

GOVERNANCE PROJECT



4

The Advisory Committee on Business Appointments

- R.4.1. It is widely accepted that events over the past few years show that the Advisory Committee on Business Appointments (ACoBA) process requires revision.
- R.4.2. There is real value both to individuals and to the efficient operation of the British economy and the British state, that there be clear and well-respected routes for individuals to move from the private to the public sector and vice versa. However, it is an important part of integrity in public office that the public has confidence in such moves, given the sensitive nature of the issues that arise. (The Commission notes that, even under the current, purely advisory, system, the vast majority of individuals subject to the Business Appointment Rules (the “BARs”) comply fully with advisory rulings.)
- R.4.3. In July 2023, the Government agreed to specific and limited reforms but did not place ACoBA on a statutory footing or make it fully independent. The impact of those reforms will not be clear for some time.
- R.4.4. However, the Commission is sceptical (as are others) that they will be sufficient, in particular as regards the Government not committing to any enforcement process other than through the Cabinet Office. The Commission recommends faster and more ambitious action, through legislation, to ensure that ACoBA is properly independent and well-resourced, and has effective control of the processes and means of enforcement. Nevertheless, it would be prudent to make a brief further and final assessment of whether the Government’s reforms, following the Government paper of July 2023, have been sufficient, before formally introducing the legislation.

We recommend that:

ACoBA should be placed on a fully independent basis

- R.4.5. Primary legislation (to embed the role and underline independence of resources and rigour on enforcement) should provide:
- a. for the creation of ACoBA as a new statutory independent body taking over the constitution, role and membership of the existing ACoBA (save as amended pursuant to the Statute);
 - b. for ACoBA’s statutory purpose to be to:
 - i. administer the BARs including ruling on applications relating to ministers, the most senior civil servants and special advisers;
 - ii. investigate potential breaches of the BARs;
 - iii. take enforcement action in relation to breaches, which may include the withholding of severance payments otherwise due to the individual committing the breach; and
 - iv. provide guidance on the BARs to any potential applicants.
 - c. for the terms of office for ACoBA’s Chair, including:
 - i. the appointments process; and
 - ii. that the chair serve for a single non-renewable five-year term;
 - d. that ACoBA may determine its own rules and procedures, including the appointment and retention of independent support staff;

- e. that the Chair of ACoBA shall make periodic reports to Parliament on the operation of ACoBA and the BARs, in the context of the statutory regime, and shall maintain, and where practicable enhance, its existing levels of transparency as to its decisions and operation;
- f. for ACoBA to have a sufficient budget relative to its duties, an independent staff and an office; and
- g. for ACoBA to have the power to make changes to the BARs after consultation with the Cabinet Secretary, the Civil Service Commission and such other persons as the Chair shall determine, having regard to the need to maintain public confidence in the regulation of movements between the public and the private sector as well as to the advantages of such movements to the efficient and orderly functioning of the British state and the need to be fair to individuals seeking to make such movements.

R.4.6. The legislation could be either:

- a. a new, freestanding statute ;
- b. part of a larger statute on conduct, standards and/or constitutional reform; or
- c. an amendment to an existing statute, e.g. the Constitutional Reform and Governance Act 2010.

Certain additional, background material for this Recommendation is available on the website for the Commission (<https://www.ukgovernanceproject.co.uk>).