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## 第一章 緒論

### 第一節 研究緣起與背景

#### 一、台灣政府倫理的國際比較表現有改進空間

台灣威權體制的轉型，從戒嚴到解嚴，從一黨長期執政到政權和平轉移與政黨輪替。使得台灣在原有經濟奇蹟之傲人成就外，增添民主成就一項，更寫下華人地區民主治理唯一成功典範新扉頁。然而，民主轉型後的台灣，卻尚未在民主治理最重要，也最基礎的面向—公共服務倫理價值與行為表現有積極進步與提昇。這樣的論述，從國內外許多事件與相關調查均可找到證據。

在近一年來，不同政府層級民選政治領袖、各級政務人員、各級民代，甚至常任文官等，均接連不斷地被質疑其個人或是家庭成員，倫理行為與道德操守方面的問題，有部分案件已進入司法程序，甚至被起訴。<sup>1</sup>即使這些案件最終調查結果並未定案，但卻已造成國人與國際組織的關注。著名的美國人權組織『自由之家』公布今年世界各國自由度報告，台灣的評分即從去年的最高級『一』降為『一點五』。台灣的公民自由仍然被列在第一級，但是政治權利從第一級降為第二級。主要原因即是貪瀆，其報告特別指出「貪瀆—特別是與政治人物、企業、有組織的犯罪有關者，令人憂心。」。(中時電子報，2007/7/4)

除了此刻正在發生的這些令國人感到震驚、不解與沮喪，看似屬於個別公職人員的重大倫理案件之外。<sup>2</sup>長期以來，國內民眾對於政府

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<sup>1</sup> 最明顯者，諸如現任總統陳水扁的國務機要費案件、第一家庭成員及其親家的貪瀆案件、國民黨主席馬英九的特別費案件、現任副總統秀蓮的特別費案件、民進黨主席游錫堃的特別費案件、...等。

<sup>2</sup> 本研究於整體行文過程中，公職人員與公共服務者此二名詞將交替使用。對於公共服務者

廉政的整體觀感，亦是呈現並非十分滿意的現象。根據 2003 年行政院研考會的民調顯示，民眾對廉政肅貪成果滿意度僅在五成上下。而在 2005 年，35% 的民眾認為未來 3 年台灣的貪腐情形會更形惡化，35% 認為會維持現狀，22% 則是認為會有所改善（台灣透明組織，2005）。總體而言，顯示我國政府目前有關公職人員倫理議題的相關規範、處理與整體表現，並未能符合人民的殷切期望。

此外，基於政府透明治理與公職人員能否恪守倫理準則，完成公民的公共信託，不僅是各國政府內部的治理議題，更是民主國家最重要的基礎與全球化的重要議題。因此，許多國際重要組織的相關評比，都會將廉政治理的相關指標，納入政府各項評比之中。台灣在這些國際評比的結果，亦是呈現存有繼續進步的空間。

首先，成立宗旨在於致力促進各國廉政治理與打擊貪污的國際透明組織，每年均會公布全球貪腐印象指數（Corruption Perception Index, CPI）。觀察台灣自 1996 年至 2007 年的表現，整體而言，過去十年台灣的排名在 25 至 35 名間窄幅盤旋。與世界各國比較，台灣雖尚屬中度廉潔的國家（台灣透明組織新聞稿，2005.10.18），但卻也呈現停滯不前的趨勢（表 1-1）。

另外，根據世界銀行最新公布的國家治理指標，台灣防治貪腐的評分，從 1998 年的 83.6，一路下降至 2004 年的 73.9（Kaufmann, Kraay, and Mastruzzi, 2005; 余致力，2006：166）。而台北美國商會（American Chamber of Commerce in Taipei）在《2001 台灣白皮書》和《2003 台灣白皮書》中皆提及台灣「貪污」情況，仍為極待改善的課題之一。同樣的，美國貿易代表署在 2001 年 3 月 30 日所公布的年度外國貿易障礙報告中，更首次把台灣的貪污現象列為貿易障礙（經濟日報，2

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與公職人員此二名詞之使用，於本文中基本上指涉類似概念。不過，以公共服務者此名詞出現時，較為強調職務性質；以公職人員此名詞呈現時，則較為強調身份，但基本概念是相通的。至於為何本研究不採我國實務界較為常用的公務員、公務人員等名詞，係因為本研究範圍包括了民選、政務與常任文官等對象，以廣義的公職人員稱叫符合研究對象範圍。此外，就國際學術社群而言，公職人員係屬較為共通的概念，而公務員或公務員及其區別則僅為我國學術與實務社群流通。因此，本研究係以公職人員稱之，但對於特定法規名稱與其指稱，則仍依原意。

版，2001.4.1)。由此可見國際社會對我國政府的貪腐問題，依然存在著不良的印象和憂慮。

**表 1-1 國際透明組織亞洲國家 1996 至 2006 年貪腐印象指數排名**

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
新加坡	4	5	5	5	5	5	4	6	7	7	9	7
香港	14	15	15	16	14	14	14	15	15	16	18	18
日本	17	17	21	24	21	20	21	23	25	25	21	17
台灣	34	34	32	35	30	29	27	28	28	29	31	29
韓國	43	42	40	47	50	40	42	48	50	43	34	27

資料來源：台灣透明組織，2007。

再就綜合評比各國競爭力最負盛名的兩項報告來看，瑞士「國際管理發展學院」(International management and Development, IMD)的「世界競爭力年報」(World Competitiveness Yearbook)，以及世界經濟論壇「World Economic Forum, WEF」的「全球競爭力報告」(Global Competitiveness Report, GCR)，二者均將治理透明度、賄賂、貪污等公共服務倫理相關議題指標，納入政府效能評比的重要面向。

以 IMD 報告來看(表 1-2)，台灣近五年來國家總體競爭力一直高於政府效能，而構成政府總體效能的各次面向中，有關政府治理相

關倫理議題面向，例如政策透明度、賄賂、貪污等指標，我國此一部分表現，一直落於政府總體效能排名之後。以 2005 年而言，政策透明化排名為 33，賄賂與貪污排名為 29（引自施能傑，2006：14），顯示我國公共服務倫理程度有需要進一步提昇。而在 WEF 的 2006 年報告中，我國總體競爭力排名為 13，但在細項弱勢指標排名部分，兩項與政府透明治理與公共服務倫理有關的關鍵性指標，「貴國是否經常發生因貪污而將應給大眾的公共基金轉移」，以及「大眾是否信任政客對於財務上的誠實態度」兩項，排名分別為 39 與 32，與 2005 年相較，分別退步了 12 名與 17 名（WEF, 2006）。

**表 1-2 近五年 IMD 台灣總體競爭力與政府效能排名**

項目	2002	2003	2004	2005	2006
總體競爭力	20	17	12	11	18
政府效能	24	20	18	19	24
差距	-4	-3	-6	-7	-6

**資料來源：IMD 網站。**

綜合以上幾項調查可以明顯發現，國內民眾對政府公職人員倫理行為的可信度，已逐漸產生質疑，對總體政府治理的清廉程度亦不甚滿意，台灣政府也因此逐漸失去民主治理最重要的公共信任基礎。而各項重要的國際相關評比，也與國內多數民眾的感受呈現頗為一致的趨勢。此種現象，對於目前正處在民主轉型後，必須進一步民主鞏固以達永續發展的台灣而言，無疑是國家總體展與邁向優質治理，最迫切需要解決的危機。



## 二、台灣政府倫理法治制定與執行的現況與問題

從台灣目前的倫理法制執行的現況來看，我們可以明顯看見下面三方面的問題，其一，政府的決心趕不上民眾的期盼，其二，政府所執行的倫理面向，較為負面與零碎，缺乏完整架構，其三，政治行為規範方面，不論法制與執行都有所不足。

首先，在民眾期盼方面，我國固有文化當中對於官場貪腐文化的印象已經根深蒂固，主要原因是民眾並非帝制與威權體制的統治主體，對於貪腐文化的排除雖然有期盼，除了等待明君與清官以外，沒有其他的方式，久而久之形成一種對統治者貪腐犬儒的看法，因此，台灣民主化的主要意義之一，就是人民能夠主動利用選票排除貪腐的領導者，也是對新上任者清廉自持一種期待，但是，公務人員與政務人員的貪腐，造成許多惡果，其中最嚴重的，就是民主政府因為貪腐而不受人民信任，2006年10月底<sup>3</sup>，香港愛德曼公司發表信任度調查，台灣在中國大陸、印度、星、港、韓、澳等十餘個國家地區中，政府所獲得的民眾信任度是最低的，只得十一分，與區域內平均分數相去甚遠，該份報告為台灣民眾有以下的形容：「台灣民眾充滿了高度懷疑」。如此低的民眾信任水準，政府推行政務的正當性被剝奪，更重要的，不信任也讓民主治理運作的成本升高，降低國家國際競爭力，進而阻礙經濟成長。

事實上，根據聯合國最新的報告顯示(Blind, 2006)，人民對政府的信任普遍地下降，貪腐的顯現是最重要的原因，作者提出世界上人民為何突然對政府的倫理重視勝過其能力？(Why is there a sudden preference of morality over capability?)主要的解釋是全球化所帶來對政府的新需求，人民從全球化經過比較的世界中，發現有政府應該可以做得更好，自己也值得過更好的生活，而政府在全球化的媒體下所暴露的不正當行為，讓民眾對政府的要求更高，民眾已經不能滿足於以政績來交換政府毫無節制地浪費稀有資源，甚至為統治者自己謀福，換句話說，政府如果要民眾給予統治正當性，應該對自己的權力行為有更高的倫理要求，而這樣的要求如果能達到，從國際評比的經驗中，對一國經濟發展是有正面幫助的。

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<sup>3</sup> 請參工商時報小社論，2006/10/27。

再者，本研究將會就我國倫理相關法制建設的現況，與國際相對應國家進行一個全面的評估，如果先從目前現況來看，台灣對公職人員倫理法制的規範與執行，有下面四個特點。

第一，對象主要是以事務人員為主，內容也是以事務人員應該如何忠實執行領導者命令為主，這樣的思維架構，如果就公務人員服務法來看(1939年初定)，它是在二十世紀初期所建立的，主要的「行政倫理」內涵，是以「聽命令」為主，是標準威權體制下的產物，倫理的概念是狹隘的領導與順服而已，二十世紀最重要的民主治理所需的相關價值，並不在其中。

第二，如果就我國公務員服務法第一條規定：「公務員應遵守誓言，忠心努力，依法律命令所定，執行其職務。」宣誓條例第六條第二款規定公務人員之誓詞為：「余誓以至誠，恪遵國家法令，盡忠職守，報效國家，不妄費公帑，不濫用人員，不營私舞弊，不授受賄賂，如違誓言，願受最嚴厲之處罰，謹誓。」我們可以看出我國倫理是以防弊而非正性為主的，也就是說，公務人員被要求不可以作什麼，但是並不清楚自己應該依循些什麼主要的倫理價值，更重要的，這些倫理價值之間，必然會發生衝突，但是如何處理之需要倫理判斷的能力，這能力的培養絕對不止是聽從上級命令與避免作某些事而已，還必須內化許多公務人員應有的正面價值。

第三，如就我國相關倫理法制的執行現狀，我們可以從法務部的廉政工作統計中看出一些趨勢，從 93-95 年的三年間，分別有 904, 886, 1323 位公務人員涉入，主要是以公共工程、巨額採購、警察、醫療衛生等為數量最多的項目，這個部分與國際透明組織所揭諸易生貪污的熱點有許多近似之處(政治腐敗、公共契約與採購、公共與基礎建設、教育部門與健康部門)，這個部分的工作主要是政風體系以及檢查體系在共同處理；另外，公職人員財產申報與利益迴避的執行部份，是由監察院執行，再者，考試院則負責行政中立訓練的部分以及公務人員服務法中的各種公務人員義務事項，明顯各種倫理事項散落在五院不同機關的權限中，統合綜效的倫理法治效果有限，又因為廉政業務是多頭馬車，類似「法務部廉政局組織法」的爭議，勢必會持續。

第四，就我國相關立法與立法中的相關倫理法規來看，我國政府近年來較以往更積極的力圖反貪腐與倫理法制建設。儘管以上相關論述顯示我國政府倫理建制的完備度與執行成效仍有進步空間，但無可否認，從近年來相繼立法、修正通過，以及在立法院審議中的幾項法案來看，例如「公職人員財產申報法」、「財產來源不明罪」，以及目前正在立法院審議的「公務人員行政中立法草案」、「法務部廉政局組織法」、「政務人員法草案」，以及「政治獻金法修正草案」等，顯示台灣政府近年來對提昇政府倫理治理法制化的努力與企圖心是可見的。儘管由於部分立法院生態與其他立法技術及各方意見之未能一致，致使幾項倫理相關案件仍在立法院審議中，但政府努力與企圖心仍是不應忽視。

最後，民主治理(democratic governance)的主要核心，就是讓民主政治的精神與權威的需要作良好的結合，這種結合的本質，事實上也是一種多重價值的實踐問題，也就是一個倫理困境的問題。學者 Eva Etzioni-Halevy(吳友明譯，1998)曾說：「官僚政治給民主造成了一個兩難的困境：一個強有力、獨立、非政治化的官僚體制對民主是一種威脅，然而它對民主又是不可缺少的東西。由於同樣的原因，民主也給官僚造成了一個兩難的困境：在目前這種缺乏連貫性的民主政治之下，官僚體制既應獨立又要處於從屬地位，在同一時刻內既要參與政治又必須非政治化，這樣一來就使民主和官僚政治之間形成了一種充滿了麻煩的共生關係，或者說是一種似是而非的自相矛盾的關係：官僚體制對民主來說是必需的，而同時它對於民主又是一個經常性緊張、摩擦以及衝突的來源。」在這樣的關係當中，官僚體系負責專業責任，政治系統負責民主回應，相互依存與制約，但是，許多互動的關係，也應該納入倫理法治的規範，其中最重要的，就是政治中立的相關草案，包括目前正在研議中的「公務人員行政中立法草案」、「政務人員法草案」等，都是十分重要的倫理規範，但是，行政中立法制化不一定會受到政黨的同意，主要可能原因是任何一個政黨都知道，如果取得政權之後，行政中立法可能會影響權力的貫徹，有政治能力讓它的通過的政黨，同時也都有可能執政，更是讓文官中立的法制化

遙遙無期。

### 三、台灣急需建構一個完整有效的統合性政府倫理法制

上述相關說明顯示，台灣在民主轉型之後，公共服務的倫理程度，似乎並未隨著民主化而提昇。對此，政治學者 Rose-Ackerman 研究義大利與拉丁美洲國家的政經結構與貪腐狀況發現，政治上從威權體制轉變到民主政治，經濟上從共產主義開放成市場機制，這些政經變革都未必一定會減少社會上貪腐狀況。事實上，在沒有完善健全的反貪腐策略作為與配套措施的情況下，這些政經變革有時反而會加速貪污腐化、向下沈淪的力量（台灣透明組織新聞稿，2006）。這樣的研究結果與觀點，恰好指出我國目前公共服務與公職人員之倫理危機，實肇因於缺乏健全有效的統合性政府倫理法制。

此外，許多研究政府相關議題的學者均發現，儘管公民希望政府「小而美，小而能」的呼聲不斷，但政府組織規模基本上並未明顯減縮，服務內容也愈來愈複雜，再加上層出不窮的新議題，使得各國政府的公共服務面臨極大挑戰。在各式各樣的挑戰中，對於民主國家而言，來自公民要求政府與各類公職人員，在公共服務提供與輸送各種決策過程與結果，以及日常運作的行政行為，更加符合透明治理與倫理準則，以建立一個廉潔、效率、便民與具國際競爭力的政府，不僅是當代民主國家最大的挑戰之一，也是各國政府再造與行政革新的最重要目標（Lewis & Gilman, 2005; European Communities, 2006; 余致力等，2006；吳英明，2006；施能傑，2006；陳敦源、蔡秀涓，2006）。

面對上述挑戰，觀察無論是民主治理或國家總體經濟發展與競爭力，均表現亮麗的 OECD 各國可以發現。透過相關倫理法制的建制，指明公共服務應有的核心價值，以及規範公職人員的行為，不僅是 OECD 各國達成善治提昇公共信任的普遍途徑，更是唯一被強調與證明有效的不二法門（PUMA, 2000; Gileman, 2005; Lewis and Gileman, 2005; 施能傑，2006）。因為，對人民而言，沒有廉能的政府，就不可能提供優質公共服務，提昇公民對政府的公共信任（PSHRM,

2007)。對企業而言，沒有廉能的政府，就不可能建設良好的投資環境發展經濟，促成國家總體競爭力的提昇。

基於台灣國內外社會均認為，我國政府治理透明度與公職人員廉潔度，尚有繼續提昇的必要。我國亦為民主國家，有著民主鞏固與轉型深化，以及國家競爭力必須持續提昇，以維持台灣永續發展的民主課責現實壓力。儘速建立一個有效且完備的統合性政府倫理法制架構，已是刻不容緩。

由於體認到以上現實，執政當局遂於去年（2006）台灣經濟永續發展會議總結報告第五項，「建立政府倫理及提升行政效率」面向中，明確回應台灣民主治理此現實壓力，並指出以下兩項政府應優先推動的政策。

(一)政府需展現決心提出反貪行動方案

- 1.研訂反貪污行動方案。
- 2.建構專責獨立肅貪機關，落實肅貪廉政。
- 3.建立客觀嚴謹的廉潔政府監測機制，並定期公布監測報告書。
- 4.研議增列公職人員財產來源不明之罰則。

(二)加強整合政府倫理法制與機制

- 1.研訂統合性之政府倫理法制，以健全公務倫理規範。
- 2.相關主管機關應加強宣導相關人員倫理法治觀念，俾各類人員建立正確倫理法制與機制。
- 3.配合考試院儘速完成「公務人員基準法」、「政務人員法」及「公務人員行政中立法」等相關公務人員人事法制。

經續會以上兩項結論七種作法，實質上即是西方各先進民主國家，例如 OECD 國家、歐盟、世界銀行等各會員國，均已非常強調而且已有一定完備性的「政府統合性倫理法制」(亦可名為「國家廉政體

系」(National Integrity System; NIS)。<sup>4</sup>透過統合性政府倫理法制的建構與有效執行，歐美各國也邁向更為透明與廉潔的公共服務提供和政府治理。因此，政府在此時提出優先加強與整合政府倫理法制，不僅方向正確，也為台灣的公民信心、民主深化，以及國際競爭力，開啓邁向新頁的可能性。

## 第二節 研究目的

誠如上述所言，許多國際組織均非常強調，其會員國在政府改革過程中，應優先建立統合性倫理法制的重要性。而此重要性，也同樣被國內外學者一致認為，是促成國家透明治理與廉能政治的最佳途徑 (Finer, 1941; Rohr, 1989; Staring, 1998; Lewis & Gilman, 2005; 吳英明, 2006; 施能傑, 2006; 陳敦源、蔡秀涓, 2006)。

然而，盱衡國內現有相關研究多限於探討肅貪、防貪或反貪等，端正政風作為或對組織設計的研議，較缺乏宏觀層次的統合性倫理法制具體設計之研究，對於國家整體相關倫理法規、運作機制的綜整研議，更可謂是付之闕如。職是之故，為使我國在健全的公職人員倫理法制基礎下，邁向使公民更具信心的清廉治理，以及因清廉政治而提昇的國家競爭力。本研究遂先行瞭解較具代表性的幾個國家之倫理法制，繼而於此基礎上，進一步提出我國統合性倫理法制的制度設計，以及相關的配套政策建議。具體而言，本研究主要目的有以下幾項：

### 一、介紹並比較清廉指數與倫理法制較為完善的國家相關法制大要

此一部分主要在瞭解，香港、新加坡、日本、韓國、德國、英國、加拿大等國之倫理法制。選擇這幾個國家，主要是基於其中除韓國外，其餘國家的國家貪腐印象指數 (CPI) 均表現得比我國傑出 (表 1-3)，

<sup>4</sup> 有關此二體系的更詳盡論述與說明，以及各國情形，可進一步參見黃榮護 (2003)、謝立功 (2004)、余致力等 (2003 & 2006)、施能傑 (2006)、陳敦源、蔡秀涓 (2006)。

而且相關的政府倫理法制亦是相當完備，深值得我國借鏡。至於韓國，雖然整體清廉度仍稍遜於我國，但其近年來積極建立廉能政治國的形象與作為，以及與國際廉政組織密切合作的成功經驗，已經贏得國際社會的注意與讚許，其作為值得我國參考。

此外，這七個國家中，新加坡、香港、日本與韓國等，與我國均屬亞洲國家；英國、加拿大與德國則分屬歐美國家。透過瞭解不同區域國家倫理法制內容與架構，並從中抽離出共同的關鍵要素與差異點，將可為本研究將提出的統合性政府倫理法草案，提供豐富的參考基礎。此一部分所欲瞭解內容有以下幾項：

- (一)各國倫理法制架構
- (二)各國倫理法制主要的負責與執行機制
- (三)各國倫理法制規範重點與主要法規的重要條文內容
- (四)各國倫理法制特色比較

**表 1-3 本研究選取七國歷年貪污印象指數排名表現**

	2001	2002	2003	2004	2005	2006	2007
新加坡	4	5	5	5	5	5	4
英國	13	10	11	11	11	11	12
加拿大	7	7	11	12	14	14	9
香港	14	14	14	16	15	15	14
德國	20	18	16	15	16	16	16
日本	21	20	21	24	21	17	17
韓國	42	40	50	47	40	42	43

資料來源：Transparency International (2007)

## 二、擬定統合性政府倫理法草案條文，並研提與現行相關政府倫理法令配套之規定，以及必要之各項行政命令條文規定

此一部分，主要所欲達到目的有以下幾項：

- (一)瞭解我國現行相關倫理法律、規範對象、以及規範內容
- (二)研提我國政府倫理法制草案內容與有效運作所需配套方案
- (三)確認我國統合性倫理法制內容，主要包括應規範的對象、主要面向、種類與罰則等；以及統合性倫理法制有效運作所需的配套方案

### 第三節 研究方法

爲了使本研究結果提出與研究目的達成，係基於證據基礎 (evidence-based)，且能更加周延完善，盡量降低可能產生的偏誤，本研究係採取融合一種以上的多元研究途徑 (multi-method) (胡幼慧，2002：271)<sup>5</sup>。此種研究途徑主要是假定任何一種資料、方法和研究者，均有其各自的偏差，唯有納入各種資料與方法，才能真正達到對研究問題「致中和」(neutralize) 的瞭解(胡幼慧，2002：271)，並尋得對研究問題與現象，深厚豐富的描述與值得信賴的詮釋。

整體而言，針對研究目的各次項研究重點，本研究團隊主要透過文獻探討、專家學者焦點座談會以及訪談法等三種方法 (表 1-4)，以達到研究目的，以下分別說明各種研究方法於本研究之應用。

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<sup>5</sup> 多元研究方法，亦名稱之爲三角交叉檢視 (triangulation)，原來是用在導航與戰爭策略，意指合併多種不同方法以導出對策略的思考，在 1978 年被 Denzin 首先引至社會科學的研究 (胡幼慧，2002：271)。



表 1-4 本研究重點與擬使用研究方法

研究重點	資料蒐集方法
一、介紹並比較各國政府倫理法制架構、規範重點與主要條文內容、執行機制	文獻分析
二、瞭解我國現行公共服務相關倫理法律、規範對象、以及規範內容	文獻分析
三、第一階段初步草擬我國統合性政府公共服務倫理法草案條文，並與各界代表就草內容與配套措施，廣泛交換意見	文獻分析、第一階段焦點團體座談
四、根據第一階段修正與具體化草案內容並與草擬相關配套措施	文獻分析、第一階段焦點團體意見分析
五、確認我國政府統合性公職人員倫理法草案內容，確認其應規範對象、主要面向、種類、罰則與其他，以及應有的配套措施	文獻分析、第二階段焦點團體座談與意見分析、法界專家訪談與意見分析

### 一、文獻分析法

本研究運用文獻分析法，進行對於英國、加拿大、德國等歐美國家，以及新加坡、香港、日本與韓國等亞洲國家，倫理法制負責與執行架構、倫理法制規範面向與重點、重要相關法規重要條文內容，以及其他相關議題進行瞭解。此外，本研究亦運用文獻分析法，瞭解我國現行已有的相關倫理法規，以及學術社群對相關議題的討論。

主要的文獻資料來源，包含蒐集自各國政府網站的倫理法制相關資料、學術研究資料與實務資料，學術研究資料如中英文學術期刊論文，以及中英文研討會論文及專書論文（紙本、電子格式）。實務資料則將倚賴我國及世界各國政府的網站及出版品。

## 二、專家學者焦點團體座談會

本研究也使用能夠經由觀察一群參與者，在短時間內所發言論的相互討論，提供大量的對話內容，而獲取對各種對立觀點的資料和洞識（insight）的專家學者團體座談（Rubin and Rubin, 1995: 140），深入地蒐集各相關人，對本研究團隊所研提的我國統合性政府倫理法制草案內容，以及相關配套措施的各種意見與看法，以作為本研究提出更周延完整之法制內容與設計的重要依據。

為了依據本研究對於我國統合性政府公職人員倫理法草案研提，不同階段的需要，因此，本研究有關焦點團體座談的部分，係分成兩階段舉行。第一階段焦點團體座談，主要目的在於較為廣泛的瞭解利害相關人代表的相關態度與意見。經與委託單位討論後決定，係以領域與地區二項作為焦點團體代表的選取原則。因此，以領域而言，係以產業界、非政府組織、媒體、學術界、研究機構，以及政府部門政風體系等領域為主；就地區性而言，焦點團體代表則具有台灣各區域代表性。

於以上二原則下，本研究舉辦一場以中央與地方各機關政風主管與人員為主的焦點團體座談，此一場次係以全國各機關政風機構為主，由本研究委託單位行政院研究發展考核委員會協助，全面發放邀請各機關派員參加之公文，最後參加之中央與地方政風機構代表共計有 48 位主管與非主管，無論就機關層級代與人員代表性均相當周延且全面。另外三場的焦點團體座談。則包括了產業界、非政府組織、媒體、學術界、研究機構等領域。產業界、媒體、NGO、研究機構等代表選定，係以各類機關團體中，較具代表性之機關團體的理事長、執行長與實際負責處理機關團體會務者為邀請對象。學術界代表則包括與政府倫理議題更有直接關切與高度關連的公共行政與法律學界教授為對象，並從中再以是否有對倫理相關議題直接或間接研究與專長作進一步選定標準。

此外，本研究根據第一階段修正與具體化草案內容並草擬相關配套措施，進一步提出更為具體化的草案內容與相關配套建議後，為了

希望能藉由法律界的學者專家提供的深入具體意見，以協助確認我國政府統合性公職人員倫理法草案內容，應規範對象、主要面向、種類、罰則與其他，以及應有的配套措施，因此再舉辦一場第二階段焦點團體座談，此一場次代表即是以實務界與法律學界對此草案較具關係性與足以提供具體意見者為代表。

總體而言，包含第一階段與第二階段共計五場焦點團體座談會與會代表，無論是在領域、地區或發言豐富及深度等方面，都堪稱具有一定的代表性（附錄 1）。因此，與會者之意見對本研究團隊所草擬之統合性政府公職人員倫理法草案內容之意見提供與相互溝通，擴大本研究相關參與者的代表性與深度，以及提昇本研究團隊所提法制之可行性與周延性，均有非常大的貢獻與助益。具體的座談題目如表 1-5。

**表 1-5 焦點團體座談會討論題綱**

<p>「我國統合性政府公職人員倫理法草案與相關議題」座談會討論題綱</p> <p>一、請就「我國統合性政府公職人員倫理法草案」以下各相關面向表示意見。</p> <p>（一）我國統合性政府公職人員倫理法草案應強調的核心價值。</p> <p>（二）我國統合性政府公職人員倫理法草案應規範與包含的對象。</p> <p>（三）我國統合性政府公職人員倫理法草案，對於倫理相關價值與法條爭議的解決、違反倫理法之揭露，以及倫理案件等三方面程序，應如何規範。</p> <p>（四）我國統合性政府公職人員倫理法草案，未來主要負責與執行機關之設置與設計。</p> <p>（五）我國統合性政府公職人員倫理法草案其他相關議題</p> <p>二、我國統合性政府公職人員倫理法草案，應採集中立法或分散立法。</p> <p>三、我國統合性政府公職人員倫理法制相關配套措施建議。</p> <p>四、我國政府公職人員倫理法制其他相關議題。</p>
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**資料來源：本研究**

### 三、訪談與書面意見

爲了使本研究所研提的我國統合性政府倫理法制，能夠得到來自法律界專家學者代表的意見與確認，本研究特別透過對於這類代表有關我國統合性政府公職人員倫理法草案內容與建議進行訪談，以使本研究團隊草擬之草案內容構想與法條，進行數次的訪談，並根據這些專家代表的意見，逐次修正本草案之內容。此外，由於有部分專家學者礙於時間無法接受訪談，因而以書面意見陳述對本研究草案之看法。接受本研究深度訪談與爲本就提供書面意見之法界專家學者名單，請見附錄 2。

## 第二章 相關文獻回顧

與本研究相關的文獻頗為豐碩，不過，於本研究中，將僅就與本研究最直接相關者進行說明。以下，分別就政府倫理法制之意涵、倫理法制對民主治理之重要、學界對倫理法制建構之看法，以及相關國際組織對倫理法制建構之意見等四方面進行說明。

### 第一節 倫理法制之意涵

有關政府公共服務倫理法制意涵的討論，研究者分別從規範性主張、經驗性內涵或哲學性觀點加以詮釋（Cooper, 2006）。Rohr（1989: 70-71）即認為必須根據「政體憲法價值」討論公共服務倫理的內涵，因此應該從規範性角度建立公共服務倫理規範，政府官員的最高道德責任，就是確保體現各項民主政體的憲法價值。因此公共服務的倫理面向，不能僅談論利益迴避、辭職抗議、政府倫理法、公民抗議或公益性洩密等，而應著眼於（1）公共服務倫理，必須根據支撐政體的最核心價值而建立（2）政體所依賴的價值乃是規範性的（3）政體價值應該存在於法律中。

Boling 與 Dempsey（1981）則從政府運作系絡指出，公共服務倫理應包括：（1）處理決策決定和建議時涉及的政策倫理（2）公職人員處理公共經費、資訊或參與政策過程時應有的個人倫理，以及（3）組織要求員工應有的倫理行為和義務等組織倫理。

Denhardt（1988: 26）則於檢視美國幾十年來公共服務理論觀點發展後，整理出一項相當實用的綜合觀點：

「所謂倫理是要求一位行政人員，要能夠獨立自主地對於行政決策所依賴的標準，至少是所服務組織之決定，進行合理的檢視和質疑

思索。當社會價值更清楚被瞭解後，或者有新的社會關切被表達時，行政標準的內容當然可能會隨之改變，方期能經常反映出對於社會核心價值的認同，以及對於組織目標的認識。行政人員在個人層次和專業層次上必須為其決定負責，也為支撐這些決定的倫理標準而負責任。」。

對於公共服務倫理內涵更具體的論述，則可以從 Rosenbloom 與 Kravchuk(2002:555)的觀點獲得理解：「倫理可視為是自我課責的一種型態，或是對公共服務者的一種『內在制約』」，不過，內在制約可透過許多正式要求而確保執行，使得服務者的行為符合許多類別的外在標準。」。

綜合分析以上各論者對於公共服務倫理法制意涵之見解可以發現，公共服務倫理法制之意涵，基本上包含了應為與禁止兩個層面的意義。所謂的應為層面，即意指從事公共服務的公職人員，被期待達到的角色與應有行為。此一層面多屬於價值陳述，具有引導公職人員正確行為的功能，以及達到法定責任以外之更高標準。Gilman 歸納各國倫理法制後指出，廉潔、客觀中立與效能是大部分國家期待其公職人員應達到的三大共通倫理價值 (2005:13)。

第二層面的禁止事項，則意指公職人員不應該出現的行為，而且是具體以法令規範，且通常會一併指明違反效果與罰則。依全球趨勢而言，即是以與貪腐有關行為的禁止為主 (Gilman, 2005: 5)。一項完整的倫理法制，基本上即應包括以上應為與禁止兩個面向 (Gilman, 2005: 5)。

由於公共服務倫理法制的完整意涵，包括應為與禁止兩個層面。因此，就概念內涵而言，公共服務倫理並不同於反貪腐的意義，公共服務倫理實質上包含了一般認知的防貪、反貪與肅貪概念，但亦同時包括了公職人員應為的價值與原則。於本文中，對於公共服務倫理法制亦是採取此種概念內涵。

## 第二節 倫理法制對民主治理之重要性

關於民主治理維繫與鞏固的諸多討論中，有關於公共服務倫理議題，長期以來一直是政治學者與公共行政學者最為關心的課題。從相關研究中可以發現，多數論者較為認同，對於民主倫理價值的維繫，以及提高清廉治理的程度，透過制度的建立較為有效。儘管有部分文化論者並不認為，制度的改革，必然能夠帶來更好的結果。因為文化論者認為「由政治行為到政策決策的模式所產生的政治結果，反映的是社會價值的模式，這些價值不大會受到組織結構變異的影響。」（Uslaner, 1998）。然而，大多數相關研究與實務經驗的結果，多是主張民主國家治理的倫理價值維繫，透過法制途徑是較為有效的作法。相關研究中，較為早期的論述，多是著重在討論或強調公共服務倫理法制對民主治理的重要性，但較為晚近的研究，則由於當代政府治理環境的變遷，論者在探討倫理法制對民主治理的重要論述時，有更多面向的討論。

較早期的論述，可以追溯到美國開國元勳 James Madison 於聯邦文獻第 51 號（Federalist 51）的一段話：「人們如果是天使，那就沒有成立政府的必要。如果天使治理著人類，就沒必要對政府有外部或內部控制。政府的設立，乃是由平凡的人們管理著平凡的人們。因此最大的困難就在於：必須首先讓政府能管理被治者，接著是要求政府能控制自己。」。此段著名的民主宣言，即已點出對於政府與政府人員的控制是必須的，而且，透過相關倫理法制設計以施行的外在控制機制，與公職人員基於自律的內在控制，即使不是更加重要，也絕對是不可或缺。

之後，美國兩位著名的公共行政學者 Finer 與 Friedrich 在 1940 年代，曾經為了公共服務倫理的維持與提昇，究竟應該採取自律性的內控機制，或透過倫理法制規範的外控機制，有一場精彩的論戰（Finer, 1941; Friedrich, 1940）。Finer（1941）認為，從事公職的人，沒有比

一般人在德行上好到哪裡去，因此，各類正式的外控機制的建立是必要的。但是，Friedrich（1940）卻認為，外在控制有其一定的限制，無法真正規範公職人員，因此，包括倫理準則的內控機制才是最主要的工具（陳敦源、蔡秀涓，2006）。基本上，Friedrich 的論點，並未駁斥倫理法制可以確保公職人一定的倫理水準，而是提醒，若價值體系一併強調將會更具效果。換言之，兩位學者對於完備的公共服務倫理法制，有助於民主治理此基本看法並無二異。此後，政治學者與公共行政學者在討論各類公職人員之貪腐、清廉與倫理行為時，基本上都以上述兩位學者所提之論點，作為建制倫理法制的思考架構（Levine et al., 1990; Cooper, 2006; Staring, 2008; Lewis & Gilman, 2005）。

以上兩位學者的觀點，從一項民主體制轉型與貪腐關係之比較研究可以得到經驗意義的證實。政治學者 Rose-Ackerman（1998）研究義大利與拉丁美洲國家的政經結構與貪腐狀況就發現，政治上從威權體制轉變到民主政治，經濟上從共產主義開放成市場機制，這些政經變革都未必一定會減少社會上貪腐狀況。事實上，在沒有完善健全的反貪腐策略作為與配套措施的情況下，這些政經變革有時反而會加速貪污腐化、向下沈淪的力量。

由於始自 1980 年代的全球性政府新公共管理績效改革，為各國帶來許多實益，因而達到績效目標被視為民主課責的重要倫理價值。但也由於績效改革衍生大量授權、鬆綁、彈性、民營化、委外等市場機制與管理主義的引進，導致公共服務倫理不彰，動搖民主根本的現象。<sup>6</sup>所以，晚近有關倫理法制與民主治理關係之探討文獻，因為加入政府績效改革之因素，而有更多面向的討論。

例如 Hunt 與 O'Toole(1998)二人所編著的《公共服務之改革、倫理與領導》一書即為代表。Tait（2000: 16）在一篇討論加拿大政府公共服務倫理法制重建的重要文獻中即指出，對當代政府而言，公共服務最核心的倫理價值就是為民主服務，而其具體作法，就是透過公共利益的維繫與提昇為民主服務其中。此外，Gilman(2005)、Lewis

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<sup>6</sup> 有關新公共管理績效改革對公共服務倫理的衝擊，可參閱陳敦源、蔡秀涓(2006, 192-193)。



& Gilman(2005)、施能傑(2004 & 2006)主要是從民主治理中的公共服務與國家競爭力等觀點討論。余致力(2006)與吳英明(2006)則是從民主治理之觀點著眼。陳敦源、蔡秀涓(2006)則是從民主治理的倫理因素、台灣傳統公共服務行政倫理觀念的轉型，以及新公共管理造成的影響等三方面，將倫理法制對台灣民主治理鞏固與國家發展的重要性，做相當完整的討論。<sup>7</sup>

### 第三節 學界對倫理法制建構之看法

學術界對於公共服務倫理法制建構具體原則的討論，相較於上述兩項議題而言，顯得較為不足。不過，Lewis 與 Gilman(2005)從學理與長期參與和觀察政府實務界，整理出一項完備且可落實的公共服務倫理法制，應該包含的具體可操作面向與內容，堪稱是目前相關文獻中，相當詳盡完整的論述。<sup>8</sup>這兩位學者分別從公共服務倫理法制之關鍵要素、一般過程與有效的機制、應規範的主要項目、倫理標準對公職人員的意義與實用性，以及成功的倫理法制所需配套措施等五個面向，整理出各次項目應含括的內容(表 2-1)(Lewis & Gilman, 2005: 194)，非常值得參考。

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<sup>7</sup> 國內相關研究中，除了本節所列舉的這幾篇，係屬與本研究最具直接相關性之外，其他有關的研究，還可簡略區分成國外經驗的引介與學習、國內制度的研究、貪腐原因的探討等三類。國外經驗引介與學習相關研究，主要分析對象包括香港、新加坡、OECD 等國家與非營利機構的防制措施，如江岷欽、林鍾沂(1999)、余致力、陳敦源、黃東益(2003)、施能傑(2006)等。第二類有關國內制度的研究，又可分成兩個不同的研究方向。一類是從結構功能的角度，包括政風機構、廉政署的設立與否及成效等問題，如翁源燦(2000)、陳書樂(2003)之研究。另一類則是從法制面的角度，主要針對相關法制面的探討與修正，包括圖利罪、貪污治罪條例、陽光法案等(許玉秀, 2002; 彭德富, 2002; 劉淑惠, 2000; 柯耀程; 2003)。第三類研究則是從造成貪腐原因的面向來探討解決方法。這一類研究多從某一角度(如行政倫理、行政裁量權)切入探討，相關文獻包含有廖文生(2000)、邱瑞忠(2000)、顧慕晴(2003)、蘇彩足(2002)、徐仁輝(2003)、許濱松等(2004)和謝立功(2003 & 2004)等。

<sup>8</sup> 對於倫理法制應包含的具體面向與建制原則，國內相關研究迄今仍較少具體討論，因此，本研究遂未加以說明。

**表 2-1 公共服務倫理法制應有面向**

<p>一、五大關鍵要素：</p> <ol style="list-style-type: none"><li>1.合理、廣泛的目標</li><li>2.領導行為的優先價值</li><li>3.可瞭解的標準，包含可做與不可做項目</li><li>4.設定有效有意義的罰則</li><li>5.程序規定</li></ol>
<p>二、一般過程與有效的機制</p> <ol style="list-style-type: none"><li>1.執行政序：揭露、公正委員會、調查、審計</li><li>2.保護機制：苦情申訴程序、檢舉專線、弊端揭發人保護</li><li>3.有意義的罰則與罰金：行政干預、行政罰</li><li>4.機關執行：各種訓練、倫理行為評估與宣揚、自我管制</li></ol>
<p>三、主要項目</p> <ol style="list-style-type: none"><li>1.基本的、可瞭解的禁止行為</li><li>2.財務揭露</li><li>3.不當行為標準</li><li>4.具有調查權或建議權的廉政委員會或機關</li><li>5.補充性的禁止事項（例如兼職、旋轉門條款）</li><li>6.刑罰與行政罰</li><li>7.申訴與員工的保護程序</li></ol>
<p>四、公共管理者應瞭解事項</p> <ol style="list-style-type: none"><li>1.我瞭解這些標準嗎？</li></ol>

- 2.我記得這些標準嗎？
- 3.這些倫理標準對工作有何意義？
- 4.這些倫理標準對我有何意義？

#### 五、所需配措施

- 1.高階管理者持續、堅定的承諾與執行
- 2.將各項倫理標準落實到各級人員的日常工作
- 3.將倫理行為與生涯及報酬連結
- 4.明禁賄賂、選擇性對待、偏私與濫權
- 5.重複且公開的向員工、利害相關人與媒體溝通倫理標準與期待

**資料來源：**Lewis and Gilman (2005:194)

### 第四節 相關國際組織的建議與作法

國際組織對於民主國家倫理法制建構原則與內涵的相關討論、建議與調查不少，其中，「經濟合作發展組織」(OECD)較為著重一個國家公共服務倫理法制建構原則、應有面向與實施結果的調查。「國際透明組織」(TI)、「亞太經濟合作組織」(APEC)、世界銀行(World Bank)，以及「全球廉政中心」，則較為關注廣泛的反貪污議題。其中，OECD與TI的建議與作法，相較於其他組織而言更普遍地被提及與應用，以下，僅對於OECD與TI的建議與作法加以略述。

#### 一、OECD

OECD長期致力於為各會員國提出倫理法制建制原則、建議，推動正式公約，以敦促各國相關立法，並持續透過對其會員國的相關倫理法制體系機制加以比較分析，期望能找出有效的防治之道，發揮跨

國性政策學習與經驗擴散之效果，其工作頗有成效（PUMA, 2005）。以下分別介紹 OECD 對政府倫理法制相關面向之看法與調查情形。

### （一）OECD 各國政府公共服務倫理規範兩大面向

OECD 各國政府公共服務倫理規範，主要可大致區分成積極提昇的公共服務倫理規範，以及禁止的反貪污相關規範，以下分別說明之。

#### 1、公共服務倫理規範

OECD 認為建制政府公共服務倫理法制之目的，在於提昇公共服務倫理是增進民眾信任政府的不二法門。因為「各級政府想提供給公民在經濟與社會生活上有一個可信任和有效架構時，誠實正直已成為該架構的根本要件之一。倡導建立正直誠實的機制和體系，也越來越被認為是良善治理的根本要素。」。（PUMA, 2000:1），而所謂的誠實正直架構，就是政府倫理法制。

因此，為了確保政府倫理法制能達到所謂的誠實正直，就必須符合以下幾項指標：

- (1) 政府員工行為符合所任職機關組織的公共執掌
- (2) 日常的公共服務運作具有可靠性
- (3) 公民獲得根據合法性和公正性所為之無偏私對待
- (4) 公共資源能有效率地、有效能地和適當的被運用
- (5) 決定程序對民眾公開透明，並允許民眾質疑審視和給予抱怨救濟

#### 2、反貪污規範

所謂的貪污，最常見的也最常用的定義，係指濫用職位、角色或資源以圖利個人。可區分為政治貪污和行政貪污。行政貪污是指政府

官員擔任決策者或行政管理者的作為活動而發生的貪污，其包括兩種可能性，一是符合法令規定作為但仍有貪污行之舉，例如完全依法令行事，但卻也同時藉機違法收受利益。另一則是根本違反法令作為之貪污（施能傑，2004：117）。

為了禁止貪污，OECD 各國通常會明令禁止公職人具有以下行為（OECD, 1999:15; 2000:42; 引自施能傑，2004：117）：

- (1) 未嚴守秘密，未經許可使用機密性官方資訊，濫用個人資訊。
- (2) 不當行為，濫用公共設備與政府財產資源
- (3) 販售影響力交換好處
- (4) 擔任其他不得從事之工作的規定
- (5) 作偽證或不實陳述誤導政府官員
- (6) 接受餽贈
- (7) 選舉舞弊或干預選舉
- (8) 干涉或妨礙政府採購
- (9) 歧視
- (10) 政治活動限制
- (11) 參與罷工
- (12) 私親主義
- (13) 對弊端揭發者報復
- (14) 怠忽職守
- (15) 影響政府聲譽

## (二)OECD 建議各國應採取的倫理行動

有關於倫理法制建制原則部分，OECD 在 1998 年一份名為「公共

服務管理原則」(Principles for Managing Ethics in the Public Service)的文件中，即對於會員國應採取的倫理行動，以及倫理法制應有原則兩項議題提出指導建議。有關各會員國應採取的倫理行動建議方面，OECD 指出有以下六點(PUMA, 1998)：

- 1.發展與定期審視影響公共服務倫理行爲的政策、程序措施與制度。
- 2.強化政府行動以維持公部門高標準行爲與反貪污。
- 3.將倫理面向整合至管理架構，以確保各項管理措施符合公共服務倫理價值和原則。
- 4.將倫理制度中，有關價值規範與法律規範予以結合。
- 5.評估公共管理改革對公共服務倫理行爲的影響。
- 6.採用 OECD 之「公共服務倫理管理原則」，以確保高標準的倫理行爲。

### (三)OECD 建議的倫理法制原則

至於 OECD 認為政府倫理法制應有的原則，則是規範於「公共服務倫理管理原則」(PUMA, 1998)，共計有以下 12 項：

- 1.倫理標準應該清楚。
- 2.倫理標準應該反映在法制架構。
- 3.倫理標準應該讓公職人員隨手可得。
- 4.政府員工犯錯時應該知道自已的權利與義務。
- 5.政治承諾應該強化對公職人員倫理行爲之要求。
- 6.決策過程應該透明公開。
- 7.公私部門互動應有清楚的指引標準。
- 8.管理者應該展現與提昇倫理行爲。

9. 管理政策、程序與措施應該提昇倫理行爲。
10. 公共服務條件與人力資源管理應該提昇倫理行爲。
11. 適當的課責機制應該被置於公共服務之中。
12. 應有適當的程序與罰則處理不當行爲。

#### (四) OECD 國家主要倫理價值

OECD 曾對於各會員國政府倫理法制的相關議題進行調查。2000 年 (PUMA) 的報告就發現：無私公正 (24)、依法行事 (22)、廉潔誠實 (18)、透明公開 (14)、追求效率 (14)、確保公平 (11)、負責 (11)、與維持正義 (10) 等八項倫理價值，是各國政府最重視的公共服務核心倫理價值。<sup>9</sup>

此外，施能傑依據 OECD 幾項報告自行彙整各國公共服務倫理核心價值 (2004: 137-138)，對於瞭解 OECD 各國倫理法制內涵有很高的參考性 (表 2-2)。

**表 2- 2 OECD 國家公共服務倫理核心價值**

	核心價值	法源
澳洲	無私公正、廉潔誠實、效率、平等、公平、專業主義、親切人性、親切人道關懷	一般法律、公共服務法律
奧地利	無私公正、依法行事、廉潔誠實、負責、嚴守秘密	
比利時	依法行事、廉潔誠實、服從指揮、	公共服務法律

<sup>9</sup> 每一項價值後括弧之數字代表有多少國家採用此項價值。

	核心價值	法源
加拿大	無私公正、依法行事、廉潔誠實、透明公開、	一般法律、公共服務法律
捷克	無私公正、嚴守秘密、利益迴避	
丹麥	無私公正、依法行事、廉潔誠實、效率	一般法律
芬蘭	無私公正、透明公開、負責	文官法律
法國	嚴守秘密、服從指揮	一般法律
德國	無私公正、依法行事、廉潔誠實、平等、負責、公平、嚴守秘密、專業主義、公共利益、利益迴避、服從指揮、效忠國家、	一般法律、憲法、文官法律、公共服務法律、
希臘	無私公正、依法行事、廉潔誠實、透明公開、效率	一般法律、憲法、公共服務法律
匈牙利	無私公正、依法行事、效率、負責、公平、專業主義、公共利益、切人道關懷	文官法律
愛爾蘭	無私公正、依法行事、效率、平等、公平、嚴守秘密、專業主義、利益迴避、善用國家資源	
冰島	無私公正、依法行事、透明公開、負責	一般法律、文官法律
義大利	無私公正、依法行事、效率、服從指揮、效忠國家	一般法律
日本	無私公正、依法行事、廉潔誠實、平等、嚴守秘密、公共利益、利益迴避、服從指揮	憲法、公共服務法律



	核心價值	法源
韓國	無私公正、依法行事、廉潔誠實、嚴守秘密、專業主義、服從指揮、效忠國家、親切人道關懷	一般法律、憲法、文官法律
盧森堡	無私公正、透明公開、平等	一般法律
墨西哥	依法行事、廉潔誠實、透明公開、效率、負責	一般法律、憲法、公共服務法律
荷蘭	無私公正、依法行事、廉潔誠實、透明公開、平等	一般法律、憲法、文官法律、公共服務法律
挪威	無私公正、依法行事、透明公開、效率、平等、公平、慎用國家資源、效忠國家	一般法律
紐西蘭	廉潔誠實、透明公開、效率、負責、公平	
波蘭	無私公正、廉潔誠實、專業主義	一般法律、憲法
葡萄牙	無私公正、依法行事、廉潔誠實、透明公開、效率、平等、負責、公平、專業主義、公共利益	一般法律
西班牙	無私公正、依法行事、效率、公平、公共利益	憲法、公共服務法律
瑞士	依法行事、效率、公共利益	公共服務法律
瑞典	無私公正、依法行事、廉潔誠實、透明公開、效率、平等、負責、公平、嚴守秘密、公共利益、利益迴避、慎用國家資源	一般法律、憲法
土耳其	無私公正、依法行事、廉潔誠實、平等、公平、慎用國家資源、效忠國家	憲法、文官法律

	核心價值	法源
英國	無私公正、依法行事、廉潔誠實、透明公開、負責	文官法律
美國	無私公正、依法行事、廉潔誠實、透明公開、效率、平等、嚴守秘密、利益迴避、慎用國家資源	一般法律

**資料來源：施能傑，2004：137-138。**

(五)OECD 政府倫理法制主要規範的倫理面向

OECD 各會員國，爲了落實以上各項核心價值，因此，透過法律、服務行爲守則、服務倫理守則、文官法令、一般行政規範等，具體規範幾項一般公職人員均應遵守的主要倫理面向(表 2-3)(OECD, 2000: 38)。

**表 2-3 OECD 政府倫理法制主要規範的倫理面向**

面向	國家數目
官方資訊之使用	28
接受禮物或好處	28
政府部門以外之工作	27
奉派之差旅	22
官方財務之使用	21
政治工作之參與	19
離職後之工作限制	17
企業信用卡之使用	14
其他	7

**資料來源：PUMA, 2000: 38**

## 二、國際透明組織 (Transparency International: TI)

國際透明組織於 1993 年正式成立，結合政府機關、民間企業與公民社會的力量，致力於抑制與打擊各國的貪污腐化行爲，以營造一個廉潔而有效能的生活環境。在具體做法上，國際透明組織的主要工作不是針對單一特定貪腐事件進行報導與查訪，而是著眼於國家及國際間抑制貪腐工具的建立，並推動各種反貪腐機制的建立與政策的改革，所採取的策略包括：(1) 激起社會關注 (2) 建立反腐聯盟 (3) 開發反貪工具 (4) 設定廉潔標準 (5) 監測貪腐活動。

