, investigation or inquiry to the Minister for the Cabinet Office.

Clause 16: Additional functions of the Commissioner

- 37 Clause 16 provides that the Minister for the Cabinet Office may agree with the Commissioner that they may carry out additional functions relating to public appointments.

Clause 17: General powers of the Commissioner

- 38 Clause 17 gives the Commissioner general powers to carry out their functions.

Clause 18: Financial provision for the Commissioner

- 39 Clause 18 provides that the Minister for the Cabinet Office must pay to the Commissioner an appropriate amount, determined by the Minister, to carry out its functions.

Clause 19: Arrangements for assistance to the Commissioner

- 40 Clause 19 enables the Commissioner to make arrangements to be provided with assistance, including with the Minister for the Civil Service for civil servants to provide assistance.

Clause 20: Status of the Commissioner

- 41 Clause 20 provides that the Commissioner is not a servant or agent of the Crown, and does not enjoy any status, immunity or privilege of the Crown.

Clause 21: Reports of the Commissioner

- 42 Subsection (1) and (2) of clause 21 require the Commissioner to provide the Minister for the Cabinet Office with a report about their activities as soon as practicable after the end of each financial year.
- 43 Subsections (3) and (4) require the Commissioner to publish the report on their website and the Minister for the Cabinet Office to lay a copy of that report before Parliament.

Clause 22: Governance Code on Public Appointments

- 44 Subsection (1) of clause 22 requires the Minister for the Cabinet Office to publish the Governance Code on Public Appointments, setting out the principles of public appointments

and process for public appointments to bodies listed in the Public Appointments Order in Council.

- 45 Subsections (2) and (3) require the Minister for the Cabinet Office to keep the Governance Code under review and revised from time to time, and to consult the Commissioner when preparing or revising it. Subsection (4) requires the Minister to lay the Governance Code before Parliament.

Part 4: Business Appointments

Clause 23: Committee on Business Appointments

- 46 Subsection (1) of clause 23 establishes the requirement for ACOBA.
- 47 Subsections (2) to (4) provide that ACOBA will consist of six independent members (one of whom is Chair) and three members nominated by political parties. Each member holds office for a single, non-renewable term of up to five years.

Clause 24: Status of the Committee

- 48 Clause 24 provides that the Committee, its members and employees are not servants or agents of the Crown, and do not enjoy any status, immunity or privilege of the Crown.

Clause 25: Procedure and proceedings

- 49 Clause 24 enables ACOBA to decide on its own procedures.

Clause 26: Staff of the Committee

- 50 Clause 26 enables ACOBA to employ staff.

Clause 27: Independent members of the Committee and Chair

- 51 Clause 27 sets out the process for appointing the independent members of ACOBA, including the Chair. Subsection (2) provides that His Majesty may appoint a person as an independent member on the recommendation of the Minister for the Cabinet Office.
- 52 Subsection (2) provides that, in recommending a person to be an independent member of ACOBA, the Minister must follow the selection process in subsection (3) to (5): selection must be on merit on the basis of fair and open competition; a person's selection as Chair must be in accordance with the process for significant appointments in the Governance Code on Public Appointments, with a majority of independent members on the assessment panel and a senior independent panel member; and the Minister must have regard to any pre-appointment hearing by the appropriate parliamentary committee in relation to the Chair.

Clause 28: Three members of the Committee to be nominated by parties

- 53 Clause 28 provides that the leaders of each of the three largest registered political parties (based on the number of Members of the House of Commons) may nominate a member of ACOBA. A member nominated by a political party may not be Chair of ACOBA.

Clause 29: Resignation or removal of a member of the Committee

- 54 Clause 29 provides that a member of ACOBA may resign by giving written notice, or may be removed from office by His Majesty if the appropriate parliamentary committee is satisfied that the Independent Adviser should not be in post for any of the reasons specified in this clause.

Clause 30: Functions of the Committee

55 Subsections (1) to (4) of clause 30 set out ACOBA's functions as follows: decide on applications under the Business Appointment Rules relating to intended appointment or employment after leaving public office for Ministers, permanent secretaries and civil servants at grade SCS3 and above and equivalents, including special advisers of equivalent standing, investigate potential breaches of the Rules, report the result of an investigation to the Minister for the Cabinet Office and provide guidance on the Rules to any potential applicants for a ruling by ACOBA.

Clause 31: Additional functions of the Committee

56 Clause 31 provides that the Minister for the Cabinet Office may agree that ACOBA may carry out additional functions relating to business appointments.

Clause 32: General powers of the Committee

57 Clause 32 gives ACOBA general powers to carry out its functions.

Clause 33: Delegation

58 Clause 33 allows ACOBA to delegate its functions to its members or employees.

Clause 34: Financial provision for the Committee

59 Clause 34 provides that the Minister for the Cabinet Office must pay ACOBA an appropriate amount, determined by the Minister, to carry out its functions.

Clause 35: Arrangements for assistance for the Committee

60 Clause 35 enables ACOBA to make arrangements to be provided with assistance, including with the Minister for the Civil Service for civil servants to provide assistance.

Clause 36: Reports of the Committee

61 Subsections (1) and (2) of clause 36 require ACOBA to provide the Minister for the Cabinet Office with a report about its activities as soon as practicable after the end of each financial year. Subsection (3) and (4) require ACOBA to publish the report on its website and the Minister to lay a copy of that report before Parliament.

Clause 37: Business Appointment Rules

62 Subsections (1) and (2) of clause 37 require the Minister for the Cabinet Office to publish the Business Appointment Rules for Ministers, civil servants and special advisers who intend to take up an appointment or employment after leaving public office, based on the need to manage and regulate any potential conflicts of interest when they move into the private sector.

63 Subsections (3) and (4) require the Minister to keep the Rules under review and revised from time to time, and to consult with the ACOBA when preparing or revising them. Subsection (5) requires the Minister to lay the Rules before Parliament.

Part 5: Final provisions

Clause 38: Interpretation

64 Clause 38 sets out the definitions for terms commonly used throughout this Bill.

Clause 39: Commencement

65 Subsection (2) of clause 39 provides that clauses 1 to 39 of this Bill would come into force at the end of the period of three months beginning with the day on which it is passed.

Clause 40: Extent

66 This Act extends to England and Wales, Scotland and Northern Ireland.

Clause 41: Short title

67 If enacted, this Bill would be cited as the Public Service (Integrity and Ethics) Act 2024.

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