國際透明組織所提出與建議的國家廉政體系 (National Integrity System, NIS)，則是提供國際透明組織進行許多跨國性比較研究的重要架構 (余致力等，2006)。國際透明組織對於各國 NIS 建制的原則指引與測量，基本上係分別從以下十二個面向加以設計 (Transparency International, 2000; 引自余致力、蘇毓昌，2006)。

- (一) 立法機構
- (二) 行政機關
- (三) 司法系統
- (四) 審計總署
- (五) 監察特使
- (六) 反貪腐機構：
- (七) 文官系統
- (八) 地方政府
- (九) 私人企業部門
- (十) 媒體
- (十一) 公民社會
- (十二) 國際行爲者

國際透明組織期望透過電基於以上十二個基礎的整合體系，診斷

與評估一個國家整體廉政的體質，並進一步採取治理策略與行動。這些立基於社會價值與公民意識的樑柱，共同支撐起國家廉政體系（圖2-1），進而達成永續發展、依法治理與生活品質的目標。

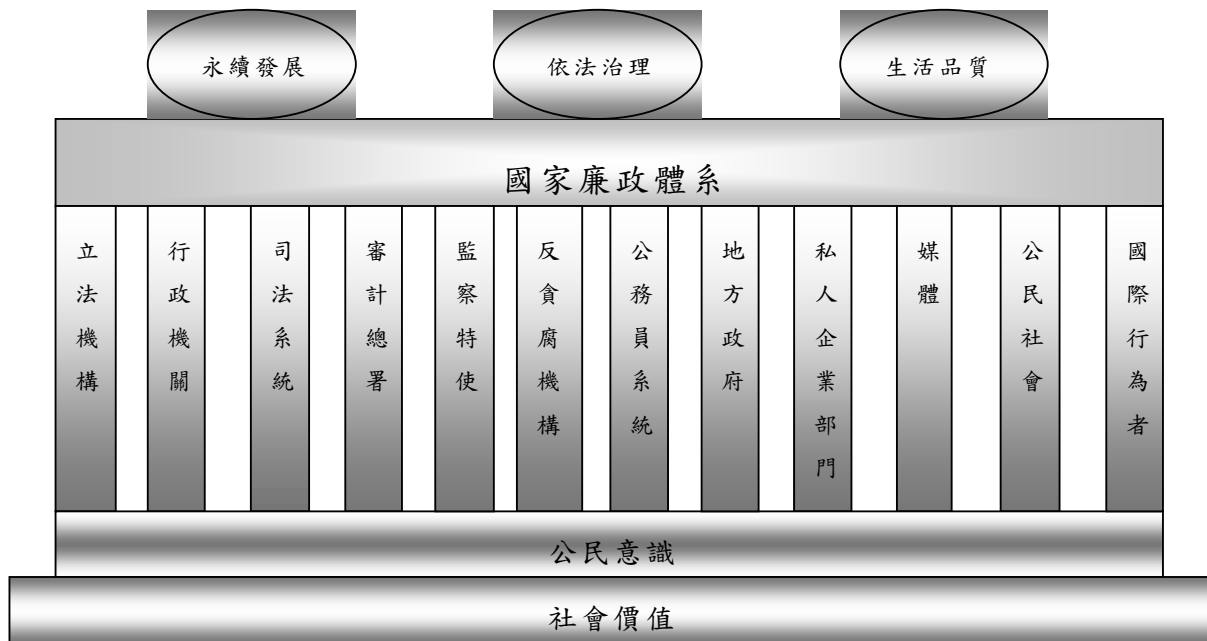


圖2-1 國際透明組織所建構之國家廉政體系

資料來源：Transparency International 2000: 35

## 第三章 英、加、德、星、港、日、韓政府 倫理法制分析

從本研究團隊所蒐集之英國、加拿大、德國、新加坡、香港、日本與韓國等國，統合性政府倫理法制相關資料發現，這些國家（與政府）的政府倫理法制，大致上可以分別從（一）倫理法制制定背景；（二）核心價值與特色；（三）倫理法制總體特色；（四）倫理法制主要規範向以及（五）執行架構獲得瞭解並進行比較。於各國在以上五項議題所呈現之特色基礎上，即可進一步看出對我國建構統合性政府倫理法制之意涵。<sup>1</sup>

### 第一節 各國政府倫理法建制背景與緣起

國家倫理法制的建構，往往涉及遠因與近因，遠因通常是官僚系統在民主政治當中必然會面對的價值衝突問題，比方說，政治回應性（political responsiveness）與專業責任（professional responsibility）的衝突，近因方面，可能是轟動的政府弊案或醜聞所引爆的政治性反

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<sup>1</sup> 本研究由於委託單位並未將美國納入委託書的研究範圍，因此，並未在各國倫理法制部分對美國進行分析。但由於期末審查時，部分委員認為美國之政府倫理法制不僅完整，亦為各國相當稱許的典範，因此認為本研究應盡可能將美國政府倫理法制相關內容於適當處加以呈現。本研究團隊基本上同意此種觀點。因此，於考量自收到期末審查會會議記錄至最後完全定稿僅有的兩星期，若欲重新針對美國政府倫理法制內容進行如其他國家一般，自其政府官方網站搜尋最新資料並逐條翻譯或摘譯，顯然對本研究團隊將是不盡合理且難以達到之要求。因此，本研究與委託單位討論後，對於部分審查委員希望能於本研究呈現美國倫理法制部分內容之意見，本研究係採取以目前國內對美國政府倫理法介紹與論述較為完整之施能傑（1999）第13章為基礎，於本章以下各相關部分進行必要之補充與說明。此種作法就資料更新度而言，固然有所遺憾。然於考量此部分本非委託單位意欲委託部分，非本研究團隊所應完成事項、本研究團隊基本上認同這些委員意見、以及有限的時間壓力等因素，此種處理方式應屬適當。

應。遠因方面，例如英國、加拿大與德國，其倫理法制的建構，主要是從政治領袖爲了提昇公共信任（public trust）而推動的。在本研究所特別關注的七個國家（政府）中，屬於歐美國家的英國、加拿大與德國，大體上政府倫理法制之建制背景均屬於第一類。而同屬亞洲區域的新加坡、香港、日本與韓國，大體上政府倫理法制之建制背景則均屬於第二類。

不過，在歐美國家中，一向對政府倫理法制建制完整性不斷追求的美國，1978年第一部聯邦政府完整的「政府倫理法」（Ethics in Government Act of 1978），卻是源於1970年代尼克森時代先有副總統因貪污辭職，後有尼克森因水門案也辭職等一連串事件魯門總統一些親信涉及貪污情事所致（施能傑，1999：232）。

以英國爲例，1980年代新公共管理改革，讓公私價值的取捨產生摩擦，逐漸侵蝕英國文官傳統在民眾心中誠實與廉潔的形象，1994年，梅傑組成由上議院議員諾蘭（Lord Nolan）領導的「公職生涯行爲標準委員會」，1996年公布「文官行爲準則」（Civil Service Code）。

另外，加拿大的發展在於領導者對於重建民眾對公務部門對關鍵價值尊重的形象有關，1995年樞密院書記長 Jocelyne Bourgon 領導九位副部長，成立九個有關政府革新的研究小組。其中之一，即是政府公共服務價值與倫理研究小組，此一小組係由歷任加拿大政府重要部會副部長，兼具學者身份的樞密院辦公室資深顧問 John C. Tait 所領導，成立理由在於民眾普遍對公職人員的價值與倫理行爲不認可，而公職人員自己也有此感受。此一小組於1996年發表「礎石：公共服務價值與倫理任務小組報告」，此後在加拿大公職人員倫理相關議題即不斷被討論，2003年國會終於依據此報告通過「公共服務價值與倫理法」。

最後，德國1953年的「聯邦公務員法」與「公務員基準法」即有相關公務人員倫理規範的規定，可以說是較早就完整的展現公務人員相關倫理價值的國家，因此，德國也沒有單獨的公務人員倫理法制。

本研究中的亞洲國家與地區，新加坡、香港、日本與韓國政府倫

理法制建制緣起，基本上都是與歷經一連串嚴重的貪腐事件，導致社會與政府興起反貪腐的決心有關。因此一開始多是以反貪腐為政府倫理法制的起始與核心，而後逐步擴大範圍與面向，成為與歐美國家倫理概念較為一致的政府倫理法制。

例如歷經一段時間的香港的相關倫理法制，受到英國公務人員制度的薰陶，加上廉政公署的成功經驗，已經從反貪腐的角度切入並建構公務人員相關倫理法制與規範。香港這樣的發展與新加坡頗為類似，同樣受到英國文官傳統的影響，新加坡 1965 年獨立於馬來聯邦之後，就努力從法制反貪的方面出發，建構公務人員紀律的相關規範，已有不錯的成果。

日本與韓國的發展則都是在民主社會中，先是在公務人員相關基本法制當中，建構初步但不完全的規範。後來在各項政治與經濟的醜聞不斷爆發之後，公務人員的倫理規範成為民意的焦點後，才建制統合性政府倫理法制。例如日本以單一的倫理法制規範各類公職人員。韓國則以公職人員行為守則，配合反貪腐法來規範公職人員的行為規範，1970 年「公職人員服務規定」誕生，1981 年第一部統合性倫理法「公職人員倫理法」完成，但此法於 2003 年為「公職人員行為守則法」替代，2001 年則通過「韓國反貪法」。

綜合來看，各國公務人員倫理法制的建構，除了德國以外，都是近三十年公務系統內外壓力之下所發展的結果，而各國的回應方式，因為國內現有的公務人員規範的價值、法規架構、甚至政治制度而有所不同，接下來本研究再從這些項目來比較及觀察各國政府倫理法制各相關面向。

## 第二節 各國倫理法制主要核心價值

一般而言，一國倫理法制的核心價值是靈魂，而結構特色則是其運作的基本環境，對於一國倫理法制的發展有其一定的重要性。因此，

各國對於倫理法制核心價值的認定，呈現不同的面貌。

儘管各國倫理法制核心價值未盡相同，不過，根據本研究整理與歸納英國、加拿大、德國三個歐美國家，以及新加坡、香港、日本與韓國等四個亞洲國家，共七個國家的倫理法制架構與相關法制內容(請見附錄 3-1 至 3-7)之後發現，各國均會在其最重要的統合性以及相關的倫理法典中，相當明確的指明幾項最重要的核心價值，以作為該國政府引導公共服務人員應達到之倫理標準，以及不應違背的反倫理行為準則。

綜合分析各國倫理法制核心價值(表 3-1)可知，<sup>2</sup>儘管部分國家會依據其傳統與系絡所需，特別強調幾項倫理價值。但基本上各國所強調之倫理價值，仍具有相當高的一致性。各國所共同強調之倫理價值，大致上可以區分成三大類。第一類是廉潔透明與等價值，這也是各國最為強調的基本倫理價值。第二類則為與公正中立有關的價值，即使各國用語有所差異，但所指涉的概念基本上類似。第三類則是民主國家公共服務體系最終應積極達到，有關公共利益、效率效能與課責(負責)之倫理價值。

廉潔透明此項倫理價值，基本上即意指必須將公共服務之責任置於個人私利之上，因此也意謂不得濫用權力以遂私利。更具體而言，從七個國家中對廉潔透明界定最為明確的「英國文官行為準則」相關規定可知，廉潔透明的積極面，意指做為一名國家公職人員，必須達到以下幾項標準(附錄 3-1)：

- 1.負責地履行責任與義務；
- 2.秉持專業行事，以贏得民眾之信賴；
- 3.確保公共經費與其他資源皆能獲致妥善與效率的運用；
- 4.公正、效率、敏捷、有效及敏感地處理公眾事務；
- 5.在合法授權下，盡可能地保持資訊公開；

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<sup>2</sup> 有關個別國家的倫理核心價值，由於已經表列在表 3-1，為免重複因此不再一一贅述。



6.遵守法律並維護司法。

就消極與禁止面而言，公職人員不得有任何濫用職權，例如以職務之便所取得之權力或資源，做為自身與他人私利之用、接受他人的禮物或款待，或其他形式的利益，以致影響決策判斷或行政處分。

所謂的公正中立，實則涵蓋公正公平與政治中立兩個次概念。藉由概念規範最為清晰的英國，吾人可以瞭解，所謂的公平意指，做為國家公共服務者，必須恪守以下兩項原則：

- 1.以公平、正義與公正的方式，以及恪遵文官對平等和多元的承諾，執行其職責。
- 2.不得無理地偏袒或歧視特定個人或利益。

英國文官的政治中立傳統，一向為舉世稱讚，這得歸功於英國對政治中立概念非常明確地訂於其政府倫理法制中。因此，透過英國對政治中立概念的界定，即可對此倫理價值有一相當周延的瞭解。英國政府倫理法分別從應為與禁止事項進行界定，茲引述如下：

作為一位文官，必須：

- 1.無論執政政黨為何，不論自身的政治信仰為何，遵循此守則的要求，嚴守政治中立、竭盡所能地為政府服務；
- 2.贏得部會首長的信任，並於此同時與未來可能的政府或首長，建立相同的關係；
- 3.遵守政治活動參與的相關限制。

作為一位文官，不得：

- 1.依政黨之考量行事，或將公務資源用於政黨之政治目的；
- 2.以個人的政治觀點提出建議或行動。

至於公共利益課責此項倫理價值，從加拿大政府倫理法制之相關規定，則可有深刻地理解。加拿大「公共服務價值與倫理法」(附錄3-2)指出：

公共服務者必須時時刻刻以倫理行為促進公共利益，具體而言，必須遵守以下規範：

- 1.公務員應盡義務並妥善安排私事，以利公民源於對政府清廉、客觀與無私的公共信任得以被保存與提昇。
- 2.公務員應時刻以符合最嚴格的公共監督之作爲行事；而不應僅簡單地依法行事而已。
- 3.公務員除了重法定義務與責任之外，決策時亦應以公共利益爲念。
- 4.假如公務員的私利和法定的義務有所衝突，應以公共利益爲先。

除了以上各國倫理法制核心價值部分，呈現幾項共認的價值此一趨勢之外。從本研究蒐集到的各國資料當中也發現，英、加、德、韓對於倫理法制的核心價值涵蓋的價值面向較多。英國對於常任文官與政務首長還有不同的價值要求，其中廉潔、客觀是兩者共通的地方，文官政治中立是特別的要求，當然，公開是對政府首長的要求，但卻不是對常任文官的主要要求，這可能與英國長久以來事務人員隱居幕後，政治責任由政務首長負擔有關。因此，相同內閣制國家如德國，公務人員重要的倫理核心價值中，甚至還包括沉默，也就是說，公務人員從事隱密的「弊端揭發」(whistleblowing)或是「洩漏資料」(leaking)給新聞媒體的工作，將會有倫理價值上的爭議。

另外，加拿大的原則，雖然項目不多，但是基本上包含許多公務系統基本的價值衝突，比方說，民主與專業之間，就有其一定的衝突所在，另外，專業與人本之間，也會有其衝突，當然，專業是否包括客觀，但是這樣的客觀，是否會否定某些倫理價值，比方說，人民知的權利與官僚體系以專業不對稱(professional asymmetry)獨占政策資訊之間，就會有衝突。至於美國，雖然其社會與政的核心價值是民主，然而卻很早就要求公務人員必須遵守兩項行為規範，及國家忠誠與現致政活動，立法者認爲這種特別的義務負擔乃爲確保文官服從政治領導的民主理念之需（施能傑，1999：230）。

最後，亞洲國家當中，韓國將公正、公眾利益、透明與效率當作倫理價值的基礎，但是，這些價值並沒有明確地在相關法制條文當中指出，也可以看見亞洲國家對於規範性的條例，是站在全觀性（holistic）而非分析性（analytical）的角度來推動倫理法制，因此比較著重在執行層面，也比較不會處理規範層面價值衝突的問題，因此，在規定上就以規範的內容取代倫理價值上的明示。

**表 3-1 各國倫理法制主要核心價值（或義務）比較表**

國別	核心價值
英國	常任文官：廉潔、正直、客觀、公平、政治中立 政務首長：無私、廉潔、客觀、課責、公開、誠實、領導
加拿大	民主（政治中立）、專業、倫理（公共利益）、人本
德國	公共利益、執行職務、服從、中立、沈默、忠誠
美國	國家忠誠、政治中立與政治活動限制 <sup>3</sup>
新加坡	廉潔
香港	廉潔、誠實、公正
日本	常任文官：清廉、負責、公共利益 政務官：清廉、信任、
韓國	廉潔透明、公正、公共利益、效率

**資料來源：本研究**

綜合以上說明與討論，本研究認為，基於我國現行政治經濟環境所需，公民對政府公職人員的期待，以及各國對政府倫理價值的共識，本研究認為我國公職人員倫理法草案，亦應比照各國政府倫理法制之設計，於條文中正式宣示我國公職人員應遵循的倫理價值應有廉潔透明、公正中立，以及公共利益等三項，並於法條中對此三項價值予以概括說明其內涵。

<sup>3</sup> 引自施能傑，1999：230。

### 第三節 各國倫理法制總體特色

整理英國、加拿大、德國、美國、新加坡、香港、日本與韓國等國家的倫理法制相關面向，可以將之歸納成倫理法制所屬的憲政體制、規範對象、是否規範相關的處理程序與違法事件揭露及調查程序、倫理相關規範法治化程度、倫理法制集中程度，以及有無統合性倫理法典及主要倫理法典名稱等六個面向（表 3-2）。

首先，就憲政體制而言，本研究範圍中的國家，大部分是屬於內閣制的國家，僅有美國與韓國為總統制國家。英、加、德、日等國為典型內閣制國家，新加坡是仿英國內閣制，但並非完整的民主國家，總理的位置存在威權統治的行政領導意義。再從規範對象來看，各國均以常任文官為最基礎的規範對象，英國、新加坡、香港與日本則將內閣閣員與政務人員納入，美國與日本則將參眾議員與地方議員等民意代表亦納入規範。

由於內閣制國家行政與立法融合，最主要的政治任命人員（部會首長、內閣閣員），都是民選產生的議員，政務人員本身也是民選人員，因此，內閣制國家倫理法制所規範的政務人員，乃是指進入內閣的國會民選議員。然而，在總統制國家，因為政務人員不能兼任國會議員，政治任命人員與國會議員是兩種不同的人，政務人員法不會包括國會議員。但美國則於部分規範（例如財產申報）亦將國會議員納入（施能傑，1999：235）。

此外，韓國倫理法制規範對象，則擴及凡與政府有契約關係或代為執行公權力之廣義的職權行使相關人員全部納入。新政府運動影響下，政府推動「機構化」，這些準政府機構負擔越來越多公共機構過去的任務，這些機構當中的人雖然沒有傳統公務員的身分，但是其行事仍然會影響民眾的公共利益。因此，韓國將其納入規範是相當周延的作法。

由於規範相關的處理程序與違法事件揭露及調查程序此一面向，是民主與憲政國家維護組織人權的重要指標。因此，除了香港未在統合性倫理法典做非常明確指明之外，其餘各國政府均有詳盡程度不一的規範。另外，將倫理相關規範以法律或以行政規則或命令方式予以法治化，亦是各國倫理法制共通趨勢之一，對於公務員行為準則規範的法典化程度都很高。

此外，就倫理法制採集中立法或分散立法此一面向而言，從法條的集中程度來看，英國、德國、美國、日本、韓國、新加坡、香港都有一定的集中度，其中英、美、日、韓還有正式的倫理法，德國雖然沒有相關以倫理法為名的法令，但是聯邦公務員法當中對公務員的倫理規則，從義務的角度觀之亦有完整的規範。當然，許多規範公務員的相關倫理規定，也往往會以行政命令、內規、共同宣言或是公務員契約簽定的方式(權利義務的規範)，在不同的國家文官系統內造成倫理法制規範的影響。

因此各國總體均呈現，將主要規範至於一項或兩項主要的統合性倫理法典，於其中對諸多倫理相關議題均加以集中規範，但有關各相關規範更實體與程序面之規定，則多採分散式立法以求規範周延。

表 3-2 各國倫理法制總體特色比較表

倫理法制執行架構	英國	加拿大	德國	美國	新加坡	香港	日本	韓國
1.憲政體制	內閣制	內閣制	內閣制	總統制	內閣制	行政長	內閣制	總統制
2.對象								
(1) 公務員	✓	✓	✓	✓	✓	✓	✓	✓
(2) 民選首長與政務人員	✓			✓	✓	✓	✓	
(3) 各級民代				✓			✓	
(4) 職權行使相關人員				✓				✓
3. 是否規範相關的處理程序與違法事件揭露及調查程序	✓	✓	✓	✓	✓	-	✓	✓
4. 倫理規範法治化程度	高	高	高	高	高	高	高	高
5. 倫理法制集中立法或分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法	主要規範集中立法，相關補充採分散立法

倫理法制執行架構	英國	加拿大	德國	美國	新加坡	香港	日本	韓國
6. 主要的統合性政府倫理法典以及主要法典名稱	「文官行為守則」、「文官管理法典」、「內閣大臣法典」	「公共服務價值倫理法」	「聯邦公務員法」	「倫理改革法」	「公務員守則及紀律條例」、「憲法」、「多以刑事法規範	「公務員紀律規則」、「公務員事務規則」	「國家公務員倫理法」	「公職人員行為守則法」、「韓國反貪污法」

資料來源：本研究

說明：1. ✓代表該國有規範該選項 2. 倫理規範法治化程度，意指該國相關倫理規範係以法律或行政規則命令呈現的程度。

綜合以上相關比較與討論，本研究認為，基於我國目前社會中，源於近幾年幾項重大貪腐事件導致公民對民選首長與政務人員總體清廉形像的質疑，長久以來對各類民意代表貪腐的深刻印象，本研究認為我國倫理法草案如欲符合社會公民的期待，則應將常任公務員、民選首長與政務人員，以及各級民意代表均納入。至於職權行使相關人員是否應具體規範於草案中，本研究認為可由各主管機關依機關與業務性質自行決定是否另訂規則加以管理或准用本法。

此外，基於目前我國已有諸多分散式的相關倫理與反貪法律，但獨缺各國均有作為統合與上位指導的統合性倫理法典，因而形成公職人員適用理解上相當複雜難解之困境。因此認為我國公職人員倫理法草案，應兼具統合性與集中性特質。於參酌各國主要規範面向，以及整合我國現有重要的幾項相關倫理法之基礎上，將符合我國所需之重要倫理面向均原則性的規範於本草案中。

## 第四節 各國倫理法制主要規範面向

分析各國倫理法制主要規範面向，可以大致區分成政治中立、政治活動、財產申報、在職期間利益迴避、離職後利益迴避、弊端揭發，以及其他等七個面向，各國各規範面向比較總表請見表 3-3。各國於各規範面向之內容摘要與主要原則，則於以下說明。

表 3-3 各國倫理法制主要規範面向比較表

規範面向	內容	英國	加拿大	德國	美國	新加坡	香港	日本	韓國
一、政治中立		✓	✓	✓	✓				
二、政治活動	1.擔任公職候選人 2.參與政黨組織 3.參與競選活動 4.值勤時規定	✓ ✓ ✓ ✓	✓ ✓ ✓	✓ ✓ ✓	✓ ✓ ✓ ✓		✓ ✓ ✓		
三、財產申報	1.申報義務 2.申報對象 3.申報時間 4.強制脫產與信託	✓ ✓	✓ ✓ ✓ ✓		✓ ✓ ✓	✓ ✓ ✓	✓ ✓ ✓ ✓	✓ ✓ ✓	✓ ✓
四、在職期間利益迴避	1.兼職 2.收受禮物 3.財務利益 4.尋求或收受賄賂 5.同事之間的禮數	✓ ✓ ✓ ✓ ✓		✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓		✓ ✓ ✓ ✓	✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓



規範面向	內容	英國	加拿大	德國	美國	新加坡	香港	日本	韓國
	6.利用職務資訊圖利	✓	✓		✓	✓	✓		
	7.請託關說		✓		✓	✓			✓
五、離職後利益迴避	1.規範時間	✓	✓	✓	✓		✓	✓	✓
	2.禁止事項	✓	✓	✓	✓		✓	✓	✓
	3.負責機構	✓	✓	✓	✓		✓	✓	✓
六、弊端揭發	1.揭弊途徑	✓	✓	✓					✓
	2.揭弊人保護	✓	✓				✓		
	3.部會機關應辦事項	✓	✓	✓					
	4.調查程序	✓	✓	✓					✓
七、其他倫理行為	1.國家忠誠義務			✓	✓				
	2.保守職務機密	✓		✓	✓			✓	

資料來源：本研究

說明：✓代表該國於該項目有所規範

### 一、各國政治中立主要規範內容與原則

從表 3-4 發現，英國、加拿大、德國與美國此三個歐美國家，對於政治中立此一倫理價值的重視，似乎遠較新加坡、香港、日本與韓國等四個亞洲國家高出許多。此種現象不僅在此呈現，於所強調之核心倫理價值亦呈現一致趨勢。所以如此，有可能是因為一般而言，歐美國家之民主體制已有一定基礎與傳統，並歷經相當多次的政黨輪替，從中瞭解到公職人員，尤其是常任文官恪守政治中立價值，對國家民主體制鞏固與發展的重要性。此外，雖然從施能傑（1999）美國政府倫理法內容相關論述中，未見有政治中立此一項目，但從美國政府對其各類公職人員政治活動限制規範之詳細度而言（施能傑，1999：

257-261)，本研究團隊判斷，美國政府係將政中立規範鑲嵌在政治活動限制規範之中。

反觀新加坡、香港、日本與韓國等四個亞洲國家，新加坡基本上非屬典型的民主國家，香港回歸中國之後亦不屬於民主政體，未歷經民主政體必經之政黨輪替。日韓兩國之民主發展相較於歐美國家而言，亦稱不上久遠，雖歷經幾次政黨輪替，但均不及歐美等國之經驗豐富。因此相較而言，似乎較不重視政治中立此一對於民主國家發展攸關甚劇之重要倫理價值。

綜合上述說明與分析，本研究認為對台灣而言，2000年歷經民主發展史上第一次政黨輪替，此刻正值由民主轉型邁入民主鞏固之階段。部分事件與研究亦發現，無論是民選首長、政務人員或是常任文官，政治中立之概念與行為表現仍須加強。為此，為使我國民主發展得以更加長遠與深化，本研究主張應仿照歐美等國，將政治中立正式納入我國倫理法制規範的具體面向之一。

**表 3-4 各國政治中立主要規範內容與原則**

國別	須達到事項	禁止事項
英國	1.無論執政黨與自身政治信仰為何，竭盡所能為政府服務 2.不分此時或未來，贏得部會首長信任 3.遵守政治活動參與相關限制。	1.依政黨考量行事，或將公務資源使用於政黨之政治目的 2.以個人政治觀點提出建議或行動
加拿大	1.公務員忠誠的對象是加拿大政府，而非特定黨派。 2.公共服務必須遵守非黨派性與功績原則	※
德國	1.公務員應為國民全體，而非特定政黨服務。	※

國別	須達到事項	禁止事項
美國	※	※
新加坡	※	※
香港	※	※
日本	※	※
韓國	※	※

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有明確指明**

## 二、各國政治活動規範主要內容與原則

根據表 3-5 各國政治活動規範主要內容與原則摘要表可知，英國、加拿大與日本對於政治活動有較為具體詳盡的規範，德國則主要是作原則性的價值引導規範。至於新加坡、香港與韓國對於政治活動之規範，則較不是整體倫理法制規範面向的最優先選項。此種現象，基本上與此三國於整體政府倫理法制架構之重點，係置於反貪與肅貪面向，而非如歐美等民主體制發展較為長遠穩固之國家，已從反貪肅貪等行為面懲罰等所謂低階途徑（Low road），更全面地朝向以倫理價值為前導形塑公職人員自律之高低階途徑並行的完整架構。

分析英國、加拿大、美國與日本此四個對政治活動規範較為具體的國家可知，日本規範最為嚴格，任何政黨職務、活動與競選活動均不得參與。德國與加大原則上並不禁止，但德國公務員自己需負判斷責任，加拿大則有較清楚的指導。英國與美國（施能傑，1999：257-261）則依人員別有所不同。總體而言，各國主要規範原則大致有以下幾點：

1. 於法典中對政治活動的意義加以定義。
2. 依據政治活動的內容性質與層次（例如全國性與地方性）加以分類。
3. 依據公職人員的職務層級、性質、服務機關屬性加以分類，不

同人員別適用不同程度之規範，越高階越重要越具敏感性職位者所受規範越嚴格。

- 4.授權各部會機關可依所需對更多重要與特殊性職位加以規範。
- 5.均採事先核可制度。
- 6.參選者均必須辭職或留職停薪，於此期間均非屬公務員。

綜合上述分析，本研究認為對台灣而言，2000年歷經民主發展史上第一次政黨輪替，此刻正值由民主轉型邁入民主鞏固之階段。部分事件與研究亦發現，無論是民選首長、政務人員或是常任文官，政治中立之概念與行為表現仍須加強。為此，為使我國民主發展得以更加長遠與深化，本研究主張應仿照歐美等國，將政治中立正式納入我國倫理法制規範的具體面向之一。

**表 3-5 各國政治活動主要內容與原則**

國別	主要內容	原則
英國	<ol style="list-style-type: none"> <li>1.區分成全國與地方兩個層次的政治活動，並加以列舉說明。</li> <li>2.依職位層級與性質依限制嚴格度區分為政治限制類、其他文官、政治自由類。政治限制類包括最高兩級的高階文官與納入快速升遷人員。政治自由類為任職於國營事業與非部局職等之公務員。其他文官為非屬以上二類人員。</li> <li>3.依不同人員別對參與政治活動有不同規範。政治限制類不得參加全國性政治活動，參加地方性政治活動需要先取得部會機關許可並遵守要求與條件。其他文官參加政治活動，均需事先取得部會機關核可並遵守要求與條件。政治自由類可以自由參加政治活動，文官長得對此類人員進行核可。</li> </ol>	<ol style="list-style-type: none"> <li>1.對政治活動進行分類</li> <li>2.對人員進行分類，越高階越重要職位越嚴格限制。</li> <li>3.採行事先核可制</li> <li>3.授權各部會機關以因應特殊性</li> <li>4.對復職有所規範</li> </ol>

國別	主要內容	原則
	<p>4.除以上原則外，各部會機關可對敏感性職位（文官管理法典有規定）行使必要之否決裁量。</p> <p>5.公務員值勤、著制服或於官方場所，不得參與政治活動以及由政黨主辦之會議。</p> <p>6.公務人員應對政治爭議保持沈默、避免陷於其中。</p> <p>7.公務員參選國會議員與歐洲議會議員必須辭職。</p> <p>8.對參選後復職有所規範</p>	
加拿大	<p>1.政治活動包括參與或反對特定政黨、候選人之活動。在選舉之前或期間尋求被提名為候選人。</p> <p>2.公務員只要值勤時，不會被認為政治不中立均可參加政治活動。但對於聯邦層級之閣員與高級文官，可以另訂更嚴格的管制規則。</p> <p>3.公務員參選前，均需向公共服務委員會提出申請，或留職停薪許可後才能參選，公布參選後即非屬公務員。</p> <p>4.公務員違反規定，公共服務委員會可以進行調查，予以矯正或解職。</p>	<p>1.原則上不禁止</p> <p>2.對人員進行分類，越高階越重要職位越嚴格限制。</p> <p>3.採行事先核可制</p> <p>4.授權各部會機關以因應特殊性</p>
德國	<p>1.公務員從事政治活動時，應遵守基於其為國民全體服務之地位及其職務上義務之考慮所導出之慎重與節制義務。</p>	僅作原則規定
美國 <sup>4</sup>	<p>1.將人員區分成兩類，並對各類人員採列舉式規定。</p> <p>2.對於參與非政黨性活動、參與政治組織、參與競選活動、參與選舉、公職候選人、參與競選募款等各面向依兩類人員做詳盡規範。</p>	<p>1.原則上不禁止</p> <p>2.對人員進行分類，越高階</p>

<sup>4</sup> 施能傑，1999：257-261。

國別	主要內容	原則
	3.對於公務人員在對於執行職務中、身處政府機關中、身著制服，以及使用或搭乘政府機關場所及交通工具等四種情形，採特殊完全禁止之規範。	越重要職位越嚴格限制。 3.採行事先核可制 4.授權各部會機關以因應特殊性
新加坡	※	
香港	※	
日本	1.公務員不得因政黨或政目的而參與要求或接受政治獻金或其他利益之行爲。 2.公務員不得成爲公職候選人、不得擔任政黨或其他政治團體之幹部、顧問或其他相同職務之職員。 3.不得違反人事願所訂限制行爲。	1.原則上不禁止，對禁止事項明列
韓國	※	

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有無明確指明**

### 三、各國財產申報主要規範內容與原則

財產申報一向是各國倫理法制中，被認爲是非常重要且非常有效的一個機制。因此，從表 3-6 可以發現，大部分國家對此均有頗爲具體的規範。整體而言，各國於財產申報此一倫理法制面向，主要規範原則有以下幾項：

- 1.公職人員負主動申報義務。
- 2.應申報對象、申報內容、申報時間（例如固定期間申報與動態申報）有具體規範。
- 3.對公開與否有規範。
- 4.對於強制信託與否有規範。

**表 3-6 各國財產申報主要規範內容與原則**

國別	主要內容	原則
英國	<ol style="list-style-type: none"> <li>1.公務人員必須向其部會或機關申報其事業利益或本人與近親（配偶、非婚關係之夫或妻，及子女）所保有之股票及有價證券；申報範圍包括已知利益，及依其職務上之地位所得利益的可能發展。</li> <li>2.公務人員已處破產狀態者，必須向其部會或機關陳述其事實。該公務人員亦須向其部會或機關知曉其被逮捕、拒絕交保、或依法判刑之可能</li> </ol>	<ol style="list-style-type: none"> <li>1.主動申報</li> <li>2.應申報對象、申報事項有所規範</li> <li>3.破產之告知義務</li> </ol>
加拿大	<ol style="list-style-type: none"> <li>1.公務員需在任命或職務調動 60 天內主動報告可能引發利益衝突的資產、負債、收禮及其他利益等機密報告給副部長。</li> <li>2.具體規範報告中必須與無須呈現的資產和負債項目。</li> <li>3.機關副部長認為有必要時，可以強制公務員脫產或信託。</li> </ol>	<ol style="list-style-type: none"> <li>1.主動申報</li> <li>2.申報事項、申報時間有規範</li> <li>3.可以要求強制信託與脫產</li> </ol>
德國	※	
美國 <sup>5</sup>	<ol style="list-style-type: none"> <li>1.依規定需申報者，依人員性質不同就職後主動申報期亦</li> </ol>	<ol style="list-style-type: none"> <li>1.主動申報</li> </ol>

<sup>5</sup> 施能傑, 1999:234-239。

國別	主要內容	原則
	<p>不同</p> <p>2.主管機關依申報人員別而不同。</p> <p>3.對於申報人所需申報事項詳列 12 項。申報人配偶或扶養子女所應申報與無須申報事項詳細規定。</p> <p>4.罰則與申報資料保管和查閱均有規定。</p>	<p>2.應申報對象、申報事項、罰則與相關事項均有所規範</p>
新加坡	<p>1.凡屬常任公務員均需負主動申報義務，申報對象包括配偶與共同生活成員。</p> <p>2.具體規範財產申報內容（參附錄四）</p> <p>3.財產申報分為任職申報、現職申報、離職申報。</p> <p>4.部門常務次長及貪污調查局負責審查，法院負責公證。</p>	<p>1.主動申報</p> <p>2.申報事項、時間有規範</p>
香港	<p>1.需定期申報者分為兩層。第一層為可取得高敏感資料之局長級。第二層為包括首長、及有較多機會引發利益衝突之職位。</p> <p>2.定期申報期間有超過 20 萬港幣或 3 各月薪資所得之投資交易，均需 7 天內申報。</p> <p>3.非屬以上人員必要時亦需申報。各局部門可依所需訂定財產申報規定，員工必須遵守。</p> <p>4.財產申報資料必須公開。</p> <p>5.必要時管理者可要求申報人脫產及強制信託。</p>	<p>1.主動申報</p> <p>2.應申報對象、期間、事項有所規範，並授權個機關得依所需另訂規範對象</p> <p>3.固定與動態申報並行</p> <p>4.可以要求強制信託與脫產</p>



國別	主要內容	原則
		5.申報資料公開
日本	1.各省審議官職級以上人員需申報。 2.申報內容為前一年總所得金額、各種所得金額、贈與稅課稅稅額、股票交易。	1.申報對象、時間有規範 2.申報內容有規範
韓國	公務員負有財務公開透明與誠實申報之義務	對財產申報義務有規範

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有無明確指明**

#### 四、各國倫理法制在職期間利益迴避主要規範原則與內容

觀察各國對此一部份規範發現（表 3-7），相較於其他倫理法制面向規範而言，各國對此一面向之規範有著相當一致的共識，無論就規範對象、規範事項、規範方式、釋疑途徑與違反效果，均會做較為詳細的規定。就規範對象而言，大部分國家均以公職人員為主體，但英國則對機關亦課以責任。此外，多數國家並未區分職級與職務性質，但日本則僅規定各省副課長級以上人員適用。

規範面向部分，大抵均包括了對於在外兼職、收受與要求財務利益及禮物（含娛樂與招待）、尋求與收受賄賂、接受外國政府勳章頭銜、請託關說、利用職務資訊圖利自己或他人，以及同事之間禮數（尤其是長官與部屬）等事項的禁止與規範。就規範方式而言，均以事先許可制為原則，事後報告為例外。

釋疑路徑則依各國倫理法制負責與執行體系不同而有差異，但多

數國家均會在法典中加以指明。至於違反效果，若是以反貪肅貪為重點的國家或政府，則採取較為嚴格的處罰例如新加坡採全面禁止原則，違反者一律以貪污罪論處，並於相關規範中說明。其他國家雖未於統合性倫理法典中指明違反效果，但會散見於其他補充立法或相關法規。

總體而言，各國政府對於公職人員在職期間利益迴避相關規範的主要原則有以下幾點：

- 1.對於規範對象加以界定。
- 2.對於利益迴避事項採全面且詳盡的列舉與原則規範。
- 3.均以事先許可制為原則，事後報告為例外。
- 4.對於違反效果與釋疑途徑有所規範。

觀察各國對於公職人員在職期間利益迴避要求，均採取近乎全面禁止的高標準嚴格規範，主要是源於公職人員因職務身份的關係，擁有比一般常民百姓無法具有的公權力，以及因此衍生的資訊、公共財產與各種資源接近與使用機會，也因此，存在著更多不當利得的空間。所以，對於公職人員在職期間之利益迴避事項進行嚴密規範，遂成為是各國倫理法制非常強調的一環。

綜合上述說明與討論，本研究認為，以台灣而言，由於深受中國文化影響，人與人之間對於收受禮物等行為，往往被解讀成是基本禮數，而未就其潛藏的利益衝突與影響加以深思或考量，因此導致公職人員往往難以判斷是否涉及利益衝突。因此，本研究認為我國公職人員倫理法草案中，有關在職間利益衝突迴避之規範，應該採取以上各國共同具有的立法原則，甚至更為嚴格的規定，一方面可以引導公職人員利益衝突避免之倫理價值與行為的建立，一方面也使公職人員可以依法拒絕送禮與行賄者。

**表 3-7 各國倫理法制在職期間利益迴避主要規範原則與內容**

國別	主要內容	原則
英國	<p>1.對於部會與機關之利益迴避有所規範，包括不得有契約關係對象、不得聘任者、不得販售財產之對象、調整所屬人員中因兼職影響工作者。</p> <p>2.公務人員接受禮物、招待、獎賞、勳章及其他利益前，需事先取得上級許可。</p>	<p>1.對機關與公務員均加以規範</p> <p>2.利益迴避事項甚多</p> <p>3.採事先許可制</p>
加拿大	<p>1.對公務員利益迴避一般責任加以規範，明訂公務員應先對私事安排妥當，以避免任何實質、明顯或潛在利益衝突發生。一旦發生，應以公共利益為先。</p> <p>2.不應因參與政府活動明顯或特定的增加私人利益。</p> <p>3.不應索賄與接受經濟利益移轉，若為慈善機構募款，需事先取得副首長授權與同意。</p> <p>4.不應逾越規定代為協助任何私人與團體向官方交涉圖利他人。</p> <p>5.不應使用職務資訊從中得利。</p> <p>6.不得將政府財產做為私人用途。</p> <p>7.公務員參加公務以外活動，若可能違法或令人懷疑其中立性，必須繳交報告，必要時首長可要求公務員減少或停止參與。</p> <p>8.除規定允許之情形外，公務員不應接受或要求任何可能使執行公務不公的禮物、住宿招待及其他利益。</p>	<p>1.規範利益迴避事項甚多</p> <p>2.採事先許可制</p>

國別	主要內容	原則
德國	1.對於需經許可與無需經許可的兼職行為有所規範。 2.公務員不得因職務原因接受酬勞與贈與，除非經最職機關同意。但市價低於 25 歐元之物品不在此限。 3.離職公務員不得因職務原因接受酬勞與贈與，除非經最後任職機關同意。但市價低於 25 歐元之物品不在此限。 4.公務員需經總統同意，才能接受外國元首與使節頒贈之頭銜、勳章與其他榮譽。	1.規範利益迴避事項甚多 2.採事先許可制 3.離職員工一併納入規範
美國 <sup>6</sup>	1.對於需經許可與無需經許可的兼職行為有所規範。 2.不得收受任何演講、座談、稿費、出席費（除非轉做二千美元以下之慈善捐款）、對於外國政府之禮物與勳章贈與採原則上禁止規定。 3.對於政府以外來源之禮物、同事間禮物、財務利益衝突、辦理勤務不公正、尋找其他工作機會、濫用職(位)權、工作外活動、賄賂、其他各種有違利益迴避事項均有詳細規範。	1.規範利益迴避事項甚多，採詳細規範 2.採事先許可制
新加坡	1.公務員不得接受餽贈、外界邀宴，一經查出以貪污罪論處。2.公務員不可以接受報酬，因而實施或不實施某種作為，幫助或阻礙官方行為，以幫助或阻礙特定一方取得合同或利益。報酬範圍相當廣泛，但明確訂定。 4.公務員不可接受禮品，無論價值多少，但不具金錢價值之紀念品除外。若當時情境不便拒絕，收下禮品後必須向上級報告繳交處理或照價買回。一旦隱瞞以貪污罪	1.規範利益迴避事項甚多，採取非常詳盡的列舉 2.兼採事先許可制與事後報告

<sup>6</sup> 施能傑，1999：243-252。

第三章 英、加、德、星、港、日、韓政府倫理法制分析

國別	主要內容	原則
	<p>論。</p> <p>5.除私人情誼外，公務員不得接受下級人員贈送之任何禮品與邀宴和娛樂活動。退休時收受下級之禮品與款待，均有一定品名數量與價值之限制，且需報告。</p> <p>6.公務員接受與業務有關人士之邀宴，需向上級請示後決定能否參加。</p>	<p>3.以重罰作為違反效果</p> <p>4.原則上接近全面禁止</p>
香港	<p>1.公務員不得或令人有理由懷疑利用公職，為自己、親友或任何曾有恩於己者圖利，如有此種情形發生，需立即報告上司。</p> <p>2.對於行政長官公告一般許可收受利益、款待之來源對象以及性質，有非常清楚具體的規範。</p> <p>3.一般公務員如欲接受或索取非屬以上准許之利益，不論何種形式，均需在接受或索取前，請求授權機關批准，授權機關可以准許或拒絕。</p>	<p>1.規範利益迴避事項甚多，採取非常詳盡的列舉</p> <p>2.兼採事先許可制與事後報告</p>
日本	<p>1.各省副課長級以上人員，接受業者提供利益或報酬一次達五千日圓價值以上必須申報。</p> <p>2.明訂公務員不得接受利害關係人提供之事項。包括金錢、財務、股票、借貸、動產或不動產之贈與與借與、勞役、招待、娛樂、非公務旅行。</p> <p>3.公務員不得重複接受非利害相關人之業者招待超出一般社交程度。</p> <p>4.公務員不得兼任以營利為目的之組織的任何職位，亦不得自營事業。</p>	<p>1.規範利益迴避事項甚多，採取非常詳盡的列舉</p> <p>2.採事後報告</p>

國別	主要內容	原則
韓國	1.禁止公務員由於職權對個人或三等親之親屬產生利害關係致無法公正處理。 2.禁止不當行爲，包括給予特定組織地區與個人優惠。爲人關說請託或做仲介人。 3.對金錢與禮物之收受與禁止條件明訂。 4.不得利用職務資訊圖利自己與他人。 5.兼職（含在外授課、參與各種會議）之時數與申請准許程序有所規範。 6.對以上事項有所疑義，應主動向機關之廉政倫理官申請諮詢與報告。	1.規範利益迴避事項甚多 2.指明釋疑路徑

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有無明確指明**

### 五、各國倫理法制離職後相關限制主要規範原則與內容

通稱旋轉門條款的公職人員離職後相關規定，基本上亦是屬於公職人員利益衝突迴避的一環，但由於其規範對象係屬離職人員，基於公民有自由從業之權利，但又因此類人員曾任公職之特殊性，因此各國對此一面向之規範，通常均予以獨立規範以求周延。從表 3-8 來看，各國對於離職公職人員之相關規範，基本上亦是採取相當周延的法制設計。立法原則大致相同，主要有以下幾點：

- 1.明確規範對象。多數國家並未依照離職後是否仍領受政府金錢給付作為適用對象，但德國與日本則係以此為規範標準。
- 2.明訂限制期間、禁止事項、審議標準、負責機構、審議程序。
- 3.除離職後就業相關規定外，部分國家亦規範離職公職人員其他

面向之行爲。例如英國、德國與日本均規定離職人員仍負保密原則。德國離職後的公職人員亦不得任意收受禮物、不得從事破壞民主與違憲的活動。

綜合以上分析討論，本研究認爲，以台灣之倫理法草案此一部分立法原則而言，至少上述幾點原則均應納入。此外，由於台灣公務員依現行退休制度，領受之退休金總額與所得替代率爲全球之最。基於儘管爲離職與退休公務員，但仍應時刻心念「爾俸爾祿，民脂民膏」之胸懷，對公民仍負有課責義務，以及部分離職公職人員常界所謂的回憶錄，有意或無意於其中揭發密辛。本研究認爲應仿照英國、德國與日本之規定，明訂退休與離職公職人員仍負保密義務。

**表 3-8 各國倫理法制離職後相關限制主要規範原則與內容**

國別	主要內容	原則
英國	1.規範期間爲離職兩年內。 2.僅對於將任職企業者有所規範，對於適用之規範對象明確列出。 3.主要負責單位爲企業任職諮詢委員會。 4.屬於高階文官團者，再依其職等與性質分爲三個層級人員，分別由首相、文官長與內閣辦公室依據企業任職諮詢委員會或同等專家之建議提供具體意見。非屬以上人員或屬較無可能產生利益衝突者，則由各部會機關自行審議即可。 5.離職人員仍負保密責任。	明確規範時間、對象、負責機構與審議程序
加拿大	1.一般公務員離職前應告知副首長未來就職意向，並討論可能的潛在利益衝突，一旦決定接受某一新職，必須立刻告知。	明確規範時間、對象、負責機構、審議

國別	主要內容	原則
	<p>2.各機關對於主管職或相當職等人員，以及認為有特殊需要者，可以另訂規定。</p> <p>3.明訂離開公職一年內不得任職與官方有交易關係的委員會或職位、代表任何組織或個人，透過本身或部屬與官方交易。提供來自任職前職位之非對外公開資訊給客戶。</p> <p>4.副首長有權決定縮短或增加離職後的限制期間。</p>	<p>程序與禁止事項。</p>
德國	<p>1.規範對象基本是以退休與離職後仍領受金錢給付者為原則。</p> <p>2.由公務員判斷是否有可能損害公務機關利益，若有應立即告知最後服務機關。</p> <p>3.最後服務的最高機關可以自行禁止或授權下級機關決定，期限最多持續至離職後五年。</p> <p>4.退休與離職公務員亦需遵守部分在職人員應遵守之規範，例如報酬禮物之收受、不得從事違憲與破壞民主的活動、必須遵守沈默與保密原則。</p>	<p>1.明確規範時間、對象、負責主體、審議程序與禁止事項</p> <p>2.除對新職予以規範外，亦規範其他行為。</p>
美國 <sup>7</sup>	<p>1.依行政部門人員、國會部門人員、高階任命人員與貿易談判人員分別規定。</p> <p>2.行政部門人員一涉及事項分為終身限制、兩年限制與一年限制。高層人員尚有額外一年限制。</p> <p>3.國會部門依議員、議員私人助理、委員會助理、兩院議長與兩黨領袖等領導者、私人助理及其他國會所屬機關公務人員做不同規範。</p>	<p>1.規範人員種類詳盡且周全。</p> <p>2.時間與禁止活動規範明確。</p>

<sup>7</sup>施能傑，1999：239-243。



國別	主要內容	原則
	<p>4.限制非採不從事特定工作職業種類，而是禁止從事特定活動，特別是遊說與接觸等活動。</p> <p>5.訂定罰則。</p>	
新加坡	※	
香港	<p>1.規範對象為領受退休金者。期間為離職兩年或行政長官另訂更長時間。工作地點在香港。</p> <p>2.首長級公務員，無論受薪與否、權職或兼職，均需事先批准。依層級不同管制期為一至三年。審查標準係依是否有潛在利益衝突與公眾看法而定。有關禁止事項、時間均有詳細規定。另外首長級人員最後任職資料與新職資料均需公開。違法懲處則有多達八種。由退休公務員就業申請委員會審議決定。</p> <p>3.一般公務員退休就業申請由部門首長審議及決定，交退休公務員就業申請委員會備悉。</p>	<p>明確規範對象、審查標準、禁止事項、期間、審議方式、資訊公開與否，以及懲處規定。</p>
日本	<p>公務員離職後 2 年內，不得至與其離職前 5 年內任職之機構有密切關係之私人企業就業，經所屬機關報告人事院取得核可者不在此限。公務員離職後亦不得洩密。違者處 1 年以下有期徒刑 3 萬以下日圓罰金。</p>	<p>1.明確規範時間、對象、禁止事項</p> <p>2.亦規範其他行為。</p>
韓國	※	

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有無明確指明**

## 六、各國倫理法制弊端揭發主要規範原則與內容

政府倫理法制面向中，弊端揭發機制亦是屬於為各國所重視的一個面向。具體的內容應包括哪些原則，基本上亦有共識，不過，對於舉報人是否應採匿名此一議題，則不同國家看法不同（表 3-9）。大部分國家基於保護揭弊者免其被報復之保護原則，基本上均以匿名為原則。但部分國家基於黑函文化盛行，以及避免誣告濫告過多，造成調查機關負荷過重，則會要求揭弊人不得匿名檢舉且需負舉證責任，例如韓國。總體而言，各國政府對於弊端揭發人此一部份之規範，大致上均具有以下幾點原則：

1. 大多數國家在政府倫理法所訂之弊端揭發人係以部會機關內部人員為主。
2. 明訂保護原則。
3. 明訂揭弊途徑與調查處理程序。
4. 明訂要求各機關必須建制內部處以程序與應辦事項。
5. 明訂揭弊人應匿名或不得匿名。

有鑑於以上分析可知，各國政府倫理法制均將弊端揭發人納入，以更加落實倫理價值，以及增強肅貪成效。本研究亦認為我國公職人員倫理法草案中，亦需對於弊端揭發人此一面向有所著墨。至於立法原則，則至少應包含以上各國共通之五項立法原則，以使本法具有前瞻性。

表 3-9 各國倫理法制弊端揭發主要規範原則與內容

國別	主要內容	原則
英國	<ol style="list-style-type: none"> <li>1. 弊端揭發途徑為向部會中直屬長官、上層長官、倫理特任官或警方提出反映或申訴，若皆無回應可逕向文官委員會提出檢舉。</li> <li>2. 部會遇有規定必須調查之事情發生時，必須展開調查。</li> <li>3. 部會機關必須明訂弊端揭發與申訴案件處理程序以及負責官員，程序進行必須確保揭密者的隱密性與保護性。</li> </ol>	<ol style="list-style-type: none"> <li>1. 明訂揭弊途徑、程序與保護原則</li> <li>2. 要求各部會機關應辦事項</li> </ol>
加拿大	<ol style="list-style-type: none"> <li>1. 公務員可向機關上層主管或機關的清廉官揭露，清廉官有調查權，做出報告與建議。</li> <li>2. 聯邦各部門應建立內部揭弊機制。</li> <li>3. 揭弊以非公開為原則，除非揭露者認為有違反法律或人身安全顧慮才可公開揭露。</li> <li>4. 對於防止揭弊者被報復有清楚規定。</li> </ol>	<ol style="list-style-type: none"> <li>1. 明訂揭弊途徑、程序與保護原則</li> <li>2. 要求各部會機關應辦事項</li> </ol>
德國	當可疑跡象有事實依據時，單位主管必須立刻告知檢查機關和最高行政當局。內部調查行動必須立刻展開，且需採取防止證據湮滅的行動。	規範調查程序
新加坡	<ol style="list-style-type: none"> <li>1. 非特定針對機關內部揭弊人進行規範。</li> <li>2. 對於檢舉人保密周延，偵察過程中不提來源亦不隨案移送，非必要時法院不傳喚作證，檔案中不留任何姓名與記錄，以免曝光或遭報復。</li> </ol>	規範保護原則與調查程序
香港	※	
日本	※	
韓國	<ol style="list-style-type: none"> <li>1. 每位國家公務員當獲知貪污行為，或被其他公務員強</li> </ol>	<ol style="list-style-type: none"> <li>1. 對於揭弊途徑、調查程序</li> </ol>

國別	主要內容	原則
	<p>制、建議從事貪污情事，應立即向相關調查機關舉報。</p> <p>2. 舉報人不得匿名且需舉出具體事證。</p> <p>3. 獨立反貪委員會接獲舉報後，必須在 60 日內完成偵結，有正當事由得展期，調查結果需以書面通知舉報人，舉報人得提出異議要求重新調查，調查機關不得拒絕。</p> <p>4. 高階政府官員或部分特殊職位任職者涉貪污時，必須以公職身份起訴。</p> <p>5. 調查過程涉及國家機密事務，需有總統命令才能進行調查工作。</p>	<p>有具體規範</p> <p>2. 舉報人不得匿名且需負舉證責任</p>

**資料來源：本研究**

**說 明：※代表本研究所蒐集之資料難以判斷有無明確指明**

## 七、各國其他倫理行為相關規範

各國政府倫理法制除了在以上各面向係為共同規範面向之外，英國、德國與日本亦對其他面向加以規範（表 3-10）。三個國家對於在職與離職公職人員的保密責任，同樣給予非常高度的強調與嚴密的規範。其中，英國對於資訊保密的內容，更做了非常詳盡且全面的規定，並且考量了民主體制之政黨輪替此一常態現象中，公職人員在新舊政府更迭過程中，所應具體遵守的資訊保密義務與責任。此外，德國亦對於忠誠此項價值有所規範。

基於我國各級公職人員對於政黨輪替，此一民主政治常態似乎尚未習慣，我國現行相關規範亦對此面向尚無具體規範，為使本草案立法符合台灣當代社會的期待並具前瞻性，本研究認為可以將公務資訊保密此一原則作為我國倫理法制的一個面向，尤其是可以仿效民主傳統最長久，且文官在政治中立與民主維護上最被稱許的英國，對於資

訊保密做較為詳盡的立法原則規範，以作為相關主管機關未來修訂相關法律之引導。

**表 3-10 各國其他倫理行為相關規範**

國別	主要內容	原則
英國	公務人員資訊保密規定。具體的規範包括：未經授權禁止公開討論、離職後仍須保密、未經授權不得以任何形式（包括公職經驗分享）於在職或離職後揭露官方資訊，回憶錄涉及資訊保密者需經部會首長及文官長許可、不得以取得之公務資訊阻撓政府決策、不得提供新政府前政府執政時之文書資料，尤其是內閣大臣的商議內容與官員提供的建言。	1. 做詳盡規範
加拿大	※	
美國 <sup>8</sup>	<ol style="list-style-type: none"> <li>1. 每位公務人員人員任用前均應接受調查，依職位對國家安全性重要性有不同幅度調查。</li> <li>2. 依涉及國家安全性質區分為極端敏感、非常敏感或不敏感三類，極端敏感一定要調查，後二者可視情況而定。</li> <li>3. 極端敏感與非常敏感職位需接受定期國家安全利益檢查。</li> <li>4. 對於不符國家安全利益十二項內容有詳盡規定，違反效果亦有規定。</li> </ol>	<ol style="list-style-type: none"> <li>1. 依職位性質作詳盡規定</li> <li>2. 對於違反標準與違反效果作清楚指明</li> </ol>

<sup>8</sup> 施能傑，1999：252-257。

國別	主要內容	原則
德國	1.忠誠義務。公務員必須忠誠維護其所宣誓的憲法秩序，對國家之批評必須在憲法所允許的範圍且以合憲手段為之。 2.資訊保密。公務員未經許可前，對於需保密之事務不得在法庭上或法庭外為陳述或說明，離職公務員之許可權為其最後職務之長官。	做原則規範
新加坡	※	
香港	※	
日本	公務員應嚴守職務上知悉之秘密，退休後亦同，違者處年以下有期徒刑或 3 萬日圓以下罰金。	
韓國	※	

**資料來源：本研究**

**說明：※代表本研究所蒐集之資料難以判斷有無明確指明**

## 第五節 各國倫理法制負責與執行架構

從管理的角度來看倫理法制的建構，徒有空法應該是建構倫理法制的有識之士，最不希望見到的結果。另外，從反貪腐的角度來看，如何以法令讓政府規範它自己，也是一個制度設計的問題。因此，各國政府莫不對於倫理法制負責與執行架構相當重視。

觀察英國、加拿大、德國、美國、新加坡、香港、日本與韓國等國家之倫理法制負責與執行架構，可以發現大致上可以分別從負責與執行機制採集中式或分散式設計、是否有主要負責機關、主要負責機

構與最高行政機關之關係、負責機構之人員與職權獨立性，以及負責機構之權力等五個面向比較分析（表 3-11）。

### 一、倫理法制負責與執行機制採集中或分散設計

從倫理法制負責與執行機制設計面向而言，英國、加拿大、德國與美國等歐美國家，雖然都有一個最高負責機構，但執行的實質權力與責任，則是由中央授權各部會機關，在不違反中央統合性倫理法典與相關法制規範下，依其所需可以對適用人員、相關規範與執行機制進行彈性設計。此種設計原則，基本上與歐美國家長期以來，各部會機關與地方自主性與自治程度較高，以及人事政策均採分權與授權原則的傳統，應有極大關係。

至於新加坡、香港、日本與韓國等亞洲國家，基本上日本與韓國雖屬民主國家，但由於儒教文化影響下，中央集權的心態與文化影響仍在，因此許多國家政策仍偏好以中央為主導，至於新加坡與香港更是如此。因此，在倫理法制執行架構之設計，亦呈現較為集中式的特色。

總體而言，在執行機制的集中與分散程度方面，歐美國家多採分散制，而東方國家多採集中制。分散制的好處是單一政治勢力掌控不易，讓倫理法制的執行過程受到政治壓力的影響較小，但是，執行上當然有跨部門協調與分工的問題，集中制的好處當然是執行焦點的明顯，利於推動相關活動，缺點是容易受到政治壓力的影響。

### 二、是否有一主要負責機關與定位

爲了宣示政府對倫理法制的重視以及有一統籌機關，基本上各國中央政府均有一最高負責機構，由其名稱一望即知。不過，由於各國政府建制倫理法制的緣起背景不同，因此，對於倫理法制的強調重點會有些許差異。英國、加拿大、德國、美國與日本等民主國家倫理法制發展較爲長遠，因此多以涵蓋了更多價值層面，且包含防貪、反貪

與肅貪概念之「倫理」稱之。新加坡、香港與韓國均屬於在經歷重大連串貪腐弊案之後建制，因此目前仍均尚在強調肅貪階段，所以最高負責機構多以廉政或反貪稱之。

此外，各國負責倫理法制的最高機關，無論是內閣制或總統，均是隸屬與建制在最高行政機關之內，直屬最高行政首長內閣總理或總統。此種設計，基本上與常任文官、民選首長與政務官等公職人員，即為國家行政運作的主體，且民主憲政體制均屬於行政權運作之一環得以互相配合，並獲致倫理法制最高成效。

### 三、最高負責機關人員任命、獨立性與權力

觀察各國政府倫理法制最高負責機構人員任命與獨立性可以發現，英國與德國係由象徵性元首任命之外，其餘國家與政府均是由最高行政首長任命。就組織運作獨立性而言，新加坡與韓國受總理與總理直接指揮運作，其餘均屬獨立行使職權。至於各國政府最高倫理法制負責機構所擁有之權力，則有所不同。基本上均具有相關法令與政策建議、制訂與監督執行權。但是新加坡、香港、日本與韓國等亞洲國家，則尚具有調查與懲戒權。



表 3-11 各國倫理法制負責與執行架構

倫理法制執行架構	英國	加拿大	德國	美國	新加坡	香港	日本	韓國
1. 集中或分散計	相對分散	相對分散	相對分散	相對分散	相對集中	相對集中	相對集中	相對集中
2. 是否有主要負責機構	文官委員會	公務價值倫理局	聯邦人事委員會	聯邦政府倫理局	貪污調查局	品行紀律事務部	國家公務員倫理審查會	反貪獨立委員會
3. 負責機構與最高行政機關關係	隸屬內閣	隸屬公共人力資源管理署	隸屬內政部	隸屬行政部門內獨立機關	隸屬總理	隸屬香港公務員事務局	隸屬人事院	直屬總統
4. 負責機構之人員任命與職權獨立性	英皇任命非常任文官閣員之人士組成	※	聯邦內政部長請總統任命，獨立行使職權	總統提名參議院同意	局長由總理任命，總理直接指揮，其他干預	※	與由提參院，行會委員內命眾同意，行使職權	人員由總統任命，行使職權
5. 最高負責機構之權力	調查權與處理建議權	相關政制訂、提供會所需與建議	相關法制訂與執行權	相關標準法制定、監督各規、法提供與宣導	調查權與偵察權	相關法制定、監督執行、監察廉署轉介案件	政策與法律訂建、調、懲戒權	反貪政策與推薦、總、活、揭、發權

資料來源：本研究

說明：※代表本研究所蒐集之資料難以判斷有無明確指明

統合性政府倫理法制之研究

## **第四章 我國政府現行相關倫理法制與 焦點團體意見分析**

### **第一節 我國政府現行相關倫理法制分析**

爲了能對於我國統合性政府倫理法制應有內涵與具體面向之建構，有較爲完整的考慮。因此，對於其他國家政府倫理法制各面向有一基本瞭解之後，就有必要進一步對於我國政府現有倫理相關法制進行瞭解，並與其他國家進行比較。因此，本節係以規範對象屬於一般人員爲主的相關法規爲分析基礎。至於我國現行相倫理法規中，有一類是主管機關依據人員之職務特性所訂的的專屬倫理法規，例如立法委員、法官、法院人員、主計人員、採購人員，以及其他各類非屬一般人員之相關倫理法規，由於係主管機關依各類人員職務所需而制訂，較不具普遍性，因此不納入本研究分析範圍。以下，分別從相關倫理法制主要核心價值、相關倫理法制總體特色、相關倫理法制主要規範面向、相關倫理法制負責與執行架構等面向進行說明。

#### **一、相關倫理法制主要核心價值**

根據學界觀點、各國際組織建議原則，以及各國公共服務倫理法制內涵可知，一項健全的公共服務倫理法制首要特徵，就是應首先明訂幾項重要的倫理價值以爲引導。但是，分析表 4-1 台灣現行公共服務倫理相關法規核心價值摘要表發現，大多數法規並未指明該法所要強調的倫理價值爲何。即使少數有指明該法立法宗旨的法規，除了公務員服務法有較多規範價值外，其餘有指明主要核心價值者，亦都僅限清廉（廉能）此單一價值。

此種現象之所以呈現，一方面固然顯示我國過去相關法規立法背景，多屬威權體制時期，因此多採警察國家以行為管制及懲罰為主的立法特色。一方面也顯示我國總體公共服務體系，對於應以哪些倫理作為公職人員共通的核心價值，並未嚴肅思考與有所共識。此種現象對於各主管機關建立引導公共服務者倫理行為之價值體系，以及應遵循行為準則將有嚴重缺憾。而對於已歷經民主轉型需要進一步民主深化的台灣而言，亦將形成台灣民主治理阿奇里斯腳跟之所在。

**表 4-1 我國現行公共服務倫理相關法規主要核心價值摘要表**

法規名稱	明訂核心價值
公務人員任用法 26 條	無
公務人員任用法 26-1 條	無
公務人員任用法 28 條	無
公務人員考績法 6 條	無
公務人員考績法 12 條	無
公務員服務法	遵守誓言、忠心努力、依法值勤、服從、清廉
公務員兼任非營利事業或團體受有報酬職務許可辦法	無
公務員懲戒法	無
公職人員利益衝突迴避法	廉能
公職人員財產申報法	廉能
刑法第四章	廉潔、盡職
貪污治罪條例	廉潔
獎勵保護檢舉貪污瀆職辦法	廉潔
遊說法	公開透明

**資料來源：本研究**

## 二、相關倫理法制總體特色

分析表 4-2 發現，以規範對象而言，不同法規規範的對象並無一致性。雖然大多數都是以公務員或公務人員稱之，但進一步分析所指涉的對象範圍，若不是未加以更清楚界定，即是各法規之間即使用相同名詞，但法條所界定之人員種類與範圍亦是不相同。例如公務員服務法、公務員兼任非營利事業或團體受有報酬職務許可辦法，以及刑法第四章所謂公務員，所意指的對象就有部分差異。於表 4-2 所列相關法規中，僅有公職人員財產申報法與利益衝突迴避法兩項法律，規範對象完全相同。此種對相同名詞卻指涉不同對象與概念之現象，基本上即突顯我國政府與相關機關，以往對於倫理法制的建構並無長遠與完整思考，以致出現究竟哪些公共服務人員應被規範亦無一致性。

由於我國重要的相關倫理法規，多以法律形式立法。因此整體而言呈現法治程度相當高的特色。再就台灣總體倫理法制採集中立法或分散立法而言，由於我國並未如其他國家，具有一至二項統合性的倫理法典作為尚未法或基準法，因此整體倫理法制呈現高度分散立法且龐雜的特色。

**表 4-2 我國現行公共服務倫理相關法規規範對象與法制化程度摘要表**

法規名稱	規範對象	法治化程度
公務人員任用法 26 條	常任文官為主，其他類公務員為輔	高，法律形式立法
公務人員任用法 26-1 條	機關首長（含各級民選與政務人員）	高，法律形式立法
公務人員任用法 28 條	機關組織法規中，除政務人員及民選人員外，定有職稱及官等、職等之人員。	高，法律形式立法
公務人員考績法 6 條	經銓敘審定合格實授者	高，法律形式立法

法規名稱	規範對象	法治化程度
公務人員考績法 12 條	經銓敘審定合格實授者	高，法律形式立法
公務員服務法	公務員--受有俸給之文武職公務員、國營事業機關人員	高，法律形式立法
公務員兼任非營利事業或團體受有報酬職務許可辦法	公務員--受有俸給之文武職公務員、國營事業機關人員	高，法律形式立法
公務員懲戒法	公務員--未予界定	高，法律形式立法
公職人員利益衝突迴避法	公職人員--民選各級首長、政務人員、各級民代、其他各類公務員及相關人	高，法律形式立法
公職人員財產申報法	公職人員 <sup>1</sup> --民選各級首長、政務人員、各級民代、其他各類公務員 <sup>2</sup> 及相關人	高，法律形式立法
刑法第四章	公務員--依法令具有法定職務權限（含受委託人）	高，法律形式立法
貪污治罪條例	依法令從事公務（含受委託人）	高，法律形式立法

<sup>1</sup> 公職人員利益衝突迴避法所稱公職人員，係指公職人員財產申報法第二條第一項所定人員。共計有以下十三類人員：總統、副總統。行政、立法、司法、考試、監察各院院長、副院長。政務人員。有給職之總統府資政、國策顧問及戰略顧問。各級政府機關之首長、副首長及職務列簡任第十職等以上之幕僚長、主管；公營事業總、分支機構之首長、副首長及相當簡任第十職等以上之主管；代表政府或公股出任私法人之董事及監察人。六、各級公立學校之校長、副校長；其設有附屬機構者，該機構之首長、副首長。軍事單位上校編階以上之各級主官、副主官及主管。依公職人員選舉罷免法選舉產生之鄉（鎮、市）級以上政府機關首長。各級民意機關民意代表。法官、檢察官、行政執行官、軍法官。政風及軍事監察主管人員。司法警察、稅務、關務、地政、會計、審計、建築管理、工商登記、都市計畫、金融監督暨管理、公產管理、金融授信、商品檢驗、商標、專利、公路監理、環保稽查、採購業務等之主管人員；其範圍由法務部會商各該中央主管機關定之；其屬國防及軍事單位之人員，由國防部定之。其他職務性質特殊，經主管府、院核定有申報財產必要之人員。

<sup>2</sup> 同註 1。

法規名稱	規範對象	法治化程度
獎勵保護檢舉貪污瀆職辦法	公務員—未界定	高，法律形式立法
遊說法	總統副總統、各級民代、各級政府正副首長、部分政務人員 <sup>3</sup>	高，法律形式立法

資料來源：本研究

### 三、相關倫理法制主要規範面向

從表 4-3 可以發現，台灣現行政府倫理法制主要規範重點，主要多與反貪污（含財產申報與弊端揭發）及利益迴避相關議題（例如請託、關說、賄賂、不當得利...等）有關。其次則是有關紀律、忠誠、保密與盡職等項，這些價值基本上均屬於傳統行政機關內部，依據長官與部屬層級節制原則所衍生價值與行為要求，在台灣官場被統稱為「行政倫理」（陳敦源、蔡秀涓，2006：190）。另外，兼職與遊說於現行法規中亦有規範。

但是，對於民主國家公共服務體系中，被高度重視的政治中立與政治活動規範，於現行法中卻無任何規範。<sup>4</sup>此外，從各相關法規主要規範內容來看，有多項法規立法重點多在規範禁止事項與罰則，而且呈現堪稱嚴刑峻罰的警察國家立法特色，尤其是與反貪有關者，多會將罰則當作法規最後要的主軸，例如公職人員利益衝突迴避法與公職人員財產申報法等均是如此。此種公共服務倫理法制規範面向強調重點，基本上與新加坡香港兩個非民主政體，以及與我國同屬亞洲新興民主國家之韓國，呈現相當高的一致性。

<sup>3</sup> 依政務人員退職撫卹條例第二條所訂人員有：依憲法規定由總統任命之人員及特任、特派之人員。依憲法規定由總統提名，經立法院同意任命之人員。依憲法規定由行政院院長提請總統任命之人員。其他依法律規定之中央或地方政府比照簡任第十二職等以上職務之人員。

<sup>4</sup> 尚在立法院審議中的「公務人員行政中立法草案」，主要即在規範公務人員政治活動面向，但由於其尚未正式立法通過，因此，仍不宜將之視為台灣現行倫理相關法制之一。

**表 4-3 我國現行公共服務倫理相關法規規範面向與內容摘要表**

法規名稱	規範面向	內容摘要
公務人員任用法 26 條	利益迴避--圖利自己或他人	高階主管人事案件迴避規範。訂定適用對象、迴避時間。
公務人員任用法 26-1 條	利益迴避圖利自己或他人	離職前特定期間之人事案件迴避。訂定適用對象、迴避時間。
公務人員任用法 28 條	反貪污	犯（曾犯）貪污罪者免職。訂定適用對象、禁止行為、罰則。
公務人員考績法 6 條	紀律、品行	違法亂紀品行不端，得考列丁等。訂定適用對象、規範項目、罰則。
公務人員考績法 12 條	忠誠、盡責、反貪污、不法圖利、破壞紀律	違反左列事項，得處以一次二大過免職。訂定適用對象、規範項目、罰則。
公務員服務法	保密、藉職權圖利、兼職、離職後限制、請託關說、財務餽贈	違反左列相關事項各法條，予以懲處。訂定適用對象、禁止事項、罰則。
公務員兼任非營利事業或團體受有報酬職務許可辦法	兼職	明訂不許可事項、程序。訂定適用對象、禁止事項、罰則。
公務員懲戒法	違法、失職	有左列情形者予以懲戒。訂定適用對象、懲戒事項、程序與罰則。
公職人員利益衝突迴避法	利益衝突	規範財產非財產利益、職務圖利、人事案件迴避、請託關說、與關係機關各種交易行為迴避。訂定適用對象、應迴避利益類別、程序、罰則、懲處案件公開。



第四章 我國政府現行相關倫理法制與焦點團體意見分析

法規名稱	規範面向	內容摘要
公職人員財產申報法	財產申報	規範應申報人、申報時間、申報事項、程序、申報機關、強制信託、罰則。
刑法第四章	要求、期約收受賄賂或其他不正利益	規範禁止事項、應行作為與相應罰則。
貪污治罪條例	禁止之貪污行為	不當得利與圖利他人、要求、期約收受賄賂。訂定對象、禁止行為、具體罰則。
獎勵保護檢舉貪污瀆職辦法	弊端揭發	弊端揭發之事項、程序 與獎金分配。訂定揭弊人應具備條件（不得匿名、負舉證責任）、揭弊與調查程序、保護原則。
遊說法	遊說事項與行為	可（不可）為遊說者、事項、應遵循規定、應迴避事項、應公開資料、罰則。

資料來源：本研究

#### 四、相關倫理法制負責與執行架構

學界、國際組織，以及本文上述對全球先進國家公共服務倫理法制負責與執行架構之分析顯示，一項完備得以發揮效能的公共服務倫理法制，其基本元素中，至少必須具備有一統合性的最高主管機關，以作為相關法制政策之決定者、監督者，以及最終相關事項的決定者。

但衡諸我國現行各相關法規主要負責與執行機關（表 4-4）卻發現，不同法規主管機關相當分歧，整體而言呈現非常混亂的現象。以院的層級而言，即有考試院、監察院、行政院。以部會層級而言，則有銓敘部（銓敘機關）、法務部、內政部與公務員懲戒委員會。此外，

各用人機關與各機關人事單位亦屬其中。此種現象對於健全政府倫理法制與推動相關政策，有可能造成多頭馬車、爭功諉過與本位主義等現象，導致我國政府倫理法制與落實與推動效果不彰的情形。

此外，觀察各國公共服務倫理法制主要負責與執行機關定位發現，無論是內閣制國家或總統制國家，均是隸屬於行政權與最高行政機構之一環。但台灣，由於五權架構之憲政體制，佔公共服務最大宗的行政院，卻非公共服務倫理法制的主導與最高負責機構，反而是獨立於行政權院之外的考試院與監察院，為相關倫理法制的主要負責機構。此種特色，對於台灣公共服務倫理法制的建構與執行成效，則是有待觀察。

**表 4-4 我國現行公共服務倫理相關法規負責與執行機關**

法規名稱	負責與執行機關
公務人員任用法 26 條	銓敘機關、考試院、監察院
公務人員任用法 26-1 條	銓敘機關、考試院、監察院
公務人員任用法 28 條	銓敘機關、考試院、監察院
公務人員考績法 6 條	用人機關、銓敘機關、考試院
公務人員考績法 12 條	用人機關、銓敘機關、考試院
公務員服務法	未指明
公務員兼任非營利事業或團體受有報酬職務許可辦法	各機關人事單位
公務員懲戒法	公務員懲戒委員會
公職人員利益衝突迴避法	法務部、監察院
公職人員財產申報法	監察院、法務部
刑法第四章	法務部
貪污治罪條例	法務部
獎勵保護檢舉貪污瀆職辦法	法務部
遊說法	內政部

**資料來源：本研究**

## 第二節 焦點團體座談、訪談與書面意見分析

爲了使本研究研提的統合性政府倫理法制中，最核心的「統合性政府公職人員倫理法」草案，得以在學術理論、國際組織、英國、加拿大、德國、美國、新加坡、香港、日本與韓國等國經驗之基礎上，亦同時納入各類利害相關人之意見。因此，本研究於草案草擬不同階段，分別透過不同類別人員之焦點團體座談會與訪談<sup>5</sup>，匯集各類意見，以期能使本研究所研提之草案內容，更加的符合我國所需。

### 一、草案研擬第一階段之焦點團體意見分析

本研究於草案研擬第一階段，爲擴大各類相關人之參與，因此先行舉辦四場焦點團體座談會。前三場主要與會人員，主要是來自產業界、學術界、民間團體與智庫，第四場的與會者，則主要是以各行政機關政風單位代表爲主，各場次與會者代表領域請參見附錄 1。以下，即依據各場次座談會與會者意見（附錄 4-1 至 4-4），分別從我國統合性政府公職人員倫理法草案相關面向進行綜合分析與說明。

#### （一）統合性政府公職人員倫理法之定位、性質與立法原則

有關我國倫理法制之訂定，應該採統合式與集中式立法，或是採分散式立法？<sup>6</sup>全部與會者中共計有八位對此議題有較爲明確的表態（表

<sup>5</sup> 由於藉由焦點團體與訪談所蒐集的資訊，於本研究中主要功用在於提供各領域代表的看法，以提供法案草擬之基礎，而非在進行學術性的內容分析。因此，本研究對於這些相關意見之呈現，主要係以總體性偏量化方式呈現，是以，於引述焦點團體代表觀點時，將僅呈現本研究認爲較具代表性之意見。

<sup>6</sup> 儘管本研究委託單位「行政院研究發展考核委員會」基於台灣內外環境所需，期待我國未來能有一類似其他先進國家的統合性政府倫理法典，因而有本研究之產生。但委託單位，基於更瞭解我國公職人員倫理此議題各類利害相關人之意見，以及對本研究結果採取開放的態度。因此，仍表達希望本研究在焦點團體座談題綱中，能納入我國倫理法制應採統合式立法，或維持現行分散式立法之討論議題。

4-5)。其中，有五位焦點團體代表認為應採統合式立法模式，有三位則主張應以分散式立法為主。相對而言，贊成我國政府倫理相關規範，應以統合性立法者之人數，稍高於主張應以分散式立法者。以下僅略舉統合性立法贊成者意見與分散式立法支持者之意見以為對照。

贊成統合性立法者，主要是從全球政府倫理法制趨勢，以及我國現行法制紊亂之觀點著眼。例如焦點團體代表 2-D 即指出：「是否要訂立倫理法呢？目前來說勢必是個免不了的趨勢，一方面可以在附件中所看到各國都有訂立，另外一方面整個世界趨勢變化太大，…我們需要一個新的目標去規範。…新變化出現以後，用以往對於公務員的看法來做的話恐怕是無法應付的。…要訂立這樣一個法的話建議要集中，現在已經太過分散在各法中，每次都是請參考相關法案，要是遺珠是沒參考到的，未來又會產生問題，可以集中處理相關所有規定會比較好。」。

焦點團體代表 2-C 也指出：「目前過多的法制上，基本上還是應該要想辦法能夠讓這些相關但不盡相同的法案儘可能的找出這些法律彼此之間的從屬關係等等，先將其釐清楚。」。

此外，代表 4-E 亦指出：「分散立法還是集中立法？建議先設一個基本法規，再做個別的相關規定立法，這樣或許會比較周延一些。」。

贊成分散式立法者，則是對於統一規範是否適宜與適當有所保留，例如焦點團體代表 1-N 即指出：「該法是要定位在那裡？如果要再來一個法，如何定位？倫理是抽象的，而不是具體的懲罰制裁，讓規範的對象知道應該做什麼。目前非法制裁部分在其他法裡已有規範。倫理跟專業相關，是動態的，也跟行為人的特質相關。綜合上述，很存疑是否有必要再設一個法。公部門各個部門人員的行為都不盡相同，所以用單一的一個法去規範所有的人是有問題的，不同的人要有不同的行為準則。」。

焦點團體代表 3-E 則是認為：「是否可定出放諸四海皆準的倫理規範出來？…不可能找出一個一統的核心價值會是有問題。另外與其他相關法令的衝突競合也是需要注意的。」。

從以上較為主張我國政府倫理法制，應以分散式立法之與會者觀點來看，可以發現此類人員，並非強烈認為一定要採分散式立法。而是對於不同類別人員倫理規範之差異性較為關切，因而認為國倫理法制採分散式立法也許較佳。

再就立法目的而言，較多與會者認為主要應該是在提昇公職人員的倫理價值、滿足社會觀感，以及彌補現有相關法令之不足。以下僅略舉 1-N、1-G、2-H 與 2-N 四位焦點團體代表之意見予以佐證。

焦點團體代表 1-N 指出：「應把重點放在正面的倫理部分，而非負面的肅貪部分。」。

焦點團體代表 1-G 認為：「應該幫公務人員解決價值衝突，應該重視價值宣導。」。

焦點團體代表 2-H 強調：「我們為什麼要用一個統合性的法律？一定是有些現行狀況不是太好，所以才需要一個統合性的法律整合。」。

焦點團體代表 2-M 指出：「社會觀感到底為何？或許就是倫理道德法制的問題。從公民角度，希望看到說有沒有一個很具體的道德規範出現，有錯誤就有對口的法律處理」。

**表 4-5 焦點團體對我國統合性政府公職人員倫理法立法目的之看法**

目的	倫理價值取向	彌補現有不足	滿足社會觀感	具體的道德規範
人數	6	4	5	2
排名	1	2	3	

此外，與談人對於我國公職人員倫理法草案訂定時，應注意事項亦提出不少關切（表 4-6）。首先，最多數與談人均強調，於我國倫理法中應謹訂原則，而由各相關主管機關與個別機關訂定較為具體的規範。例如焦點團體代表 1-C 即指出：

「政府倫理法若要規定公務及相關人員的倫理規範，可能只能規定一般的大原則，各領域的專業倫理規範，則可授權各專業領域訂定，再送交倫理署審查或備查。因為專業規範十分細緻，且會有各自衝突的地方，無法全部統整在一部法規中。」。

其次，違反效果的訂定、防弊與興利之平衡、人權問題之考量亦是焦點團體代表認為應注意的立法原則。例如焦點團體代表 1-K 即指出：「人權保障要考慮，新加坡與香港的作法已超過我們對人權保障的概念」。

**表 4-6 焦點團體對我國統合性政府公職人員倫理法立法原則之看法**

應注意立法原則	人數
謹訂原則，各專業領域、人員與地方政府，由主管機關訂定具體完整規範	9
必須訂違反效果	4
防弊與興利之間要平衡，不能導致公務員不敢做事	4
考量人權問題	4
法條列舉要具體	2

## (二)我國統合性政府公職人員倫理法應有的核心價值

本研究第一階段焦點團體代表，對於我國倫理法制應強調的核心價值，基本上與國外政府倫理法所強調的核心價值具相當高的一致性。從表 4-7 可知，清廉透明是與會者最為強調的價值，其次則為公正中立，泛屬公共利益之為民服務與專業倫理等價值，亦是焦點團體代表所關切的價值之一。此外，應有多少項價值作為核心價值，多數焦點團體代表認為不應過多，三像是較有共識的看法。從以下幾位代表之意見，可以瞭解與會者的一般看法。

焦點團體代表 2-M 即指出：「廉潔、公平、正義、透明，都可以作為一個母法的內容。」。

焦點團體代表 2-J 則認為：「核心價值：應該分為民選首長與代表，政務官，一般常任文官，這三種類別，其中共同的部分要強調廉潔、無私、透明、效率，那常任文官的部分強調行政中立、忠誠、主動、前瞻。」。

焦點團體代表 4-E 亦主張：「在核心價值的部分，廉潔正直大部分的國家都有提到，另外數量不宜多，不應該超過三項，必須要是最關鍵的部分」。

**表 4-7 焦點團體對我國統合性政府公職人員倫理法核心價值之看法**

項目	專業倫理	誠實	正直	清廉透明	公正中立	效率	忠誠	為民服務	道德責任	前瞻
次數	5	3	3	11	9	4	2	3	2	1
排名	3	5	5	1	2	4	6	5	6	7

### (三)我國統合性政府公職人員倫理法應規範對象與規範面向

對於我國統合性政府公職人員倫理法，所應規範對象應有哪些？與會者較多數的意見採從嚴認定。認為應盡可能將凡涉及公權力執行者均應納入，因此，從民選正副總統、各級民選首長、各級民代、行政機關約聘僱人員、以及各種外聘委員及決策委員、契約外包相關人員，均是焦點團體代表認為應規範的對象。例如代表 4-CC 就指出：「個人覺得把民意代表放進去，這是比較重要且適當的。」。

此外，亦有少部分工商團體代表主張，除了涉及公權力行使的公職人員應納入規範之外，對於特定重要具影響力的職位，其親屬亦應納入規範。有一位代表 2-J 即指出：「應該達到六等親，這部分可以一網打盡。」。至於我國政府統合性倫理法，應規範的面向有哪些，與會者則一致認為，凡是國外政府倫理法中有規範的面向，我國政府倫理法均應納入。與會代表 4-CC 即指出：「各國倫理法規定的面向都可以納入，不怕多。」。

(四)我國統合性政府公職人員倫理法負責與執行機關

對於我國統合性政府倫理法未來負責與執行機關之設計（表 4-8），焦點團體代表多數主張，應設立一專業、獨立與整合的單一機關負責。這樣設計的目的，一方面可以事權統一，另一方面也可統整目前我國相關法制負責機關多軌的現況。與會者普遍均強調，機關獨立性是最重要的。例如焦點團體代表 2-L 就指出：「可以先做的是將組織獨立化，給該有獨立全力的組織獨立的權力。職權行使本身的獨立性也非常重要。」此外，與會者也認為此一倫理法負責機關的層級應該要高，才能彰顯我國政府對公職人員倫理法的重視。另外，也有部分與會者直接指出依我國現行憲政體制，放在監察院應是最為適當的安排。

對於此一負責機構應具有哪些職權？則有部分與會者指出至少應具有評鑑、決策、宣導、向立法院報告的權力。例如焦點團體代表 4-CC 即指出：「負責法體系的建立整合、政策宣導、對政府各部門的建議諮詢、要求各部門提出報告、監督與懲處、向立法院負責。」

此外，少部分與會者也指出此一倫理法負責機構，雖然應具獨立性，但是仍應有對其監督與課責的機制。焦點團體代表 4-E 即持此種看法：「在執行機關的方面，獨立性很重要，也必須要做一些監督，避免濫權，所以是相對的獨立而不是絕對的獨立。」

**表 4-8 焦點團體對我國統合性政府公職人員倫理法負責機構之看法**

項目	層級要高	專業獨立 整合的單 一機構	做一評鑑 決策與審 查機構	放監察院	依規範對 象決定放 哪	放法務部	還是要受 監督
次數	3	14	3	4	2	1	2
排名	3	1	3	2	4	5	4



## (五) 相關配套措施

有關我國政府統合性公職人員倫理法未來執行時，所應有的配套措施有哪些？與會者最為關切的，就是這個倫理法及負責機構，應如何與我國現有相當紛亂複雜的相關法規與制度整合（表 4-8）。此外，不同與會者也針對未來如何使我國政府統合性公職人員倫理法更加有成效，以及公職人員倫理程度更加提昇，提出各種不同建議。這些建議主要有加強倫理教育訓練、增加媒體與民間參與、各機關內部應有相對應的倫理機制、加強各專業組織自律、增加政府資訊公開透明，以及設立專業的倫理法庭等項。例如焦點團體代表 1-F 即指出：「政府廉政法制的補充以及執行力的提升。教育訓練的重要性不可忽視。讓媒體有更專業中立的生存環境，有助提昇我國廉政指標，提供媒體更佳生存環境，政府要促進媒體又要被媒體監督。民間參與：由下而上的力量，倫理只是個蓋子，真正要談的是廉政。公務人員協會專業性組織自律能力的展現，是很重要的，公務人員協會內部的自我認證，例如公務人員協會法的修正或補充。」。

表 4-9 焦點團體對我國政府統合性公職人員倫理法相關配套之看法

項目	與現有 相關體 制法規 整合	教育訓 練	媒體與 民間參 與	專業組 織自律	專業法 庭	資訊公 開透明	各機關 也要有 對應組 織與人 員
次數	17	3	2	1	1	1	1
排名	1	2					

## 二、法案草擬第二階段法學界專家學者代表訪談與座談會意見分析

本研究經過上述對各類利害相關人代表之意見，有一廣泛徵詢與瞭解之後，為使所研提之法案更加周延，因此，於進行具體草案具體

法條研擬之同時，亦同步再次徵詢幾位法律界專家學者代表，對於我國統合性政府倫理法應有內涵之看法。此一部份之專家學者意見，主要又可區分成兩部分。一部份是針對我國政府倫理法各面向進行原則上之意見表述（附錄 5-1 至 5-4）。另一部份，則是對於本研究草擬之草案條文，進行類似逐條意見之表達（附錄 5-5 至 5-10）。由於專家學者對於本研究草案進行逐條意見表示之部分，內容多涉整體草案各條文之邏輯一致性、法律文字之修正與格式。因此，本研究於整合相關意見後直接呈現於草案法條之修正，而不於此再加以說明。於此，僅對於法律界各專家學者有關我國倫理法各相關面向原則性之總體意見加以簡要說明。

#### （一）我國統合性政府公職人員倫理法之定位、性質與立法原則

關於我國政府倫理法之定位與性質，從附錄 5-1 至 5-4 可以發現，受訪專家學者的意見相當一致。均認為此法應屬類似基準法的性質，基本上具有宣示與訂定各相關倫理法規應有原則的性質。因此，受訪者也一致認為於本法中，不宜訂定過於具體與細節性的法條。例如違反效果的相關規範，以及有關本法負責機關之組織法部分，就應該於本法中僅作原則性的規範。

受訪者 5-B 即指出：「我國相關倫理法制散見在各個法律中，現在目的是要將這些法統合，類似一個母法的概念，當然要有一個通通包括的法律是不可能的，所以是一個宣示的概念，再去規範下面的法律。」。受訪者 2-F 看法亦類似：「上位法的定位則應該是宣示與原則的意義，但不一定是 All in one 的統合，否則只是程序上的規範。」。

#### （二）我國統合性政府公職人員倫理法應有的核心價值

至於我國倫理法應具有的核心價值該有哪些？受訪的專家學者指出，應於草案中起始即明列公職人員應遵行的倫理價值，並且用幾句話對各核心價值予以界定。主要可做為我國公職人員倫理價值的項

目，至少應包括透明、利益迴避、課責、中立等。受訪者 6-A 之觀點足為代表：「開宗明義、總則的規定，公職人員應該要遵守哪些倫理原則先規定出來。」。受訪者 2-F 看法亦類似：「核心價值明列公務人員應如何如何，用一至兩句話將核心價值定義。核心價值的部分應該包含了課責、定義及呈現，其中課責與定義的部分應該要相互連結。」。

### (三)倫理法應規範對象與規範面向

受訪的專家學者對於我國統合性政府倫理法，應包含哪些對象基本上亦是頗有共識，多是認為可以範圍廣一點。受訪者也建議，可以參考我國目前相關法規中，公職人員界定最廣的定義，例如刑法中對公務員的範圍界定。不過，其中一位受訪者由於服務於立法院，因此強烈主張，中央民代基於國會自律原則不應納入規範，但地方各級民意代表則應納入。其指出(5-B)：「國外公職人員概念不包含民代，通常包含政務官跟常任文官，但在某些特別的項目會分別立法做區別及不同的規範，所以基本上沒有包含民代。」。

其他受訪者則是認為基於社會期待，亦應該包含立法委員，或至少於法條中應規定立法委員「準用」或要求必須自訂相關倫理法自我約束。至於因為委外而執行公權力但非屬公職人員者，是否應納入？受訪者則是認為可以於法條中訂定，由各機關自行依所需另訂相關規範。

有關具體規範面向部分，受訪者大致上認為，由於本法定為基準法，是屬於對我國最低的倫理價值要求與規範，因此至少應包含財產申報、利益迴避、遊說、以及目前相關法規中已規範的面向。此外，受訪者也主張，針對不同的規範面向，應注意不同職務與職等性質，應有差異性規範。例如退休離職人員就應在某些面向亦被規範。

### (四)倫理法負責與執行機關

對於未來我國政府此項統合性政府倫理法的負責機關應該如何設

計，受訪者多主張可以成立類似「公職人員倫理管理委員會」之類的機關。由於未來本法規範的對象範圍與層級相當高，因此均建議可以將此倫理委員會置於現有監察院中。例如受訪者 2-F 即指出：「目前民眾對政府信任度不高，如果要設立機關應該是上位機關，具有發動權之後再由其他機關去執行。…如果規範對象位階也涵蓋到正副總統則可能要設在監察院比較妥當。」。至於此一委員會的實際組織與職權，受訪者均建議另以法律訂之。不過，基本上認為此一委員會應是一個負責統籌我國公職人員倫理政策、監督各機關倫理情形，接受檢舉申訴案件並做分案的政策性與監督機關，不適宜設計成一個執行機關。此外，亦應確保該機關運作與委員職權行使有一定的獨立性。

#### (五)相關配套措施

有關相關配套措施部分，弊端揭發人 (whistle blower) 制度是最被強調的。另外，各機關應依本法另訂機關內部的倫理機制、設置倫理官、倫理委員會應向誰報告，以及訂定各機關未來於我國此一倫理法通過之後，必須在一定期限內修法完竣等，亦是受訪者所提的相關配套措施。此一部份受訪者 5-B 即提供相當完整的看法：「弊端揭發人 (whistleblower) 在台灣並沒有相關法律，應該要訂定相關揭發程序。揭露要統一有一個簡易的程序，國外有的是機關自行訂定，有的是有一統一的揭露規定。國外倫理官的條件是資深常任文官且職位高，但在台灣不適合由政風人員擔任，或許日後可以將政風人員改成倫理人員，政風人員為內控其實可以將倫理結合又不會增加員額。應該對 Whistleblower 要有獎勵，否則只會承擔風險，內部揭弊不能獎勵因為要保密，只能獎勵外部揭發。」。

## 第五章 我國統合性政府公職人員倫理法立法原則 與草案內容

本研究綜合上述學理對政府倫理法制建制原則之探討；經濟合作暨發展組織與國際透明組織對各會員國之建議作法；英國、加拿大、德國、新加坡、香港、日本與韓國等歐美與亞洲國家政府倫理法制內涵及特色分析；我國現行相關法制之檢討；以及我國各類利害相關人與法律界學者專家意見，首先提出我國此項統合性倫理法應有的立法原則；進而以這些原則為基礎，提出我國「統合性政府公職人員倫理法草案」。以下，首先說明此項草案應有建制原則與內涵，其次則對於此草案之立法說明與內容加以陳述。

### 第一節 我國統合性政府公職人員倫理法草案立法原則

#### 一、應具統合性、基準性、倫理性、社會期待性

根據學理，國際組織的建議與經驗，以及英國、加拿大、德國、新加坡、香港、日本與韓國等國統合性倫理法制之內涵以及各利害相關人與專家學者意見可以發現，我國政府倫理法制若欲達到成效，基本上必須具有統合性、基準性、倫理性、社會期待性等原則。

統合性立法原則係指，一個國家（或政府）必須有一個較其他相關法律更上位的統合性倫理法，以作為統攝各相關倫理法規之用。同時，此一統合性倫理法典，亦具有讓公職人員與一般公民瞭解，公職人員應達到的倫理行為與應禁止的反倫理行為有哪些之宣示與實益功能。一方面達到規範公職人員行為之目的，一方面也保護公職人員，得免受脅迫利誘以致做出反倫理行為。

從前述我國現行相關法制檢討可知，我國目前並無一統合性倫理法典，而各類相關人意見則反映出我國應有一統合性倫理法典之共識。因此，本研究認為此項原則必須是我國建構政府倫理法典的最重要立法原則之一。

不過，在此值得進一步說明的是，我國政府統合性公職人員倫理法草案應採統合性立法為第一原則，所謂的「統合性」意指在此法典中，對於核心價值、適用對象、重要規範面向予以說明，以提供現有其他相關法規一個法源基礎，及遵照本草案各規範面向所定最低標準據以修法之依據。而非意指將現有各項相關法規、命令與規則等內容與規定，全部納進本草案的「包裹式」立法。因為此種將相關面向全部涵蓋在數百條條文的包裹式立法，雖然具有降低法典數量與整併的好處，但在我國實務立法經驗中，此立法形式不僅會造成立法過程極大的阻礙成本，而且一部包含數百條條文的法律，無論是閱讀或翻閱亦不方便。因此，本研究在參酌國外政府倫理法制相關立法原則與我國立法實務考量，係以「統合性」而非「包裹式」為立法原則。

其次，由於我國現行相關倫理法規與制度相當紛雜，再觀察各國趨勢可知，一項具有為各倫理法訂定基準的法典極其重要。因此，我國倫理法立法原則也應當符合基準性。具體而言，為了使各相關倫理法規均能達到最低倫理標準要求的一致性，此法典必須在其中指明，各相關法規不得違反此統合性倫理法典基本主張與規範；並且對各相關法規未來配合修法時，應遵循之修法原則進行較為具體的規範，以使整體倫理法制具有一致性。

因此，就此法與其他既有相關的政府倫理法，例如「公務人員任用法」、「公務人考績法」、「公務員服務法」、「公務員懲戒法」、「公職人員利益衝突迴避法」、「公職人員財產申報法」、...等，以及刻正立法中的「公務人員行政中立法草案」、「政務人員法草案」、...等政府相關倫理法規之關係而言，本法係屬「基本法」之位階。其他既有相關法規之精神，將於本法各相應法條中取得基本法源基礎，且不可違背本法對於既有各法相應規範法條之基本精神。

觀察倫理法制較為周延的國家可以發現，倫理法典必須包含公共服務倫理價值規範此應為面向，以及以反貪腐為主的禁止事項。目前我國各相關法典，相當欠缺有關對公職人員應有倫理價值與行為的具體陳述與規範此倫理性。因此，基於國際趨勢與各相關人意見可知，增加倫理性面向之規範是我國倫理法必須有的立法原則之一。

最後，從各國經驗可以清楚看出，一項統合性政府法典之產生，基本上都是源於當時社會公民之強烈期待而來。對於當前的台灣而言，正處於社會對政府公職人員倫理行為應大幅提昇之強烈期待中。因此，如何使我國此倫理法典，無論在規範對象、規範面向或成效上，都能達成社會期待，將是應優先考慮的立法重點。

## 二、應明訂幾項重要的核心價值

無論是從學理、國際組織與各國作法可知，一項周延健全的政府倫理法典，於立法宗旨部分，即會明確指出該國公職人員應遵守的幾項核心倫理價值。觀察我國目前相關倫理法制，對於此一部份之規範卻是相當缺乏。

因此，基於我國現行政治經濟環境所需，公民對政府公職人員的期待，以及各國對政府倫理價值的共識，焦點團體座談會之共識。本研究認為我國公職人員倫理法草案，亦應比照各國政府倫理法制之設計，於條文中正式宣示我國公職人員應遵循的倫理價值應有廉潔透明、公正中立，以及公共利益等三項，並於法條中對此三項價值予以概括說明其內涵。

## 三、規範對象層面應擴大且統一以公職人員稱之

從各國政府倫理法典所規範的對象可知，各國規範對象有所差異。這其中最大的差異有二。一是民意代表應否納入或是另以法律規範；一是因政府業務委外因而代為行使公權力的人員，以及各機關具有決策權和影響力的外聘委員等是否應納入。

從各類利害相關人的意見可以發現，也許是源於我國目前社會中，近幾年幾項重大貪腐事件，導致公民對民選首長與政務人員總體清廉形象的質疑；以及長久以來對各類民意代表貪腐的深刻印象。各類代表均相當一致地認為，我國政府倫理法如欲符合社會公民的期待，則應將常任公務員、民選首長與政務人員，以及各級民意代表均納入。由於適用對象範圍甚大，因此，本研究認為以「公職人員」稱之最能符合。至於職權行使相關人員是否應具體規範於草案中，本研究認為可由各主管機關依機關與業務性質，自行決定是否另訂規則加以管理或準用本法。

#### 四、規範面向應盡可能周延，並加重政治中立與政治活動規範

一個國家與政府對其公職人員倫理行為最明顯的期待與最具體的規範，就是表現在倫理法中，究竟含括了哪些規範面向。從各國倫理法制規範面向可知，至少都包括了政治活動、財產申報、在職期間利益迴避、離職後利益迴避、弊端揭發等項。對於有較為優良與長久民主經驗的歐美國家，更會強調民主治理中，公職人員（尤其是常任文官）最重要與應遵守的政治中立與政治活動規範。

那麼，我國政府倫理法究竟應該包含哪些規範面向呢？從本研究各類焦點團體參與者與專家學者意見發現，至少應包含其他國家均有規範的政治活動、財產申報、在職期間利益迴避、離職後利益迴避、弊端揭發等面向是最起碼原則。另外，本研究基於我國現有相關倫理法規中，對於部分規範面向已有立法及行之有年的名詞。因此，於我國倫理法中亦將這些面向加以整合。

此外，對台灣而言，2000年歷經民主發展史上第一次政黨輪替，此刻正值由民主轉型邁入民主鞏固之階段。部分事件與研究亦發現，無論是民選首長、政務人員或是常任文官，政治中立之概念與行為表現仍須加強。為此，為使我國民主發展得以更加長遠與深化，本研究主張應仿照歐美等國，將政治中立正式納入我國倫理法制規範的具體面向之一。



再者，有鑑於台灣剛邁入民主鞏固時期，中央政府亦才經歷過一次政黨輪替，各類公職人員對於政治活動應否參加、能否參加，哪些可以參加，由於目前並未有正式立法予以指導，倘未有非常清楚的概念。因此，本研究認為應在我國倫理法草案中，指明此一面向之相關規範應有之原則，以使各主管機關於修法時有所遵循。

### 五、各規範面向僅作原則性立法，但明訂相關法規配合修法之日出條款

由於我國現行倫理相關法規呈現非常分散式的立法，因此，未來欲將其全部統合至政府倫理法一部法典中，基本上不僅不切實際，而且亦不符立法趨勢。但如何才能使各相關法規在政府倫理法此法源基礎下，於一定期限內配合修法，以使各相關倫理法規符合此基本倫理法典之要求，而且彼此具有一致性與體系性？本研究認為此統合性倫理法典必須於條文中，分別對各規範面向做最原則性之規範。但各規範面向之具體內容與罰則，則仍回歸現有各相關主管機關。但於此部法典中，明訂各規範面向相關主管機關，必須在一定期間內，依此法典對各規範面向應有修法原則配合修法完竣。

### 六、應有一專責且位階較高的負責機關

無論是學理、國際組織或各國經驗均顯示，一項倫理法典若欲達到應有目標。則有一專責的統籌機關是重要元素之一。誠如本研究前述分析我國現有倫理法制特色指出，我國目前與各倫理法制相關的主管機關非常分散，因此造成事權過於集中與多頭馬車現象。對此，各焦點團體代表與專家學者因而相當有共識的主張，我國應有一專責的統籌機關，而且此一機關應具獨立性，再加以規範對象類別眾多層級亦高。所以此一專責機關亦應具有較高的獨立性與位階。據此，本研究認為我國政府倫理法，應明訂未來此法典的執行與我國相關的倫理政策，應由一專責且位階較高的統籌機關負責。至於該機關組織法是否應訂於本法中，基於法律界學者專家一致建議不宜明確定於本法；

再加以本研究亦認為，此專責機關之具體組織應如何設計茲事體大，實非於本法典中用幾條法條即可清楚呈現，因此認為於法典中，應僅對此專責機關做原則性規範。

## 第二節 統合性政府公職人員倫理法草案內容與說明

根據上述幾項立法原則，本研究將我國統合性政府倫理法典，暫訂為「統合性政府公職人員倫理法」。以下第一部份是採取類似行政機關提案時的立法總說明，第二部分則將本研究所研提之「統合性政府公職人員倫理法」以條文及說明兩欄並列的方式呈現。

### 一、統合性政府公職人員倫理法立法總說明

本法為規範公職人員於執行職務時所應遵守之倫理守則，鑑於我國目前針對公職人員倫理相關規範係散見於個別法規當中，且各個法規之內容未盡完備、規範對象皆不相同，制定本法可作為一統合性上位基準法，使得公職人員在執行職務上能夠有所依循，促成公職人員倫理相關法規能依本法所定之精神加以建構，提昇人民對政府之信賴。

茲將本法之立法重點說明如下：

- (一)參考各國針對公職人員倫理的核心價值，再加入我國固有之特色，明確將之予以定義。(第一條)
- (二)本法作為一基準法，原則上皆適用本法之規定，未規定時再適用其他法規。(第二條)
- (三)適用對象部分，除將學理上公務員定義之人員納入外，並增加總統副總統、各級民意代表等與公共利益及人民福祉相關之人員，期能擴大應遵守倫理規範之對象，提昇人民對政府之信賴。(第三條)

- (四)公職人員應遵守之倫理規範，參考各國立法例其規範層面多包含了政治活動、財產申報、保密、公正無私、利益迴避、資訊使用之限制、競業禁止、旋轉門、收受餽贈或贈受財物、內部揭露等面向，本法皆將各該層面予以規範，並配合我國之特色，將上述內容予以明文化，作為公職人員執行職務之依據。(第四條至第十三條)
- (五)為有效辦理公職人員職務倫理事項，將設立一公職人員倫理委員會之主管機關，獨立行使職權，並提出與公告相關績效報告及改進建議，且送立法院備查。(第十四條至第十五條)
- (六)訂定公職人員違反本法所定倫理規範之處理程序。(第十六條)
- (七)為完善我國公職人員之倫理法制，設立二年之日出條款期限，以本法所揭示之原則，修正、廢止或制(訂)定各特殊職務所需之專業倫理。(第十八條)

## 二、統合性政府公職人員倫理法

### 統合性政府公職人員倫理法草案條文與說明

條文	說明
<p>第一條(立法目的)</p> <p>為建立公職人員職務倫理，廉潔透明、公正中立執行職務，維護公共利益，遏阻貪污腐化，促進廉能政治，以提昇人民對政府之信賴，特制定本法。</p>	<p>一、明訂本條之立法目的，乃基於我國現行政治經濟環境所需，人民對政府公職人員的期待，並參考各國對公職人員倫理價值的共識，應包括「廉潔透明」、「公正中立」與「公共利益」等部分，以作為本法核心價值。</p> <p>二、有關公職人員必須遵守「廉潔透明」、「公正中立」與「公共利益」之核心價值，其意義如下：</p> <p>(一)「廉潔透明」：</p>

條文	說明
	<p>1.負責地履行責任與義務。</p> <p>2.秉持專業行事，以贏得民眾之信賴。</p> <p>3.確保公共經費與其他資源皆能獲致妥善與效率的運用。</p> <p>4.公正、效率、敏捷、有效地處理公眾事務。</p> <p>5.在合法授權下，盡可能地保持資訊公開。</p> <p>6.遵守法律並維護司法。</p> <p>（二）「公正中立」：</p> <p>1.以公平、正義與公正的方式，以及恪遵文官對平等和多元的承諾，執行其職責。</p> <p>2.不得無理地偏袒或歧視特定個人或利益。</p> <p>3.無論執政政黨為何，不論自身的政治信仰為何，遵循此守則的要求，嚴守政治中立、竭盡所能地為政府服務。</p> <p>（三）「公共利益」：</p> <p>1.公職人員應時刻以符合最嚴格的公共監督之作為行事；而不應僅簡單地依法行事而已。</p> <p>2.公職人員除了重法定義務與責任之外，決策時亦應以公共利益為念。</p> <p>3.若公職人員的私利和法定的義務有所衝突，應以公共利益為先。</p>

條文	說明
<p>第二條（適用範圍） 公職人員執行職務應遵守之公務倫理，依本法之規定；本法未規定者，適用其他法律之規定。</p>	<p>本法所列之公職人員倫理規範，乃公職人員應確實遵守之基本準則，惟基於公共事務的多樣性與複雜性，若他法有更為規定者，適用該他法之規定。</p>
<p>第三條(名詞定義) 本法所稱之公職人員，其範圍如下： 一、總統、副總統。 二、行政、立法、司法、考試、監察各院院長、副院長。 三、其他政務人員。 四、有給職之總統府資政、國策顧問及戰略顧問。 五、直轄市長、縣（市）長、鄉（鎮、市）長。 六、各級民意機關民意代表。 七、考試委員、監察委員、大法官、法官、檢察官、行政執行官、軍法官。 八、其他受有俸給之文武職公務員。</p>	<p>本條明定公職人員適用之範圍。</p>
<p>第四條(公職人員應遵守之倫理原則一) 政治活動 前條第一款、第二款之行政、立法院長、副院長、第三款、第四款、第五款、第六款人員，參與政治活動或其他活動，在其職務範圍內應保持中立，不得影響人民對其執行職務之信賴。(第一項)</p>	<p>一、第一項規定，基於前條第一款至第六款之人員（除司法、考試、監察正、副院長外）有其特殊之政治色彩，惟對於公共服務時，仍應以全民福祉為首要之務，不得影響人民對其應有之信賴。 二、第二項之規定，有關司法、考試、監察正、副院長及第七、八款人員，</p>

條文	說明
<p>前條第二款之司法、考試、監察各院院長、副院長及第七、八款人員在其職務範圍內應保持中立，不得參與以特定政黨或特定政治目的有關之活動。(第二項)</p>	<p>為確保執行職務不受政治力之干涉，而能使人民信賴其執行職務不以特定政黨利益、政策為取向，故明定不得參與特定政黨或特定政治目的有關之活動。</p> <p>三、除前二項之原則外，依本法第十八條針對政治活動規範進行修正時，應包含以下原則：</p> <ol style="list-style-type: none"> <li>1.於法規中對政治活動的意義加以定義。</li> <li>2.依據政治活動的內容性質與層次(例如全國性與地方性)加以分類。</li> <li>3.依據公職人員的職務層級、性質、服務機關屬性加以分類，不同人員別適用不同程度之規範，越高階、越重要與越具敏感性職位者應予以越嚴格規範。</li> <li>4.授權各部會機關可依所需對更多重要與特殊性職位加以規範。</li> <li>5.規範應採事先核可制度。</li> <li>6.規範參選者有關辭職或留職停薪，及於此期間之身分認定。</li> </ol>
<p>第五條(公職人員遵守之倫理原則二)財產申報 第三條第一款至第七款之公職人員，應定期申報財產；第八款之公職人員因職等高或其他職務性質特殊，經主</p>	<p>一、公職人員之財產申報，參考各國立法例及我國公職人員財產申報法以一定職位以上之人員，始有申報之義務，惟因擔任司法警察、稅務、關務等之主管人員等，或其他職務性質特</p>

條文	說明
<p>管府、院核定有申報財產必要之人員，亦同。(第一項)</p> <p>第三條第八款之公職人員，經調查有證據顯示其生活與消費顯超過其薪資收入者，得經法定程序指定其申報財產。(第二項)</p> <p>前二項公職人員之配偶及其未成年子女之財產，應一併申報。(第三項)</p>	<p>殊者，亦應有申報財產之義務。</p> <p>二、公務員利用職權貪瀆，個人的因素有時更重於職務誘因，基於審核申報之機關資源有限，不可能對所有的公務員要求申報，為免掛一漏萬，以及申報與審核申報之經濟性考量，增列經調查有證據顯示其生活與消費顯超過其薪資收入者，該公職人員所屬機關之政風單位得經中央政風主管機關之核可後，指定其申報財產。即所謂指定申報制。</p> <p>三、公職人員配偶與未成年子女之財產因與公職人員財產有密切關係，不易區別，為求達到財產透明之申報效果，宜一併申報之。</p> <p>四、除前三項之內容外，依本法第十八條針對財產申報規範進行修正時，應重新檢討以下內容：</p> <ol style="list-style-type: none"> <li>1. 規範應申報對象、申報內容、申報時間、申報形式、申報義務。</li> <li>2. 規範資訊公開與否及相關事項。</li> <li>3. 規範需強制信託情形。</li> </ol>
<p>第六條(公職人員遵守之倫理原則三) 保密</p> <p>公職人員對於其職務上所知悉之秘密，負有保密之義務，退、離職者亦同。</p>	<p>國家機密因涉及利益甚巨，公職人員應負有保密之義務，以免洩漏造成國家社會之損害；部分離職公職人員常藉所謂的回憶錄，有意或無意於其中揭發密辛，故參考外國立法例明定退</p>

條文	說明
	休與離職公職人員仍負保密義務。
<p>第七條(公職人員遵守之倫理原則四) 公正無私</p> <p>公職人員為公共利益服務，應以全國國民福祉為依歸，其執行職務應全力以赴，非有正當理由，不得為差別待遇。(第一項)公職人員應公私分明，不得利用其職務和地位為自己或他人謀取私利。(第二項)</p>	<p>一、公職人員本於為公共利益服務，應全力以赴為全國國民之利益而努力，並不得以特定身分或其他因素而在執行職務時發生偏頗。</p> <p>二、公職人員不得利用職務之便，中飽私囊或為他人牟取不當利益，確保公職人員執行職務之公正性。</p>
<p>第八條(公職人員遵守之倫理原則五) 利益迴避</p> <p>公職人員執行職務時，如發現其本人、配偶、共同生活之家屬或二親等以內之親屬與當事人或其他利害關係人有利益衝突時，應即時迴避。(第一項)</p> <p>前項所稱利益衝突，指公職人員執行職務時，得因其作為或不作為，直接或間接使本人或前項之關係人獲取金錢、物品或其他財產上之價值及非財產上之利益。(第二項)</p>	<p>一、為預防公職人員執行職務產生個人利益與公共利益產生衝突，應使公職人員有迴避之義務，維持人民對政府公共之信任，遏止貪污腐化及不當利益之輸送。</p> <p>二、除前二項之內容外，依本法第十八條針對利益迴避規範進行修正時，應重新檢討以下內容：</p> <ol style="list-style-type: none"> <li>1.對於規範對象加以界定。</li> <li>2.對於利益迴避事項與具體行為，採全面且詳盡的列舉與規範。</li> <li>3.涉及財務與任何有價事項，應規範最高可收受金額。</li> <li>4.授權各主管機關得依人員與業務性質，另訂相關規定。</li> <li>5.均以事先許可制為原則，事後報告為例外。</li> <li>6.對於違反效果與釋疑途徑有所規範。</li> </ol>



條文	說明
<p>第九條(公職人員遵守之倫理原則六) 資訊濫用</p> <p>公職人員除依法應予公開之資訊外，不得以任何方式揭露官方資訊或因職務所得之資訊。(第一項)</p> <p>公職人員使用官方資訊或職務所得之資訊，應於法令職掌範圍內為之，並與使用之目的相符。(第二項)</p>	<p>一、參考英國立法例，政府以立法、民眾申報義務或其他行政管制手段所取得有關人民或其他資訊不得加以濫用，除依相關法令（例：政府資訊公開法）應公開外，公職人員不得任意洩漏資訊。</p> <p>二、公職人員使用資訊，應與使用目的相符，不得為自己或他人利益或其他不當之濫用。</p>
<p>第十條（公職人員遵守之倫理原則七） 競業禁止</p> <p>公職人員，除第三條第六款之人員外，不得經營商業或投機事業。(第一項)</p> <p>公職人員非依法律不得兼任他項公職或公營事業機關、公司代表官股之董事或監察人或民營營利事業之董事、監察人或其他職務。(第二項)</p> <p>公職人員兼任教學、研究工作或非以營利為目的之事業或團體之職務，應經服務機關許可。(第三項)</p> <p>公職人員為前二項之兼任時，仍應注意是否與其本職有所衝突或影響本職之業務。(第四項)</p>	<p>公職人員不得兼職為各國倫理法制利益迴避規範下之一環，除要求公職人員應全心於公共職務上，並不得利用其職務或身分之便利經營商業或投機事業以獲取利益。</p>

條文	說明
<p>第十一條(公職人員遵守之倫理原則八) 旋轉門</p> <p>公職人員於離開公職三年內，具有下列情形之一，除經公職人員倫理委員會審查許可者外，不得擔任營利事業董事、監察人、經理、執行業務之股東、顧問或其他受有報酬之職務者：</p> <p>一、離職前五年以內，與將任職之雇主間具有正式商業往來情形者。</p> <p>二、服務公職期間，與將任職之雇主間具有持續或反覆正式商業往來情形者。</p> <p>三、職務上曾接觸未來雇主競爭對手之商業機密情報者。</p> <p>四、因離職前五年以內的職務之故，曾參與對將任職之雇主有利之建議或決策制定，而其聘任可能被視為具有對價關係；或曾參與政策之規劃，其專業知識將有利於將任職之雇主者。</p> <p>五、離職前五年以內，與公務外之團體或組織具有商業交易行為，而將以諮詢顧問聘任者。</p>	<p>一、離職後三年內之限制期間乃鑑於我國部分政府機關之一般人事輪調為三年，並參考公務員服務法之規定，以配合我國國情。</p> <p>二、各國對於離職前年限之規定不一，參考我國公務員服務法之規定以五年為基準故加以援用。</p> <p>三、參考英國立法例，對於欲擔任營利事業董事、監察人、經理、執行業務股東或顧問等職位，公職人員得提出申請審查是否屬於本條一至五款條件限制之內，可免公職人員於退職後工作權受限且經審查許可後，亦是對公職人員提供保障。</p> <p>四、除該五款之內容外，依本法第十八條針對旋轉門規範進行修正時，應重新檢討以下內容：</p> <p>1.明確規範對象。</p> <p>2.明訂限制期間、禁止事項、審議標準、負責機構、審議程序。</p> <p>3.除離職後就業相關規定外，其他應規範行為。</p>
<p>第十二條(公職人員遵守之倫理原則九) 收受餽贈或其他利益</p> <p>公職人員對於所辦理之事務，不得收受任何餽贈。(第一項)</p>	<p>一、我國由於深受中華文化影響，人與人之間對於收受禮物等行為，往往被解讀成是正常社交禮俗，而未就其潛藏的利益衝突與影響加以深思或考量，導致公職人員往往難以判斷是否</p>

條文	說明
<p>公職人員與有隸屬關係者、所辦理事務之當事人或其他利害關係人間，無論涉及職務與否，均不得贈受財物。(第二項)</p> <p>公職人員基於禮節而贈受財物須合於禮節限度，且於收取後，應依規定報備或登記。(第三項)</p>	<p>涉及利益衝突。因此，凡涉及公職人員職務上之事務，不得接受任何餽贈。</p> <p>二、公職人員於有隸屬關係、事務辦理之相對人及利害關係人，因其身分間之特殊關連性，不論與職務有關與否，皆不宜收贈財物，以建立公職人員清廉之形象。</p> <p>三、本條之設立，一方面可以引導公職人員利益衝突避免之倫理價值與行為的建立，一方面也使公職人員可以依法拒絕贈受財物。</p>
<p>第十三條(公職人員遵守之倫理原則十) 內部揭露</p> <p>公職人員獲知所屬機關內部有貪污或其他違反職務倫理之行爲時，應向其主管長官及公職人員倫理委員會揭露之。公職人員被其他公務機關人員強制、唆使從事貪污或其他不當情事時，亦同。(第一項)</p> <p>公職人員爲前項揭露之行爲，應保障其法定權利。(第二項)</p>	<p>一、有鑑於各國政府倫理法制均將弊端揭發納入，以更加落實倫理價值，以及增強肅貪成效。且由機關內部揭露弊端更能深入瞭解內情有效打擊貪腐，故列爲倫理守則之一。</p> <p>二、鑑於內部揭露者可能因爲揭露行爲而使其身分或權利受到侵害，法律上應給予適當之保護。</p> <p>三、除前二項之內容外，依本法第十八條制訂內部揭露規範時，應包括以下內容：</p> <ol style="list-style-type: none"> <li>1.明訂揭露者保護原則。</li> <li>2.明訂揭露途徑與調查處理程序。</li> <li>3.明訂要求各機關必須建制內部處理程序與應辦事項。</li> <li>4.明訂揭露者揭露時所需提供資訊。</li> </ol>

條文	說明
<p>第十四條(主管機關)<sup>24</sup> 為有效辦理公職人員職務倫理事項，政府應設置公職人員倫理委員會。(第一項)</p> <p>公職人員倫理委員會依法獨立行使職權，其組織與職掌另以法律定之。(第二項)</p>	<p>為辦理公職人員倫理相關事務，宜設立一獨立專責機關負責並依法獨立行使職權。</p>
<p>第十五條（主管機關權責） 公職人員倫理委員會每年應就遏阻貪污腐化、公職人員財產申報、政治獻金申報，促進公職人員維持職務倫理等事項，提出績效報告及改進建議。(第一項)</p> <p>前項績效報告、改進建議，應以適當方法主動公告之，並送立法院備查。(第二項)</p>	<p>明定主管機關之報告義務、改進建議及其他相關主管事務。</p>
<p>第十六條（違反本法之效果） 公職人員之行為，經公職人員倫理委員會審查後，認為有違反本法之規定者，移送相關主管機關依法處罰之；</p>	<p>明確律定公職人員倫理委員會經初步調查後，可依案件係違反行政或刑事規定之性質，移送相關主管機關或司法機關論處。</p>

<sup>24</sup> 若依據「中央行政機關組織基準法」第五條規定：「除本法及各機關組織法規外，不得以作用法或其他法規規定機關之組織。」，於本草案第 14 條至第 16 條中，實不宜對於「公職人員倫理委員會」此組織進行相關規範。但由於本研究為了要凸顯「公職人員倫理委員會」此組織之重要，再加以本研究多數期末審查委員對於此組織定位執掌之重視，因此，本研究認為於此研究案階段，仍應暫時維持原條文，至於未來草案真正付諸立法時，再由當時的主管機關對「公職人員倫理委員會」之組織法加以處理比較適當。

第五章 我國統合性政府公職人員倫理法立法原則與草案內容

條文	說明
認為有犯罪嫌疑者，應移送該管法院檢察機關或軍法機關。	
第十七條(救濟) 公職人員之權利遭受主管機關不當或違法之侵害時，政府應依法令提供當事人有效及公平救濟的管道。	公職人員之權利依法應受到保障，若遭到主管機關不當或違法之侵害，應給予救濟管道，使公職人員執行職務實無後顧之憂。
第十八條（公職人員倫理相關法規之修正） 政府各機關於本法公布實施後二年內，應依本法所揭示原則及各特殊職務所需之專業倫理，修正、廢止或制（訂）定相關倫理法令。	設日出條款，政府各機關應以本法所揭示之原則，作為修正、廢止或制定相關倫理法規。
第十九條(施行日期) 本法自公布日施行。	明定本法之施行日期。

統合性政府倫理法制之研究

## 第六章 政策建議

對於當前面臨應積極提昇各級公職人員倫理行爲的我國而言，具有一項公共服務倫理價值與禁止行爲明確、規範對象與規範面向周延的統合性「公職人員倫理法」，固然已爲整體政府倫理價值與公職人員倫理行爲之提昇，奠立非常重要的基礎。然而，徒法不足以自省，爲了使我國「公職人員倫理法」未來能真正落實達到成效，且以此爲基礎，更進一步提昇我國政府總體治理的透明清廉與倫理水準，以使之成爲我國民主發展的重要支柱與國家競爭力的利基，就必須有一些相關的配套措施。

對此，本研究觀察各國政府倫理法制之施行，基本上均有各種不同層次與內容的相關制度安排，以盡可能達到「複式佈網」的效果（Lauda, 1969; 引自余致力、蘇毓昌，2006：47）。因此，本研究有關我國公職人員倫理法立即可行建議與中長期建議內容與主辦單位之提出（表 6-1），亦是採取此種概念。以下即對各項建議內容加以說明。

**表 6-1 「統合性政府公職人員倫理法」立即可行與中長期建議  
及主辦機關彙整表**

立即可行建議	主辦單位（人）
<b>壹、中央主管機關部分</b>	
一、政治領袖與高階管理者持續堅定的倡導與承諾	政治領袖與高階管理者
二、儘速推動「公職人員倫理法」立法	行政院
三、儘速訂定「公職人員倫理委員會」組織法	行政院
四、儘速訂定「公職人員倫理法施行細則」	行政院
五、加強公職人員倫理相關議題之溝通與訓練	行政院人事行政局、考試

立即可行建議	主辦單位(人)
	院國家文官培訓所、公職人員倫理委員會
貳、地方政府	地方政府
參、民間團體	民間團體、中央政府、地方政府
中長期建議	
壹、公職人員倫理與公共人力資源管理政策整合	行政院人事行政局、考試院銓敘部與考選部
貳、啟動全面性的「台灣國家倫理與廉政體系」再造	各相關組織

## 第一節 立即可行建議

### 一、中央主管機關部分

本節當中所有的建議與討論，都可以放在「政治可行性」(political feasibility)的概念當中來檢視，也就是說，本研究的建議，還必須通過政治過程的考驗，因為單純立意良善的政策建議，往往不一定會成為正式的政策，這個落差主要可顯從三個方面來觀察，其一，政策建議是否可以得到目前相關業務單位的共識；其二，法令的推動是否可以得到國會多數的認可；最後，利害關係人(stakeholders)能否同意其內容並產生共識。第一點中的中央部會，橫跨行政、考試與監察三院，尤其是行政與考試兩院對於公務人員的管理問題，是有重疊與衝突的，再者，立法院是政策合法化的關鍵場域，本研究的建議必須要能通過政黨的考驗，也就是政治偏好的影響，其政治性是十分高的；最後，統合性倫理法的利害關係人，高可以高到總統，低可以低到外包廠商，這些人與團體的意見，都會藉由其各自在立法院中的代言人發



言，爭取自己或團體最大的利益，以台灣的個案來說，基本上本法令在行政院院內、行政院與考試院之間、以及不同類別的公務人員間，都會有一定的阻礙，融入政治可行性的概念，本研究提出如下意見：

#### (一)政治領袖與高階管理者持續堅定的倡導與承諾

所有的政府改革議題，關鍵性成功要素中，政治領袖與高階管理者公開持續且堅定的支持，是最重要的一環。尤其是在政府倫理價值的提倡與行為改變此一議題，更是如此(Lewis & Gilman, 2005; Menzel, 2007)。也因此，從本研究第三章有關各國倫理法制內涵分析可知，任一國家政府倫理法制的研議，多是直接由最高政治領袖召集，組成特別委員會或研究小組。而最高負責機構之人員任命與職權行使，亦都是由最高行政首長負責。

因此，本研究建議，我國若欲藉「統合性政府公職人員倫理法」作為進一步提昇台灣政府倫理治理的基礎，以重新贏回公民的信任。則政治領袖與各高階管理者，就必須對此法案之推動展現最大的承諾。例如成立專案小組推動此法案之立法、能適時適地的在一些國內外重要場合，公開持續地倡議公職人員倫理，對台灣民主治理的重要，以及堅定承諾推動與確實執行此向倫理法的共識與決心。

#### (二)儘速推動「統合性政府公職人員倫理法」立法

在政府倫理法制中，具有統合性質的倫理法典，不僅是最重要的礎石，更是引導後續各項相關制度建制與整合的羅盤。因此，就我國政府倫理法制推動而言，當務之急就是儘速推動「統合性政府公職人員倫理法」的立法通過。由於此項法典規範對象涉及總體公職人員，因此就我國五權的憲政架構而言，已涉及行政、立法、司法、考試與監察五權。但是，從總體公職人員分佈而言，行政院暨所屬機關之各類公職人員，佔我國總體公職人員超過九成五以上。因此，本研究建議此項「公職人員倫理法」之立法推動，仍應由行政院主導，儘速促成該法之立法通過。

### (三)儘速訂定「公職人員倫理委員會」組織法

再周延的倫理法典，若無一個組織架構完善與職權足以有效推動該法典的負責機關，基本上難以發揮成效。由於我國目前並無一個位階夠高且足以統攝公職人員倫理相關政策與法規執行的專責機關。因此，本研究於參酌學理、各國經驗、焦點團體代表與專家學者意見後，於「公職人員倫理法草案」第十四條指出：「為有效辦理公職人員職務倫理事項，政府應設置公職人員倫理委員會。(第一項)公職人員倫理委員會依法獨立行使職權，其組織與職掌另以法律定之。(第二項)」。

據此，本研究建議行政院於推動「公職人員倫理法」立法之同時，亦應儘速訂定「公職人員倫理委員會組織法」，將此組織法與「公職人員倫理法」一併送立法院，以使我國公職人員倫理法制最重要的行為法及組織法可以同時立法通過，盡快落實。

雖然根據「中央行政機關組織基準法」第五條規定：「除本法及各機關組織法規外，不得以作用法或其他法規規定機關之組織。」，<sup>25</sup>有關「公職人員倫理委員會」之定位、權責、人員組成與任命方式、及相關組織法內容，實應視未來我國「統合性政府公職人員倫理法」實際推動立法時，當時的社會期待與政治現實與憲法架構等因素，再行決定此倫理委員會之組織設置與規定相關職掌較為適當，然而，基於本研究認為「公職人員倫理委員會」之組織定位與應有職權，將是決定我國「統合性政府公職人員倫理法」推動與執行成效的最關鍵要素，<sup>26</sup>因此，本研究建議「公職人員倫理委員會組織法」草案內容，應至少包括以下幾部分之規範：

- 1、公職人員倫理委員會為國家最高公職人員倫理政策與相關事項主管機關。

<sup>25</sup> 有關「中央行政機關組織基準法」之規定，本研究團隊感謝期末審查時，委託單位行政院研究發展考核委員會對此規定之提醒。

<sup>26</sup> 除了本研究對此組織之重視外，由於諸多審查委員亦希望本研究能對此組織有更多論述。但本研究認為未來「公職人員倫理委員會」將主掌我國公職人員倫理相關政策，因此，其整個組織與人員組成，除了功能考量外，也必須考量現有各相關院部會之權力均衡此政治面向。因此，於有關公職人員倫理委員會組織法部分，本研究係以原則性建議為主。

- 2、公職人員倫理委員會應以常設機關方式設立與存在。
- 3、公職人員倫理委員會之委員組成與任命方式，必須能維持此委員會功能運作之獨立性與客觀性。
- 4、公職人員倫理委員會職掌有以下幾項：
  - (1)訂定全國一致性倫理政策與準則之權力。
  - (2)要求與輔導各機關配合中央倫理相關政策之權力。
  - (3)輔導各機關制訂專業與內部倫理政策及提供諮詢。
  - (4)要求與審查各機關倫理政策實施情形與倫理案件概況報告之權力。
  - (5)接受民眾與各機關公職人員倫理相關案件之陳情及申訴案件。
  - (6)主動調查公職人員倫理相關案件。
  - (7)獨立行使指揮與監督相關單位與人員（例如法務部調查與政風系統、內政部警政署…等）調查公職人員倫理相關案件之職權。
  - (8)公職人員倫理案件最終裁決權。
- 5、公職人員倫理委員會負有以下兩項義務與責任，以符合民主治理公共課責之最重要精神：
  - (1)每年必須向我國最高民意機關立法院報告我國政府公職人員倫理政策推動與執行概況，類倫理案件調查情形與處理概況。
  - (2)每年定期召開記者會向公民公布我國政府相關倫理政策執行情形，以及公職人員倫理案件處理概況，並將相關資料公布於機關網頁。

本研究以上各項有關「公職人員倫理委員會組織法」建議原則，涵蓋了機關定位、機關運作模式、人員組成與任命、相關職掌，以及

責任義務等項，基本上所論及之面向應可算是相當周延。在此需要說明的是，之所以未對於此一倫理委員會，應置於現行五權架構之哪一權？那一院？或是那一部？進行說明與建議，主要是基於以下兩點考量。

首先，第一點考量就是尊重上述「中央行政機關組織基準法」第五條之規定。其次，也是本研究最主要的考量就是，本研究認為此一組織未來設立時，其所處的憲法與總體政經社會系絡，應會與現在系絡有所不同。對於一個未來的組織，卻以現行的系絡對其加以定位，不僅限制其可能性，亦有可能引起現行相關倫理法制主管機關許多不必要之疑慮，以及引發相關機關間之緊張關係。而這些疑慮與緊張關係，卻是有可能在未來「公職人員倫理委員會」實際設立時，在當時憲法與總體系絡下已不復存在。是以，基於以兩點考量，本研究對於此組織應置於憲法之哪一權、那一院或那一部，不做具體建議，而僅對其組織法應有內容作原則性之建議。

#### (四)儘速訂定「公職人員倫理法施行細則」

由於「公職人員倫理法」係定位為一統合性的上位基準法性質，其作用不僅在提供各公職人員瞭解，其被期待達到的倫理價值與行為，以及禁止的反倫理行為；更是作為公民檢視公職人員是否達到最低倫理標準的羅盤。因此，在法條部分就不宜訂的過多與過於繁複。然而，為使「公職人員倫理法」的精神能真正被落實，本研究認為必須同時訂定「公職人員倫理法施行細則」，於其中對於本法之精神與規定做更詳盡的說明。<sup>27</sup>

本研究建議，「公職人員倫理法施行細則」內容，至少應包含以下幾方面的規範：

- (一)對於「公職人員倫理法」第一條所訂的倫理價值，做進一步說明。

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<sup>27</sup> 對此，即為本研究將之列於各法條說明欄部分之文字。

有關公職人員必須遵守「廉潔透明」、「公正中立」與「公共利益」之核心價值，其意義如下：

1. 廉潔透明：

- (1) 負責地履行責任與義務。
- (2) 秉持專業行事，以贏得民眾之信賴。
- (3) 確保公共經費與其他資源皆能獲致妥善與效率的運用。
- (4) 公正、效率、敏捷、有效地處理公眾事務。
- (5) 在合法授權下，盡可能地保持資訊公開。
- (6) 遵守法律並維護司法。

2. 公正中立：

- (1) 以公平、正義與公正的方式，以及恪遵文官對平等和多元的承諾，執行其職責。
- (2) 不得無理地偏袒或歧視特定個人或利益。
- (3) 無論執政政黨為何，不論自身的政治信仰為何，遵循此守則的要求，嚴守政治中立、竭盡所能地為政府服務。

3. 公共利益：

- (1) 公職人員應時刻以符合最嚴格的公共監督之作為行事；而不應僅簡單地依法行事而已。
- (2) 公職人員除了重法定義務與責任之外，決策時亦應以公共利益為念。
- (3) 若公職人員的私利和法定的義務有所衝突，應以公共利益為先。

(二) 規定各相關法規修法與立法原則

1. 政治活動規範

各主管機關依本法第十八條針對政治活動規範進行修正時，應包含以下原則：

- (1) 於法規中對政治活動的意義加以定義。
- (2) 依據政治活動的內容性質與層次（例如全國性與地方性）加以分類。
- (3) 依據公職人員的職務層級、性質、服務機關屬性加以分類，不同人員別適用不同程度之規範，越高階、越重要與越具敏感性職位者應予以越嚴格規範。
- (4) 授權各部會機關可依所需對更多重要與特殊性職位加以規範。
- (5) 規範應採事先核可制度。
- (6) 規範參選者有關辭職或留職停薪，及於此期間之身分認定。

## 2. 財產申報規範

各主管機關依本法第十八條針對財產申報規範進行修正時，應重新檢討以下內容：

- (1) 規範應申報對象、申報內容、申報時間、申報形式、申報義務。
- (2) 規範資訊公開與否及相關事項。
- (3) 規範需強制信託情形。

## 3. 利益迴避規範

各主管機關依本法第十八條針對利益迴避規範進行修正時，應重新檢討以下內容：

- (1) 對於規範對象加以界定。
- (2) 對於利益迴避事項與具體行為，採全面且詳盡的列舉與規範。
- (3) 涉及財務與任何有價事項，應規範最高可收受金額。

- (4) 授權各主管機關得依人員與業務性質，另訂相關規定。
- (5) 均以事先許可制為原則，事後報告為例外。
- (6) 對於違反效果與釋疑途徑有所規範。

#### 4. 離職後相關規範

各主管機關依本法第十八條針對旋轉門規範進行修正時，應重新檢討以下內容：

- (1) 明確規範對象。
- (2) 明訂限制期間、禁止事項、審議標準、負責機構、審議程序。
- (3) 除離職後就業相關規定外，其他應規範行為。

#### 5. 內部揭露規範

各主管機關依本法第十八條制訂內部揭露規範時，應包括以下內容：

- (1) 明訂揭露者保護原則。
- (2) 明訂揭露途徑與調查處理程序。
- (3) 明訂要求各機關必須建制內部處理程序與應辦事項。
- (4) 明訂揭露者揭露時需提供資訊。

(三) 規定由公職人員倫理委員會負責主導現有相關法規修法與整合相關制度。

誠如本研究分析我國現有相關倫理法制結果發現，我國現有法制呈現高度分散與欠缺整合的現象。而此，亦是焦點團體代表與專家學者最為關切的議題。因此，本研究建議有關現有相關法規之修法與體制之整合，應由公職人員倫理委員會主導進行整合，並確實要求各相關法規負責機關可以如期在規定期間內完成修法工作。

我國政府現有公職人員倫理相關法規與主管機關，與「政府統合

性公職人員倫理法草案」之關係，大致如以下表 6-2 所示，<sup>28</sup>本研究建議未來修法時，「公職人員倫理委員會」可以就每一相關法規與主管機關，設一專責輔導小組以有效協助各機關修法。

**表 6-2 「政府統合性公職人員倫理法」與各相關法規關係表**

法規名稱	法的位階	負責與執行機關
政府統合性公職人員倫理法	基準法	
公務人員任用法	子法	銓敘機關、考試院、監察院
公務人員考績法 6 條	子法	用人機關、銓敘機關、考試院
公務員服務法	子法	銓敘機關
公務員兼任非營利事業或團體受有報酬職務許可辦法		各機關人事單位
公務員懲戒法	子法	公務員懲戒委員會
公職人員利益衝突迴避法	子法	法務部、監察院
公職人員財產申報法	子法	監察院、法務部
刑法第四章	子法	法務部
貪污治罪條例	子法	法務部
獎勵保護檢舉貪污瀆職辦法	子法	法務部
政治獻金法	子法	內政部
遊說法	子法	內政部
公務人員行政中立法草案	子法	銓敘機關

<sup>28</sup> 表 6-2 僅列出本研究認為較重要的各相關法規，於未來修法時，除表 6-2 所列法規，凡所有我國政府公職人員倫理相關法規、各相關法規施行細則與相關行政規則與命令，均應一併列入修法範圍。



### (五)加強公職人員倫理相關議題之溝通與訓練

無論是學理、國際組織或各國經驗均顯示，<sup>29</sup>透過溝通與訓練，使公職人員瞭解公職倫理的內涵、相關規定、如何處理倫理困境，以及相關議題，不僅是落實公職人員倫理法的最根本途徑，亦是使倫理價值真正內化於公職人員內心與行為的最重要機制。

由於依現行憲法，考試院為人事政策主導機關，而行政院人事行政局則實質管轄了全國 95% 以上各類公職人員。因此，本研究建議行政院人事行政局所屬之公務人力發展中心與考試院文官培訓所，於「公職人員倫理法」開始推動立法之際，即可開始規劃與實施公職人員倫理相關課程，以加強對各級公職人員倫理法制與相關議題之溝通與訓練。

相關的訓練課程設計中，本研究也建議應納入民主治理與公職人員倫理關連性、政府競爭力與公職人員倫理關連性、相關法制規定與政策作法、國外政府相關規範，以及如何處理倫理困境等議題。尤其是對於各級主管此一方面的訓練，更是必需優先且深化於一般人員，因為「風行草偃，上行下效」的律則，在台灣的公務體系文化中，從來就絕對可以得到印證。

## 二、地方政府

對當代國家而言，整體治理績效與國家競爭力，絕對不是由中央政府可單獨創造而成。各地方政府治理績效的總和，更可能是一國實質競爭力與永續發展的決定性因素。尤其是在全球化系絡下，許多議題的處理成效，往往是地方政府較之中央政府更有卓越表現。同樣地，地方政府在某一議題的困境與問題，也可能是拖垮整體國家的稻草。

以公職人員倫理此一議題而言，地方政府的角色更是被高度強調的一環。此從國際透明組織的國家廉政體系架構包括了地方政府即可

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<sup>29</sup> Lewis 與 Gilman (2005: 306-307) 於其書中，即列出將近 30 個美國最具代表性的地方政府倫理治理相關的網站。

看出。此外，學者們對地方政府之倫理管理也是多所關切（Lewis & Gilman, 2005; Menzel, 2007）。Menzel(2007: 112-115)觀察全球地方政府倫理治理後指出，當代地方政府與城市，面臨了以下五項挑戰：

1. 領導者尚未真正瞭解倫理與廉潔對地方治理的重要性。
2. 包含領導者與各公職人員在內，尚未理解倫理與廉潔對個別組織或個人並非是限制規範。
3. 欠缺建立倫理治理的真心承諾與提供必要資源和具體行動。
4. 如何避免僅以狹隘的管制法規作為唯一途徑。
5. 無法勇敢面對在地的倫理困境並從中學習。

本研究認為，Menzel（2007）以上對於全球各地方政府倫理治理困境的觀察，於台灣地方政府亦是非常明顯的呈現。<sup>30</sup>因此，本研究建議地方政府亦應藉著我國「公職人員倫理法」之推動，進行地方倫理與廉潔治理的相關配合政策。具體而言，可以包括以下方面：

- （一）確實依照公職人員倫理委員會規定，建立各縣市政府之公職人員倫理法規與政策。
- （二）擴大現行的反貪工作會報，將之提昇至倫理工作會報層次。並依規定定期向公職人員倫理委員會提交各相關政策執行情形。
- （三）建立符合地方特色之倫理調查與監測機制，並將之納入地方各機關績效管理一環。
- （四）強調地方公職人員倫理訓練課程，並儘可能與人力資源管理決策整合。

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<sup>30</sup> 本研究基本上認為，即使是我國中央政府，從過去到現在也同樣面臨此五種倫理治理的困境。

### 三、民間相關團體

民間非營利組織對於當代國家治理的重要性越來越凸顯，尤其是倡議型非政府組織，對於新興民主國家而言，不僅在民主化推展的開端扮演重要角色，更會藉由對各種新興公共議題的倡議（例如環保、人權、性別、正義、倫理、反貪腐...等），在民主轉型、深化與鞏固時期，持續扮演舉足輕重的角色（蔡秀涓、余致力，2007）。觀察全球政府倫理與清廉治理之趨勢可以發現，具有影響力的相關民間團體之參與和監督，更是促成政府倫理機制創新與確實執行的重要因素（Kim, 2000; 蔡秀涓、余致力，2007）。

因此，本研究建議政府在擬定相關倫理法制與政策時，應建立適當管道以讓民間相關團體之意見有表達之機會。此外，對於部分係屬全球相關國際組織在台分會的民間團體，由於其與全球此議題相關組織關係密切，對於各項政府倫理議題之新趨勢與創新機制掌握，往往較政府部門更為迅速與深入，<sup>31</sup>政府主管機關更應加強與這類民間團體之合作，以使總體公職人員倫理政策更周延更有成效。

## 第二節 中長期建議

### 一、公職人員倫理與公共人力資源管理政策整合

對民主國家政府部門而言，為了更有能力成為支撐全球競爭、民主課責與國家永續的動能，必需持續不斷地進行各項公共議題的改革。觀察各國政府改革相作法可以發現，公共人力資源管理改革政策，將期待公職人員表現的價值與行為，鑲嵌到各項人力資源管理政策，被學術傑與實務界一致認為，最能達到效果（Dresang, 2002; Sylvia & Meyer, 2002; Klingner & Nalbandian, 2003; PUMA, 2005; Phillips, 2005; 施能傑，2006；江大樹，2006；蔡秀涓，2007）。

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<sup>31</sup> 以我國而言，台灣透明組織即屬於國際透明組織在臺中心，其各項反貪倡議策略即以台灣在地系絡為主軸，與國際透明組織及全球相關網絡有全球性之緊密鏈結（蔡秀涓、余致力，2007）。

由於各國政府對於倫理治理的重視，因此，雖然整體 OECD 國家公共人力資源管理趨勢，朝向分權與彈性化。但是，對於各類公職人員之倫理行爲、紀律與懲處等政策主導權力，卻反而成爲目前各國中央人事主管機關更加集權的保留項目，且盡可能的將其與各項政策整合（PUMA，2005；引自蔡秀涓，2006）。

據此，本研究建議，爲了提昇我國公職人員倫理價值與行爲，達到倫理與廉能治理的境地，就中長期而言，中央人事主管機關，應該將公職人員倫理面向，全面的整合至各項人力資源管理政策中。這非僅止於建立各種相關倫理法規而已，而是更全面地將倫理價值與行爲表現，整合至甄補、人力配置、俸給、考績、績效管理、訓練與升遷等各面向。<sup>32</sup>

## 二、啓動全面性的「台灣國家倫理與廉政體系」再造

本研究第二章曾指出，目前全球唯一以反貪腐爲成立宗旨的國際透明組織，主張爲了使各國倫理治理與反貪腐能更有成效，必須進行整體國家廉政體系的建構，因而提出「國家廉政體系」（National Integrity System, NIS）架構以供各國參考。此架構目前不僅已成爲許多跨國性比較研究的重要架構，亦成爲各國政府建構全面性倫理廉政體系的重要藍本。

本研究建議，就中長期而言，無論就與國際接軌的共通平台考量，或是健全我國總體倫理廉政體系之實益，我國應該以國際透明組織此國家廉政架構爲基準，分別從立法機關、行政機關、司法系統、審計總署、監察特使、反貪腐機構、文官系統、地方政府、私人企業部門、媒體、公民社會以及國際行爲者等十二個面向，全面啓動「台灣國家倫理與廉政體系」再造運動，以下僅針對各面向進行原則性的建議。

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<sup>32</sup> 相關的概念與原則，可參考施能傑，2006。

### （一）立法機關

透過選舉機制產生的立法機關，民主國家最重要的治理機制之一，也是建立民主課責機制的個基礎支柱。以台灣而言，從中央到地方政府，各類民選人員定期改選的制度已經建立。然而，無論從國際機構的調查或是社會大眾的認知均可發現，普遍均呈現對於我國立法機關（國會）與各級民意代表倫理行無表現的失望（請見第一章）。即使立法院有制訂由立法院紀律委員會負責之「立法委員行為法」，但是，其成效顯然亟待提昇。因此，本研究建議就長遠而言，如何透過選舉制度、立法機關組織法，以及相關內外監督機制之建立與引進提昇立法機關與人員之倫理，仍是應積極思考的議題。

### （二）行政機關

行政機關是當代國家治理最重要的一環，因此，行政機關在建立、維持一國的倫理治理扮演核心角色。除了以上第一節的各項建議外，本研究認為就中長期而言，行政機關各級領導者的角色；行政機關預算與公共政策如何連結，以避免錯誤政策造成浪費此廣義貪腐現象之產生；以及行政機關如何在組織政策與文化面均成為倫理組織等議題值得思考。

### （三）司法系統

一個獨立、公正和充分訊息的司法機關在確保政府行為之公正、誠信、公開和負責方面是有核心的作用。其中獨立性和課責程度是有關的，也是使司法系統能免於行政機關與立法機關干擾的要件。儘管目前台灣司法體系的專業性與獨立性日漸受到肯定，然而本研究認為如何透過法官的任命、任期、報酬、司法管理及行為準則等相關課題之思考（余致力、蘇毓昌，2006：49），進一步強化司法體系與人員對國家倫理治理的功能仍為重要課題。此外，本研究認為司法機關與人員，如何在專業獨立基礎上，仍能發揮積極支持台灣民主治理與轉型

的功能，而不是成爲無監督制衡獨大的怪獸，更是值得考量的課題。<sup>33</sup>

#### （四）主計與審計單位

計與審計單位分別爲國家財政監督的前端與後端，如何透過對人員的任命、人員的行爲管理與組織設計，使之更具獨立性、專業性、倫理性與課責性；以及如何使主計與審計相關審查法規之更趨完備，應是國家倫理廉政體系再造時應一併思考的問題。

#### （五）監察特使

監察特使的角色在於當司法系統本身就難以爲繼之時，可提供人們另一個保護的管道。監察特使的職責在於獨立的受理對於不良行政的指控，而獨立性即是監察特使的最重要特徵。其中有關監察特使的任命、任期、免職要件、資源、可及性（accessibility）及補救措施是此一支柱的重點（余致力、蘇毓昌，2006：49）。以我國而言，目前並未有類似監察特使的機制存在，未來我國是否應設立類似機制，以及應如何設計是一值得審慎思考的課題。

#### （六）反貪腐機構

對於致力於反貪腐的國家而言，有一強有力的反貪腐機構極其重要，不僅具有宣示效果，更具有實質打擊貪腐的功能。然而，對於已將反貪腐進一步提昇與擴大到整體倫理體系的國家而言，是否仍需要在國家最高倫理政策負責機構外，另外再存在一個反貪腐機構，則是一項值得思考的議題。目前我國法務部正規劃設置設立一個廉政署，未來此一廉政署於「公職人員倫理委員會成立後」，是否仍要單獨設置？應是必須納入思考的議題。

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<sup>33</sup> 此一議題可參考廖元豪（2007）與周志宏（2007）相關論著。

### （七）文官體制統

已於第壹部分說明，於此不再贅述。

### （八）地方政府

我國地方政府所面臨的倫理治理困境，以及因應「公職人員倫理法」實施後，可採行的政策與作為，已於上述說明。不過，就長期而言，本研究建議中央政府應與地方政府形成伙伴關係，協助各地方政府建立以地方環境系絡為主，具有在地特色的「地方倫理與廉政體系」，整體架構即可以中央的「台灣國家倫理與廉政體系」為架構。本研究此項政策建議的基礎，在於就中長期而言，透過中央與地方政府此二倫理與廉政體系之整合，將可形成各類組織縱向與橫向全面性整合，真正符合所謂「複式佈網」之精神。

### （九）私人企業部門

私人部門在維護一國廉政體系方面扮演著特別的角色，其一方面可能是誘使公職人員做出反倫理與貪腐行為之行動者；一方面也可能是檢舉公職人員索賄的最有利揭弊者；此外，由於大企業的營運範圍與相關活動往往具有全球移動的特色。因此，無論就單一國家或全球的倫理與廉潔度提昇而言，私人企業部門均扮演非常關鍵的角色，而此也是許多國際組織（例如經濟合作暨發展組織、亞太經合會、世界銀行、國際透明組織等）均致力於制訂對其會員國之私人企業有關倫理與反貪腐各項公約與相關政策之緣故。

雖然由於台灣在國際政治上之不利與特殊處境，導致我國目前未能加入許多以國家為主體的重要國際組織。但是，本研究建議就中長期而言，我國仍應盡可能依照國際最高標準，建立對我國私人企業倫理與反貪腐方面的周延立法與制度。此項建議提出基礎，一方面是著眼於得以讓世界各國瞭解，台灣無論是對於政府治理或私人企業之倫理，均採最高標準。另一方面，也為未來有朝一日，台灣得已加入更

多國際組織時接軌做準備。

#### (十) 媒體

媒體的作用在於篩選大量的信息並傳遞給公民大眾。媒體獨立的程度將是對於公職人員的行為進行有效監督的重要機制。因此，自由與獨立的媒體是國家倫理與廉政體系重要的支柱之一。以台灣現有媒體生態而言，自由與獨立程度應可算是達到一定程度，然而對政府倫理與廉政相關議題報導之專業度與關注，雖然這幾年經過台灣透明組織的倡議，對於每年全球貪腐印象指數公布記者會相關內容與台灣排名，已有越來越多媒體關注。

但本研究認為就未來而言無論在報導之專業與深度或是關注面向，仍有繼續提昇之空間。以專業度而言，目前仍少見能對於相關議題進行深入分析報導者。而就關注面向而言，對於個別事件相關人之關注，顯然仍高於對事件原因與影響之報導。

#### (十一) 公民社會

國際透明組織所指的公民社會，係為外在於正式國家機器的組織與網絡的總和，不單單僅有非政府組織，還包括工會、商會、宗教團體、學生團體及非正式的社區團體等（余致力、蘇毓昌，2006：50）。於當代社會中，透過公民社會力量的展現來填補政府所可能產生的權力真空與不足之處，更已形成全球化的重要現象之一（Godenker & Weiss, 1995,引自蔡秀涓、余致力，2007）。因此，本研究建議就中長期而言，我國政府如何使公民社會的參與，透過權責相稱的機制設計，使公民社會各類團體在總體國家倫理與廉政體系之參與，有其合法性、自由性及應有的課責性，將是一個值得思考的議題。



(十二) 國際行爲者

當代的貪腐問題，由於其本質、跨區的連動與負面的外溢效果等特性，使其具有隨著經濟全球化，而成爲往往非單一國家或政府能單獨解決的複雜議題（蔡秀涓、余致力，2007）。因此，透過國際行爲者的力量，如國際司法援助、國際警察合作、國際公約等機制來打擊腐貪，不僅會降低貪腐犯罪的跨國問題，也是各國總體倫理與廉政體系重要一環。

然而，誠如前述所言，由於台灣在國際政治上的特殊處境，導致我國目前未能加入許多以國家爲主體的重要國際組織，儘管如此，本研究建議我國中央政府與地方政府，仍應盡可能透過各種正式與非正式途徑，盡可能與其他國家官方與民間團體，保持友好與合作關係，以有效阻絕來自跨國性貪污行爲者之反倫理與貪腐行爲導致對國家總體倫理治理的斬傷。

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## 附錄 1 專家學者焦點團體座談會代表與屬性分布表

第一場次專家學者焦點團體座談會代表與屬性分布表	
姓名	產業別
1-A	學術界
1-B	學術界
1-C	實務界
1-D	實務界
1-E	實務界
1-F	民間團體 NGO
1-G	民間團體 NGO
1-H	智庫
1-I	企業界
1-J	學術界
1-K	智庫
1-L	實務界
1-M	民間團體 NGO
1-N	學術界
第二場次專家學者焦點團體座談會代表與屬性分布表	
姓名	產業別
2-A	學術界

2-B	學術界
2-C	學術界
2-D	學術界
2-E	學術界
2-F	實務界
2-G	民間團體 NGO
2-H	智庫
2-I	企業界
2-J	企業界
2-K	企業界
2-L	民間團體 NGO
2-M	智庫
<b>第三場次專家學者焦點團體座談會代表與屬性分布表</b>	
<b>姓名</b>	<b>產業別</b>
3-A	學術界
3-B	學術界
3-C	學術界
3-D	學術界
3-E	民間團體 NGO
3-F	民間團體 NGO
3-G	學術界
3-H	民間團體 NGO

3-I	智庫
3-J	實務界
3-K	企業界
<b>第四場次專家學者焦點團體座談會代表與屬性分布表</b>	
<b>姓名</b>	<b>產業別</b>
4-A	政風人員
4-B	政風人員
4-C	政風人員
4-D	政風人員
4-E	政風人員
4-F	政風人員
4-G	政風人員
4-H	政風人員
4-I	政風人員
4-J	政風人員
4-K	政風人員
4-L	政風人員
4-M	政風人員
4-N	政風人員
4-O	政風人員
4-P	政風人員
4-Q	政風人員

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4-R	政風人員
4-S	政風人員
4-T	政風人員
4-U	政風人員
4-V	政風人員
4-W	政風人員
4-X	政風人員
4-Y	政風人員
4-Z	政風人員
4-AA	政風人員
4-BB	政風人員
4-CC	政風人員
4-DD	政風人員
4-EE	政風人員
4-FF	政風人員
4-GG	政風人員
4-HH	政風人員
4-II	政風人員
4-JJ	政風人員
4-KK	政風人員
4-LL	政風人員
4-MM	政風人員

4-NN	政風人員
4-OO	政風人員
4-PP	政風人員
4-QQ	政風人員
4-RR	政風人員
4-SS	政風人員
4-TT	政風人員
4-UU	政風人員
4-VV	政風人員
<b>第五場次專家學者焦點團體座談會代表與屬性分布表</b>	
<b>姓名</b>	<b>產業別</b>
5-A	學術界
5-B	實務界
5-C	學術界

## 附錄 2 法學界學術與實務代表

姓名	產業別
6-A	學術界
6-B	學術界
6-C	學術界
6-D	學術界
6-E	學術界
5-C	學術界
5-A	學術界
5-B	實務界
2-F	實務界
4-CC	實務界

## 附錄 3-1 英國公務員倫理法制

### 壹、英國政府倫理法制沿革與背景

有感於民眾對於公職人員之倫理操守評價日漸低落，英國首相梅傑(John Major)於一九九四年邀請上議院議員諾蘭(Lord Nolan)及九名傑出文官，共同組成「公職生涯行為標準委員會」(Committee on Standards in Public Life)，賦予該委員會為英國公職人員倫理操守設立行為標準之使命，以期重振民眾對政府之信任。該委員會於一九九五年公布其第一份、亦是最著名的一份報告，其中便揭櫫了所有公職人員皆須服膺遵守之「公職生涯七大原則」(Seven Principles of Public Life)，即：無私(selflessness)、廉潔(integrity)、客觀(objectivity)、課責(accountability)、公開(openness)、誠實(honesty)，與領導(leadership)(Committee on Standards in Public Life, 1995)。而此「公職生涯七大原則」之昭示，便成為後續各項公職人員行為標準之基礎。

事實上，針對英國文官公務倫理規範之質疑與討論，長久以來便不斷為論者所論及，而是否應擬定一份正式的公務倫理法典或行為守則此項議題，卻直至一九八〇年代才為各界嚴肅看待(O'Toole, 2007)。最早針對英國文官倫理廉潔標準予以正式化之認真討論，係始於一九八五年之一份 Note of Guidance on the Duties and Responsibilities of Civil Servants(載於「阿姆斯壯備忘錄」，Armstrong Memorandum)，但提出首份正式文官倫理法典的企圖，卻連續於一九八六年與一九九〇年被下議院「財政與文官委員會」(Treasury and Civil Service Committee)，以及於一九八六年為內閣本身所拒絕(O'Toole, 2007)。

但隨著一九八〇年代英國新公共管理改革的接連展開，諸如一九八二年之「財務管理改革方案」(Financial Management Initiative)，及一九八八年的「續階計畫」(Next Steps)，為英國文官體系帶來巨大變革，包括文官體系的管理方式、割裂體系(fragmentation)的形成，逐漸侵蝕與毀壞了英國文官的傳統價值；有鑑於此，財政與文官委員會認為英國文官長久以來維持之誠實與

廉潔傳統，在劇烈的政府管理改革潮流下，亦不應有所鬆動，因此，該委員會遂對擬定正式的倫理行為法典或守則有了不一樣看法，轉而倡議應有一新的文官行為守則，以因應新一代的文官體系(O'Toole, 2006; O'Toole, 2007)。

在財政與文官委員會的建議下，英國內閣政府遂於一九九四年所公布之「文官制度：持續與變革」(The Civil Service: Continuity and Change)，及一九九五年之「文官制度：朝向持續與變革」(The Civil Service: Taking Forward Continuity and Change)兩項白皮書中，正面回應並接受該委員會之建議，著手修正該委員會所提文官行為守則草案(O'Toole, 2007)。

由此，英國文官體系一份嶄新、正式的文官倫理法典因而誕生，此即為一九九六年所公布之「文官行為守則」(Civil Service Code)，且由於此守則之頒佈，便取代了「阿姆斯特壯備忘錄」而成為英國文官公務倫理之主要規範。該守則於二〇〇六年進行修訂，新版的文官行為守則係由英國政府與英國「文官委員會」(Civil Service Commissioners)共同主導，並徵詢與參酌二千名以上全國公務人員之意見，修訂而成。特別值得一提的是，在新修訂的文官行為守則中，賦予了公務人員直接向獨立「文官委員會」提出申訴的權力與管道。新版之「文官行為守則」係於二〇〇六年六月六日公布實施(參見附錄一之一)。

除上述之「文官行為守則」外，作為英國文官公務倫理行為細部規範者亦有「文官管理法典」(Civil Service Management Code)(參見附錄一之二)。此「文官管理法典」係依一九九五年之文官樞密院令(Civil Service Order in Council 1995)所頒佈。但在前述「文官行為守則」公布後，「阿姆斯特壯備忘錄」之精神亦被納入此部「文官管理法典」中，並於一九九六再行修訂公布一次，以之與「文官行為守則」內容相契合。

由內容觀之，「文官行為守則」昭示了文官體制的憲政與倫理架構，而「文官管理法典」則進一步列舉公務人員應遵守之各項行為規範，並確保公務人員得以在功績導向與公平公開競爭之環境下，從事公職(Parry, 2001)。儘管現今已有前述兩部法典作為英國公務人員執行公務行為之圭臬，但事實上，此二部法典並未具有法律位階，僅係以行政規則方式為之；目前英國「公職生涯行為標準委員會」及「公共行政甄選委員會」(Public Administration



Select Committee)，正致力於制定「文官法」(Civil Service Act)之倡議，將其提升至法律之地位及強化其約束力(O'Toole, 2007)。

英國政府除針對常任文官之公務行為提出倫理標準與規範，對於由國會議員兼任之內閣大臣，亦有相對之條文規範。最早對於內閣大臣之活動行為提出參酌要領，是由英國工黨首相艾德禮(Clement Attlee)於一九四〇年代所草擬之「內閣大臣施政程序指引」(Questions of Procedure for Ministers)；該程序指引幾經修訂始終保持非正式之形式，至一九九二年首相梅傑深感民眾對於政府之信任漸趨低落，為提升公民之信任，認為有必要提出一份規範內閣大臣廉潔倫理之法典，因而首次將此程序指引以官方準則之姿予以公佈；繼而於一九九七年由首相布萊爾(Tony Blair)將「內閣大臣施政程序指引」進行修訂，並正式頒訂成為「內閣大臣法典」(Ministerial Code) (Gay, 2006; O'Toole, 2007)。在此法典中，不僅再次昭示內閣大臣需對禮品與款待之收受，及利益衝突之迴避與處理等倫理行為予以重視，更再次彰顯傳統憲政體制中，內閣大臣對於文官、對國會議員，及對大臣同僚等，應有之對待關係。

「內閣大臣法典」迄今亦已歷經多次版本修訂。於二〇〇一年版中，接受了「公職生涯行為標準委員會」於一九九五年之建議，確定了內閣首相為各部會大臣行為準則之最終裁決者(Gay, 2006)。最新之「內閣大臣法典」係二〇〇五年之修訂版本；而本章後文關於「內閣大臣法典」之引介，亦依此新版進行介紹(參見附錄一之三)。

基此，吾人當可理解，英國政府對於公職人員之倫理規範，係以「文官行為守則」、「文官管理法典」，以及「內閣大臣法典」(二〇〇五年之新修訂版命名為：內閣大臣法典：內閣大臣倫理與程序守則；Ministerial Code: A Code of Ethics and Procedural Guidance for Ministers；以下簡稱內閣大臣法典)等三大法典，架構起英國政府公務倫理之法制基礎。以下各節中，將針對各法典之相關細部內容進行介紹。

## 貳、英國政府倫理法制負責與執行架構

首先，於英國政府常任文官方面，在「文官行為守則」之授權下，英國「文官委員會」(Civil Service Commissioners)為維繫英國文官體系健全、中

立、廉潔之主要機構，共有十四位委員，由英皇任命非常任文官亦與內閣大臣無所關係之獨立人士所組成；其主要職責如下：

- 一、頒訂「招募準則」(Recruitment Code)以提供有效、彈性之徵聘途徑；
- 二、確保上述準則之實行；
- 三、主持並監督高階文官之選聘，確保以其功績聘任最佳人才；
- 四、依「文官行為守則」與「特別顧問行為守則」(Code of Conduct for Special Advisers)之授權，調查公務人員所提申訴案件；
- 五、與各部會合作確保文官倫理原則之遵守；
- 六、以分享成功實務與支持創新之方式，支持文官體系之現代化工程。

申言之，「文官委員會」之主要責任，即在於確保英國文官體系之核心價值—廉潔(integrity)、誠實(honesty)、中立(impartiality)，及依功績而擇定(selection on merit)，得以受到服膺與遵守。依據「文官行為守則」，若有公務人員認為受上級主管要求，從事不合理、不適當之行為時，可依申訴管道先於部會內先行呈報。而若該案未能獲得部會之妥善處理，該員得向「文官委員會」提出上訴與申復，而「文官委員會」亦將針對此案進行調查，並將調查結果公布與提出處理建議。

至於在內閣大臣的層次，「內閣大臣法典」陳述地很清楚，首相為內閣大臣行為標準，及一旦發生違反情事所得後果之最終裁決。且由現行實務來看，在「內閣大臣法典」之授權下，對於發生不當行為之內閣閣員，將由首相任命政府內部或外部人士數名，代表首相進行調查，而內閣秘書長與該名內閣閣員之常務次長皆為極可能被首相任命之人選(Gay, 2006)。<sup>34</sup>

## 參、英國政府公共服務倫理核心價值

### 一、英國文官之倫理核心價值

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<sup>34</sup> 儘管現行實務如此，但「公職生涯行為標準委員會」目前正建議政府，不應由該部會之常務次長及內閣之內閣秘書長擔任調查之責，而應由獨立的機制或個人來執行此類廉政調查工作；甚至建議仿照加拿大之「廉政參事」(Ethics Counsellor)之體制為之(Gay, 2006)。

在二〇〇六年新修訂的「文官行為守則」中，延續揭示做為一位英國文官之四大核心價值，包括：廉潔(integrity)、正直(honesty)、客觀(objectivity)，以及公平中立(impartiality) (參見附錄 3-1-1)。申言之，

- 廉潔：係謂將公共服務之責任置於個人私利之上；
- 正直：係謂真誠與公開；
- 客觀：係謂所提建議與決策須依嚴謹之證據分析而行；
- 公平中立：係謂應為所當為，超脫黨派戮力公職。

此外，「文官行為守則」進一步依其所揭示之英國文官核心價值，詳列英國文官應遵循之行為標準，依各項核心價值詳述如下：

#### (一)、廉潔

作為一位文官，必須：

1. 負責地履行責任與義務；
2. 秉持專業行事，以贏得民眾之信賴；
3. 確保公共經費與其他資源皆能獲致妥善與效率的運用；
4. 公正、效率、敏捷、有效及敏感地處理公眾事務；
5. 在合法授權下，盡可能地保持資訊公開；
6. 遵守法律並維護司法。

作為一位文官，不得：

1. 濫用職權，例如以職務之便所取得之資訊做為自身與他人私利之用；
2. 接受他人的禮物或款待，或其他形式的利益，以影響決策判斷或廉潔；
3. 在未得授權情況下揭露官方資訊。即使離開文官體系，仍然有保密之義務。

#### (二)、正直

作為一位文官，必須：

1. 誠實行事，如有錯誤即時更正；
2. 僅依授權之公共目的運用資源；

作為一位文官，不得：

1. 欺騙或蓄意誤導部會首長、國會議員，及其他；
2. 受他人不當壓力或個人不當得利的想望所影響。

### (三)、客觀

作為一位文官，必須：

1. 依據所得證據及正確無誤地說明方案選項與事實，提供資訊與建議，甚至向部會首長提出建言；
2. 依據利弊得失進行決策；
3. 妥善考慮專家與專業人事之建議。

作為一位文官，不得：

1. 在提供建言與決策時刻意忽略不利的事實或相關考量；
2. 以拒絕或放棄採取行動的方式，阻撓政策決策的執行。

### (四)、公平

作為一位文官，必須：

1. 以公平、正義與公正的方式，以及恪遵文官對平等和多元的承諾，執行其職責。

作為一位文官，不得：

1. 無理地偏袒或歧視特定個人或利益。

### (五)、政治中立

作為一位文官，必須：

1. 無論執政政黨為何，不論自身的政治信仰為何，遵循此守則的要求，嚴守政治中立、竭盡所能地為政府服務；

2. 贏得部會首長的信任，並於此同時與未來可能的政府或首長，建立相同的關係；
3. 遵守政治活動參與的相關限制。

作為一位文官，不得：

1. 依政黨之考量行事，或將公務資源用於政黨之政治目的；
2. 以個人的政治觀點提出建議或行動。

此外，在「文官管理法典」中(參見附錄 3-1-2)，亦昭示了英國公務人員的行為必須符合四大原則，即：

1. 公務人員不得濫用因職權所得之資訊，亦不得在未受合法授權的情況下，公開政府內部討論或其他來源之機密資訊。公務人員亦不得以抗命、拒絕部會決策，或是在未授權的情況、或以不當、提早揭露消息的方式，阻撓政府的政策、決策或行動。
2. 公務人員不得參加可能危及其中立性之政治性活動。
3. 公務人員不得濫用職務之便或因職權所獲資訊，作為增進個人或他人私利之手段。當因公務產生利益衝突時，公務人員應向高階管理者聲明其利益，以使高階管理做出最適決斷。
4. 公務人員不得接受來自企圖影響其決策判斷或廉潔的第三者所提供之禮物、款待或任何形式的利益。

## 二、英國政務首長之倫理原則

相對於常任文官，英國之內閣大臣，必須遵守由「公職生涯行為標準委員會」(Committee on Standards in Public Life)所頒佈之「公職生涯七大原則」(Seven Principles of Public Life) (參見附錄 3-1-3)。而此七大原則，分述如下：

- (一)、無私(selflessness)：任公職者應依公共利益行事，而不應以為其個人、家人、或朋友獲取財務或其他物質利益為目的。
- (二)、廉潔(integrity)：任公職者不應委己於外界之個人或組織之利得或責任而以害公。

- (三)、客觀(objectivity)：任公職者於執行公共事務之際，如：公職聘任、簽訂契約、薦受獎賞，皆須依其功績，客觀為之。
- (四)、課責(accountability)：任公職者皆須對其決策與行為負責，如有必要願受詳查。
- (五)、公開(openness)：任公職者應盡可能公開其所有決策與行動。唯有在符合公共利益之條件下，方可限制決策與資訊之取得。
- (六)、誠實(honesty)：任公職者負有申報任何與公務有關之私人利益之責任，並於保障公共利益之原則下，採取必要步驟避免利益之衝突。
- (七)、領導(leadership)：任公職者應運用其領導能力宣揚與支持此些原則。

#### 肆、英國公務人員之資訊保密責任

由「文官行為守則」與「文官管理法典」之內容可以發現，英國政府對於公務人員於在職或離職期間之資訊保密責任，甚是要求。「文官管理法典」第四章第二節便特別對於公務人員行為中，有關政府機密與官方資訊揭露等面向提出規範(參見附錄 3-1-2)。其所揭示重點包括：

- 一、公務人員不得在未受相關合法授權的情況下，公開政府內部討論或其他來源之機密資訊。
- 二、公務人員即便離開公職，亦須遵守此一保密責任。
- 三、公務人員不得在未取得部會或機關的授權情況下，以任何的活動或公開聲明的方式，揭露官方資訊或因公職經驗所得資訊。
- 四、公務人員不得於任職期間，公開發表或散佈關於公職經驗之個人回憶錄，或承諾是類行為。離開公職服務後，亦須在承諾公開是類回憶錄前，取得部會首長及文官長(Head of the Home Civil Service)之許可。
- 五、公務人員不得以運用或揭露因公職所取得之資訊，作為阻撓政府政策或決策之途。
- 六、值政府更替期間，公務人員必須維繫英國政治之長久慣例，即新政府無

法近用不同政治屬性之前政府的文書資料。此項慣例特別包含了內閣大臣們的商議內容，以及官員們所提供的建言；但法律官員所提供之書面建言，及前政府已公開之文書資料，則不在此限。

七、若公務人員正值處理政治或政策事務之態度與意見探查，則不得參與調查或研究專案。

## 伍、英國公職人員利益衝突之迴避與處理

### 一、常任文官之利益衝突迴避原則

「文官管理法典」之第四章第三節提出公務人員利益迴避與利益衝突之原則規範(參見附錄 3-1-2)，舉其大要者如下：

- (一)、除非在特定許可條件下，部會與機關不得與下列對象進行契約關係：
  1. 部會或機關之公務人員；
  2. 部會或機關之公務人員為該合作夥伴的會員或成員；
  3. 部會或機關之公務人員為該公司董事。
  4. 為避免上述之利益衝突關係，部會與機關應要求職員呈報與其有關的企業利益。
- (二)、部會與機關應確認處於破產狀態、可能侵佔公務資金之公務人員未受聘任。
- (三)、部會與機關不得販售政府剩餘財產予因職務特性熟悉該財產、或曾參與該財產處分、或可享有非一般大眾折扣優惠條件之公務人員。
- (四)、部會與機關必須要求所屬，在接受可能直接或間接影響其工作之外部聘任前，取得上級許可，並作適當的調整與處置。
- (五)、公務人員必須在接受禮品、款待、獎賞、勳章及其他利益前，向上級報告，並於事前取得許可。
- (六)、公務人員不得利用職務上所取得之情報，作為增加自己及他人私人

財務利益之用。

- (七)、公務人員必須向其部會或機關申報其事業利益(包含董事職務)、或本人與近親(配偶、非婚關係之夫或妻，及子女)所保有之股票及有價證券；申報範圍包括已知利益，及依其職務上之地位所得利益的可能發展。
- (八)、公務人員已處破產狀態者，必須向其部會或機關陳述其事實。該公務人員亦須向其部會或機關知曉其被逮捕、拒絕交保、或依法判刑之可能。

## 二、政務首長之利益衝突迴避原則

「內閣大臣法典」之第五款，即針對內閣大臣之個人利益及利益衝突與迴避予以規範(參見附錄 3-1-3)。其可供我國參照部分詳列如下：

### (一)、基本原則與義務

1. 內閣大臣應確保其公務責任與個人財務或其他利益間，無衝突情事之發生。
2. 每位內閣大臣皆負有採取行動以避免利益衝突(或造成利益衝突觀感)之個人責任，並為其作法進行答辯，且如有必要，應向國會進行說明。常務次長之責即在於提供內閣大臣必要之建議，可以提供慣例、或是諮詢內閣秘書長(Secretary of Cabinet)等私人方式提供建言，或以邀集政府內部與外部專家提供專業建議之方式為之。若有極為困難或疑慮之個案，甚可提交首相以徵詢其意見。但最終該內閣大臣仍須負起妥適安排其私人生活，避免招致外界之批評，及其最終行為決策後果之個人責任。

### (二)、利益衝突迴避處理程序

1. 凡就任新職，內閣大臣皆須提供常務次長(Permanent Secretary)一份所有可能與其公務產生衝突之個人利益的完整書面清單。此份清單不僅須包括內閣大臣之個人利益，亦應包含其配偶或同居人、子女(含未成



年子女)之利益、內閣大臣本人或配偶或同居人爲受託人或受益人之信託利益、或其他與之具有密切關係的關係人之利益。並且，此份清單應包含該內閣大臣之各類利益，如：理財工具和合股關係、非公司型企業組織與不動產之財務利益，及外部組織網絡關係和先前任職紀錄等非財務性私人利益。

2. 常務次長接獲該清單後，將安排與該內閣大臣之會面，以商討其內容並思考由何徵詢最妥適之處理建議。常務次長亦會依慣例或內閣辦公室之協助，提供內閣大臣建議，或安排徵詢政府內部與外部專家之專業建言。最後，該內閣大臣須書面方式記錄所考慮之處理方式及已採行之行動，並提供一份此書面記錄予常務次長。
3. 內閣大臣保留私人利益之適當行爲。即當內閣大臣與其他大臣同僚商討公務，而該事務將受其私人利益所影響時，該內閣大臣須向其同僚聲明其利益，並於該事務討論與處理過程中，保持全面超然之立場。當該內閣大臣處理部會相關事務，涉及先前或現有私人利益，有利益衝突之虞時，亦須秉持前述之步驟與作法。
4. 前述內閣大臣所揭露之個人資訊，將保有絕對之機密。若有內閣大臣被指出具有利益衝突之嫌，該員必須解釋說明其立場，並舉證其作爲。在此過程中，可能將其私人利益清單，以及所採取之避免利益衝突作爲，予以公開。

### (三)、其他利益衝突處理細部原則與方式

1. 內閣大臣於就職時，必須放棄其他任何所擁有之公開聘任。
2. 內閣大臣必須確保和那些與政府政策具有衝突目標之非公共組織無往來關係，避免利益衝突之產生。因此，內閣大臣不得接受來自壓力團體、或受政府全額或部分資助的組織，爲其提供贊助或支持的邀請。
3. 內閣大臣必須小心翼翼地避免任何於其職位與私人財務利益間實質或明顯的利益衝突。內閣大臣必須處分可能發生衝突之財務利益，或以替代方式避免之。作爲部會之會計長(Accounting Officer)，常務次長肩負部會財務監理與檢查之責，當內閣大臣發生利益衝突之情事，常務

次長之建言必須受到重視。

4. 財務利益之衝突常發生於以下情況：
  - (1).權力或影響力之運用可能對所擁有利益之價值產生影響；
  - (2).因職務關係為私人之財務利益獲取利潤或規避損失(甚或有此之嫌)。
5. 為免損及內閣大臣之名譽，以下兩項法律責任需謹記在心：
  - (1).任何依法賦予之權力、裁量、或影響力之行使或不行使，其對於內閣大臣之財務利益，皆可受法院提出質疑，且若質疑成立，則該項利益可被宣告無效。
  - (2).除本法典外，內閣大臣亦受一九九三年之刑事司法法案(Criminal Justice Act 1993)之規範，不得利用職務之便，從事內線價格資訊(unpublished price-sensitive information)之運用與散佈。
6. 若內閣大臣基於某些理由無法或不願處分其利益，可於常務次長或外部專家之建議下，採取適當方式避免利益衝突之風險。
7. 除處分財務利益之方式外，內閣大臣可考慮將其投資交付「盲目信託」(或稱「不知情信託」或「放任信託」，blind trust)，即任何投資之變化或有價證券之狀態將不會知會該內閣大臣，但仍保有接受該信託績效報表之資格，及獲取其獲利所得。一旦交付盲目信託，該內閣大臣將不可介入任何操作。
8. 除非所擁有之財務利益已獲妥適之處分，內閣大臣與其部會須採取必要措施及禁止相關文件之取得，以確保該內閣大臣不再介入任何有關之決策與討論。
9. 對於內閣大臣所擁有之合夥關係，如律師事務所或會計師事務所之專業公司，或其他企業組織，一旦任職內閣大臣，必須終止該公司日常管理事務之參與；但不必終止其合夥關係，或令其執業證照失效。
10. 內閣大臣必須於就任時辭去所擁有之董事職位，不論其於公營或民營企業，亦不論其為有給職或榮譽職。

## 陸、英國公職人員收受禮品與款待之處理原則

「內閣大臣法典」第五款當中，同時亦針對內閣大臣禮品或款待之收受，提出詳細之規範(參見附錄 3-1-3)。其規範重點分述如下：

### 一、禮品或款待之收受原則

- (一)、內閣大臣與公務人員皆不得接受他人之禮品、款待或招待。前述人員之家庭成員亦受此一原則之規範。
- (二)、內閣大臣亦不得接受與公務有關之海內、海外贊助者之禮品。
- (三)、禮品之收受原則如下：
  1. 禮品之收據須呈報予常務次長；
  2. 小額禮品(現行規定為低於英鎊 140 元)可為受贈者保有；
  3. 高於以上價格之禮品須交由該部會代為處分，以下條件者除外：
  4. 受贈者願以該禮品之現金價格購回(扣除英鎊 140 元)；
  5. 若該部會認定該禮品有其價值，可將其陳列展示或作妥適運用；
  6. 若該禮品之處分可能導致負面或反感之情事，或認為該禮品可為受贈者妥適之運用或展示，以作為友好、禮節之表現，則該部會可以此目的保留該禮品至多五年。
  7. 若所收受之海外贈品金額高於一般之旅遊津貼，則應申報關稅與貨物稅。若該內閣大臣欲保有該禮品，則應負擔該項稅額。
- (四)、內閣大臣所獲贈之禮品，若係因其內閣職位，則該禮品為部會所有，不必申報於「成員或議員利益登記清冊」(Register of Members' or Peers' Interests)；而若是因議員身份或政黨職務身份所獲之贈品，則須登錄於上述清冊之中。

### 二、禮品收受之年度清單

- (一)、政府每年公布內閣大臣之禮品收受清單(價值高於英鎊 140 元者)。清

單中詳列禮品之價值，及該禮品為部會所保有或由內閣大臣所購回。部會需確定每筆記錄之翔實內容，以供年度呈報內閣辦公室。

- (二)、若提供內閣大臣款待之出資者，被視為具有影響內閣大臣決策與行動之虞，則該項款待必須申報於「成員或議員利益登記清冊」之中。而所需登錄之款待，下議院議員為高於英鎊 550 元者，上議院議員則為高於英鎊 1000 元者。

## 柒、英國公職人員參與政治活動之規範

### 一、常任文官之政治活動參與規範

「文官管理法典」之第四章第四節，主要係對英國文官之政治活動參與做出明確規範(參見附錄 3-1-2)。其重要內涵包括如下：

#### (一)、政治活動之定義

該法典於上述章節中，開宗明義便對所謂政治活動提出明確之定義，分為全國與地方兩大層次：

1. 全國層次之政治活動：包括出任政黨組織職務，並侵犯國會或歐洲議會之政黨政治運作、針對全國性政治爭議問題公開演說、以投書媒體、著書、撰文、或傳單，對政治爭議發表看法、公開宣佈成為國會議員或歐洲議會議員之候選人、代表國會議員或歐洲議會議員之候選人或代表政黨，輔選拉票。
2. 地方層次之政治活動：參選地方首長、出任政黨組織職務，並侵犯地方之政黨政治運作、針對地方性政治爭議問題公開演說、以投書媒體、著書、撰文、或傳單，對地方性政治爭議發表看法、代表參與地方選舉之候選人或代表地方政治組織，輔選拉票。

#### (二)、英國文官政治活動之分級管制

「文官管理法典」依是否具有自由參與政治活動之權利，將文官分為三大類：

1. 政治限制類(politically restricted category)：包含高階文官及次一級之公

務人員，以及被納入快速晉升發展方案(Fast Stream Development Programme)之公務人員。凡此人員，皆不得參與全國性之政治活動；而參加地方性政治活動必須先取得部會或機關之許可，並嚴守部會或機關提出之要求與條件。

2. 政治自由類(politically free category)：此類人員包含任職於國營事業與非部局職等(non-office grades)之公務人員。此類人員得以參加全國性及地方性之政治活動。而文官長得對此類人員之認定進行核可。
3. 其他文官：凡非歸於上述二類之公務人員，皆屬此類。此類人員除經部會或機關之特令許可，欲參加全國性或地方性之政治活動，均須事先取得核可，並嚴守部會或機關提出之要求與條件。

事實上，部會與機關對於公務人員參與政治性活動之許可，除上述基本原則外，該法典更進一步授權部會與機關，針對可能影響文官中立原則最甚之敏感性職位，行使必要之裁量予以否決。其中，敏感性職位包括：

1. 提供內閣大臣或非部會之皇室機構密切地政策協助者，諸如：提供建言或立即執行內閣大臣所交付之指示；
2. 任職於內閣大臣或高階官員之私人辦公室，或所處理之事務涉及政治敏感性或國家安全者；
3. 代表政府、部會或機關發言，或代表與企業團體、壓力團體、地方政府、公務機構或其他公共團體進行互動者；
4. 代表政府與外國政府進行聯繫互動者；
5. 必須與大眾進行頻繁之面對面接觸者。

### (三)、文官政治中立之相關規範

「文官管理法典」除對上述文官可能涉入之政治活動進行界定，以及依限制範圍之不同提出分類外，亦對英國公務人員平時應有之政治中立素養，予以規範，主要包含以下諸項：

1. 公務人員於值勤、身著制服、或於官方場所時，不得參與政治性活動。
2. 公務人員不得以官方身份參加政黨組織所召開或主辦之會議與集會。

3. 非「政治自由類」之公務人員，不得以強烈或全面的政黨承諾，來表達個人之政治觀點，而侷限了對不同政黨的內閣大臣之忠誠與服務。對其內閣大臣所負責之事務，評論與意見必須謹慎；應避免對與自身內閣大臣有關之爭議事件進行評論，甚或進行人身攻擊。
4. 公務人員應避免於政治爭議中，因為了使自己成為眾所矚目之標的，而使自身內閣大臣或其部會與機關陷於困窘、難堪之境。
5. 非「政治自由類」及未取得參與政治活動許可之公務人員，應對政治爭議事件隨時保持沈默，以確保其政治中立。
6. 公務人員不具備參選國會議員與歐洲議會議員之資格。因此，公務人員於參選上述公職前，必須先行辭職。
7. 「政治自由類」之公務人員並不須以辭職之方式取得參選的資格。但為避免其參選無效，此類公務人員應於同意提名前，提出其辭呈，以符合國會選舉之規定。

#### (四)、文官參選之復職規定

如前所述，「政治自由類」之公務人員，事實上並不須以辭職之方式取得參選的資格；但通常為避免造成參選無效，大多於其之前提出辭呈。針對於此，「文官管理法典」規定，若「政治自由類」之公務人員未能當選，得於選舉結果發布後一週內提出復職申請。若順利當選，符合以下條件者，亦得予以復職：

1. 離開文官體系五年內，不再為民選公職者；
2. 參選前已具有 10 年以上之資歷者；
3. 脫離民選公職身份 3 個月內提出復職申請者。

若申請復職者未符合上述前兩項條件者，部會或機關具有同意該員復職與否之裁量權，但大多鼓勵以同意方式為之。

但部會與機關則可對於非「政治自由類」之公務人員，因參選後而提出之復職申請，行使裁量權。而復職之公務人員，其離職期間並不納入薪俸與退撫之年資計算。

## 二、政務首長要求文官參與政治活動之限制

除上述之規範外，「內閣大臣法典」亦針對內閣大臣保障公務人員之政治中立，提出要求(參見附錄 3-1-3)。「內閣大臣法典」明定，內閣大臣負有維繫公務人員政治中立之責任，不得要求公務人員從事任何有違「文官行為守則」之活動與行為；並負有確保公職之聘任不以政黨目的濫用之責任。公務人員不得被要求涉入任何有違背政治中立之虞的活動，或任何可能招致公務經費受挪用於政黨目的之質疑的行為。

此外，內閣大臣亦不得要求公務人員參加由政黨召集之集會或政策會議，或任何國會政黨次群體之集會。公務人員不得接受由政黨組織所召開之會議的邀請，除非此些公務人員之出席，係負有使其部會事務完成(或法案通過)之任務，且事務本質與該會議無關。

## 捌、離職後轉任企業之旋轉門條款

### 一、常任文官之離職轉任限制

英國政府針對公務人員離職後轉任企業之規範，係依「企業任職規定」(Business Appointment Rules)訂定相關審查要求與標準(參見附錄3-1-2)。依該項規定，公務人員於離職後二年以內需於企業任職時，必須提出申請，並接受「企業任職諮詢委員會」(Advisory Committee on Business Appointments)之審查。

該項任職規定之目的，在於：(一)避免現職人員之決策受到未來可能受聘於特定企業或組織的預期或期待心理影響，及避免產生此類之嫌疑，及(二)避免特定企業以雇用因職務知悉競爭對手之技術或其他商業機密、或瞭解政府規劃中政策發展之政府官員，獲得打擊對手之不當優勢，及其可能風險。

#### (一)、規範對象

依據「企業任職規定」，具備下列任一條件之公務人員，於離職後二年以內需於企業任職時，皆須提出申請：

1. 薪級 4 或以上之高階文官(Senior Civil Service)，及獲高階職位工作評估(Job Evaluation of Senior Posts, JESP)13 級分以上，或曾擔任諮詢專家或特別顧問(Special Advisers)及同等者；
2. 離職前二年以內，與將任職之雇主間具有正式商業往來情形者；
3. 服務公職期間，與將任職之雇主間具有持續或反覆正式商業往來情形者；
4. 職務上曾接觸未來雇主競爭對手之商業機密情報者；
5. 因離職前二年以內的職務之故，曾參與對將任職之雇主有利之建議或決策制定，而其聘任可能被視為具有對價關係；或曾參與政策之規劃，其專業知識將有利於將任職之雇主者；
6. 離職前二年以內，與公務外之團體或組織具有商業交易行為，而將以諮詢顧問聘任者。

但上述之規定並不適用於以下對象：

1. 聘任於非商業性組織且不支薪者；
2. 內閣大臣賞賜特予任命者；
3. 為部會或機關所同意為兼職人員者。

並且，依前述規定，轉任企業者不僅於首次任職時需取得企業任職諮詢委員會之核可，離職後二年內之任何異動聘任，同樣必須提出申請與取得同意。此外，由政府機關臨時調任於其他組織之人員，同樣適用於上述之規定；而由其他組織臨時調任政府機關之人員，亦受前述規定之規範，除非該員於結束調任後歸回原組織，並於該組織任職滿二年。再者，如前所述，特別顧問亦如公務人員受此規定之規範，但若該員先前離職受聘擔任特別顧問前，即受聘於相同雇主，且以擔任特別顧問達二年者，不在此限。

## (二)、申請要項

凡提出企業任職申請者，必須提供即將任職職務之完整資料，以及過去與將任職之雇主或其他組織間，正式商業往來的紀錄資料，包括與未來雇主競爭對手之間的互動資訊。而該部會必須竭盡所能尋找可確認申請者提供資



訊真偽性之副署官員，並徵詢其意見。

(三)、各級人員之申請與審查

1. 常務次長(Permanent Secretary)、JESP 達 18 級分或以上者、薪級達最高三等級者、直屬常務次長或部會、機關首長、及同等之諮詢專家或特別顧問：將由首相依據企業任職諮詢委員會之建議，予以核可；不過，與此同等之特別顧問所提出之申請，則由文官長依企業任職諮詢委員會之建議，予以核可。
2. 其他部會首長、高階文官達薪級 4 以上及 JESP 達 13 級分以上，及同等之諮詢專家或特別顧問：將提交內閣辦公室(Cabinet Office)，以徵詢文官長之建議。
3. 其他未於上述之高階文官，及同等之諮詢專家或特別顧問：將徵詢內閣辦公室之意見。
4. 高階文官團以外之職員：若申請者於過去二年內，未有與將任職之雇主正式商業往來之行爲，未有揭露商業機密資訊之風險，或申請之任職爲於非商業組織，則部會與機關將不必徵詢內閣辦公室之意見，自行審議即可。

二、政務首長之離職轉任限制

如同前述之規定，「內閣大臣法典」亦規定內閣大臣若欲於離職二年內轉任企業，須徵詢前述之獨立「企業任職諮詢委員會」之意見。且若將聘任於非商業性組織之無給職，或因政府賞賜特予任命者，如：由首相派任至國際性組織，則不受前述之規範(參見附錄3-1-3)。

但若有以下情事者，諮詢委員會將提出延遲就任之建議(最多延遲二年)：

- (一)、其就任將招致民眾之質疑—先前該內閣大臣於任內所爲之發言或決策，係受將就任之公司或組織的影響，並有事後轉任酬庸之期待；
- (二)、其將就任之雇主，有不當使用該內閣大臣因職務之便所得資訊之虞。

### 玖、政務首長之選區與政黨利益迴避處理

在內閣制之政治體制下，內閣成員係由執政黨之國會議員出任，因此，「內閣大臣法典」之第四款，便特別針對內閣大臣應如何處理其選區與政黨利益提出規範(參見附錄 3-1-3)。其重要者包括：

- 一、內閣大臣不得以政府支出支應政黨或選區工作場所(或設備)之費用。內閣大臣之選區事務應以個人開支作為支應。
- 二、政府財產不得用以作為選區事務或政黨活動之用。若政黨活動由內閣大臣於政府財產或場所舉辦，其費用應由內閣大臣本身或該政黨予以支應，不得以公眾目的為由花費政府經費。
- 三、當內閣大臣於部會內所做之決策可能影響其選區選民，則該內閣大臣必須謹慎避免任何利益衝突發生之可能。
- 四、內閣大臣可以通信方式向相關部會之大臣表達其對選區事務之看法，但須表明其係以選民代表之身分，而非以內閣大臣之身分發言。內閣大臣必須謹慎地以代表選區觀點之方式表達意見，而非表達自身之觀點；但若發現上述情況無法避免時，則該內閣大臣須確定同步將其意見評論提供予其他政黨，避免對政府政策之批評，並將其意見侷限在非內閣成員皆可能提出之觀點，並明確表達其觀點係以選區下院議員之身分提出。如此作法之重要性在於避免造成執事內閣大臣做決策時之困擾與困難，並牢記政府之成員必須集體為政府之政策成果負責。其中，特別是當該內閣大臣與所關切之事務具有個人利益或關聯時，例如：與其家人、朋友或部屬有關。若該內閣大臣需對該項個案提出質疑時，則須如同處理選區事務一般，書信予執事之內閣大臣，但須表明其個人關聯或利益。而執事之內閣大臣亦須確保對該個案之處理依然保持嚴謹、而無特殊之對待。
- 五、為避免外界產生內閣大臣企圖影響彩金決策之不良印象，內閣大臣不得對於個別彩金基金之投標予以特別支持。
- 六、官方場所之費用若係來自於國家經費，當可用於政府宣傳與廣告，但不可用於政黨資料之散播與宣傳。

## 拾、公務人員不當行為揭露之處理

前述之「文官行為守則」明確昭示了英國文官之權利與責任。依該守則之要求，各部會與機關皆有責任使所有公務人員瞭解與認識此一行為守則及其價值；若有公務人員被要求以違反此一行為守則之規範行事，「文官行為守則」特別要求該部會或機關必須審慎考慮是項關切，並確保提出疑義之公務人員不受懲罰。此外，「文官行為守則」亦原則性地規範了不當行為揭露的處理程序，即當公務人員有疑義時，可向直屬或更上層長官提出反映，若因某種原因使上述方式不可行時，則可向部會中職司公務人員倫理之特任官員，提出申訴。而若發現他人有違反此行為守則之情事，可向前述管道提出反映，並向警方或其他有關當局，提出其犯罪或不法行為之證據。若上述事項經反映卻未能得到合理之回覆與處理，可逕向「文官委員會」提出檢舉。<sup>35</sup> 二〇〇六年新版之「文官行為守則」便以此標定「文官委員會」於此類事項之處理地位(參見附錄 3-1-1)。

準此，「文官委員會」得依「文官行為守則」之授權，調查與處理公務人員所提不當行為之申訴或揭露案件；其處理原則於「文官行為守則」已有概略性規範，而細部之處理程序則於「文官管理法典」中明訂(參見附錄 3-1-2)。相關內容如下：

一、依照「文官行為守則」之規定，若有下列情事發生時，部會得展開內部調查之程序：

當公務人員認為被要求採行以下行為時：

- (一)、非法、不適當、不道德或違反公務倫理規範者；
- (二)、違反憲法慣例或專業守則；
- (三)、涉及弊端；或
- (四)、任何有違此行為守則之事項。

當發生以上情事時，公務人員應依部會內所規定之程序進行呈報。公務

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<sup>35</sup> 在此行為守則之註腳中亦指出，在某些環境條件下亦得適用「公共利益揭露法」(Public Interest Disclosure Act 1998)，並依其程序為之。

人員亦應將犯罪或不法行為之證據呈報有關當局，且若發現有任何違反此行為守則之情事，亦依部門內程序予以呈報。

- 二、若公務人員被要求從事不法行為時，該員應將相關細節向高階官員、人事主任，或部會與機關內特任之倫理調查官員進行呈報。
- 三、部會與機關須詳定申訴案件之正式處理程序。當有不法或申訴案件發生時，部會與機關內應有一名特任官員或可於第一時間以秘密方式接觸呈報之數名官員。內部處理程序按慣例皆包含常務次長(Permanent Head of Department)或機關首長(Agency Chief Executive)。部會與機關應確保揭密者之隱密性，使其得以進行申訴，並確保該員不會受到任何懲罰。
- 四、若於內部處理程序中，申訴或揭露者認為未能獲得合理之回應與回覆，該員得以書面方式逕向「文官委員會」進行申訴。

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## 附錄 3-1-1 文官行為守則

### (Civil Service Code)

#### Civil Service values

1. The Civil Service is an integral and key part of the government of the United Kingdom<sup>36</sup>. It supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament<sup>37</sup>.

2. As a civil servant, you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality. In this Code:

- ‘integrity’ is putting the obligations of public service above your own personal interests;
- ‘honesty’ is being truthful and open;
- ‘objectivity’ is basing your advice and decisions on rigorous analysis of the evidence; and
- ‘impartiality’ is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

3. These core values support good government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.

4. This Code<sup>38</sup> sets out the standards of behaviour expected of you and all

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<sup>36</sup>This Code applies to all Home civil servants. Those working in the Scottish Executive and the National Assembly for Wales, and their Agencies, have their own versions of the Code. Similar Codes apply to the Northern Ireland Civil Service and the Diplomatic Service.

<sup>37</sup>Constitutionally, civil servants are servants of the Crown. The Crown’s executive powers are exercised by the Government.

<sup>38</sup> The respective responsibilities placed on Ministers and special advisers in relation to the Civil

other civil servants. These are based on the core values. Individual departments may also have their own separate mission and values statements based on the core values, including the standards of behaviour expected of you when you deal with your colleagues.

## **Standards of behaviour**

### ***Integrity***

5. You must:

- fulfil your duties and obligations responsibly;
- always act in a way that is professional<sup>39</sup> and that deserves and retains the confidence of all those with whom you have dealings;
- make sure public money and other resources are used properly and efficiently;
- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability;
- handle information as openly as possible within the legal framework; and
- comply with the law and uphold the administration of justice.

6. You must not:

- misuse your official position, for example by using information acquired in the course of your official duties to further your private interests or those of others;
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity; or

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Service are set out in their Codes of Conduct: [www.cabinetoffice.gov.uk/propriety\\_and\\_ethics](http://www.cabinetoffice.gov.uk/propriety_and_ethics).

<sup>39</sup>Including taking account of ethical standards governing particular professions.

- disclose official information without authority. This duty continues to apply after you leave the Civil Service.

### ***Honesty***

7. You must:

- set out the facts and relevant issues truthfully, and correct any errors as soon as possible; and
- use resources only for the authorised public purposes for which they are provided.

8. You must not:

- deceive or knowingly mislead Ministers, Parliament or others; or
- be influenced by improper pressures from others or the prospect of personal gain.

### ***Objectivity***

9. You must:

- provide information and advice, including advice to Ministers, on the basis of the evidence, and accurately present the options and facts;
- take decisions on the merits of the case; and
- take due account of expert and professional advice.

10. You must not:

- ignore inconvenient facts or relevant considerations when providing advice or making decisions; or
- frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.



***Impartiality***

11. You must:

- carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.

12. You must not:

- act in a way that unjustifiably favours or discriminates against particular individuals or interests.

***Political Impartiality***

13. You must:

- serve the Government, whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this Code, no matter what your own political beliefs are;
- act in a way which deserves and retains the confidence of Ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future Government; and
- comply with any restrictions that have been laid down on your political activities.

14. You must not:

- act in a way that is determined by party political considerations, or use official resources for party political purposes; or
- allow your personal political views to determine any advice you give or your actions.

**Rights and responsibilities**

15. Your department or agency has a duty to make you aware of this Code and

its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.

16. If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department's nominated officers who have been appointed to advise staff on the Code.

17. If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain; alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate authorities.

18. If you have raised a matter covered in paragraphs 15 to 17, in accordance with the relevant procedures<sup>40</sup>, and do not receive what you consider to be a reasonable response, you may report the matter to the Civil Service Commissioners<sup>41</sup>. The Commissioners will also consider taking a complaint direct. Their address is:

3rd Floor, 35 Great Smith Street, London SW1P 3BQ.

Tel: 020 7276 2613

email: [ocsc@civilservicecommissioners.gov.uk](mailto:ocsc@civilservicecommissioners.gov.uk)

If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.

19. This Code is part of the contractual relationship between you and your

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<sup>40</sup>The whistleblowing legislation (the Public Interest Disclosure Act 1998) may also apply in some circumstances. The Directory of Civil Service Guidance gives more information: [www.cabinetoffice.gov.uk/propriety\\_and\\_ethics](http://www.cabinetoffice.gov.uk/propriety_and_ethics).

<sup>41</sup>The Civil Service Commissioners' Appeals leaflet gives more information: [www.civilservicecommissioners.gov.uk](http://www.civilservicecommissioners.gov.uk). This Code does not cover HR management issues.

employer. It sets out the high standards of behaviour expected of you which follow from your position in public and national life as a civil servant. You can take pride in living up to these values.

June 2006

**附錄 3-1-2 文官管理法典**  
**(Civil Service Management Code)**

**CIVIL SERVICE MANAGEMENT CODE**  
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## INTRODUCTION

1. This Code is issued under the authority of the Civil Service Order in Council 1995 (<http://www.civilservicecommissioners.gov.uk>) under which the Minister for the Civil Service has the power to make regulations and give instructions for the management of the Home Civil Service, including the power to prescribe the conditions of service of civil servants.

2. This Code, on which the recognised trade unions have been consulted, sets out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants and the delegations which have been made by the Minister for the Civil Service under the Civil Service (Management Functions) Act 1992 to Ministers and office holders in charge of departments, the First Minister in the Scottish Executive and the National Assembly for Wales, together with conditions attaching to those delegations. For convenience, the term “departments and agencies” has been used in the context of delegation throughout the Code. It includes the Scottish Administration and the National Assembly for Wales. Where departments and agencies are given discretion to determine terms and conditions, the Code sets out the rules and principles which must be adhered to in the exercise of those discretions. It does not of itself set out terms and conditions of service. In the case of agencies, the presumption is that functions delegated to Ministers and office holders will (in respect of agencies), be exercised by Agency Chief Executives, but the precise extent to which Ministers and office holders may wish to allow the exercise of their powers by Chief Executives is a matter for them to determine.

3. Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the National Assembly for Wales have been given the authority:

- a. to prescribe the qualifications (so far as they relate to age, knowledge, ability, professional attainment, aptitude and potential, health and coping



with the demands of the job) for the appointment of home civil servants (with the exception of the Fast Stream Development Programme) in their respective departments; and

**b.** to determine the number and grading of posts outside the Senior Civil Service in their respective departments and the terms and conditions of employment of Home civil servants in so far as they relate to the following:

- i.** classification of staff, with the exception of the Senior Civil Service;
- ii.** remuneration, with the exception of the Senior Civil Service;
- iii.** allowances;
- iv.** expenses;
- v.** holidays, hours of work and attendance;
- vi.** part-time and other working arrangements;
- vii.** performance and promotion;
- viii.** retirement age, with the exception of the Senior Civil Service;
- ix.** redundancy;
- x.** re-deployment and lateral transfer of staff within the Home Civil Service.

**4.** This delegation (which revokes all previous delegations) is made subject to the condition that recipients of delegation comply with the provisions of this Code as amended from time to time. However, it does not remove the obligation on departments and agencies to submit to the Cabinet Office proposals or arrangements which are contentious, or raise questions of propriety. Departments and agencies are reminded that the Government is committed to maintaining the reputation of the Civil Service as a good employer. The terms and conditions of civil servants must be determined with regard to: the general practice of large employers; value for money; and the provisions of “Government Accounting”.

5. Departments and agencies must comply fully with legislation which binds the Crown or which Ministers<sup>1</sup> have undertaken to apply as if it were binding on the Crown. They must define clearly the terms and conditions of service of their staff and make these available to staff, for example in departmental or agency handbooks. Where departments and agencies have delegated powers or discretion, they must make clear to their staff how these will be applied by setting out the relevant rules and procedures in their handbooks.

**6. When exercising the delegated powers permitted by this Code, departments and agencies should remember that existing rights cannot be altered arbitrarily.** They must observe any legal constraints upon them as employers, consulting as necessary with their staff and the recognised trade unions. Any questions of possible detriment occasioned by the application of their delegated powers should be resolved locally. If uncertainty over entitlement is an issue, managers should consult their legal advisers and, if necessary, the Cabinet Office.

7. The Cabinet Office retains the right to inspect and monitor observance of this Code in departments and agencies, but the aim is to keep such inspection and monitoring to the minimum level consistent with central responsibilities.

8. Subsequent changes to the central regulations and instructions (including any future delegations) will be issued as amendments to this Code, and will need to be reflected promptly in departments' or agencies' regulations for their own staff. In all cases, the Cabinet Office will make clear the effective date of any change affecting staff Service-wide.

<sup>1</sup>The reference to Ministers used throughout the code include Scottish Ministers and the First Secretary and Assembly Secretaries of the National Assembly for Wales.

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## **1. TAKING UP APPOINTMENT**

### **1.1 Recruitment**

**1.1.1** Within the framework laid down by the Civil Service Order in Council 1995 (<http://www.civilservicecommissioners.gov.uk>) and the Recruitment Code issued by the Civil Service Commissioners (<http://www.civilservicecommissioners.gov.uk>), departments and agencies have authority to:

- a. determine their practices and procedures for the recruitment of staff to the Home Civil Service; and
- b. prescribe qualifications for appointment to positions in their organisation relating to age, knowledge, ability, professional attainment, aptitude, potential, health and coping with the demands of the job.

These delegations are subject to the following conditions.

#### **Conditions**

**1.1.2** Departments and agencies must:

- a. ensure that their recruitment systems deliver recruits who are appropriate to their needs and who are able to do the work required subject to reasonable adjustments under the terms of the Disability Discrimination Act 1995; and
- b. retain records for at least three years of the recruitment criteria in use and of the performance of successful candidates.

#### **Senior Civil Service**

**1.1.3** For SASC appointments (see Section 5.2), departments and agencies must

follow the procedures described in “A Checklist of Processes for Senior Appointment Selection Committee Group Appointments” published by the Cabinet Office.

#### Fast Stream Development Programme

**1.1.4** Qualifications for appointment to the Fast Stream Development Programme are set out in Section 1.5.

#### Checks before appointment

**1.1.5** Before an unconditional offer of appointment is made, checks must be satisfactorily completed to ensure that a candidate does meet the qualifications for appointment.

#### *Character*

**1.1.6** Departments and agencies must be satisfied that recruits are able to show that they will be able to give satisfactory service in the future and that nothing in their more recent past is likely to bring discredit upon the department or agency or the Civil Service in general. This is separate from any security clearance that may be necessary. Account must be taken of the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1975 (amended in 1986) as appropriate.

#### *Nationality*

**1.1.7** The Civil Service nationality rules (Annex A) are statutorily based. Guidance on checking eligibility is available at <http://www.civilservice.gov.uk/nationality> .

**1.1.8** Some appointments, where special allegiance to the State is required, are reserved for UK nationals (Irish and Commonwealth citizens already in the Service on 31 May 1996, or appointed from a recruitment scheme with a closing date for receipt of applications before 1 June 1996, have “reserved rights” of access to such “reserved” posts for the duration of their careers, provided there is no break in service). Most posts, however, are additionally open to

Commonwealth citizens, British protected persons and to the nationals of other European Economic Area (EEA) member states and certain non-EEA family members who are entitled to EEA family permits or residence documents (having moved to the UK with their EEA spouse from another EEA member state for an approved purpose).

**1.1.9** Separate more restrictive rules may apply to certain posts under the Minister for the Civil Service and under the Secretaries of State for Defence and Foreign and Commonwealth Affairs.

#### *Aliens' certificates*

**1.1.10** Except as provided for in paragraph 1.1.8, no alien may be appointed to a post in the Civil Service unless the terms of the Aliens' Employment Act 1955 are satisfied. The Act empowers the employing department's Minister, with the approval of the Minister for the Civil Service, to issue a certificate of employment in certain circumstances. These are that:

- a. no suitable qualified candidate who satisfies the nationality rules is available; or
- b. the alien possesses exceptional qualifications for appointment; and
- c. the post is not a reserved post.

Appointments under an aliens' certificate (except for Special Advisers) are made on a conditional basis and are valid for five years.

#### Serving staff and open competitions

**1.1.11** Serving civil servants who meet the specified qualifications for appointment must be allowed to apply for open competitions in any department or agency, including their own. Common standards of selection must apply to both in-service and external candidates. Departments and agencies may exempt serving staff who were recruited through fair and open competition and have completed their initial probation from any requirements for educational or vocational qualifications which are required of non-Civil Service candidates; their relevant

experience inside the Civil Service may be taken into account instead.

**1.1.12** Management may reject applications from staff already serving elsewhere in the same department (or any of its agencies) where the candidate's level transfer from the existing post would conflict with wider department/agency interests or objectives.

**1.1.13** If a serving civil servant receives and accepts an offer of appointment following open competition, the parent department or agency must release him or her within three months of being notified of the accepted offer.

**1.1.14** Former civil servants serving on Government committees but doing no other civil service work must be treated as office holders and not as re-appointments to the Civil Service.

### **Guidance**

**1.1.15** Departments and agencies will wish to be aware of the following Cabinet Office guidance

(<http://www.civilservice.gov.uk/pins>):

- a. Personnel Information Note (PIN) 7 about the various ways to establish candidates' suitability for recruitment to a particular post or grade;
- b. PIN 39 (Revised) on health standards for recruitment and access to the full risk benefits of the Principal Civil Service Pension Scheme; and
- c. PIN 44 which draws attention to the possible risk of legal challenge if departments and agencies specify a requirement for a particular qualification in English Language (such as a GCSE or equivalent).

## 1.1 ANNEX A: CIVIL SERVICE NATIONALITY RULES

### Statutory Basis

There is a statutory prohibition in the Aliens (Restriction) Amendment Act 1919 on the employment of aliens (that is to say, foreign nationals other than Commonwealth and Irish citizens and British Protected Persons) in the Civil Service. There are, however, three legal exceptions –

- in 1991, the European Communities (Employment in the Civil Service) Order (SI 1991/1221) enabled nationals of other European Community (EC) Member States and certain non-EC family members to be employed in many Civil Service posts;
- the European Economic Area (EEA) Act 1993 enabled nationals of Member States of the European Free Trade Area (EFTA), *except Switzerland*, to be employed in the Civil Service, together with certain non-EFTA family members, on the same basis as the nationals of EC Member States under SI 1991/1221. Since 1 June 2002, this right now applies to Swiss nationals under the EU-Swiss Agreement between the EC and its Member States and the Swiss Confederation on the Free Movement of Persons;
- there is also a provision that, in exceptional circumstances, foreign nationals, other than EEA nationals and non-EEA family members mentioned above, may be employed by means of an aliens' certificate under the Aliens' Employment Act 1955.

In addition, under the Civil Service Order in Council dated 15 March 1995 and the Diplomatic Service Order in Council dated 5 February 1991, the Minister for the Civil Service and the Secretary of State for Foreign and Commonwealth Affairs may make nationality rules governing recruitment to the Home Civil Service and the Diplomatic Service respectively. This annex summarises the statutory position and sets out rules in both cases. The Race Relations Act 1976

reserves the validity of nationality rules governing eligibility for employment in the service of the Crown and certain prescribed public bodies.

### **Definitions**

UK national is as defined in the UK Declaration on Nationality for EC purposes made with effect from 1 January 1983. This comprises: British citizens, British subjects under Part IV of the British Nationality Act 1981 having the right of abode in the UK, and British Overseas Territories citizens (except those who have gained this status solely through connection with the Cyprus Sovereign Base Areas). The Declaration also notes the reference, in connection with the Channel Islands and the Isle of Man, that “any citizen of the UK and Colonies” is to be understood as referring to “any British citizen”.

Commonwealth citizen means any person who has the status of a Commonwealth citizen under the British Nationality Act 1981. This includes British citizens, British subjects with the right of abode in the UK, British Overseas Territories citizens and British Overseas citizens. A further category “British National (Overseas)” was added in 1986.

British Protected Person means a member of any class or person declared to be British Protected Persons by Order in Council under the 1981 Act, or by virtue of the Solomon Islands Act 1978.

EU Member States (besides the UK) comprise, from 1 May 2004, Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. From 1 May 2004, the Accession Treaty, signed in Athens on 16 April 2003, granted to Cyprus and Malta the same rights to work in another Member State (including the UK) as are enjoyed by the nationals of the other States of the European Economic Area. The European Union (Accessions) Act 2003 enabled the Accession Treaty to be implemented in UK law and approved the provisions of that Treaty insofar as they related to the powers of the European



Parliament. It also provided the power, from 1 May 2004, to grant to the nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia the same rights to work in the UK as are enjoyed by nationals of the other States of the European Economic Area.

EFTA Member States in this context comprise the following European Free Trade Area Member States: Iceland and Norway from 1 January 1994 and Liechtenstein from 1 May 1995.

EEA national means a national of an EU or EFTA Member State as defined above. Although Switzerland is not part of the EEA, and Swiss nationals are not EEA nationals, the EU-Swiss Agreement (1 June 2002) confers upon Swiss nationals many of the same rights as are enjoyed by EEA nationals and their family members, including employment in the Civil Service.

Family member means a specified family member of an EEA national who has moved to the UK from another EEA Member State for an approved purpose. The categories of family member are:

- the EEA national's spouse;
- a descendant of the EEA national or the spouse who is under 21 years of age or is their dependant; or
- a dependent relative in the ascending line of the EEA national or the spouse.

### **Notes**

- (a) Applicants with dual nationality will be eligible for the Home Civil Service provided that one of the nationalities meets the requirements.
- (b) Applicants from some countries may be subject to immigration control.

### **The Rules**

1. Posts in the Home Civil Service where special allegiance to the state is required are reserved for UK nationals. Many posts, however, are not in the

reserved category and do not therefore require such allegiance. They are additionally open to Commonwealth citizens, British Overseas Territories citizens, British National (Overseas) citizens, British Overseas citizens and British Protected Persons, EEA nationals of other Member States and to certain non-EEA family members. Where a vacancy is in the non-reserved category allowing applications from these groups, the recruitment publicity accompanying the application form should say this.

2. **Very exceptionally**, someone who falls outside the above groups may be considered for an appointment in the non-reserved category for up to five years under the provisions of the Aliens' Employment Act 1955 where it appears to the Minister for the Civil Service and to the Minister of the employing department or agency that no suitably qualified person meeting the nationality criteria is available or that the individual has exceptional qualifications or experience for the appointment.

3. For posts in HM Diplomatic Service and most Home Civil Service posts under the Foreign and Commonwealth Office, individuals are only eligible if:

- a. they are a British citizen;
- b. they have resided in the UK for at least two of the previous ten years, at least one of which must have been a consecutive twelve month period. Furthermore, to enable the appropriate security checks to be carried out, they must have resided for at least three consecutive years in one country.

Applicants should be aware that where there is a lack of sufficient background information, this may preclude an applicant from being granted a security clearance.

4. For certain appointments under the Minister for the Civil Service, the Secretary of State for Defence or the Secretary of State for Foreign and Commonwealth Affairs, other than appointments in the Diplomatic Service, the relevant criteria above may apply or particular requirements may be prescribed.

## **1.2 Working Arrangements**

**1.2.1** Departments and agencies have authority to determine for their own staff part-time or other working arrangements, as alternatives to full-time permanent appointments, subject to the following conditions.

### **Conditions**

**1.2.2** Departments and agencies must ensure that:

- a.** recruitment is in accordance with Section 1.1;
- b.** they consult Civil Service Pensions Division, Cabinet Office to determine whether and how the Principal Civil Service Pensions Scheme applies;
- c.** they take legal advice about such matters as letters of appointment and whether continuity of service is likely to be established; and
- d.** terms and conditions (including pay) for part-time staff are in proportion to those for full-time staff.

### **Casuals**

**1.2.3** Casual staff have temporary appointments to meet short term needs. Such appointments may be made only where there is a genuine need to employ people for a short period, and must be for less than 12 months. In exceptional circumstances a casual appointment may be extended for a period up to a maximum of 24 months.

## **1.3 Probation**

**1.3.1** Departments and agencies have authority to determine whether staff should be required to serve a period of probation and the terms of that probation. Any period of probation should not usually exceed 2 years.

## **1.4 Letters of Appointment and Information on Pensions**

### **Letters of Appointment**

**1.4.1** Sections 1 to 7 of the Employment Rights Act 1996 give most employees, including civil servants, the right to receive a written statement of their main terms and conditions within two months of starting work. Departments and agencies must therefore provide such a statement to staff covered by the Act. The contract fulfils this need for members of the Senior Civil Service (<http://www.cabinet-office.gov.uk/civilservice/jess/public.htm>).

**1.4.2** Personnel Information Note (PIN) 14 (Revised) provides guidance on the drawing up of letters of appointment (<http://www.civilservice.gov.uk/pins>).

### **Information on Pensions**

**1.4.3** New entrants must be provided with copies of the following explanatory booklets about their pension position (preferably with their letter of appointment and within two months of starting work):

“Your Pension Scheme Benefits Explained”

“Joining the PCSPS”

“Increasing Your Benefits”

“Leaving or Opting Out of the PCSPS”

“Early Retirement and Redundancy”

“Repackaging - Making the Most of Your Early Retirement Benefits” and

### “Injury at Work”

These booklets are available for new recruits from Personnel Sections. They are also available via the Cabinet Office Website at <http://www.civilservice-pensions.gov.uk/Menu.asp>.

**1.4.4** New entrants must be made aware on or prior to entry of the time limits governing transfers of their existing pension rights into the PCSPS - as explained in the relevant booklet “Joining the PCSPS”. The date of issue of this booklet should be noted on the officer’s personal file by Personnel Section.

## **1.5 Fast Stream Development Programme**

**1.5.1** The Fast Stream provides training and development for people with the potential to achieve rapid promotion off the programme (in accordance with departments’ own grading procedures) and to progress to the Senior Civil Service. It comprises:

- Central Departments (formerly referred to as the Home Civil Service)
- Diplomatic Service
- European Fast Stream
- Science and Engineering Fast Stream
- Clerkships in Parliament
- DfID Technical Development Officers

All the above are known collectively as the Graduate Fast Stream. Within the Diplomatic Service there is a separate option for economists. The Science and Engineering Fast Stream has two branches: one is exclusive to the Ministry of Defence, and the other is open to other departments. There are also separate Fast Stream competitions for Economists, Statisticians and GCHQ Graduate

Management Trainees.

### **Methods of entry**

**1.5.2** Entry to the Graduate Fast Stream is by open competition. Applicants may express preferences for more than one of the above options on the same application form. A higher pass mark may be applied to some options. There is a separate In-Service Fast Stream competition for serving civil servants, which gives access to the Central Departments or the Ministry of Defence branch of the Science and Engineering Fast Stream.

### **The selection process**

**1.5.3** The application process is begun on-line. Candidates are first asked to complete an online self-assessment of suitability. The first stage of the actual selection process consists of on-line tests of Verbal and Numerical Reasoning and a Competency Questionnaire. This stage of the selection process can be completed on any PC with internet access. If candidates reach the required level, they progress to an electronic in-tray test (the e-Tray) held in centres throughout the UK. The best performers in the e-Tray exercise are invited to the Fast Stream Assessment Centre (FSAC), a day-long process at which their potential in a range of key competencies is assessed. Success at FSAC guarantees a place in the Central Departments option, but candidates for the Diplomatic Service, DfID TDO and the Parliamentary Clerkships go on to attend a Final Selection Board.

**1.5.4** Candidates with a disability may request exemption from the on-line tests, and go straight to the e-Tray exercise. If successful, they are invited to attend a pre-FSAC familiarisation session. Reasonable adjustments are made for them as necessary.

**1.5.5** In-Service candidates are shortlisted by their departments or agencies, and are also exempt from the on-line tests. They attend the e-Tray exercise, but progress to the FSAC regardless of their performance in it. At FSAC, they are assessed to the same standard, and using the same procedure, as for external candidates.

**Eligibility**

**1.5.6** Applicants for the open competition must usually have at least a Second Class Honours Degree or equivalent qualification. For the Statistician and Science and Engineering Fast Streams, the degree must be in a relevant subject.

Applicants for the Economist Fast Stream require a 2:1 degree in economics or a joint or mixed degree of which at least half the courses are core economics.

**1.5.7** For serving civil servants wishing to enter the In-Service competition, no academic qualifications of any kind are required. In-Service applicants must usually have completed at least twelve months' continuous service in their departments or agencies. The In-Service competition is open only to serving civil servants who were recruited by a process of fair and open competition.

**1.5.8** Some posts in the Fast Stream are open to EEA and Commonwealth citizens, so departments and agencies should determine whether (or how many of) their Fast Stream posts are open to non-UK nationals.

**Age limits**

**1.5.9** There are no age limits for applicants to the Fast Stream, although it is generally expected that successful candidates will be able to contribute several years' service before retirement.

**Appointment**

**1.5.10** New Fast Streamers are assigned to departments by the Civil Service Selection Board (CSSB), taking account of departments' requirements, of the Fast Streamer's own background, experience and preferences, and of the need to ensure a fair distribution of the candidates by FSAC score.

**1.5.11** Departments and agencies are responsible for determining the pay and conditions of their Fast Stream recruits.

**1.5.12** Fixed term and conditional appointments are not normally appropriate for members of the Fast Stream.

## **Probation**

**1.5.13** Depending on the policy of the department or agency concerned, recruits to the Fast Stream, like recruits to other grades, can be required to serve a period of probation. The length of any such probation is determined by the department or agency, but should not usually exceed two years.

## **Failure to reach the standard for promotion**

**1.5.14** Should Fast Streamers cease to demonstrate the potential for promotion off the programme (and ultimately into the Senior Civil Service), departments and agencies must provide that membership of the Fast Stream will be terminated even after the period of formal probation has expired. In such a case, the individual concerned may be offered an appointment at another level, provided that the normal requirements for entry to that level are met. In-Service appointees who cease to demonstrate the potential for promotion off the Fast Stream will revert to their former status or, if appropriate, be employed at any other level for which the normal entry requirements are met, in line with the relevant pay and grading arrangements. Departments and agencies are free to determine their own arrangements for this, but must ensure that recruits are made aware of them on appointment.

**1.5.15** It is envisaged that Fast Streamers should normally have been promoted off the programme within about five years after entry, but departments and agencies may prolong membership of the Fast Stream beyond this point at their discretion. This will normally only happen in response to exceptional circumstances, such as when secondment has taken a Fast Streamer out of the Civil Service reporting system or where no vacancies for promotion have arisen.

## **Training and Development**

**1.5.16** All departments employing Fast Streamers must provide them with the training and development opportunities which are promised at recruitment and induction (listed below at 1.5.17), and which are designed to offer them the best opportunity to achieve rapid promotion off the programme and progression to the



Senior Civil Service.

**1.5.17** The key elements of the training and development programme are:

- the Fast Stream Induction Course and follow-up event;
- provision of feedback based on the individual's FSAC report for developmental purposes;
- an annual Development Plan based on immediate and predicted development needs including Professional Skills for Government requirements and the SCS competencies;
- ensuring that line managers of Fast Streamers have appropriate guidance on managing a Fast Streamer and are committed to the individual's development;
- a minimum of 15 days' off-the-job training per year;
- postings with an average length of twelve months and which include operational experience/customer interface, project management and people management (not merely policy or ministerial work);
- the opportunity to work in another department or sector for a minimum of three months;
- the opportunity to complete the full training and development package, even if this needs to happen after promotion.

**Direct Appointment Scheme (DAS)**

**1.5.18** A number of candidates who narrowly miss the required standard at FSAC, but who have nevertheless attained a high enough score to indicate that they have the potential to make a worthwhile contribution to the Civil Service, may be offered a place on the Direct Appointment Scheme (DAS). Those suitable for the DAS will be those attaining a score within a certain range, which will be determined in relation to the Fast Stream pass mark. Departments may request

Direct Appointees from CSSB if they have a post which cannot be filled through advertising internally or through Jobcentre Plus. Such posts should be particularly identified by departments for their challenging and developmental content, and tend to be graded at EO level. The intention is not necessarily to prepare Direct Appointees for another attempt at the Fast Stream competition, though it is quite likely that time spent as a Direct Appointee will enhance chances of success in subsequent applications, perhaps through the In-Service Fast Stream Competition.

## **1.6 Appointment and Management of Specialists**

**1.6.1** In some areas, Heads of Profession, supported by central management units, have been appointed by the Head of the Home Civil Service to supervise the well-being of their respective services, to provide central management of the individuals within them, and to ensure that the Civil Service obtains maximum benefit from its employment of specialists. Departments and agencies may choose to participate in these arrangements when appointing relevant professional staff. If they do, they must agree with the appropriate central management unit how the recruitment and career development of such staff will be handled.

## **1.7 Re-appointment: Reinstatement and Re-employment**

**1.7.1** Departments and agencies have authority to determine arrangements for the re-appointment of staff following an earlier period of employment in the Civil Service which satisfies article 6(1)(d) of the Civil Service Order in Council 1995 (<http://www.civilservicecommissioners.gov.uk>), and paragraphs 2.19 to 2.21 of the Commissioners' Recruitment Code (<http://www.civilservicecommissioners.gov.uk>) subject to the following conditions.

### **Conditions**

**1.7.2** Unless specified at the date of resignation, there is no entitlement to re-appointment. Specific arrangements apply to staff who return:

- a.** after service with the European Institutions (Section 10.4);
- b.** after service with HM Forces. In this case arrangements would be based on the Reserve Forces (Safeguard of Employment) Act 1985; or
- c.** following Parliamentary candidature (Section 4.4).

**1.7.3** Departments and agencies must ensure that:

- a.** applicants were selected for their former appointments in accordance with Civil Service recruitment procedures operating at that time;
- b.** where an applicant was previously retired on medical grounds, the approval of the medical services adviser appointed by the Cabinet Office for pensions relating to the PCSPS is obtained; and
- c.** the Paymaster is notified when a Civil Service pensioner is re-appointed.

**1.7.4** Former civil servants serving on Government committees but doing no other Civil Service work must be treated as office holders and not as re-appointments to the Civil Service.

## **2. EQUAL OPPORTUNITIES IN THE CIVIL SERVICE**

### **2.1 Policy**

**2.1.1** Civil Service equal opportunities policy provides that all eligible people must have equality of opportunity for employment and advancement on the basis of their suitability for the work. There must be no unfair discrimination on the basis of age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin, or (in Northern Ireland) community background, working pattern, employment status, gender identity (transgender), caring responsibility, trade union membership.

**2.1.2** Departments and agencies must comply with equal opportunities legislation and with Codes of Practice issued under such legislation. They must also have regard to the provisions of the Civil Service programmes for action to achieve equality of opportunity for people of ethnic minority origin, for women and for disabled people; to Department for Education and Skills guidance on age discrimination; and (in Northern Ireland) to the Fair Employment Commission guide “Taking Affirmative Action”.

#### **Departmental responsibilities**

**2.1.3** Each department and agency is responsible for implementing Civil Service equal opportunities policy in its own organisation. Departments and agencies must develop their own strategies, based on Civil Service policy, and draw up action plans to implement these strategies.

**2.1.4** Departments and agencies must make their equal opportunities policy known to all staff and potential applicants for employment. They must make clear to all staff their rights and responsibilities in relation to the implementation of this policy, and provide for their staff a working environment which is free from unfair discrimination and harassment.

## **Complaints**

**2.1.5** Departments and agencies must have in place procedures for handling complaints of unfair discrimination and harassment, and must make these procedures known to all staff. All such complaints must be handled promptly and appropriately. In drawing up procedures and guidance for their staff, departments and agencies must be aware of the Cabinet Office guide “Good Practice for Equal Opportunities Staff: Complaints Procedures”. This is available at:

(<http://www.cabinet-office.gov.uk/civilservice/publications/equalopportunities/complain.htm>)

## **Monitoring**

**2.1.6** To enable them to monitor the effectiveness of their policies and action plans, departments and agencies must collect data on the age, gender, ethnic origin, disability, and (in Northern Ireland) community background of staff and applicants. They must use these data to monitor and analyse staff in post and the effects on each group of key personnel procedures, including recruitment, career development, promotion, job allocation, resignations, personal review, salary, performance pay, and access to opportunities for training and personal development.

**2.1.7** To record the ethnic origin of staff and to permit analysis of ethnic minority representation Service-wide, departments and agencies must use the standard Civil Service ethnic origin categories or those relating to the 2001 Census, as specified in Cabinet Office guidance. They must also take appropriate steps, as described in the Model Code of Practice on Ethnic Monitoring issued by the Cabinet Office, to safeguard the confidentiality of ethnic origin data on individuals, consistent with the conduct of effective monitoring for equal opportunities purposes (<http://www.diversity-whatworks.gov.uk/resources.htm>).

**2.1.8** The Cabinet Office will also monitor the overall effectiveness of Civil Service equal opportunities policy. Where possible, this will draw on data held and collected centrally, but departments and agencies may be required to provide

additional information.

### **Equal Opportunities officers**

**2.1.9** Departments and agencies must identify one or more equal opportunities officer(s) to have overall responsibility for the implementation of their equal opportunities policy and action plan and for monitoring and reviewing progress as specified in Cabinet Office guidance. This is in addition to the responsibility of individual line managers for achieving progress within their own commands.

### **3. HEALTH AND SAFETY AT WORK**

#### **3.1 Health and Safety**

##### **Health and Safety at Work etc Act 1974**

##### **Management of Health and Safety at Work Regulations 1992]**

**3.1.1** Employers are required by law to maintain a safe and healthy working environment for their staff. The Health and Safety at Work Act 1974 and subsidiary regulations apply to Great Britain, but not to Northern Ireland which has similar but separate provisions in the Health and Safety at Work (Northern Ireland) Order 1978. Departments and agencies are bound by the Act and any other health and safety legislation. It should be noted that legislation also covers employers' responsibilities for the health, safety and welfare of its employees at all sites where the work is undertaken, including the home.

##### **Policy and organisation statements**

**3.1.2** Departments and agencies are required by the Act to set out written statements covering:

- a.** the general policy for their employees' health and safety at work; and
- b.** the organisation and arrangements for carrying out that policy including arrangement for risk assessment.

Both the policy statement and the organisation and arrangements statement must be communicated to staff.

**3.1.3** The Health and Safety Executive has issued guidance on the Act: "A guide to the Health and Safety at Work etc Act 1974"  
(<http://www.hse.gov.uk/pubns/regindex.htm>).

### **Safety representatives**

**3.1.4** Safety representatives have functions under the Safety Representatives and Safety Committee Regulations 1977 (SI 1977/500). For this purpose, safety representatives are those appointed by recognised trade unions.

**3.1.5** The Health and Safety Commission has issued an approved Code of Practice and Guidance Notes for safety representatives (ISBN 071 7604195).

**3.1.6** Arrangements for implementing the regulations have been agreed with the relevant trade unions. The unions have agreed:

- a.** to appoint safety representatives in departments and agencies.  
Appointments may be made jointly or by the trade union side where there is an agreement amongst the trade unions; and
- b.** to arrange or improve basic training. The courses organised by the TUC are recognised for this purpose. Direct costs, including travel and subsistence, will be met by the unions.

**3.1.7** Departments and agencies are responsible for agreeing guidance on the nature and duration of training for safety representatives with unions at local level. This guidance must be compatible with any guidance published by the Health and Safety Commission. Departments and agencies are also responsible for providing specialised training for safety representatives where this is necessary for the safe and effective functioning of particular establishments or premises.

**3.1.8** Time off with pay as necessary, and with the prior agreement of management, must be granted to safety representatives to enable them to perform their functions properly to attend training courses that are approved by the appropriate trade union and as necessary for attendance at meetings or safety committees. Time off for non-industrial staff will not be set against the facility time allowed under existing arrangements unless the period of time also discharges a liability under Section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992.



### **Safety committees**

**3.1.9** The role of a safety committee is advisory. It forms a focus of employee participation and co-operation between employers and employees in health and safety. A department or agency is required to set up a safety committee when this is requested by at least two safety representatives.

### **The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (SI 1995/3163)**

**3.1.10** Departments and agencies must investigate and keep a written record of all reportable injuries, diseases and dangerous occurrences; and notify HSE within 7 days on HSE forms 2508A and 2508B. For fatal accidents and major injuries, the report must be made by the quickest possible means (i.e. by telephone).

**3.1.11** Records (a copy of the form) must be kept for at least 3 years from the last date of entry. Extracts should be sent to HSE on request. Departments and agencies must notify the HSE in writing if an employee dies within one year as a result of a reportable injury or dangerous occurrence.

**3.1.12** Full details are contained in the Health and Safety Executive Guide L73.

### **First Aid**

**3.1.13** Employers are legally required by the Health and Safety (First Aid) Regulations 1981 (SI 1981/917) and the Approved Code of Practice 1990 (COP 42 - ISBN 071 7604268) to make arrangements to deal with accidents and health emergencies at work.

### **Guidance**

**3.1.14** Personnel Information Note (PIN) 45 describes the:

- a. system of health and safety enforcement notices for Crown bodies;
- b. system of censure hearings for Crown bodies; and

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- c. provision for High Court declarations on Crown bodies under the Working Time Regulations 1998.

It can be accessed at (<http://www.civilservice.gov.uk/pins>).

## **4. CONDUCT AND DISCIPLINE**

### **4.1 Conduct: General Principles and Rules**

**4.1.1** Civil servants are servants of the Crown and owe a duty of loyal service to the Crown as their employer. Since constitutionally the Crown acts on the advice of Ministers who are answerable for their departments and agencies in Parliament, that duty is, subject to the provisions of the Civil Service Code at Annex A, owed to the duly constituted Government.

#### **Authority**

**4.1.2** The Minister for the Civil Service is responsible for the central framework, outlined in Sections 4.2 to 4.4, which governs the conduct of civil servants. Departments and agencies are responsible for defining the standards of conduct they require of their staff and for ensuring that these fully reflect the Civil Service Code and central framework.

#### **Principles**

**4.1.3** The central framework derives from the need for civil servants to be, and to be seen to be, honest and impartial in the exercise of their duties. They must not allow their judgement or integrity to be compromised in fact or by reasonable implication. In particular:

- a.** civil servants must not misuse information which they acquire in the course of their official duties, nor without authority disclose official information which has been communicated in confidence within Government, or received in confidence from others. They must not seek to frustrate the policies, decisions or actions of Government either by declining to take, or abstaining from, action which flows from ministerial decisions or by unauthorised, improper or premature disclosure outside the Government of any information to which they have had access as civil

servants;

**b.** civil servants must not take part in any political or public activity which compromises, or might be seen to compromise, their impartial service to the Government of the day or any future Government;

**c.** civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share a civil servant's private interests (for example freemasonry, membership of societies, clubs and other organisations, and family). Where a conflict of interest arises, civil servants must declare their interest to senior management so that senior management can determine how best to proceed; and

**d.** civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.

**4.1.4** Neither the Civil Service Code nor this central framework is comprehensive. It does not deal for example with such issues as isolated neglect of duty, failure to obey a reasonable instruction or other forms of misconduct which may properly be dealt with under disciplinary arrangements.

### **Rules**

**4.1.5** Departments and agencies must incorporate in the conditions of service of their staff the Civil Service Code at Annex A.

**4.1.6** Departments and agencies must define the standards of conduct they require of their staff. They must:

**a.** make clear to staff their duties and obligations and the penalties they may incur if they fall short of them;

**b.** comply with the rules in Sections 4.2 to 4.4; and

c. ensure that the rules they lay down for their staff fully reflect the Civil Service Code and the standards of conduct described in Sections 4.2 to 4.4, and incorporate any additional rules necessary to reflect local needs and circumstances.

#### **4.1 ANNEX A: THE CIVIL SERVICE CODE**

The Civil Service Code, which was launched on 6 June 2006, can be accessed on the Cabinet Office website at <http://www.civilservice.gov.uk/civilservicecode>.

#### **4.2 Conduct: Confidentiality and Official Information**

**4.2.1** Departments and agencies must remind staff on appointment, retirement or resignation that they are bound by the provisions of the criminal law, including the Official Secrets Acts, which protect certain categories of official information, and by their duty of confidentiality owed to the Crown as their former employer.

##### **Standards of conduct to be reflected in local staff regulations**

**4.2.2** Civil servants are expected to be prepared to make available official information which is not held in confidence within Government, in accordance with Government policy and departmental or agency instructions. They must not, without relevant authorisation, disclose official information which has been communicated in confidence within Government or received in confidence from others. Government policy in this area is available via the website of the Department for Constitutional Affairs at <http://www.foi.gov.uk/index.htm>.

**4.2.3** Civil servants must continue to observe this duty of confidentiality after they have left Crown employment.

**4.2.4** Civil servants must not take part in any activities or make any public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information or experience.

**4.2.5** Civil servants must not publish or broadcast personal memoirs reflecting their experience in Government, or enter into commitments to do so, whilst in Crown employment. The permission of the Head of their Department and the

Head of the Home Civil Service must be sought before entering into commitments to publish such memoirs after leaving the service.

**4.2.6** Civil servants must not seek to frustrate the policies or decisions of Ministers by the use or disclosure outside the Government of any information to which they have had access as civil servants.

**4.2.7** In discharging their duties under paragraphs 5 and 9 of the Civil Service Code (Section 4.1 Annex A), civil servants must maintain the long-standing conventions that new Administrations do not normally have access to papers of a previous Administration of a different political complexion. The conventions cover, in particular, Ministers' own deliberations and the advice given to them by officials, other than written advice from the Law Officers and those papers which were published or put in the public domain by the predecessor Administration. In applying the conventions to the devolved Administrations in Scotland and Wales, any information contained in the administrative and departmental records belonging to a Minister of the Crown or a UK Government department should be treated as if it were contained in papers of a previous Administration of a different political complexion.

**4.2.8** Civil servants must not take part in their official capacities in surveys or research projects, even unattributably, if they deal with attitudes or opinions on political matters or matters of policy.

**4.2.9** Civil servants who are elected national, departmental or branch representatives or officers of a recognised trade union need not seek permission before publicising union views on an official matter which, because it directly affects the conditions of service of members of the union as employees, is of legitimate concern to their members, unless their official duties are directly concerned with the matter in question. In all other circumstances they must conform to the standards set out above.

#### **Leaked Select Committee Reports**

**4.2.10** Civil Servants in receipt of a leaked Select Committee report must not

make any use of it nor circulate it further. They must return the report without delay to the Clerk of the relevant Committee, and only then may they inform their Ministers or Assembly Secretaries. Leaked reports from Committees of the devolved legislatures must be handled in the same way.

### **Crown copyright**

**4.2.11** By virtue of the Copyright, Designs and Patents Act 1988, works made by civil servants in the course of their official duties are subject to Crown copyright protection. The responsibility for the management and licensing of Crown copyright rests with the Controller of Her Majesty's Stationery Office (HMSO) in her capacity as Queen's Printer for works produced by UK Government departments, Northern Ireland departments and the National Assembly for Wales. For works produced by the Scottish Administration, the responsibility for management and licensing rests with the Queen's Printer for Scotland in accordance with the Scotland Act 1998. The Controller of HMSO, in her roles as Queen's Printer, and the Queen's Printer for Scotland, authorises the Copyright Unit of HMSO to administer the respective Crown copyrights on her behalf.

**4.2.12** Civil servants must obtain the prior approval of their Head of Department or Agency Chief Executive before entering into any arrangements regarding the publication or dissemination of any Crown copyright protected material by private sector publishers or information providers. Such arrangements would usually be the subject of specific licensing, to be handled by HMSO's Copyright Unit. This would not apply in the following circumstances:

- a.** where material is to be published in learned journals or in the proceedings of conferences or seminars;
- b.** where the material in question is to be published in an official, authorised work specifically on behalf of the originating department or agency; or
- c.** where the department or agency is authorised to license the material under specific delegated authority issued by the Controller of HMSO or the Queen's Printer for Scotland.



**4.2.13** Where departments and agencies are authorised to license the reproduction of Crown copyright protected material which they originate, under the cases specified in paragraph 4.2.11 above, they must ensure that:

- a. there is an obligation placed on the publisher to acknowledge the Crown copyright source material;
- b. Crown copyright is not assigned to the publisher; and
- c. that the material is licensed on non-exclusive terms.

**4.2.14** Crown copyright is not an issue if a civil servant produces a copyright work unconnected with their official duties and entirely in their own time. If, however, the work in question is linked to their official duties, they should in the first instance consult their Director of Personnel or the Head of their Department or Agency, who in turn may need to consult HMSO's Copyright Unit. Under these circumstances, the following factors need to be taken into account:

- a. whether the civil servant produced the work during official time;
- b. whether the work is based on existing Crown copyright source documents; and
- c. whether there are security considerations.

**4.2.15** If a civil servant writes a book in their own time, which is unrelated to their official duties, but wishes to incorporate extracts of Crown copyright protected material within the work, permission to reproduce the material should be obtained from HMSO's Copyright Unit. It is customary in such cases for the licence to be granted in favour of the publisher rather than the author, as it is the publisher which is reproducing the material. It is permissible for the author to submit the application on the publisher's behalf. Where an individual is on secondment outside the Civil Service, copyright in any work which they produce during the term of their secondment will rest with their host organisation unless otherwise agreed.

**4.2.16** A series of Guidance Notes on various aspects relating to copyright and

official publishing can be obtained from the HMSO, Cabinet Office, or via their Website at <http://www.hmso.gov.uk/guides.htm>.

### **4.3 Conduct: Standards of Propriety**

#### **Rules**

**4.3.1** Departments and agencies must not, unless the civil servant has fully disclosed the measure of his/her interest in the contract and senior management has given permission, let contracts to:

- a. any civil servant in the department or agency;
- b. any partnership of which a civil servant in the department or agency is a member; or
- c. any company where a civil servant in the department or agency is a director (except as a nominee of the department or agency).

To enforce this rule, departments and agencies must require their staff to report relevant business interests.

**4.3.2** Departments and agencies must ensure that civil servants who are bankrupt or insolvent are not employed on duties which might permit the misappropriation of public funds.

**4.3.3** Departments and agencies must not sell surplus Government property to civil servants who have been able to get special knowledge about the condition of the goods because of their official duties; or have been officially associated with the disposal arrangements; or at a discount that would not be available to a member of the public.

**4.3.4** Departments and agencies must require staff to seek permission before accepting any outside employment which might affect their work either directly or indirectly and must make appropriate arrangements, which reflect the Business

Appointments Rules (Annex A) and any local needs, for the handling of such requests.

**4.3.5** Departments and agencies must inform staff, taking into account the principle in paragraph 4.1.3(d), of the circumstances in which they need to report offers of gifts, hospitality, awards, decorations and other benefits and of the circumstances in which they need to seek permission before accepting them. In drawing up such rules departments and agencies must draw the attention of staff to the provisions of the Prevention of Corruption Acts 1906 and 1916.

**4.3.6** Departments and agencies must consult the Foreign and Commonwealth Office if a civil servant is offered a decoration or medal by a foreign government.

#### **Standards of conduct to be reflected in staff handbooks**

**4.3.7** Civil servants must familiarise themselves with, and as appropriate abide by, the rules on the acceptance of outside appointments by Crown servants (Annex A).

**4.3.8** Civil servants may freely invest in shareholdings and other securities unless the nature of their work is such as to require constraints on this. They must not be involved in taking any decision which could affect the value of their private investments, or the value of those on which they give advice to others; or use information acquired in the course of their work to advance their private financial interests or those of others<sup>1</sup>.

**4.3.9** Civil servants must therefore declare to their department or agency any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family (spouse, including

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<sup>1</sup> This is not intended to prevent civil servants from taking an equity stake in companies which exploit their research, subject to appropriate safeguards in accordance with the Cabinet Office guidance on this subject (Personnel Information Note (PIN) 43 (<http://www.civilservice.gov.uk/pins>)).

partner where relevant, and children) hold, to the extent which they are aware of them, which they would be able to further as a result of their official position. They must comply with any subsequent instructions from their department or agency regarding the retention, disposal or management of such interests.

**4.3.10** Civil servants who become bankrupt or insolvent must report the fact to their department or agency. Civil servants must let their department or agency know if they are arrested and refused bail, or if they are convicted of any criminal offence. This does not apply to a traffic offence unless an official car was involved, or the penalty included imprisonment or disqualification from driving.

#### **4.3 ANNEX A: RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS**

##### **Introduction**

- 1.** It is in the public interest that people with experience of public administration should be able to move into business or other bodies, and that such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former Crown servant takes up an outside appointment there should be no cause for any suspicion of impropriety.
- 2.** The Business Appointment Rules provide for the scrutiny of appointments which former Crown servants propose to take up in the first two years after they leave the service. To provide an independent element in the process of scrutiny, the Advisory Committee on Business Appointments is appointed by the Prime Minister, comprising people with experience of the relationships between the Civil Service and the private sector. The Committee gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.
- 3.** The aim of the rules is to maintain public trust in the Crown services and in

the people who work in them, and in particular:

**a.** to avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or

**b.** to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of their official duties, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

**4.** Most applications submitted under the rules are approved without condition. In some cases approval may be given subject to a waiting period or other conditions. The imposition of conditions does not imply anything improper in a Crown servant's relationship with the prospective employer. Rather, it is an indication that an immediate move from Crown service to the employer, or one without conditions, might be open to criticism or misinterpretation. Experience has shown that employers generally are content to accept such constraints as being reasonable in an open society which places a high premium on the integrity and impartiality of its civil and military services.

**5.** This version of the rules applies to the Home Civil Service. There are corresponding requirements for other Crown servants including the Armed Forces, the Diplomatic Service, and certain office holders. There are different requirements and different procedures for staff at different levels.

#### **Who must apply?**

**6.** Within two years of leaving Crown employment, and in the circumstances set out in the following paragraph, civil servants must obtain Government approval before taking any form of full, part-time or fee-paid employment:

**a.** in the United Kingdom; or

b. overseas in a public or private company or in the service of a foreign government or its agencies.

7. Applications for approval must be made by civil servants:

- if they are in the Senior Civil Service in salary band 4 or above and in a post attracting a minimum JESP score of 13; or if they are specialists or Special Advisers of equivalent standing; or
- if they have had any official dealings with their prospective employer during the last two years of Crown employment; or
- if they have had official dealings of a continued or repeated nature with their prospective employer at any time during their period of Crown employment; or
- if they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
- **if their official duties during the last two years of Crown employment have involved advice or decisions benefitting their prospective employer, for which the offer of employment could be interpreted as reward, or have involved developing policy, knowledge of which might be of benefit to the prospective employer; or**
- if they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.

8. The rules do not apply to:

a. unpaid appointments in non-commercial organisations;

- b. appointments in the gift of Ministers; or
      - c. in the case of part-time staff, appointments held with their department's or agency's agreement while they were civil servants.
9. Approval is required for:
  - a. the initial appointment; and
  - b. any further appointment within two years of leaving Crown employment.
10. Staff on secondment from the Civil Service to other organisations are subject to the rules in the same way as other civil servants.
11. Staff on secondment to the Civil Service from other organisations are also subject to the rules in the same way as civil servants unless they return to their seconding organisation at the end of their secondment and remain there for two years.
12. Special Advisers are subject to the rules in the same way as other civil servants unless they are offered a post by the same employer which they left on being appointed as advisers and remain there for two years. The rules do not apply to Special Advisers appointed before 1 April 1996 on terms exempting them from the rules, unless they have volunteered to be subject to them.

### **Reporting offers of employment**

13. Departments and agencies must require staff considering any approach from an outside employer offering employment for which approval would be required under the rules (or which seems likely to lead to such an offer) to report the approach as follows:
  - Heads of Department: inform the Minister in charge of the Department;
  - Other members of the Senior Civil Service (or their equivalents): inform the Head of the Department or his or her deputy as

appropriate;

- Other staff: inform a senior member of staff in the reporting chain.

**14.** Staff in sections concerned with procurement or contract work should report any such approach, particularly where it emanates from an outside employer with whom they or their staff have had official dealings, whether or not they are considering taking it up.

### **Applications**

**15.** Departments and agencies must ensure that application forms are completed for all requests for approval for appointments under the rules. For this purpose:

- a.** the applicant must be asked to supply:
  - full details of the proposed employment;
  - details of any official dealings with a prospective employer or with any other organisation, including any competitors of the prospective employer; and
- b.** departments must ensure that they seek the comments of a countersigning officer who can verify, as far as possible, the information supplied by the applicant.

Departments are strongly recommended to adopt the Cabinet Office model form for applicants.

### **Terms of approval**

- 6.** Applications under these rules will be approved either:
- a.** unconditionally; or
  - b.** subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate. Conditions may include:



- a waiting period before taking up the appointment<sup>1</sup>;
- an absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government;
- a ban on the involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer;
- in the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature, or from named employers.

**17.** In view of their access to policy issues at the highest levels, all applications from Permanent Secretaries, including second Permanent Secretaries, and their direct equivalents which are referred to the Advisory Committee are subject to an automatic minimum waiting period of three months between leaving Crown employment and taking up an outside appointment, unless they have been appointed from outside the Civil Service on a limited period contract. The Advisory Committee has the discretion to recommend waiving the minimum waiting period if, in the Committee's view, the appointment is one which is entirely unconnected with the applicant's official knowledge and no questions of propriety arise. Although applicants serving on limited period contracts will not be required to serve the automatic waiting period, approval of applications may be subject to waiting periods or other conditions in the same way as any other application.

**18.** Appointments approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments which are subsequently taken up may be the subject of a public announcement. Staff at those levels are required to confirm

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<sup>1</sup> If the Advisory Committee believes that the appointment is unsuitable, it may add that advice to its recommendation that the application be subject to a waiting period of two years, and that advice will be available for publication.

to their department (or former department) their intentions to take up any appointment for which an application has been considered by the Committee. The new employer may wish to include a reference to the Prime Minister's approval in their own announcement of the appointment, and applicants should discuss with the department and the new employer the terms of the statement; in other cases, the Government reserves the right to publish the terms of the Prime Minister's decision. A consolidated record of all appointments taken up will be included in the Advisory Committee's annual report.

### **Procedures for Departments and Agencies**

#### ***Making staff aware of the rules***

**19.** Departments and agencies must:

- a.** draw the attention of staff to the existence of the rules in letters of appointment. Departments and agencies are advised to take special care to explain to staff recruited from outside the Crown service either on secondment or on a limited period contract their position under the rules on appointment;
- b.** include a copy of the rules in departmental and agency staff handbooks;
- c.** issue regular reminders to staff at all levels about the rules and the circumstances in which they apply, concentrating on particular areas as necessary;
- d.** require members of the Senior Civil Service in signing their contracts of employment to acknowledge in writing that they have seen and are conversant with the rules - and ask them to provide a further, similar acknowledgement on retirement or resignation from the Crown Service or at the end of a period appointment;
- e.** remind all staff of the rules:
  - on retirement;

- on resignation;
- at the end of a limited period appointment.

(In the case of staff who resign or come to the end of a limited period appointment this should normally take the form of providing them with a copy of the rules and an application form. The Cabinet Office model application form incorporates the relevant extracts from the rules for this purpose.)

20. Departments and agencies are advised:

- a. to take all opportunities provided by letters of resignation, exit interviews and requests for references to check whether an application under the rules is necessary; and
- b. to ensure that personnel and line managers of staff working in areas which involve contact of a commercial nature with outside organisations, particularly on procurement or contract work, are issued with regular reminders to monitor resignations by staff employed in those areas to ensure that applications are made where necessary.

#### *Approval of applications*

21. Decisions on applications, other than those referred to the Prime Minister through the Advisory Committee and those by Special Advisers, rest with the Minister in charge of the Department after taking advice of the Cabinet Office as appropriate. The Minister may, however, approve arrangements under which defined categories of cases may be decided without reference to the Minister. Decisions on applications by Special Advisers taken at departmental level are the responsibility of the permanent Head of the Department after taking advice of the Cabinet Office, as appropriate, which may consult the Head of the Home Civil Service or refer the application to the Advisory Committee.

22. In cases where it is proposed to impose a waiting period or other conditions, applicants should be given the opportunity of having an interview with an appropriate departmental officer if they so choose.

23. There may be occasions when a Minister decides that the national interest is the overriding consideration, regardless of the circumstances of the case. In all such cases, the normal procedures for dealing with applications must first be followed, including reference to the Advisory Committee where that is appropriate. A decision that the national interest should override other considerations may only be taken by the Minister in charge of the department or, in the case of applications referred to the Advisory Committee, by the Prime Minister.

24. Departments and agencies must:

- a. inform prospective employers of any conditions which have been attached to the approval of an appointment;
- b. make a careful record of all decisions to approve appointments under the rules, noting in particular any conditions that were applied;
- c. submit quarterly statistical returns, including nil returns, of applications dealt with under the rules to the Cabinet Office in the form requested.

*Procedure for dealing with applications*

25. *All Permanent Secretary posts; other posts in departments which satisfy all of the following criteria: have a JESP score of 18 or more, have a pay range within the top three pay bands, and where the post reports direct to a Permanent Secretary or is itself the Head of a Department or Agency; and specialists and Special Advisers of equivalent standing.*

Applications are normally approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments (apart from those from Special Advisers). All cases must be referred to the Cabinet Office which will refer them to the Advisory Committee unless the Head of the Home Civil Service agrees that such reference would be inappropriate, for example where the appointment is to a non-commercial body, such as a university. Applications from Special Advisers of equivalent standing will be approved by the Head of the Home Civil Service on

the advice of the Advisory Committee.

*26. Other Heads of Department; other postholders in the Senior Civil Service in salary band 4 and above and in a post attracting a minimum JESP score of 13; and specialists and Special Advisers of equivalent standing.*

All applications must be referred to the Cabinet Office which will consult the Head of the Home Civil Service.

*27. Other members of the Senior Civil Service; and specialists and Special Advisers of equivalent standing.*

Departments and agencies must consult the Cabinet Office unless:

- the applicant has had no official dealings with the prospective employer at any time during his or her period of Crown Service and there appears to be no risk of criticism; or
- the employment is with a non-commercial organisation.

*28. Staff outside the Senior Civil Service.*

Departments and agencies do not need to consult the Cabinet Office where:

- the applicant has had no official dealings with the prospective employer in the previous two years, or at most dealings of a casual nature; and
- there appears to be no risk of the disclosure of commercially sensitive information; or
- the appointment is with a non-commercial organisation.

29. Departments and agencies may refer any application to the Cabinet Office for advice. Any application may be referred to the Advisory Committee if the Head of the Home Civil Service and the Departmental Minister so agree.

30. When referring cases to the Cabinet Office departments must submit:

- a. a copy of a completed and countersigned application form;

b. a covering letter, giving their own assessment of the application, including the outcome of any consultations with competitors of the prospective employer, and their proposed or recommended course of action.

31. Guidance for departments and agencies preparing assessments of applications for submission to Cabinet Office and considering applications for departmental approval is provided in Section 4.3 Annex B.

#### **4.3 ANNEX B: GUIDANCE FOR DEPARTMENTS AND AGENCIES ON THE RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS**

1. The rules are designed primarily to counter any suspicion that an appointment might be a “reward for past favours” granted by the applicant to the employer, or that a particular employer might gain an unfair advantage over its competitors by employing someone who had access to what they might legitimately regard as their own “trade secrets”.

2. An appointment might also be sensitive because of the employer’s relationship with the department and because of the nature of any information which the applicant possesses about Government policy.

3. While appointments must not only be but also be seen to be free from reproach and departments must therefore take account of public perception, departments should be prepared to defend an appointment which they were otherwise willing to approve when public concern can be shown to be unjustifiable.

#### **The employer and the applicant**

4. In most cases problems will occur only if the applicant has had some degree

of contact with the prospective employer, giving rise to criticism that the post is a “reward for past favours”. Departments are asked to take the following into account:

- a.** how much of the contact was in the course of official duties;
- b.** how significant was the contact;
- c.** the nature of the proposed employment;
- d.** the connection between the new job and the applicant’s previous official duties.

**5.** In order to establish whether the applicant was able to exert any degree of influence over the outcome of contractual or other dealings with the prospective employers, departments are advised to establish:

- a.** whether the individual was acting as a member of a team, jointly with other individuals in the department or in Government more widely, or taking sole responsibility;
- b.** whether the employer benefitted substantially from such dealings;
- c.** whether contact was direct;
- d.** whether it was indirect (i.e. through those for whom the applicant was responsible, whether or not they normally worked for him or her).

**6.** Departments are advised to take into account contacts in the course of official duty which have taken place:

- a.** at any time in the two years before resignation or retirement;
- b.** earlier, where the association was of a continued or repeated nature.

**7.** Departments are advised to consider in particular whether the applicant has been:

- a.** dealing with the receipt of tenders from the employer;
- b.** dealing with the award of contracts to the employer;

- c. dealing with the administration or monitoring of contracts with the employer;
- d. giving professional or technical advice about such contracts whether before or after they were awarded;
- e. involved in dealings of an official but non-contractual nature with the employer (this is particularly important in the circumstances set out in paragraph 9 below).

8. Departments should consider the circumstances of an applicant's departure as a component of considering each application on its merits. Staff-reduction policies will not justify reducing standards of propriety, or any weakening of the element of protection which the rules offer to third parties in respect of trade secrets. If a civil servant is asked to retire, or is offered early retirement, at relatively short notice, or is unexpectedly made redundant, any presumption that he or she had been paving the way to subsequent employment by offering favours to potential employers may largely be removed. Conversely a protracted period of uncertainty might heighten concerns that individuals were anticipating redundancy by cultivating potential employers improperly. On balance, where departments and agencies intend to reduce numbers during a relatively short period of a year or so, unexpected departures should normally be considered as a factor mitigating any concerns on grounds of rewards.

#### **The employer and the Government**

9. The relationship of the prospective employer to the Government may be a relevant factor in considering applications. Departments are advised to pay special attention to appointments where the employer:

- a. has a contractual relationship with the department;
- b. is regulated by the department;
- c. receives subsidies, loans, guarantees or other forms of financial assistance from the department;



- d. is one in which the Government is a shareholder; or
- e. is one with which departments or branches of Government or the Armed Services are, as a matter of course, in a special relationship.

### **Overseas employers**

**10.** The same considerations apply to foreign publicly-owned institutions or companies as to their UK counterparts. If the prospective employer is a foreign government, departments are advised to consider whether the applicant has information that would benefit that government to the detriment of HM Government or its allies. This can arise where the person:

- a. has been giving advice to HM Government on policies affecting the foreign government; or
- b. would have been in a position to gain special knowledge of HM Government's policies and intentions concerning the foreign government.

### **Government policy or business**

**11.** Many Crown servants deal with private interests on behalf of the Government. They have special knowledge of how the Government would be likely to react in particular circumstances. Departments are advised to consider whether the application could be, or could be thought to be, significantly helpful to the employer in dealing with matters where policy is developing or legislation is being prepared in a way which might disadvantage competitors of that employer. This applies in particular to specific areas where:

- a. there has been a negotiating relationship between the Department and the employer;
- b. the applicant has been involved in policy discussions within the department leading to a decision of considerable benefit to the employer;
- c. the applicant has been involved in policy discussions within the

department, knowledge of which might give the employer an improper advantage over its competitors; or

**d.** where there is a risk of public criticism that the applicant might have scope to exploit contacts in his or her former department for commercial purposes.

In such cases, departments are asked to consider the implications of the applicant's joining the employer, and be guided accordingly.

### **The employer and competitors' trade secrets**

**12.** Appointments might be criticised on the grounds that the applicant had access to information about his or her prospective employer's competitors which they could legitimately regard as "trade secrets". Concern on this score can arise whether or not the applicant has had previous dealings with the prospective employer. Departments are strongly advised to consult competitors as a matter of course preferably using a standard letter based on the Cabinet Office model letter, to see whether they have any objections to the appointment.

### **Consultancies**

**13.** Individuals who are to be employed on a consultancy basis (either for a firm of consultants or as an independent, self-employed consultant, competing for commissions in the open market—a "brass plate" consultancy) should be treated in the same way as other applicants under the rules. Extra care is needed, however, in dealing with such applications.

**14.** In the case of an applicant wishing to take up a salaried appointment with a firm of consultants, the "rewards for past favours" issue will relate almost exclusively to the nature of any previous dealings between the applicant and the firm he or she is seeking to join. Departments will, however, need to consider the "trade secrets" question both from the point of view of any competitors of the consultancy firm and then, more generally from the point of view of the service

which the applicant will be offering on behalf of the consultant. It may be necessary to impose conditions on the appointment to protect the “trade secrets” of firms with which the applicant or the department had dealings.

**15.** Where an applicant wishes to set up a “brass plate” consultancy, the question of “rewards for past favours” does not arise in the usual way. But departments will wish to keep in mind the need:

- a.** to counter any suspicion of impropriety that might arise if such individuals were to be given lucrative contracts by clients with which they or their former departments had dealings; and
- b.** to protect “trade secrets” to which such individuals may have had access. There may be circumstances in which it would be undesirable for an independent consultant to offer services to a particular client where he or she has had access to the trade secrets of a competitor of the client. The fact that the competitor might also be free to use the same consultant, but did not choose to do so would not make the information any less sensitive or negate the potential advantage which could be gained by the client.

In approving applications to set up “brass plate” consultancies departments will, therefore, need to consider carefully the imposition of conditions in cases where such considerations apply.

**16.** Departments will also need to consider whether to apply conditions limiting contacts between applicants proposing to work as consultants and their former departments. This may be particularly relevant in the case of staff at senior levels, where there is a risk of public criticism that they could be exploiting contacts in their former departments for commercial purposes.

#### **4.4 Conduct: Political Activities**

## **Rules**

**4.4.1** Departments and agencies must make clear to staff any restrictions on their taking part in political activities. Political activities that may be subject to restriction are defined as follows:

**a.** at national level: holding, in a party political organisation, office which impinges wholly or mainly on party politics in the field of Parliament or the European Parliament; speaking in public on matters of national political controversy; expressing views on such matters in letters to the Press, or in books, articles or leaflets; being announced publicly as a candidate for Parliament or the European Parliament; and canvassing on behalf of a candidate for Parliament or the European Parliament or on behalf of a political party; and

**b.** at local level: candidature for, or co-option to, local authorities; holding in a party political organisation, office impinging wholly or mainly on party politics in the local field; speaking in public on matters of local political controversy; expressing views on such matters in letters to the Press, or in books, articles or leaflets; and canvassing on behalf of candidates for election to local authorities or a local political organisation.

**4.4.2** Departments and agencies must allow civil servants in industrial and non-office grades the freedom to take part in all political activities. These staff are known as the “politically free” category. The groups of staff to be included in this category are subject to the approval of the Minister for the Civil Service (Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987).

**4.4.3** Departments and agencies have discretion to permit other staff to take part in local or national political activities in accordance with paragraphs 4.4.9 and 4.4.10 below. In exercising their discretion, departments and agencies must pay due regard to the guidelines and principles in

## Annex A.

**4.4.4** In giving permission to participate in political activities to groups of staff or individuals, departments and agencies must make clear to them that the permission can be withdrawn at any time and without prior notice if there is a change in relevant circumstances.

**4.4.5** Departments and agencies must give civil servants who are refused permission to take part in political activities, or who have permission to do so withdrawn, a full explanation of the reasons for the decision, and inform them of their right of appeal to the Civil Service Appeal Board (see Section 12.1, Appeals).

**4.4.6** Departments and agencies must reinstate civil servants in the politically free group who resign to stand for election (see paragraph 4.4.20 below) provided they apply within a week of declaration day if they are not elected. If they are elected, they must still be subsequently reinstated if:

- a. they cease to be a Member after an absence from the Civil Service of not more than 5 years; and
- b. they have had at least 10 years service before their election; and
- c. they apply for reinstatement within 3 months of ceasing to be a Member.

If the first two of these conditions are not met, reinstatement is at the discretion of the department or agency, but departments and agencies are encouraged to treat applications sympathetically.

**4.4.7** Departments and agencies have discretion to reinstate civil servants who are not in the politically free category following resignation to stand for election to Parliament or the European Parliament. Discretion to reinstate should normally be exercised only where it is possible to post staff, at least initially, to non-sensitive areas.

**4.4.8** Where a civil servant is reinstated, the period of the break will not count

for pay or superannuation purposes. Salary will not be payable during the break.

### **Standards of conduct to be reflected in staff handbooks**

**4.4.9** Civil Servants in “the politically restricted” category i.e. members of the Senior Civil Service and civil servants at levels immediately below the Senior Civil Service, plus members of the Fast Stream Development Programme (Administrative and European), must not take part in national political activities (paragraph 4.4.1a). (Before 1 April 1996 this category would have included all staff at Grade 7 level and above, plus Administration Trainees and Higher Executive Officers (D)). They must seek permission to take part in local political activities (paragraph 4.4.1b) and must comply with any conditions laid down by their department or agency.

**4.4.10** Civil servants outside the “politically restricted” category (paragraph 4.4.9) and the “politically free” category (paragraph 4.4.2) must seek permission to take part in national or local political activities (paragraph 4.4.1) unless they are in a grade or area that has already been given permission to do so by means of a specific mandate from the department or agency. Where they already have permission under such a mandate, they must notify the department or agency of intended political activities prior to taking them up. They must comply with any conditions laid down by their department or agency.

**4.4.11** Civil servants must not take part in any political activity when on duty, or in uniform, or on official premises.

**4.4.12** Civil servants must not attend in their official capacity outside conferences or functions convened by or under the aegis of a party political organisation.

**4.4.13** Civil servants not in the politically free category must not allow the expression of their personal political views to constitute so strong and so comprehensive a commitment to one political party as to inhibit or appear to inhibit loyal and effective service to Ministers of another party. They must take particular care to express comment with moderation, particularly about matters for

which their own Ministers are responsible; to avoid comment altogether about matters of controversy affecting the responsibility of their own Ministers, and to avoid personal attacks.

**4.4.14** They must also take every care to avoid any embarrassment to Ministers or to their department or agency which could result, inadvertently or not, from bringing themselves prominently to public notice, as civil servants, in party political controversy.

**4.4.15** Civil servants who are not in the politically free category and who have not been given permission to engage in political activities must retain at all times a proper reticence in matters of political controversy so that their impartiality is beyond question.

**4.4.16** Civil servants do not need permission to take part in activities organised by their trade unions. Elected trade union representatives may comment on Government policy when representing the legitimate interests of their members, but in doing so they must make it clear that they are expressing views as representatives of the union and not as civil servants.

**4.4.17** Civil servants given permission to take part in local political activities must tell their department or agency if they are elected to a local authority.

**4.4.18** Civil servants given permission to take part in political activities must give up those activities if they are moved to a post where permission cannot be granted.

**4.4.19** Civil servants are disqualified from election to Parliament (House of Commons Disqualification Act 1975) and from election to the European Parliament (European Parliamentary Elections Act 1978). They must therefore resign from the Civil Service before standing for election in accordance with paragraphs 4.4.20 and 4.4.21.

**4.4.20** Civil servants in the politically free group are not required to resign on adoption as a prospective candidate. But to prevent their election being held to be

void they must submit their resignation before they give their consent to nomination in accordance with the Parliamentary Election Rules.

**4.4.21** All other civil servants, including civil servants on secondment to outside organisations, must comply with the provisions of the Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987. They must not issue an address to electors or in any other manner publicly announce themselves or allow themselves to be publicly announced as candidates or prospective candidates for election to Parliament or the European Parliament; and they must resign from the Civil Service on their formal adoption as a Parliamentary candidate or prospective candidate in accordance with the procedures of the political party concerned. Civil servants not in the politically free group who are candidates for election must complete their last day of service before their adoption papers are completed.

#### **4.4 ANNEX A: GUIDELINES AND PRINCIPLES ON PARTICIPATION IN POLITICAL ACTIVITIES**

- 1.** In exercising discretion over participation by civil servants in the political activities described in paragraph 4.4.3, departments and agencies must pay regard to the following principles:
  - a.** permission should normally only be refused where civil servants are employed in sensitive areas in which the impartiality of the Civil Service is most at risk. Permission may be granted to individuals or groups to undertake either only national or only local political activities;
  - b.** permission should normally be granted in all other circumstances, provided departments and agencies are satisfied that the civil servants concerned are aware of the need to observe the principles set out in paragraphs 4.4.10 and 4.4.11 and the other rules governing the conduct of civil servants, including those relating to the use of official information.



**2.** In applying these principles, departments and agencies should regard posts as being “sensitive” if:

- a.** they are closely engaged in policy assistance to Ministers (or to non-departmental Crown bodies) such as tendering advice or executing immediate Ministerial directives;
- b.** they are in the private offices of Ministers or senior officials or in areas which are politically sensitive or subject to national security;
- c.** they require the postholder regularly to speak for the Government or their department or agency in dealings with commercial undertakings, pressure groups, local government, public authorities or any other bodies;
- d.** the postholder represents the Government in dealing with overseas governments; or
- e.** the postholder is involved in a significant amount of face to face contact with members of the public who may be expected to know of the postholder’s political activities and makes, or may appear to make, decisions directly affecting them personally.

**3.** Departments and agencies are advised to apply as helpful a postings policy as possible to staff who wish to become or remain politically active, provided the staff concerned understand that this may have the effect of limiting their range of experience; and to identify blocks of posts in which staff may be granted advance permission to take part in the political activities described in paragraph 4.4.1.

**4.** Where a civil servant is adopted as a parliamentary candidate and is therefore required to resign, departments and agencies may, at their discretion, make an ex-gratia payment equivalent to the period of notice to be given to the individual if the adoption process does not reasonably allow for the individual to give full notice.

#### **4.5 Discipline: Rules and Code of Practice**

**4.5.1** The Minister for the Civil Service is responsible for the central framework outlined in paragraphs 4.5.2 to 4.5.15.

**4.5.2** Departments and agencies are responsible for their own disciplinary arrangements within the central framework set out below. They must:

- a.** ensure that staff are aware of the disciplinary procedures that will apply to them and of the circumstances in which they may be invoked; and
- b.** reflect the rules at paragraphs 4.5.10 to 4.5.16 and Annex A in their own disciplinary procedures.

The attention of departments and agencies is drawn to the following as guides to the drawing up of their own disciplinary procedures:

- a.** the ACAS Code of Practice on Disciplinary and Grievance Procedures ([http://www.acas.org.uk/publications/pub\\_problems.html](http://www.acas.org.uk/publications/pub_problems.html));
- b.** the Equal Opportunities Commission Code of Practice for the elimination of discrimination on grounds of sex and marriage and the promotion of equality of opportunity in employment (<http://www.eoc.org.uk/index.asp>); and
- c.** the Commission for Racial Equality Code of Practice: Race Relations (<http://www.cre.gov.uk>).

These Codes of Practice are given significant weight in Employment Tribunal cases.

**4.5.3** Personnel Information Note (PIN) 42 (<http://www.civilservice.gov.uk/pins>) provides guidance following advice from the President of the Employment Tribunals (England and Wales) that Employment Tribunals would be critical of disciplinary procedures which denied an employee the opportunity to make representations at a hearing direct to the decision making officer.

**4.5.4** Recognised trade unions have the right to make representations on procedural matters and on general principles underlying disciplinary action. Such representations may be made centrally and at departmental and agency level.

**4.5.5** Disciplinary procedures may be invoked in certain circumstances in addition to, or instead of, criminal investigations or legal proceedings. Departments and agencies should consult their legal advisers before taking disciplinary action in parallel with criminal proceedings.

**4.5.6** It is for departments and agencies to define the circumstances in which initiation of disciplinary procedures may be appropriate. It is not necessary to attempt to define every circumstance. However departments' and agencies' rules for staff must make clear the circumstances in which the application of the disciplinary procedures may be considered. These must include:

- a.** breaches of the organisation's standards of conduct or other forms of misconduct (see paragraph 4.1.4); and
- b.** any other circumstances in which the behaviour, action or inaction of individuals significantly disrupts or damages the performance or reputation of the organisation.

**4.5.7** The central rules on the limited efficiency and inefficiency procedures are given in Section 6.3.

**4.5.8** The sanctions applied as a result of disciplinary proceedings are a matter for the department or agency concerned, in the light of the circumstances of each case.

## **Rules**

### **Disciplinary procedures**

**4.5.9** Subject to the following rules, the level at which decisions are made whether or not to proceed with disciplinary action, the disciplinary procedures to be followed, and the arrangements for appeals, are matters for departments and agencies.

**4.5.10** Disciplinary decisions must be taken by someone at least one level higher than the individual concerned and appeals must be heard by someone at least one level higher than the person making the disciplinary decision. Wherever possible, appeal decisions should be taken by someone independent of the original disciplinary decision.

**4.5.11** Decisions concerning Permanent Secretary, Heads of Department and their direct equivalents and any other Heads of Department must be taken by the Head of the Home Civil Service after consultation with the Minister of the Department concerned and, as appropriate, the Prime Minister. Below that level, decisions concerning postholders in Senior Civil Service salary band 4 and above with a minimum JESP score of 13 must be taken by the Permanent Head of the Department or Chief Executive of the Agency. Decisions concerning Chief Executives below that level must be taken by the Permanent Head of Department. Individuals in these cases have a right of appeal to the Head of the Home Civil Service.

**4.5.12** Decisions not to proceed with disciplinary action in cases of serious fraud, other than where the individual is being prosecuted, must be taken by the Head of Department or Chief Executive of the agency after consultation with the responsible Minister.

#### **Trade union representation**

**4.5.13** Staff must be given the right to the assistance of a trade union representative or colleague throughout formal disciplinary proceedings.

#### **Appeals**

**4.5.14** Departments and agencies must make clear to individuals their rights of appeal against disciplinary decisions. They must allow staff who are dismissed to appeal to the Civil Service Appeal Board if they are eligible to do so (see paragraph 12.1.27). They must allow a right of appeal under the personal grievance procedure (see paragraph 12.1.4) to:

- a. staff who are dismissed but ineligible to appeal to the Civil Service Appeal Board; and
- b. staff who are not dismissed.

### **Suspension from duty**

**4.5.15** Individuals under criminal investigation or disciplinary procedures may be suspended from duty if necessary to protect the public interest. Pay may be withheld wholly or partly during suspension. During suspension, only basic pay (defined as that which would be paid during the first six months of sickness absence) may be paid, and departments and agencies have discretion to decide whether the individual on suspension should receive full basic pay or a proportion of it. Pay withheld during suspension may be forfeited wholly or partly as a result of a disciplinary decision. Any pay not forfeited must be paid retrospectively and reckoned under the Principal Civil Service Pension Scheme in the normal way.

**4.5.16** Departments and agencies must apply, where appropriate, the rules that apply to the recovery of losses to public funds on dismissal and to the forfeiture of superannuation benefits in respect of dismissal for certain criminal offences. These rules are set out in Annex A.

## **4.5 ANNEX A: RECOVERY OF LOSSES TO PUBLIC FUNDS**

**1.** On dismissal for an offence involving loss to public funds, any sums unpaid, for example in respect of salary or wages up to the last day of duty, or of income tax overpaid on salary may be withheld as a set-off against the loss. Similar set-offs should be made if someone who would have been dismissed for an offence resigns before the dismissal can be put into effect. The Inland Revenue should be notified of any sums so withheld in respect of income tax refund, and at the same time be requested themselves to withhold the refund of overpayment of tax. If the amount of tax from these sources is less than the loss to public funds, it

may be possible to recover the balance from any superannuation benefits payable. Civil Service Pensions Division, Cabinet Office should be consulted at an early stage and their authority obtained for the deduction to be made.

**Forfeiture of Superannuation Benefits (see also Section 12.1)**

2. Automatic loss of pension rights applies only where a civil servant is convicted of treason.
3. The Cabinet Office exercises the power under rule 8.2 of the Principal Civil Service Pension Scheme to withhold superannuation benefits in whole or in part if a civil servant or former civil servant is convicted of:
  - a. one or more offences under the Official Secrets Act 1989 for which the person concerned has been sentenced to a term of imprisonment of at least ten years or has been sentenced on the same occasion to two or more consecutive terms amounting in the aggregate to at least 10 years; or
  - b. an offence in connection with any employment to which the PCSPS applies, being an offence which is certified by a Minister of the Crown either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service.
4. The guaranteed minimum pension payable under the provisions of the Social Security Pensions Act 1975, as amended, must be paid in the case of paragraph 3b, but that element of a pension can be withheld if forfeiture is applied under paragraph 3a or as a result of a conviction for treason. Before the Cabinet Office exercises this power to withhold superannuation benefits, the case will be discussed on a “without prejudice” basis with the trade union side.
5. The Cabinet Office will normally advise Ministers on the certification of offences in accordance with paragraph 3b. Employment Conditions and Statistics Division, Cabinet Office should therefore be consulted at an early stage in any case in which criminal proceedings are pending and the charges are such that a withholding of superannuation benefits under either paragraph 3a or b will need to

be considered. The decision on forfeiture is however a matter for the Civil Service Pensions Division, Cabinet Office which should be kept informed of discussions. Departments and agencies should subsequently notify both Divisions of the outcome of the trial and of the possibility of an appeal. If there is a conviction, the department or agency concerned may make recommendations about the forfeiture of superannuation benefits but these recommendations should not be made known to the individual(s) concerned. They should, however, be supplied with a copy of rule 8.2 of the PCSPS and advised that representations in writing about any matters relevant to the question of forfeiture may be submitted. Such representations may be made on their behalf by a colleague or trade union representative.

**6.** The department or agency concerned will be told whether or not it is proposed to withhold superannuation benefits and, if forfeiture is intended, what benefits will be withheld. The department or agency will be told also the period (normally 21 days) within which notice of intent to appeal must be made by the person concerned. It will be for the employing department or agency to pass that information to the person. Attention should be specifically drawn to the right of appeal and a further copy of rule 8.2 of the PCSPS should be provided. The individual should be advised that in the event of lodging an appeal full written representations may be made, prior to the hearing, to the Civil Service Appeal Board, whose judgement on whether or not, or to what extent, superannuation benefits should be forfeited will be accepted by the Cabinet Office. No action, therefore, should be taken either to pay superannuation benefits to a serving member of staff or to withhold them from somebody who is already retired until a final decision is promulgated by the Cabinet Office.

## **5. THE SENIOR CIVIL SERVICE**

### **5.1 General**

5.1.1 The Senior Civil Service comprises the most senior staff in departments and agencies. Departments and agencies may determine which posts are included in the Senior Civil Service, provided that they have a job weight (JESP) score of at least 7, and which staff will fill them.

5.1.2 Responsibility for management of the Senior Civil Service is principally a matter for departments and agencies. However, some terms and conditions are determined centrally. These are summarised below, with cross references to other parts of the Management Code where appropriate.

5.1.3 The Cabinet Office assists departments and agencies to develop expertise and promote cohesion across the Senior Civil Service, through a common broad management framework and by encouraging mobility between departments and agencies. Much of this is achieved through provision of central programmes, support and co-operation rather than by applying central rules or requirements.

### **5.2 The SASC Group**

5.2.1 The Senior Appointments Selection Committee (SASC) advises the Head of the Home Civil Service on the senior staffing position across the service as well as on individual appointments. The “SASC Group” of posts is listed by the Secretary of SASC and made available to departments and agencies. In general they meet all the following criteria:

- a. the post has a job weight (JESP) score of 18 or more;
- b. the pay of the present incumbent or the proposed pay range is in the



top three pay bands; and

- c. the post reports directly to the Head of Department (or Second Permanent Secretary as appropriate) or is Head of Department or Agency.

The Prime Minister appoints Permanent Secretaries (on the recommendation of the Head of the Home Civil Service). Other appointments to the SASC Group must be approved by the Prime Minister on the recommendation of the Head of the Home Civil Service.

5.2.2 Departments and agencies must seek approval from the Cabinet Office before retaining staff in the SASC Group beyond the normal retirement age (see Section 11.3). Departments and agencies should also consult Cabinet Office before making moves affecting any members of this group, before appointing or temporarily appointing anyone within or into the group, and before retiring SASC Group staff early on any grounds.

### **5.3 Senior Civil Service Terms and Conditions**

5.3.1 The terms and conditions laid down centrally for the Senior Civil Service are summarised below.

#### **Contracts**

5.3.2 Departments and agencies must require individuals to sign a personal contract before taking up:

- a. a first appointment in the Senior Civil Service;
- b. any post which involves both a step change in responsibilities and an automatic pay increase payable under departmental or agency rules in recognition of those responsibilities; or
- c. a first post in the SASC Group.

5.3.3 Departments and agencies must consult the Cabinet Office in advance if

they wish to offer an appointment on terms significantly at variance with those set out in the model contract available from the Cabinet Office (<http://www.cabinet-office.gov.uk/civilservice/caje/publication.htm> ).

### **Selection and Succession Planning**

5.3.4 Departments and agencies should manage the most senior staff in accordance with the Cabinet Office guidance “A Checklist of Processes for SASC Group Appointments”.

### **Appraisal**

5.3.5 Section 6.2 sets out arrangements for appraisal of members of the Senior Civil Service.

### **Pay and Grading**

5.3.6 Sections 7.1 and 6.1 set out the arrangements for Senior Civil Service pay and grading.

### **Hours**

5.3.7 Section 9.1 sets out the hours of work for full-time members of the Senior Civil Service.

### **Holidays and Leave**

5.3.8 The annual leave allowance for members of the Senior Civil Service is set out in Section 9.2.

### **Leaving the Civil Service**

5.3.9 Section 11.1 sets out the notice period to be given by members of the Senior Civil Service on resignation. Section 11.3 sets out the retirement age and the rules on extension.

### **Mobility**

5.3.10 Section 10.1 sets out the mobility obligation for members of the Senior Civil Service.

## **6. MANAGEMENT AND DEVELOPMENT**

### **6.1 Grading and Classification of Staff**

**6.1.1** Departments and agencies have authority to determine the number and grading of posts and the classification of their own staff outside the Senior Civil Service, subject to the following conditions.

#### **Conditions**

**6.1.2** Departments and agencies must develop arrangements for the grading of posts which are appropriate to their business needs, are consistent with the Government's policies on the Civil Service and public sector pay, and observe public spending controls. The exceptions to this condition are the Scottish Administration and the National Assembly of Wales who must develop arrangements for the grading of posts which are appropriate to their business needs and are consistent with the Government's policies on the Civil Service and take account of the Government's policies on public sector pay. The arrangements for the grading of posts must be developed in conjunction with the arrangements for the remuneration of staff, taking account of the conditions set out in Section 7.1.

#### **Senior Civil Service**

**6.1.3** Apart from Permanent Secretary, there are no central grades in the Senior Civil Service. Departments and agencies have discretion to place staff into pay bands within the broad framework laid down by the Cabinet Office and to classify them as they wish (see Section 7.1).

### **6.2 Personal Review**

**6.2.1** Departments and agencies have authority to determine personal review arrangements for their own staff outside the Senior Civil Service, subject to the following conditions. The term “personal review” covers both the appraisal of performance and the assessment of individual potential.

#### **Conditions**

**6.2.2** The means of rating overall performance must be capable of contributing to the organisation’s arrangements for making decisions on performance-related pay.

**6.2.3** Performance review systems and reporting arrangements must be capable of clearly identifying performance which is unsatisfactory or unacceptable.

**6.2.4** The design and development of departmental and agency systems for personal review must take account of any principles of good practice issued by Cabinet Office in consultation with departments and agencies.

#### **Senior Civil Service**

**6.2.5** The performance of all members of the Senior Civil Service is managed by departments and agencies, within a central framework determined by the Cabinet Office. Guidance is available from the Employment Policy and Practice Division, Cabinet Office.

### **6.3 Poor Performance: Inefficiency and Limited Efficiency**

#### **Inefficiency**

**6.3.1** Departments and agencies must have procedures in place for dealing with inefficiency, that is:

- a. poor performance - where the work of a member of staff has deteriorated to an unacceptable standard; and

b. poor attendance - where the frequent absence of a member of staff adversely affects the efficient running of the office.

**6.3.2** In determining their procedures, departments and agencies must:

a. have regard to the ACAS advisory handbook “Discipline at Work” and the ACAS Code

of Practice on Disciplinary and Grievance Procedures;

([http://www.acas.org.uk/publications/pub\\_problems.html](http://www.acas.org.uk/publications/pub_problems.html))

b. provide for staff to have the right to the assistance of a trade union representative or colleague during a hearing under formal proceedings about poor performance;

c. refer cases to the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS when either management or the person concerned consider that the causes of poor performance or poor attendance may make retirement on medical grounds appropriate without prejudice to any decision made by the medical services adviser (see Section 11.10); and

d. inform staff of their right to:

- have their case referred to the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS; and
- apply for medical retirement.

**6.3.3** Where performance or attendance does not improve and medical retirement is inappropriate, staff may be dismissed on grounds of inefficiency (see Section 11.4).

#### **Limited efficiency**

**6.3.4** Departments and agencies must have procedures in place for dealing with limited efficiency. This denotes performance which is not sufficiently poor to be considered inefficient, but:

- a. no longer measures up to the requirements of the post; or
- b. where the individual fails to carry out his or her full duties satisfactorily.

**6.3.5** In determining their procedures, departments and agencies must:

- a. have regard to the ACAS Advisory Handbook “Discipline at Work” and the ACAS Code of Practice on Disciplinary and Grievance Procedures ([http://www.acas.org.uk/publications/pub\\_problems.html](http://www.acas.org.uk/publications/pub_problems.html)) ; and
- b. provide for staff to have the right to the assistance of a trade union representative or colleague during a hearing under formal proceedings about poor performance.

**6.3.6** Where performance does not improve, staff may retire or be retired early on grounds of limited efficiency (see Sections 11.7 and 11.6).

## **6.4 Promotion and Lateral Transfers**

**6.4.1** Departments and agencies have authority to determine promotion and lateral transfer arrangements for their own staff, subject to the following conditions.

### **Conditions**

**6.4.2** Departments and agencies must ensure that:

- a. all promotions and lateral transfers follow from a considered decision as to the fitness of individuals, on merit, to undertake the duties concerned;
- b. the design and development of their promotion and lateral transfer systems reflect any guidance and principles of good practice issued by the Cabinet Office in consultation with departments and agencies;

- c. their own promotion and lateral transfer procedures are clearly set out in departmental and agency staff handbooks;
- d. promotion of staff on fixed term appointments is in accordance with the Civil Service Commissioners' Recruitment Code (see Section 1.1 Annex A); and
- e. they obtain approval from the Secretary of SASC (see Section 5.2) before promoting staff into one of the SASC Group of posts or moving staff from one post to another within the Group.

### **Responsibilities of Ministers, Heads of Departments and Agency Chief Executives**

**6.4.3** Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the National Assembly for Wales have a responsibility to ensure that the conditions in paragraph 6.4.2 above are met. Subject to this, Heads of Departments and Agency Chief Executives are responsible for the promotion and lateral transfer arrangements for their staff. Ministers (which includes Scottish Ministers and the First Secretary and Assembly Secretaries of the National Assembly for Wales) will have a legitimate interest in a small number of posts, outside the SASC Group, for example because the postholder will work directly to them. In filling such posts by promotion or lateral transfer, the Head of Department or Agency Chief Executive is responsible for recommending to the Minister suitable individuals for consideration, selected in accordance with the conditions set out in paragraph 6.4.2 above.

## **7. PAY AND ALLOWANCES**

### **7.1 Remuneration of Staff**

**7.1.1** Departments and agencies have authority to determine the terms and conditions relating to the remuneration (excluding pensions) of their own staff outside the Senior Civil Service and the payment of allowances to all staff, subject to the following conditions.

#### **Conditions**

**7.1.2** Departments and agencies must develop arrangements for the remuneration of their staff which are appropriate to their business needs, are consistent with the Government's policies on the Civil Service and public sector pay, and observe public spending controls. The exceptions to this condition are the Scottish Administration and the National Assembly of Wales who must develop arrangements for the remuneration of staff which are appropriate to their business needs and are consistent with the Government's policies on the Civil Service and take account of the Government's policies on public sector pay. The arrangements for the remuneration of staff must be developed in conjunction with the arrangements for organisational change (including grading – see Section 6.1) and reward systems, and must reflect the following key principles:

- a.** value for money from the pay bill;
- b.** financial control of the pay bill;
- c.** flexibility in pay systems; and
- d.** a close and effective link between pay and performance;

taking account of the inter-relationship between pay, pension provision, leave, and other terms and conditions.

**7.1.3** A department or agency proposing major changes to its pay and grading



arrangements must submit a restructuring business case to the Cabinet Office.

#### valuation

**7.1.4** New pay and grading arrangements must be evaluated three years after they have been brought into effect, and subsequently at three yearly intervals, against both the principles set out above and other objectives set by the organisation - except where a longer period is agreed by the Cabinet Office. Each evaluation should include equality proofing following the principles of the Equal Opportunities Commission's "Code of Practice on Equal Pay" (<http://www.eoc.org.uk/index.asp>). A copy of the evaluation must be sent to the Cabinet Office.

#### Reporting requirements

**7.1.5** Departments and agencies must observe the reporting requirements which the Cabinet Office may issue from time to time.

#### Pension implications

**7.1.6** Changes in pay structures (including the use of consolidated or non-consolidated bonuses) and in pay related terms and conditions of service may have implications for pension entitlement. Departments and agencies must consult Civil Service Pensions Division, Cabinet Office as necessary. CSP Division must also be consulted about the reckonability of any allowance for pension purposes. The cost of pensionability must be taken into account in setting the level of any pensionable payment.

#### Benefits in kind

**7.1.7** Departments and agencies may provide their staff with benefits-in-kind where they encourage and reward good performance, promote team building, or recognise outstanding contribution. However, these must:

- a. be reasonable and commensurate with the level of success;
- b. not raise issues of potential controversy or propriety (such as

private medical insurance and free private use of official vehicles);  
and

- c. avoid the suggestion of endorsing particular goods or services.

Advances, voluntary deductions from pay, and rent for Government-owned properties

**7.1.8** Departments and agencies must comply with the additional conditions on advances of pay, voluntary deductions from pay, and rent for Government-owned properties set out in sections 7.2 to 7.4.

Pay for certain senior staff

**7.1.9** Pay arrangements for certain senior staff, as determined by the Minister for the Civil Service, must fall within the parameters of the Senior Civil Service pay framework set out below. Any proposals which go beyond these parameters must be approved by Cabinet Office.

**Senior Civil Service**

**7.1.10** Responsibility for Senior Civil Service pay is not delegated to departments and agencies, although they have discretion within the broad framework laid down by the Cabinet Office.

Permanent Secretaries

**7.1.11** Permanent Secretaries and certain other senior staff are paid within the Permanent Secretaries pay range (see Annex A). The exact position on the pay range is set individually for each Permanent Secretary by the Government on the recommendation of the Permanent Secretaries Remuneration Committee (which the Government normally expects to accept). The Committee comprises members of the SSRB, the Head of the Home Civil Service and the Permanent Secretary of the Treasury. (These last two withdraw when their own pay is being considered.)

Other members of the Senior Civil Service

**7.1.12** The overall pay framework is laid down by the Cabinet Office. There are 3 core pay bands, broadly reflecting the main responsibility levels in most departments and agencies. Departments and agencies have the option of using a fourth band (Pay Band 1A) where there is a business need (see Annex A). Departments and agencies must have regard to the job-weight (JESP) ranges appropriate to each band when allocating staff to pay bands.

**7.1.13** The minimum and maximum levels for each pay band are set each year by the Government, taking into account the recommendations of the SSRB. The current values are set out in Annex A. These minima and maxima apply both to full-time staff and to part-time staff when their pay and allowances are expressed on a full-time basis. Senior civil servants are eligible for performance bonuses, subject to a minimum award recommended by the SSRB.

**7.1.14** Departments and agencies have discretion to determine the detailed operation of their pay schemes, subject to the principles in paragraphs 7.1.2 and 7.1.6 and the additional rules and principles set out in Annex A, and taking into account guidance issued by the Cabinet Office from time to time.

#### Allowances for members of the Senior Civil Service

**7.1.15** Allowances should normally be taken into account in determining whether an individual's pay meets the requirements of paragraph 7.1.13. Departments and agencies must ensure that their use of allowances represents value for money, bearing in mind that the Senior Civil Service pay framework allows them to take account of other factors formerly recognised by the payment of allowances.

#### External Appointments

**7.1.16** Where external appointments are made, departments and agencies must seek approval from the Cabinet Office in advance for remuneration and allowances which would not be in accordance with paragraphs 7.1.10 to 7.1.15, and as required in Cabinet Office guidance.

**7.1 ANNEX A: SENIOR CIVIL SERVICE PAY FRAMEWORK  
2002/2003**

<b>Pay Band</b>	<b>Range Minimum</b>	<b>Range Maximum (Recruitment &amp; Performance Ceiling)</b>
	<b>£</b>	<b>£</b>
1	51,250	107,625
1A	59,450	117,875
2	70,725	148,625
3	87,125	184,500
Permanent Secretaries	115,000	245,000

The range minima for staff, while they are based in London, in Band 1 and Band 1A can be increased by £3,500 for departments and agencies using London Target Rates.

**Rules and Principles**

The following rules and principles apply to pay awards for 2002/2003:

1. Individual pay awards must lie within the range 0 to 10% as set out in the guidance issued by Performance and Reward Division, Cabinet Office (<http://www.cabinet-office.gov.uk/civilservice/scs/training.htm>) which provides information to support the pay system.
2. The distribution of pay awards in departments should be determined on the basis of relative contribution and position in pay band. Relative contribution will be considered as follows:

Top Tranche 25% of staff

Middle Tranche 65-70% of staff

Bottom Tranche 5-10% of staff

Departments have the flexibility to vary the size of the top and middle tranches as set out in Cabinet Office guidance. Special arrangements apply to departments with small numbers of staff. The Cabinet Office will ensure, in consultation with departments, that the aggregate distribution is achieved.

3. Top tranche performers will receive a non-consolidated performance bonus, and middle tranche performers will also be eligible for a performance bonus. Departments may decide the amounts of these bonuses, subject to a minimum amount payable.

## **7.1 ANNEX B: ALLOWANCES FOR MEMBERS OF THE SENIOR CIVIL SERVICE**

The allowances set out below, if in payment on 31 March 1997 to staff who were members of the Senior Civil Service on that date, need not be taken into account in determining whether an individual's pay meets the requirements of paragraph 7.1.13. This flexibility also applies in respect of any members of the Senior Civil Service on 31 March 1997 who would have been in receipt of one of the allowances below had they not been on loan, secondment or unpaid special leave.

1. Recruitment and Retention Allowance

An amount not exceeding the sum in payment on 31 March 1997.

2. London Weighting and London Allowance

Where rights to retain these allowances (referred to as "reserved rights") have been granted as follows:

- a. to staff receiving London Weighting on 30 September 1994, on the terms and conditions applying on that date, as set out in Section 8.1 (issue 1: January 1994) and Section 8.1 Annex A (issue 2: January 1994) of the Pay Chapter of the Civil Service Management Code.
- b. to staff receiving the London Allowance on 31 March 1995, on the terms and conditions applying on that date, as set out in Section 8.2 (issue 1, January 1994) of the Pay Chapter of the Civil Service Management Code.

### 3. Private Secretary Allowance

An amount not exceeding £5,129 for as long as the individual remains a Private Secretary.

## **7.2 Advances of Pay**

7.2.1 Where departments and agencies have arrangements for making advances of pay to individual members of staff, they must ensure that their rules contain provisions on the payment and recovery of these advances.

## **7.3 Voluntary Deductions from Pay**

7.3.1 Where departments and agencies have arrangements for voluntary deductions from pay to be offered to staff, the following conditions apply.

### Conditions

7.3.2 Departments and agencies must ensure that:

- a. no liability is to be attached to the department, agency or pension-paying authority in the event of default by a member of staff or recipient organisation. Legal advice should be taken if necessary; and

- b. in providing such facilities, they offer no assurance of the soundness or integrity of recipient organisations.

### **Trade Union subscriptions**

**7.3.3** Where departments and agencies offer arrangements for deducting subscriptions to trade unions, they must ensure that:

- a. they comply with the relevant statutory provisions (including those concerned with political levies, where appropriate);
- b. they recover the costs of the provision of the facility from the trade unions concerned; and
- c. subscriptions deducted during the quarter in which an officer ceases to be a subscriber will be paid to the relevant trade union.

In the event of official industrial action by non-industrial civil servants, departments and agencies may withdraw the facility, in whole or in part, in respect of deductions payable to any union with members officially involved in the industrial action for the duration of that action. Withdrawal is subject to approval by the Cabinet Office.

7.3.4 For those trade unions whose subscriptions include a political levy, arrangements must be made to ensure that the department or agency concerned shall not at any time have information about the numbers or identities of members contributing to the levy.

## **7.4 Rent for Government-Owned Properties**

7.4.1 Where departments and agencies determine tenancy and rent agreements for their own staff who occupy Government-owned residences in the UK, the following conditions apply.

Conditions

7.4.2 **Departments and agencies must:**

- a. take account of the relevant market rates when setting rents;
- b. apply those provisions of the legislation covering tenancies, rents and rent rebates, which do not bind the Crown as if they were binding;
- c. not contribute towards any income tax liability arising from the benefit of accommodation or services provided with the accommodation; and
- d. ensure occupants are made responsible for payment of their personal liability for the Council Tax.



## **8. EXPENSES**

### **8.1 Reimbursement of Expenses**

**8.1.1** Departments and agencies have authority to reimburse the expenses incurred by their own staff in connection with their employment, subject to the following conditions.

#### **Conditions**

**8.1.2** Departments and agencies must:

- a.** reimburse staff only for expenses which they actually and necessarily incur in the course of official business, except where otherwise provided in this chapter;
- b.** comply with the additional conditions and rules on Travel, Relocation Expenses, Compensation for Loss or Damage to Property, and Overseas Expenses set out in Sections 8.2 to 8.6; and
- c.** ensure that their rules provide for claiming recompense, including verification and authorisation.

#### **Compensation for tax liability**

**8.1.3** Departments and agencies must compensate staff for any tax liability, and any direct adverse consequence of such compensation (e.g. where the parental contribution to student grant is increased), arising where staff move frequently between workplaces, or have a temporary posting which is expected to last for a year or more.

**8.1.4** Departments and agencies must not meet any tax liability in respect of:

- a.** an incentive element included in motor mileage rates to encourage staff or essential users to use their own vehicles;

- b. beneficial loans; and
- c. grant for house purchase.

**8.1.5** In all other circumstances, it is for departments and agencies to decide whether, and the extent to which, any such liability is met.

### **Compensation for National Insurance Contributions liability**

**8.1.6** Departments and agencies must not meet any liability to employee's National Insurance Contributions arising on payments covered in paragraph 8.1.4 above. In all other circumstances, it is for departments and agencies to decide whether, and the extent to which, any such liability is met.

## **8.2 Travel**

**8.2.1** Departments and agencies must ensure that staff use the most efficient and economic means of travel in the circumstances, taking into account any management benefit or the needs of staff with disabilities. They must not reimburse the costs of home to office travel, except as otherwise provided in this Code.

### **Travel by private vehicle on official business**

**8.2.2** Where departments and agencies reimburse costs incurred by staff using their own vehicles, they must ensure that the staff concerned hold insurance policies which cover:

- a. bodily injury to or death of third parties or any passenger;
- b. damage to the property of third parties; and
- c. the use of the car either in connection with the claimant's business or the business of the employing department or agency.

### **Official cars**

**8.2.3** Departments and agencies may provide cars or motor cycles (whether purchased, hired or leased) for official use where it is cost-effective to do so. The rules of a department or agency must:

- a.** ensure that individuals are charged for any private use of such vehicles which the department or agency allows;
- b.** cover insurance requirements, parking and garaging arrangements, the liability of passengers and any claims made by them; and
- c.** ensure that statutory insurance requirements are met where the vehicle is used privately.

Compensation for death or injury when driving or travelling in an official vehicle

**8.2.4** Departments and agencies must make arrangements for considering ex-gratia payments for staff (or their dependents) who are killed or injured in an accident when driving or travelling in an official vehicle on an officially approved journey where the Principal Civil Service Pension Scheme (PCSPS) does not provide cover. These arrangements must include staff who, although not serving in employment in the Civil Service, are employed in a civil capacity, whether temporarily or permanently, and whether for reward or not. Such payments may be made subject to the following conditions:

- a.** members of staff, or dependents, were not at the time of the injury payment in receipt of injury compensation under Section 11 of the PCSPS as a result of the accident; and
- b.** the driver of the official vehicle involved in the accident did not, at the date of the accident, hold a valid comprehensive motor insurance policy which provided for personal injury benefit to the person killed or injured in the circumstances of the accident.

**8.2.5** Departments and agencies must consult Civil Service Pensions Division, Cabinet Office in case of doubt over the coverage of particular individuals or groups of staff.

### **Concessionary travel: home to office travel**

**8.2.6** Departments and agencies may meet part or all of the cost of home to office travel for their staff in the following circumstances:

- a.** to relieve financial hardship for young civil servants on first appointment, or to keep them in touch with their parental homes;
- b.** to enable staff serving away from home, on permanent transfer, or attending training courses to visit their home at the weekend; or
- c.** where additional costs are incurred when additional journeys outside normal working hours are made, where additional costs are incurred when staff are required to work early or late, or as specified below.

#### **Home to office travel in official cars**

**8.2.7** Permanent Secretaries may:

- a.** use official cars for journeys which are not regarded as official travel, including home to office travel, on the understanding that they would normally be carrying classified papers on which they would be working, or to which they might need to refer during the journey; and
- b.** determine whether, exceptionally, other senior staff are allowed to use official cars on the same conditions.

**8.2.8** Departments and agencies may also allow the use of official cars:

- a.** when staff, not engaged on a regular tour of duty ending at a late hour, are detained by official duties until after public transport services have ceased to run; or
- b.** in special circumstances, including illness.

#### Home to office travel in taxis or hire cars

**8.2.9** Where it is cost effective, departments and agencies may allow the use of

taxis or hire cars in the circumstances described in 8.2.6c and 8.2.8 above.

### **8.3 Relocation Expenses**

**8.3.1** Where departments and agencies pay expenses to their own staff who permanently transfer to another office or to new recruits who move on appointment and, as a result, move their homes or incur additional travelling expenses, the following conditions apply.

#### **Conditions**

**8.3.2** Departments and agencies must provide for the reimbursement of relocation expenses of staff who are subject to permanent and compulsory moves. There must be a benefit to the department or agency to justify contributions towards relocation expenses in other circumstances.

**8.3.3** Relocation terms must be cost effective compared with the alternatives, and the level of reimbursement must reflect the reasonable additional costs necessarily incurred. Incentives to move must not be paid.

**8.3.4** The financial assistance given must not enable individuals to purchase or rent a better type of property than that enjoyed prior to the move, nor to increase their stake in the housing market by maintaining two properties at the department's or agency's expense. (Two properties may be maintained for a temporary period provided the individual concerned is making every effort to dispose of his or her old property.)

#### Second homes

**8.3.5** The following conditions apply to offers of financial assistance with the purchase of a second home:

- a.** financial assistance may be offered only when it is clear that otherwise serious domestic hardship would be created and that the transfer of the individual is essential, and that it is cost effective to do so;

- b.** any financial contribution must be recovered in whole, or in part:
  - when the individual ceases to be a civil servant;
  - following a further permanent and compulsory move; or
  - when the property becomes the family home;
- c.** departments and agencies must take an equity stake of not less than 10% of the open market value (net of mortgage, outstanding advance of salary, capital gains tax and increases in the value of property due to improvements carried out at the individual's own expense);
- d.** the size of the equity share should be commensurate with the financial assistance given with the capital costs; and
- e.** when the property is sold and there is negative equity, departments and agencies must pay the individual an amount commensurate with the financial assistance given with the capital costs.

### Housing Equity

**8.3.6** Departments and agencies must only compensate staff for equity losses arising from a permanent move where either:

- a.** a relocation company offering a guaranteed sale price is used (or a department or agency is able to offer such a guarantee), when the individual may be paid the difference between the sale price of the old property guaranteed to the individual and the eventual disposal price; or
- b.** there is demonstrable financial hardship.

**8.3.7** Where there is demonstrable financial hardship, departments and agencies may offer financial assistance with the shortfall between a mortgage and bridging loan (or both) and the disposal price of the property (or a guaranteed sales price). Any such assistance:

- a.** must take account of the individual's ability to contribute and (for bridging loan shortfalls) the alternative cost; and

- b. should normally be a loan - interest free for bridging loan shortfalls and either interest bearing or interest free for mortgage shortfalls.

#### Interest-free loans for house purchase

**8.3.8** Where departments and agencies offer interest-free loans for house purchase, these must not exceed 12 months salary, and must be offered only where staff:

- a. move to areas where housing costs are higher; or
- b. are first time purchasers; or
- c. have bridging loan and mortgage shortfalls (see paragraph 8.3.7).

Repayment period must not exceed 20 years, and staff must agree to repay the loan on demand when they cease to be civil servants. Where financial hardship arises following redundancy, death or early retirement, departments and agencies may allow staff to repay the loan over the original period and/or waive repayment on outstanding interest-free loans.

### Grants for house purchase

**8.3.9** Departments and agencies may pay grants for house purchase where they would otherwise offer an interest-free loan. The maximum grant must be the value of interest foregone on a loan of up to 12 months' salary repaid over 20 years; and staff must agree to repay the grant, in whole, or in part, upon demand, when they cease to be a civil servant.

## **8.4 Compensation for Loss or Damage to Personal Property**

**8.4.1** Where departments and agencies compensate their own staff for loss or damage to personal property arising in the course of employment, the following conditions must be satisfied:

- a. the loss is verifiable;

- b.** the loss or damage is not covered by insurance or any provision for free replacement;
- c.** for cash losses only, there was an official need for money to be carried on duty; and
- d.** there has been no negligence on the part of the officer.

## **8.5 Concessionary Arrangements for Staff Working in Northern Ireland**

**8.5.1** Where departments and agencies compensate their staff working in Northern Ireland for any additional expenses that arise as a result of the security situation, the following rules apply.

### **Concessionary travel and relocation**

**8.5.2** Departments and agencies may reimburse:

- a.** the reasonable costs of additional travel between home and office to avoid dangerous areas; and
- b.** for staff with roots in the mainland who have been posted to Northern Ireland, the reasonable cost of:
  - return trips to the mainland;
  - removing furniture and travel to the mainland by the partner, widow or widower and any dependent children of a member of staff following the retirement of that member of staff; and
  - moving the partner, widow or widower and any dependent children of a member of staff back to the mainland following the death of that member of staff, up to the limit of what would be paid if returning to the previous mainland station.



### **Compensation of Housing Equity Loss**

**8.5.3** Departments and agencies may meet the loss of housing value attributable to the security situation in Northern Ireland when staff sell their homes in Northern Ireland and purchase a new home in the mainland. This does not apply to properties purchased after 1 August 1972.

### **Education Costs**

**8.5.4** Where departments and agencies are satisfied that it will be detrimental to any dependant children of accompanied staff permanently transferred to Northern Ireland to receive their primary or secondary education in Northern Ireland, they may meet the reasonable costs of having them educated on the mainland.

**8.5.5** Departments and agencies must review these special arrangements from time to time in the light of the security situation to decide whether they are still appropriate.

## **8.6 Overseas Expenses**

### **Reimbursement and Compensation**

**8.6.1** Where departments and agencies reimburse and compensate staff for the essential extra cost of having to live outside the UK in order to perform their duties, the following conditions apply.

#### **Conditions**

**8.6.2** Departments and agencies must ensure that:

- a.** the amounts paid or refunded are based on the principle of reimbursement and do not exceed reasonable levels of compensation; or
- b.** the level of reimbursement and compensation must not exceed the reasonable extra costs necessarily incurred when living and working outside the UK.

### **Residential accommodation overseas**

**8.6.3** Departments and agencies must, wherever possible, provide their staff overseas with rent-free accommodation. Where this is not available, departments and agencies must reimburse the reasonable actual costs of renting private accommodation, taking account of the level of rents near the workplace, the duties of the officer and his or her family responsibilities.

### **Death of a member of staff or dependant stationed overseas**

**8.6.4** Departments and agencies may determine the arrangements, including the level of any financial assistance given, in connection with the death overseas of one of their own staff or dependant.

### **Compensation for dependants of officers injured as a result of terrorist or criminal activity overseas**

**8.6.5** Departments and agencies may compensate dependants of their own staff serving overseas for personal injuries sustained as a result of terrorist or criminal activity overseas. Compensation may be paid only to:

- a. members of an officer's household whose travel costs to the country where the incident occurred were met by the department; and
- b. dependent children who make privately financed visits to their parent(s).

Compensation must not be paid to persons who sustain injuries as a result of their own negligence or misconduct, or to those who disregard official advice or instruction.

**8.6.6** Compensation must be analogous with that which would have been payable under the Criminal Injuries Compensation Scheme had the injury occurred in the UK.

### **Claims against overseas governments**

**8.6.7** Where departments and agencies assist their own staff to make claims for

riot compensation against an overseas government, they must ensure that:

- a. claims are presented through the Foreign and Commonwealth Office;  
and
- b. staff agree to repay any advance of salary from compensation received from the overseas government or any other source.

## **9. HOURS, HOLIDAYS AND ATTENDANCE**

### **9.1 Hours of Work**

**9.1.1** Departments and agencies have authority to determine the terms and conditions relating to hours of work of their own staff, subject to the following conditions.

#### **Conditions**

**9.1.2** The rules of a department or agency must:

- a. describe the hours that staff are contracted to work and the circumstances in which they may be expected to work outside their normal arrangements;
- b. determine how staff are compensated for working outside their normal arrangements or for unsocial pattern of attendance, where appropriate;
- c. determine arrangements for recompensing staff for time spent on official travel outside their normal working hours, where appropriate. Travel between home and office qualifies only if additional attendance at work is required outside normal working hours. The attendance must be additional to the normal pattern of duty or any pre-arranged programme of work; and
- d. make provision for claiming recompense, including verification and authorisation.

Reckonability for superannuation

**9.1.3** As a general rule, payments for excess hours are not pensionable. Civil Service Pensions Division, Cabinet Office must be consulted on the pensionable status of payments made under variations to existing schemes.

Senior Civil Service

**9.1.4** The hours of work for full-time members of the Senior Civil Service are a minimum of 41 hours in London or 42 hours elsewhere, including daily meal breaks of one hour. Senior civil servants may be required to work such additional extra hours as may from time to time be reasonable and necessary for the efficient performance of their duties. Departments and agencies must not recompense members of the Senior Civil Service for additional hours worked.

**9.1.5** Departments and agencies have discretion to determine the hours to be worked by part-time staff in the Senior Civil Service.

**9.2 Holidays and Attendance**

**9.2.1** Departments and agencies have authority to determine in respect of their own staff arrangements for holidays and terms and conditions related to attendance and time off work, subject to the following conditions.

**Conditions**

**9.2.2** Departments and agencies must:

- a. have regard to the effect of granting holidays and time off work on the discharge of public business; and
- b. keep records of holidays taken.

**9.2.3** The rules of a department or agency must prescribe:

- a. any qualifying conditions;

- b.** the number of days holiday (or equivalent in hours) that staff may be granted; and
- c.** the arrangements for carrying forward or compensating for holidays not taken.

**9.2.4** Unless separate arrangements have been authorised, departments and agencies must grant staff a holiday in recognition of the Queen's Official Birthday on either the Friday preceding or the Tuesday after the Spring Bank Holiday.

**9.2.5** Departments and agencies must:

- a.** allow time off work to members of the Reserve Forces, Territorial Army and Cadet Forces;
- b.** allow time off for attendance required by:
  - the Safety Representatives and Safety Committee Regulations 1977;
  - Sections 168-170 of the Trade Union and Labour Relations (Consolidation) Act 1992 for trade union activities; and
  - Section 50 of the Employment Rights Act 1996 for certain public duties;
- c.** give young people the opportunity to attend suitable day classes for one day a week at a college of further education or similar institution until the end of the term in which they are 18. This opportunity may be:
  - deferred by agreement between the department or agency and the individual; and
  - extended beyond the formal entitlement until the end of the session or course of study, including any examinations;
- d.** make it clear to staff who are granted time off work with pay that they must not claim or accept attendance fees or any compensation other than for travel and subsistence. For any period of approved absence due to public service, the total of any fees provided by the department, agency, or

public body in question must compensate only up to the extent of the officer's actual loss of earnings from his or her department or agency; and

- e. regard staff as being on official duty when they are called upon in their official capacity:
- to give evidence in criminal and civil proceedings and in coroners' courts; or
  - to attend other official bodies as witnesses or in other capacities.

9.2.6 Departments and agencies must allow members of the Reserve Forces, Territorial Army and Cadet Forces to accept payments which result from such service. They are not subject to the restrictions imposed by paragraph 9.2.5d.

9.2.7 Personnel Information Note (PIN) 27 (<http://www.civilservice.gov.uk/pins>) reminds department and agencies of the assistance that can be provided to staff who have a caring responsibility for dependants who are elderly, infirm or disabled. It also discusses support for staff who participate in voluntary public service.

### Senior Civil Service

9.2.8 The annual leave allowance for members of the Senior Civil Service is 30 days. Members of the Senior Civil Service are also entitled to all public holidays and 2½ privilege days a year and must be offered time off in lieu if they are required to work on these days. Departments and agencies have discretion to specify the timing of privilege holidays, with the exception of the privilege day for the Queen's official birthday (see paragraph 9.2.4).

## 9.3 Maternity Arrangements

**9.3.1** In determining for their own staff arrangements for maternity leave and payments related to such absence, departments and agencies must apply the following conditions.

**Conditions**

**9.3.2** Departments and agencies must:

- a. allow a woman member of staff paid maternity leave of at least 3 months and 1 week for monthly-paid staff or 14 weeks for weekly-paid staff for the period of continuous absence before and after confinement provided that she:
  - states that she intends to return to work in the Civil Service after her confinement, and agrees to repay any payment made during that period if she fails to return (such payment will exclude any Statutory Maternity Pay to which she is entitled); and
  - is in paid service at the time her maternity leave begins and has rendered at least one year's such service.
- b. ensure that Statutory Maternity Pay is offset against paid maternity leave, and that any maternity allowance in payment is deducted from paid maternity leave.
- c. allow a woman who qualifies for paid maternity leave to have unpaid maternity leave which cannot be terminated earlier than 41 weeks from the date of actual confinement, except with the woman's consent.

**Paternity leave**

**9.3.3** Departments and agencies must allow staff at least 2 days' paid paternity leave on each relevant occasion.

**9.4 Attendance During National Emergencies**

**9.4.1** Special provisions, operative only on Cabinet Office notification, apply to civil servants called to serve in the Reserve Forces during national emergencies. Copies may be obtained from Employment Policy and Practice Division, Cabinet Office.

## **9.5 Sick Absence**

**9.5.1** In determining for their own staff the terms and conditions for absence due to incapacity because of illness (i.e. sick absence) and for payments related to such absence, departments and agencies must abide by the following conditions.

### **Conditions**

**9.5.2** The rules of a department or agency must prescribe:

- a. that staff who are sick are allowed to be absent from their place of work;
- b. the time limits within which sick pay and absence are allowed; and
- c. that satisfactory evidence of incapacity is provided before sick absence is allowed.

**9.5.3** Departments and agencies must ensure that:

- a. sick absence is managed effectively and kept to a minimum, using monitoring arrangements which trigger management action when a sick absence record could be cause for concern;
- b. sick absence is granted only if there is a reasonable prospect of a return to work;
- c. annual leave is not taken instead of sick absence;
- d. sick absence is recorded and made available to the contractor to the Cabinet Office for the collation and analysis of sick absence statistics;



- e. any Social Security benefits that are payable during sickness or injury are subsumed within the limit of full pay. A notional amount representing a Social Security benefit must be deducted from full pay if the member of staff decides not to cash the benefit;
- f. where arrangements are made for sick pay at pension rate, they obtain a calculation of the amount of sick pay at pension rate from their pension awarding authority; and
- g. the minimum level of sick pay for re-employed pensioners plus any pension is no lower than the amount they would have received from a reassessment of their pension awards had they ceased work on the first day of sick absence. The pensions paying department or agency must continue to pay any pension at the rate already in issue.

**9.5.4** Sick Pay at pension rate must be increased in line with pensions increase legislation.

## **9.6 Absence due to Injury, Disease or Assault at Work**

**9.6.1** Departments and agencies must operate the following rules and procedures where absence is due to:

- a. injury sustained or disease contracted in the course of duty;
- b. injury resulting from an assault in the course of duty or clearly connected with duty.

### **Injury or disease**

#### Absence

**9.6.2** If a member of staff is absent due to an injury sustained or a disease contracted in circumstances that satisfy the qualifying conditions for injury benefit under the Principal Civil Service Pension Scheme, departments and agencies

must:

- a.** provide 6 months' injury absence on full pay before normal departmental or agency sick pay arrangements are applied;
- b.** where delegated authority has not been granted, make application to Civil Service Pensions Division, Cabinet Office for the payment of injury benefit and any additional injury absence;
- c.** not make deductions from either sick pay or ordinary pay, on return to duty for:
  - disability benefit awarded under the Social Security Acts in respect of an injury sustained at work; or
  - for an increase in disability benefit or disability pension during approved hospital treatment;
- d.** ensure that where any injury is due wholly or in part to the negligence of the Crown, the whole of such period of absence, or proportionate part thereof, does not reckon towards the time limits of the department's or agency's sick absence scheme; and
- e.** ensure that any proportion of any contributory negligence by the injured officer reckons towards the time limits of the department's or agency's sick absence scheme.

#### Claims for damages

**9.6.3** Where a claim for damages lies against a third party, departments and agencies must:

- a.** require staff to include in the claim a specific amount for loss of earnings;
- b.** provide an advance of salary in place of any pay due for injury absence under paragraph 9.6.2a and/or any sick pay due under the departmental or agency sick pay arrangements;

- c. require staff to repay proportionately any advance of salary where the claim for damages is wholly or partly successful; and
- d. ensure that where all or part of the advance is repaid, a period representing the repaid advance does not reckon towards the limits of the department's or agency's sick absence scheme.

**9.6.4** Where a claim for damages is against a third party who is a servant of the Crown acting during the course of duty, or where it is alleged that a breach of duty on the part of the Crown has caused the accident, departments and agencies must:

- a. ensure that a civil servant in receipt of full sick pay does not include in the claim any amount for loss of earnings;
- b. allow staff on less than full pay to claim damages for the amount that would bring their remuneration up to full pay;
- c. allow staff to claim damages for any gross salary or wages that would have exceeded full sick pay had they not been absent due to injury; and
- d. where necessary, apply the conditions at paragraph 9.6.3c and d above.

## **Assault**

### Absence

**9.6.5** Any sick absence due to an assault in the course of duty, or when not on duty but clearly connected with duty, must not reckon towards the maximum period of sick absence allowed under a department's or agency's sick absence schemes.

**9.6.6** Where an absence is due to such an assault, and no claim for damages is made, staff must:

- a. receive full pay, less any Social Security sick or injury benefits; plus
- b. any additions for excess hours, shift and night working payments, calculated on average hours worked over the immediately preceding

calendar quarter.

Claims for damages

**9.6.7** Where a member of staff makes a claim for damages following such an assault departments and agencies must:

- a.** provide an advance of salary that represents the amount provided by paragraph 9.6.6a and b above;
- b.** ensure that the claim includes a specific amount for loss of earnings;  
and
- c.** require staff to repay proportionately any advance of salary where the claim for damages is wholly or partly successful.

## **10. STAFF MOVEMENT AND REDEPLOYMENT**

### **10.1 Mobility**

**10.1.1** Departments and agencies have authority to determine the extent to which their own staff have a mobility obligation and the circumstances in which the obligation should be extended to include service overseas subject to the following conditions.

#### **Conditions**

**10.1.2** Departments and agencies must ensure that:

- a. details of the mobility requirement are given to all staff, and made clear to new staff in their letter of appointment; and
- . changes to mobility requirements have no implications for staff with reserved rights to the pre-1 April 1987 early retirement terms set out in Section 7 of the Civil Service Compensation Scheme.

**10.1.3** The minimum mobility obligation for all staff must be a liability to:

- a. move between posts which are within reasonable daily travelling distance of their home; and
- . serve away from home for periods of detached duty.

**10.1.4** Mobility requirements must be capable of being justified by departments and agencies if challenged.

#### **Senior Civil Service**

**10.1.5** Full-time staff in the Senior Civil Service may be required to transfer to any post in the Senior Civil Service in the UK. Departments and agencies have authority to decide whether to extend this mobility requirement to include service overseas. The mobility obligation for part-time staff is the minimum obligation defined in paragraph 10.1.3 above.

## **10.2 Transfer of Staff between Departments and Agencies**

**10.2.1** Departments and agencies have authority to determine the circumstances (other than for machinery of government changes) in which staff may be transferred between departments and agencies, including the filling of vacancies in one department or agency with staff from another and the movement of staff between departments and agencies to promote career development or on compassionate grounds, subject to the following conditions.

### **Conditions**

**10.2.2** Departments and agencies must:

- a.** take into account the interests of the Civil Service at large and in particular the needs of small departments, and of staff whose security clearance has been withdrawn;
- b.** take into account the interests and needs of staff, particularly surplus staff, where other departments and agencies have given notice of surpluses;
- c.** release successful candidates for posts which have been trawled (advertised inter departmentally) within 8 weeks of notification of success (4 weeks for members of the Information Group) unless a later date for release is agreed;
- d.** ensure that the redeployment of staff does not conflict with the Civil Service Commissioners' Recruitment Code;
- e.** in respect of posts in the SASC Group (see Section 5.2), follow the procedures described in "A Checklist of Processes for Senior Appointment Selection Committee Group Appointments" published by the Cabinet Office; and

f. where transfers are compulsory, have regard to the principles set out in paragraph 7 of the Introduction to this Code.

### **Machinery of government changes**

**10.2.3** The general rule when functions are transferred from one department to another is that staff are transferred with the work. Paragraph 10.2.2f applies where transfers are compulsory. More detailed advice may be sought from the Central Secretariat, Cabinet Office.

### **Departmental contacts**

**10.2.4** The Cabinet Office maintains a list of contact points (which is revised and circulated regularly) to enable departments and agencies to distribute details of vacancies which they are seeking to fill from within the Service and give notification of surplus staff.

## **10.3 Secondment**

### **General**

**10.3.1** Secondment is the term used to describe the voluntary movement of individuals into or out of the Civil Service on a temporary basis, in a way which does not affect their employment status.

**10.3.2** Departments and agencies are encouraged to arrange for the interchange of staff between the Civil Service and outside organisations where they are satisfied that it would benefit their wider interests and the individuals concerned. There are no formal limits on age or grade.

**10.3.3** Secondment into the Civil Service must not conflict with the Civil Service Commissioners' Recruitment Code (<http://www.civilservicecommissioners.gov.uk>). The terms of attachment of any foreign nationals must not conflict with the Civil Service nationality rules (Section 1.1 Annex B).

**10.3.4** Subject to paragraph 10.3.5, the terms of secondment are a matter for

negotiation between the receiving organisation, the sending employer, and the secondee.

**10.3.5** Officers seconded outside the Civil Service do not cease to be civil servants and the provisions of Chapter 4, Conduct and Discipline continue to apply to them, including those relating to disclosure of information, conduct and discipline. Where a member of the Senior Civil Service continues to receive a civil service salary during a secondment, departments and agencies may agree to any proposal by the host organisation for an additional modest payment, usually in the form of a one-off non-pensionable terminal bonus, provided that total remuneration and allowances from all sources do not exceed the limits set out in paragraph 7.1.13.

#### **Pension arrangements**

**10.3.6** A civil servant who accepts an outward secondment must be given a written statement of the effect upon his or her pension arrangements.

**10.3.7** Pension arrangements for the secondment of civil servants are set out in the Pensions Manual: Introduction to Civil Service Pensions (4.1 Annex A) (<http://www.civilservice-pensions.gov.uk/Menu.asp>). Departments and agencies wishing to offer alternative secondment terms must obtain the prior written authority of Civil Service Pensions (CSP) Division, Cabinet Office.

#### **Injury benefits**

**10.3.8** Departments and agencies must agree the arrangements for injury benefit cover before any secondment (inward or outward) commences, and must give the secondee a written statement explaining who is providing it, and if it is being provided by the PCSPS, what it comprises. (If a department or agency wishes to provide injury benefit cover to an inward secondee, the prior authority of CSP Division must be obtained.)

**10.3.9** The arrangements referred to in paragraph 10.3.8 must ensure that a secondee who remains in the pension scheme of the sending employer will receive



cover from that employer. In other cases, the receiving organisation must provide the cover. CSP Division will advise departments and agencies where there is any doubt about liability. Information about the provision of cover for injury benefit to seconded civil servants is given in the Pension Manual: Introduction to Civil Service Pensions, 4.1.

## **10.4 Service with the European Institutions**

**10.4.1** Departments and agencies should encourage staff with potential to consider service with the European institutions as part of their developmental training. Work in the institutions should normally be regarded as experience which will be valuable to the department or agency on the officer's return. Opportunities exist for both temporary and permanent employment within the European institutions.

### **Temporary appointments**

**10.4.2** The following schemes offer temporary service:

- a.** the Stagiaire schemes provide short-term (5 months) secondment giving staff under 30 the opportunity to gain first-hand experience of the working and interaction of the European institutions;
- b.** the Detached National Expert scheme provides the opportunity for secondment to the European Commission for up to three years to fill a specific post; and
- c.** the Agent Temporaire and Auxiliaire schemes offer temporary contracts for a period of up to three years. However, staff need not resign from their employing department or agency and should be offered unpaid time off work if departments and agencies are satisfied they will be able to re-absorb the officer. Where such offers are made, departments and agencies should ensure that those on temporary contracts are treated in

accordance with the appropriate terms and conditions of service applying to their UK based staff, including promotion and future pay.

#### Pay and living allowances

**10.4.3** Staff seconded to the European Commission continue to receive their salary from their employing department or agency which is also responsible for paying ERNIC and accruing superannuation liability charge (ASLC). Stagiaires also receive a cost of living allowance. Detached National Experts are paid a living allowance by the Commission but, where this is less than would have been paid under departmental or agency overseas conditions of service rules, the department or agency must in addition pay the difference between the two amounts.

#### **Permanent appointments**

**10.4.4** Staff who take up permanent appointments are required by the rules of the European institutions to resign from their previous employment.

#### Re-appointment

**10.4.5** Departments and agencies should consider giving a guarantee of re-appointment to staff who return within 5 years of accepting a permanent appointment with a European institution provided they are satisfied they will be able to reabsorb the officer. Guarantees should not be given to staff aged 55 or over.

**10.4.6** Where an absolute guarantee is given and no post is available when the officer returns then, provided the officer has completed at least one year's qualifying service, early retirement on redundancy grounds must be awarded (see Pensions Manual: Early Retirement Volume - Section 4) (<http://www.civilservice-pensions.gov.uk/Menu.asp>).

#### **Pension arrangements**

**10.4.7** Departments and agencies must ensure that, before departure, staff taking up either a permanent or Agent Temporaire appointment receive specialist advice

from their superannuation section in respect of the pension implications of their change of employment.

**Further information**

**10.4.8** The European Staffing Branch, Cabinet Office can provide further advice relating to secondment and employment in the European Institutions, visit <http://www.eu-careers-gateway.gov.uk>.

## **11. LEAVING THE CIVIL SERVICE**

### **11.1 Notice and References**

#### **Notice**

**11.1.1** Because of the constitutional position of the Crown and the prerogative power to dismiss at will, civil servants cannot demand a period of notice as of right. But in practice departments and agencies will normally apply the periods of notice set out below, unless: employment is terminated by agreement; or, if exceptionally, the civil servant is employed on a fixed-term or rolling contract which does not expressly provide that in practice such notice will be given if the employment is terminated prior to the maximum period of employment fixed by such a contract. On the expiration of such period of notice, the employment of the civil servant will terminate.

#### Minimum periods of notice

**11.1.2** In accordance with paragraph 11.1.1, the minimum periods of notice in the table below will be given to staff:

- a. who are retired on age grounds;
- b. who are dismissed on grounds of inefficiency;
- c. whose dismissal is the result of disciplinary proceedings in circumstances where summary dismissal is not justified; or
- d. whose probationary appointments are terminated.

Continuous service for:	weekly paid staff	monthly paid staff
Up to 4 weeks	up to 2 weeks	} 5 weeks
4 weeks to 2 years	2 weeks	
2 to 3 years	3 weeks	

3 to 4 year	4 weeks
over 4 years continuous	1 week plus 1 week for every year of service. Maximum 13 weeks.

## Medical early retirement

**11.1.3** In accordance with paragraph 11.1.1, staff who are retired on medical grounds (see Section 11.10) will be given the period of notice set out in paragraph 11.1.2 subject to the following minimum periods:

- a. 5 weeks during probationary service. This may be extended by up to a further 3 weeks if the officer (or the appropriate trade union) is considering an appeal; or
- b. 9 weeks in other cases, unless a shorter period is agreed.**

### Compulsory termination of appointment

**11.1.4** In accordance with paragraph 11.1.1, staff will be given 6 months notice (or a period equal to the unexpired part of their fixed period of employment specified in their contract, where this is less) if their appointment is terminated compulsorily on grounds other than those covered by paragraphs 11.1.2 and 11.1.3. This does not apply to:

- a. flexible and approved early retirement and voluntary redundancy, where the date of termination is agreed;
- b. summary dismissal which is the result of disciplinary proceedings or which is otherwise justified at common law; or
- c. certain staff over age 60 who, if made compulsorily redundant, will be given 12 months notice if they have less than 10 years service or 9 months

notice if they have 10-25 years service, provided that this notice does not extend beyond their 65th birthday.

### Appeals

**11.1.5** When giving notice to staff, departments and agencies must draw their attention to their right of appeal to the Civil Service Appeal Board (see Section 12.1), and must give reasonable time for the person concerned (or their trade union) to decide whether there are sufficient grounds for appeal.

### **Compensation in lieu of unexpired notice**

**11.1.6** Where, exceptionally, departments and agencies do not give the relevant period of notice set out above, in full or in part, they must compensate their staff in accordance with Section 9 of the Civil Service Compensation Scheme. This therefore does not apply:

- a. to flexible and approved early retirements and voluntary redundancy, where the date of termination is agreed;
- b. where the person leaves voluntarily before the end of the period of notice;
- c. where the person is summarily dismissed as the result of disciplinary proceedings or otherwise justifiably at common law; or
- d. to staff on those fixed-term or rolling contracts mentioned in paragraph 11.1.1, compensation for whom may be available under Section 8 of the Civil Service Compensation Scheme.

### **Resignation**

**11.1.7** Departments and agencies may determine the minimum periods of notice to be given by their own staff when they resign. Staff do not have the right to withdraw their notice, but may do so with the agreement of the department or agency.

### Senior Civil Service

**11.1.8** Members of the Senior Civil Service must give a minimum of 3 months notice in writing when they resign. Staff with rights to a one-month notice period on 2 April 1990 may give the shorter period of notice provided they have not been promoted since that date. Such rights will lapse in the circumstances described in paragraph 5.3.2.

### **References**

**11.1.9** Departments and agencies must provide references for former employees on request.

## **11.2 Action Before Leaving the Civil Service**

**11.2.1** Departments and agencies must remind staff who are leaving:

- a.** that the Official Secrets Acts and the duty of confidentiality continue to apply (see Section 4.2);
- b.** that permission is needed before publishing memoirs (see Section 4.2);
- c.** of the business appointment rules (see Section 4.3 Annex A);
- d.** that, provided they comply with the relevant time limits, it may be possible to have a transfer value in respect of pensionable service in the Civil Service paid to their new pension scheme instead of preservation for payment at retiring age or, for those with non-preservable benefits, instead of being brought back into the State Earnings-Related Pension Scheme (SERPS). A copy of the booklet “Leaving or Opting Out of the Principal Civil Service Pension Scheme” must be given to each leaver, and a note recording the issue put on their personal file.

## **11.3 Normal Retirement Age**

**11.3.1** Departments and agencies have authority to determine policy on normal retirement age for their own staff subject to the following conditions.

**Conditions**

**11.3.2** Departments and agencies must:

- a. be consistent in the application of their retirement policy to staff at broadly the same level;
- b. be satisfied that staff retained beyond age 60 meet the normal standards of health and efficiency;
- c. ensure that they maintain for senior civil servants the normal retirement age of 60. Heads of Departments and Agency Chief Executives have flexibility to retain members of the Senior Civil Service beyond age 60 if they judge it in the public interest and they are satisfied about the fitness and efficiency of the individual to carry out his or her duties; and
- d. have written approval from the Head of the Home Civil Service to retain a member of the SASC Group (see Section 5.2) for longer than 3 months beyond their 60th birthday.

Staff on loan

**11.3.3** Where a member of staff on loan is to retire, the parent department or agency must arrange for their pension to be paid.

**11.4 Dismissal for Inefficiency**

**11.4.1** Departments and agencies must provide staff with an internal right of appeal against a decision to dismiss on grounds of inefficiency (see Section 6.3).

**11.4.2** Once a decision has been taken to dismiss a member of staff, departments and agencies must determine whether compensation should be paid and, if so, how much. The maximum amount of compensation that may be paid is set out



in Section 11 of the Civil Service Compensation Scheme (CSCS). If departments and agencies consider that compensation should be paid, they must assess in percentage terms the extent to which, if at all, they consider the inefficiency to have been beyond the individual's control. The compensation payable should then be calculated by applying that percentage to the maximum that could be paid under the CSCS in that case. Guidelines for assessing compensation can be found in Personnel Information Note (PIN) 40 (<http://www.cabinet-office.gov.uk/civilservice/pins/index.htm>).

**11.4.3** Staff have further rights of appeal to the CSAB against decisions:

- a. to dismiss on grounds of inefficiency; and
- b. not to pay compensation or the extent to which compensation should be paid.

Provided the relevant conditions in Section 12.1 are satisfied.

## **11.5 Early Retirement or Severance**

**11.5.1** Staff can retire or be retired early under the following categories:

- Compulsory Early Retirement or Severance;
- Flexible Early Retirement or Severance;
- Approved Early Retirement;
- Actuarially Reduced Retirement; and
- Medical Retirement.

Early retirement applies to staff aged 50 or over, whereas early severance applies to staff aged under 50. The following sections deal with these categories in greater detail.

**11.5.2** The Cabinet Office must be consulted about any proposals to retire staff in

the SASC Group (see Section 5.2) early on any grounds.

### **Benefits Payable on Early Retirement or Severance**

**11.5.3** Full details of the benefits payable under the various categories may be found in the Civil Service Compensation Scheme (CSCS) and the Rules of the Principal Civil Service Pension Scheme (PCSPS) as appropriate.

## **11.6 Compulsory Early Retirement or Severance**

### **Compulsory redundancy**

**11.6.1** The definition of redundancy is set out in Section 139 of the Employment Rights Act 1996. Departments and agencies have authority to determine the redundancy procedures which apply to their staff, subject to the following conditions.

#### Conditions

**11.6.2** Departments and agencies must:

- a.** act consistently with the statutory provisions relating to redundancy, apart from those relating to compensation (which is provided for in the Civil Service Compensation Scheme);
- b.** have regard to good industrial relations practice and take into account the guidance available in the ACAS booklet “Redundancy Handling” ([http://www.acas.org.uk/publications/pub\\_problems.html](http://www.acas.org.uk/publications/pub_problems.html)); and
- c.** consider all measures which might avoid or minimise the need for compulsory redundancy.

### **Voluntary redundancy**

**11.6.3** As a pre-redundancy measure, departments and agencies may call for volunteers to leave on compulsory terms in order to avoid compulsory redundancy

procedures.

### **Structure**

**11.6.4** Departments and agencies may retire staff early on grounds of structure. This denotes severe management problems, for example caused by serious promotion blockages or other situations causing serious managerial or organisational difficulties which impair the efficient working of the department. Compulsory early retirement or severance on grounds of structure applies principally to members of the Senior Civil Service. Personnel Information Note (PIN) 25 (revision 1) (<http://www.civilservice.gov.uk/pins>) provides guidance on some of the circumstances in which it might, or might not, be reasonable to dismiss a member of staff on grounds of structure.

### **Limited efficiency**

**11.6.5** Departments and agencies may retire staff early on grounds of limited efficiency where performance is deemed to fall within the definition in Section 6.3, this has been reflected on at least two occasions in the normal reporting cycle, and no improvement is likely. Compulsory retirement of staff on grounds of limited efficiency applies principally to members of the Senior Civil Service. In all cases downgrading may be considered as an alternative to early retirement.

### **Appeal to Civil Service Appeal Board**

**11.6.6** Staff compulsorily retired early (with the exception of those who leave on voluntary redundancy) have a right of appeal to the Civil Service Appeal Board (CSAB) provided they satisfy the relevant conditions (see Section 12.1).

## **11.7 Flexible Early Retirement or Severance**

**11.7.1** Departments and agencies may invite staff to leave in the wider interests of efficiency and effectiveness of the Civil Service. The possible grounds are:

- a. Structure** - to help with management problems, for example caused by promotion blockages, succession planning, or organisational changes;
- b. Limited efficiency** - where performance is deemed to fall within the definition in Section 6.3, this has been reflected on at least one occasion in an overall performance assessment and no improvement is likely. Only non-industrial staff are eligible; or
- c. Limited postability** - where staff have to be moved and their background and experience is extremely limited or specialised and/or they are close to retirement age. Only non-industrial staff are eligible.

## **11.8 Approved Early Retirement**

### **Scheme (a)**

**11.8.1** Departments and agencies may invite volunteers where retirement would help solve management problems and improve overall efficiency. Only staff aged 50 and over with at least five years qualifying service are eligible. The criteria for selection must be discussed in advance with the recognised trade unions and made known to staff. Individuals must be informed why their application has been refused.

### **Scheme (b)**

**11.8.2** Staff may apply to retire subject to management's approval. Only staff aged 55 and over with at least 25 years qualifying service are eligible.

## **11.9 Actuarially Reduced Retirement**

**11.9.1** Certain staff have a right to retire early and receive immediate payment of actuarially reduced pension at no extra cost to the

Exchequer. To be eligible, staff must be aged 50 or over, have 2 or more years qualifying service, and be entitled to an actuarially reduced pension which is not less than the guaranteed minimum pension.

### **11.10 Medical Retirement**

**11.10.1** Departments and agencies may retire staff early on medical grounds. Staff may also apply for medical retirement. A medical certificate must be issued in each case by the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS, before retirement can go ahead. The benefits payable on medical retirement are a charge on the Civil Superannuation Vote. The criteria for medical retirement, that the breakdown in health is such that it prevents

the person from carrying out his or her duties and that the ill-health is likely to be permanent, are therefore set by Civil Service Pensions Division, Cabinet Office on the advice of their medical advisers. The last day of service must be within 4 months and 10 days of the issue of the certificate.

**11.10.2** These rules do not apply to staff over 65, or who have formally retired on or after reaching the minimum retiring age and who have been re-employed.

#### **Disclosure**

**11.10.3** Departments and agencies may disclose the medical reasons recorded on retiring certificates. In certain circumstances it may be appropriate for this information to be disclosed by the person's own doctor. Where this seems to be the case, departments and agencies should consult the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS. Staff may be given details of their sick record.

#### **Appeals**

**11.10.4** Staff who have additional medical evidence supporting their case have

a right of appeal first to the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS and then to an independent Medical Board convened by the adviser against:

- a. a decision to retire them on medical grounds; or
- b. a refusal to retire them on medical grounds.

Appeals are usually made before the person leaves the Service, but late appeals may be submitted up to 2 months after the date of retirement. All appeals must be supported by documented medical evidence and referred to the medical services adviser appointed by the Cabinet Office for provisions relating to the PCSPS. Where the person concerned is unfit to make the appeal personally, a close relative, friend or trade union may appeal on their behalf during the allowed period. Medical information and the sickness record may be released provided that the person concerned agrees.

**11.10.5** Staff have the right to be accompanied by a relative, friend or trade union official at the Medical Appeal Board.

**11.10.6** The decision of the board is final.

**11.10.7** If an appeal against retirement on medical grounds is successful, the person is regarded as having remained on their normal conditions of service. This means that any superannuation award will be cancelled, and any payment will have to be adjusted retrospectively to give the person the salary to which they would have been entitled during the period. If the appeal fails, the person is regarded as having been medically retired at the date originally set by the department or agency.

## **12. APPEALS AND LEGAL REPRESENTATION AT PUBLIC EXPENSE**

### **12.1 Appeals**

**12.1.1** Civil servants have a right of appeal against management decisions that affect them adversely.

#### **Rules for departments and agencies**

**12.1.2** Departments and agencies must inform staff of their rights of appeal.

**12.1.3** Departments and agencies must put in place appropriate appeal arrangements. They must ensure that these arrangements incorporate the rights of appeal described in paragraphs 12.1.4 to 12.1.42 below.

#### **Personal grievances**

**12.1.4** Civil servants with personal grievances related to their work must be given the opportunity to appeal against decisions or actions which affect them adversely. The level at which such appeals are determined is a matter for the Permanent Head of Department, provided the decision is taken by an officer at least one management level higher than the officer who was responsible for the decision or action which is the subject of the appeal.

**12.1.5** Staff must be given the right to the assistance of a trade union representative or colleague during formal grievance proceedings.

#### **Appeals under the Civil Service Code**

**12.1.6** Paragraph 11 of the Civil Service Code provides for internal review of crises of conscience and other matters:

“Where a civil servant believes he or she is being required to act in a way which:

-is illegal, improper, or unethical;

- is in breach of constitutional convention or a professional code;
- may involve possible maladministration; or
- is otherwise inconsistent with this Code;

he or she should report the matter in accordance with procedures laid down in departmental guidance or rules of conduct. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with departmental procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience."

**12.1.7** A civil servant should not be required to do anything unlawful. In the very unlikely event of a civil servant being asked to do something which he or she believes would put him or her in clear breach of the law, the matter should be reported to a senior officer or to the Personnel Director or to an official nominated by the department or agency, who should if necessary seek the advice of the Legal Adviser to the department.

**12.1.8** Departments and agencies must establish clearly defined formal procedures for handling complaints. While many complaints will be raised through the management line, there should also be a nominated official or officials who can be approached in confidence in the first instance. The internal resolution procedures will normally involve the Permanent Head of Department or Agency Chief Executive. Departments and agencies should ensure that staff feel confident to voice complaints, and are not penalised for raising concerns in accordance with the procedures. Clear guidance on the procedures should be available to all staff.

**12.1.9** Reference to the Civil Service Commissioners is provided for in paragraph 12 of the Civil Service Code: "Where a civil servant has reported a matter covered in paragraph 11 in accordance with procedures laid down in departmental guidance or rules of conduct and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she



may report the matter in writing to the Civil Service Commissioners.”

**12.1.10** The Civil Service Code leaves it open to civil servants to make complaints directly to the Commissioners, and therefore to judge for themselves whether the Department’s internal response, when it is complete, is reasonable. Where a civil servant chooses to refer a concern through the Permanent Head of Department or Agency Chief Executive, or, if that is impractical or inappropriate, through the Personnel Director or equivalent, comments may be added in a covering note but the appeal itself should not be amended. Where a civil servant has gone to the Civil Service Commissioners directly, the Commissioners will wish to confirm whether the facts as stated in the complaint fairly reflect the department or agency’s position. The Commissioners should be given full co-operation in establishing the facts.

**12.1.11** It will sometimes occur that the instruction which is subject to complaint under paragraph 11 of the Civil Service Code is urgent, and the full process for internal review cannot be completed within the timescale for the action in question. Events may develop so quickly that there is insufficient time to complete the steps described, or senior staff may not be immediately available. In such cases, the civil servant wishing to raise a concern, if satisfied that there is no alternative action available under the procedure, and provided it would not put him or her in clear breach of the law, should carry out the request or instruction in question and immediately afterwards formally record in writing their dissent and the reasons for it. That minute should be sent to the Head of Department, or Chief Executive of the agency, who should advise the departmental Minister, if appropriate. Procedures for internal review and complaint to the Commissioners may still be followed after the event if the individual has a continuing concern about the action they were required to take.

### **Disciplinary action**

**12.1.12** Civil servants must be given the opportunity to appeal against

disciplinary decisions as set out in paragraph 4.5.14.

### **Civil Service Appeal Board**

**12.1.13** Departments and agencies must, in appropriate circumstances, inform staff of their rights of appeal to the Civil Service Appeal Board (CSAB). This is an independent appeals body comprising three people sitting together; either the appointed Chairman or Deputy Chairman and two members, one from the Official Side panel and one from the Trade Union panel. It operates without undue formality.

**12.1.14** The Board hears appeals against:

- a. refusal to allow participation in political activities (see paragraphs 12.1.15 to 12.1.23);
- b. forfeiture of superannuation (see paragraphs 12.1.24 to 12.1.26);
- c. dismissal and early retirement (see paragraphs 12.1.27 to 12.1.35); and
- d. non-payment of compensation or the amount of compensation paid to civil servants dismissed on inefficiency grounds (see paragraphs 12.1.36 to 12.1.40).

Political activities

12.1.15 Civil servants must be given the opportunity to appeal to the CSAB against a department's or agency's refusal to allow participation in political activities (see Section 4.4, Conduct: Political Activities).

**12.1.16 Appellants must ensure that the Board receives:**

- a. notification of the appellant's intention to appeal within 8 weeks of him or her being told of the department's or agency's final decision following any appeal under internal grievance procedures; and
- b. a full written case within 4 weeks of the date of lodging the appeal.

12.1.17 The Board will forward the appellant's full written case to the department

or agency which should, within 4 weeks of receiving it, explain the reasons for its decision and comment if it wishes on points made by the appellant. The Board will send a copy of the department's or agency's submission to the appellant.

12.1.18 The Board will tell the appellant when it will consider the case and ask if the appellant wishes to appear in person and to be assisted. If the appellant appears before the Board, the department or agency will be invited to attend.

12.1.19 The Board may seek relevant evidence from the department or agency or from any other person it considers qualified. Departments and agencies must, if required by the Board, give the appellant access to other papers which he or she wishes to see, if the Board considers they are necessary for the presentation of the appellant's case. In such circumstances the Board will consider carefully any security considerations before requiring departments and agencies to release any papers to the appellant.

12.1.20 Appellants have the right to:

- a. give further evidence either orally or in writing; and
- b. ask a trade union representative or a colleague to assist them with their case and to submit evidence on their behalf.

12.1.21 Departments and agencies may give further evidence orally or in writing.

12.1.22 The Board will consider the appeal in the light of the rules set out in Section 4.4, Conduct: Political Activities. It may recommend to the department or agency that permission to undertake the activity in question should or should not be granted or that there should be specific conditions applied to the granting of permission. The Board will tell the appellant and the department or agency of the Board's recommendation.

12.1.23 If the Head of department or agency does not accept a recommendation of the Board that permission to undertake a political activity should be granted, the department or agency must submit the case for final decision to the Minister

responsible for that department or agency and must tell the appellant and the Board of the final decision.

### **Forfeiture of superannuation**

12.1.24 Civil servants may appeal to the CSAB against the withholding of superannuation benefits under rule 8.2 of the Principal Civil Service Pension Scheme (see Annex A to Section 4.5).

12.1.25 Departments and agencies must give the individual a copy of rule 8.2 if superannuation benefits are to be withheld. The appellant may submit written representations about any relevant matters. Such representations may be made on their behalf by a trade union representative or colleague.

12.1.26 The Board's judgement will be accepted by the Cabinet Office.

### **Dismissal and early retirement**

**12.1.27** Civil servants must be given the opportunity to appeal to the CSAB if they are dismissed or retired early if, at the date of termination of their employment:

- a. they are UK based;
- b. the dismissal is not on medical grounds;
- c. they have been continuously employed in the Civil Service for at least one year;
- d. they have not reached the minimum pensionable age;
- e. their employment is not being terminated at the expiry of a fixed-term appointment in respect of which they have already agreed in writing before 25 October 1999 that they have no right of appeal;
- f. they were not taking part in industrial action, unless:
  - the dismissal was for taking part in protected industrial action; or
  - the department or agency has not dismissed all employees who were

taking part in the industrial action at the same establishment at the date of dismissal or another of those dismissed at the time has been offered re-engagement within 3 months of the date of dismissal; and

g. they were not taking part in unofficial industrial action at the time of dismissal.

**12.1.28 Appellants must:**

a. send notice to the Board of their intention to appeal either before their effective date of termination or so that it is received within 3 months of that date; and

b. send their full written case to the Board within 21 days of giving notice of their intention to appeal.

**12.1.29 The Board will:**

a. tell the employing department or agency of the intention to appeal as soon as it is received;

b. send the department or agency a copy of the appellant's full case and invite them to explain the reasons for their action and to comment, if they wish, on any points made by the appellant; and

c. send a copy of the department's or agency's statement to the appellant.

12.1.30 The department or agency should reply to the Board's invitation to comment within 21 days.

**12.1.31 Appellants have a right to:**

a. receive a copy of the department's or agency's statement;

b. respond to evidence sought by the Board;

c. submit representations about any relevant matters;

d. give further evidence either orally or in writing;

- e. ask a friend, trade union representative or a colleague to assist them with their case and to submit evidence on their behalf;
- f. a copy of any relevant communication between the department or agency and a medical advisor or Welfare Officer, unless the Board considers that there are special circumstances which would make such disclosure undesirable;
- g. access to other papers which they wish to see, as long as the Board considers they are necessary for the presentation of the appellant's case and there are no security considerations; and
- h. a hearing before the Board.

12.1.32 If the Board comes to a majority conclusion that the department's or agency's decision was fair, it will tell the appellant this. The appellant (or his or her representative) has two weeks from the date of the Board's notification of its conclusions to make representations to the Head of Department or to an officer at a level determined by the Head of Department before a final decision is made.

12.1.33 If the Board decides that the decision to dismiss was unfair, it may:

- a. recommend that the appellant be reinstated or re-employed (if the recommendation is rejected, it may award compensation or additional compensation in the case of early retirement); or
- b. specify what compensation (or additional compensation in the case of early retirement) should be paid; or
- c. recommend the appropriate action.

12.1.34 In cases of early retirement on grounds of limited efficiency or structure, the Head of Department or Agency Chief Executive will normally be expected to accept the recommendations of the Board unless there are overriding reasons to the contrary and, before such a recommendation is rejected, other departments and agencies must be consulted about the possibility of a transfer to them.

12.1.35 Departments and agencies must pay compensation awarded by the Board.

Inefficiency dismissals: compensation

12.1.36 Departments and agencies must give civil servants who have a right to appeal to the CSAB against dismissal on inefficiency grounds the opportunity to appeal separately and subsequently to the Board against the department's or agency's decision on compensation.

12.1.37 Appellants must tell the Board of their intention to appeal

- a. either within 21 days of the Board's report that dismissal was fair; or
- b. if not contesting the dismissal:
  - within 21 days of the effective date of termination; or
  - if the appointment was terminated without notice, the date on which employment ceased.

An appeal against dismissal may not follow one against non payment of compensation or the amount of compensation paid.

12.1.38 Appellants must send their full written case to the Board within 21 days of giving notice of their intention to appeal.

12.1.39 Appellants have the rights described in paragraph 12.1.31.

12.1.40 If the Board decides that the decision not to pay compensation was unjustified or the amount of compensation inappropriate, the department or agency must pay compensation awarded by the Board.

Expenses

12.1.41 Departments and agencies must pay for the following in connection with attendance at a Board hearing:

- a. the travelling and subsistence expenses of:
  - the appellant;

- any civil servant assisting the appellant;
  - any non-civil servant (other than a full time trade union representative or solicitor or barrister) who, with the Board’s agreement, attends with the appellant; and
- b. loss of earnings, if appropriate, incurred by:
- the appellant;
  - any non-civil servant (other than a full-time trade union representative or solicitor or barrister) who, with the Board’s agreement, attends with the appellant.

#### Communications with the Civil Service Appeal Board

12.1.42 All communications with the Board must be sent to the Secretary, Civil Service Appeal Board, Room G32, 22 Whitehall, London SW1A 2WH. It is the sender’s responsibility to ensure delivery.

### **12.2 Legal Representation at Public Expense**

12.2.1 Civil servants may be involved in legal proceedings or formal enquiries as a consequence of their employment. Unless the circumstances are covered by the rules set out in paragraphs 12.2.2 to 12.2.5 below, departments and agencies have discretion to grant civil servants so involved some or all of their legal representation or pay for some or all of their legal costs. In deciding whether to exercise this discretion, departments and agencies must take into account the following considerations:

- a. whether or not it is in their interest to grant assistance;
- b. whether the act in question was committed or suffered within the scope of the civil servant’s employment.



### Rules for departments and agencies

12.2.2 Departments and agencies must provide legal representation for civil servants who are sued for damages as a result of actions carried out in the course of their employment. This representation will be by the solicitor acting for the Crown. Any damages and/or liability for the other sides' costs must also be met from public funds. This right does not apply if:

- a. the department or agency consider that the civil servant was acting outside the scope of his or her employment; or
- b. the civil servant refuses to instruct the solicitor in terms required by the solicitor.

12.2.3 Departments and agencies must also:

- a. provide legal advice to civil servants assaulted in the course of their official duty. Departments and agencies have discretion to give assistance with any subsequent proceedings; and
- b. permit civil servants involved in an inquest or fatal accident enquiry as a result of their official duty to be represented by the legal representatives of the department or agency, provided there is no conflict of interest. Otherwise assistance with legal representation is at the discretion of the department or agency; and
- c. when a formal enquiry might lead to a civil servant being blamed, consider with their legal adviser whether the individual concerned should be given legal representation at public expense; tell the relevant trade union of their provisional decision and give sympathetic consideration to their views; and
- d. provide legal representation for civil servants sued as a result of the findings of the enquiry for actions carried out in the course of their official duty, unless the civil servant appears to have been guilty of wilful or gross negligence.

### Right of appeal

12.2.4 Civil servants who are refused legal representation or assistance with legal expenses may appeal to the Head of Department or his delegated representative.

### Liability of directors

12.2.5 Subject to paragraph 12.2.6 the Crown will accept responsibility for the civil liabilities, including costs, of a civil servant incurred in connection with his or her performance of the functions of a director (or any similar position, however described) or other officer of a company, provided that the department or agency has given written confirmation that the appointment is one to which this paragraph applies.

12.2.6 Paragraph 12.2.5 will not apply if:

- a. the liability arises from any wilful default or bad faith on the part of the civil servant; or
- b. the civil servant is otherwise indemnified against the liability.



附錄 3-1-3 內閣大臣法典

(Ministerial Code)

# MINISTERIAL CODE

*A Code of Ethics and Procedural Guidance for Ministers*

CABINET OFFICE  
JULY 2005

## **MINISTERIAL CODE**

### **A Code of Ethics and Procedural Guidance for Ministers**

#### **Foreword by**

#### ***The Prime Minister***

In issuing this Code, I should like to confirm my strong personal commitment to the bond of trust between the British people and their Government. We are all here to serve and we must serve honestly and in the interests of those who gave us our positions of trust.

I will expect all Ministers to work within the letter and spirit of the Code. For the first time, the Code is split into two parts: a Ministerial Code of Ethics, and Procedural Guidance for Ministers. This takes account of a recommendation made by the Committee on Standards in Public Life. Ministers will find it a useful source of guidance and reference as they undertake their official duties in a way that upholds the highest standards of propriety.

I believe we should be absolutely clear about how Ministers should account, and be held to account, by Parliament and the public. The first section of the Code of Ethics sets out these responsibilities clearly, including Ministers' responsibilities under the Freedom of Information Act 2000.

I commend the Ministerial Code to all of my Ministerial colleagues.

**TONY BLAIR**

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## PART I - MINISTERIAL CODE OF ETHICS

### 1 MINISTERS OF THE CROWN

1.1 Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

1.2 This Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations drawing on past precedent. It applies to all members of the Government (and covers Parliamentary Private Secretaries in section 2).

1.3 Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Parliament. The Code is not a rulebook, and it is not the role of the Secretary of the Cabinet or other officials to enforce it or to investigate Ministers although they may provide Ministers with private advice on matters which it covers.

1.4 Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention.

1.5 The Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life set out in the first report of the Committee on Standards in Public Life, repeated in annex A, and the following principles of Ministerial conduct:

- a. Ministers must uphold the principle of collective responsibility;
- b. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies;
- c. it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- d. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000;



e. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;

f. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

g. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

h. Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

i. Ministers must not use government resources for Party political purposes. They must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code.

1.6 Ministers must also comply at all times with the requirements which Parliament itself has laid down, including in particular the Codes of Conduct for their respective Houses. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report columns 1046-47), and for Ministers in the Lords the Resolution can be found in the Official Report of 20 March 1997 column 1057.

## 2 MINISTERS AND APPOINTMENTS

### Appointments by Ministers

2.1 The Prime Minister should be consulted in good time about the appointment or re-appointment of:

- a. the Chair and other Members of Royal Commissions;
- b. the Chair of and, as required, the Members of
  - i. Public Corporations;
  - ii. the most important Non-Departmental Public Bodies (both executive and advisory) and Executive Agencies;
  - iii. the more important Departmental committees, including those at 8.14(b);
- c. Heads of Non-Ministerial Departments;
- d. cases where the appointment is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations submissions to the Prime Minister by an appointing Minister should be copied to the Chief Whip. The Chief Whip should invariably be consulted before a Member of the House of Commons is approached about appointment to an office which would result in the vacation of a Parliamentary seat.

2.2 In all such cases, the Prime Minister will need to be informed about the particular requirements of the post, the attributes essential for a candidate and the extent to which candidates meet such requirements. In addition, the Prime Minister should be informed of other factors bearing upon the appointment of particular candidates (e.g. conflicts of interest) and all other relevant information.

2.3 A current list of individual public appointments on which the Prime Minister would expect to be consulted is held by the Public Appointments Unit in the Cabinet Office. This list has been agreed between Departments and No 10. Departments may also choose to consult the Prime Minister in other cases, depending on circumstances and bearing in mind sub-paragraph d. above. In all cases, the submission should make clear why the Prime Minister is being consulted.

2.4 In all cases falling within paragraphs 2.1 and 8.14-15 the submission which is to be put to the Prime Minister should be cleared with the Head of the Home Civil Service in advance and should indicate that any remuneration proposals have been agreed with the Treasury if necessary. No commitment should be made to any

individual before the Prime Minister has been consulted. In the case of Royal Commissions, the Private Secretary to the Prime Minister as well as the Lord Chancellor (see paragraph 8.14-15) should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

2.5 Where there is doubt about the need for consultation with the Prime Minister, the Public Appointments Unit should be consulted.

2.6 Subject to the above paragraphs and to the constitution of the body to which the appointment is made, public (non-Civil Service) appointments are the responsibility of the Minister concerned, who should appoint the person(s) he or she considers to be best qualified for the position. In doing so, the Minister should have regard to public accountability, the requirements of the law and to *The Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies*. The process by which such appointments are made should conform to the principles in the Code - Ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality - and to the procedures set out in detail in the Code.

**Parliamentary  
Private  
Secretaries**

2.7 Parliamentary Private Secretaries are not members of the Government, and should be careful to avoid being spoken of as such. They are Private Members, and should therefore be afforded as great a liberty of action as possible; but their close and confidential association with Ministers imposes certain obligations on them. Official information given to them should generally be limited to what is necessary for the discharge of their Parliamentary and political duties. This need not preclude them from being brought into Departmental discussions or conferences where appropriate, but they should not have access to secret establishments, or information graded secret or above, except on the personal authority of the Prime Minister. While, as Private Members, they need not adhere to the rules on private interests which apply to Ministers, they should, as a general rule, seek to avoid a real or perceived conflict of interest between their role as a Parliamentary Private Secretary and their private interests.

2.8 Ministers choose and appoint their own Parliamentary Private Secretaries with the written approval of the Prime Minister. The Chief Whip should, however, be consulted about the choice of a Parliamentary Private Secretary; and in view of the special position which Parliamentary Private Secretaries occupy in relation to the Government, the Prime Minister's approval must also be sought before any such appointment is offered and announced.

2.9 Ministers should ensure that their Parliamentary Private Secretaries are aware of certain principles which should govern the behaviour of Parliamentary Private Secretaries in the House of Commons. Like other Private Members, Parliamentary Private Secretaries are expected to support the Government in all important divisions. However, their special position in relation to the Government imposes an additional obligation which means that no Parliamentary

Private Secretary who votes against the Government may retain his or her position. Parliamentary Private Secretaries should not make statements in the House or put Questions on matters affecting the Department with which they are connected. Parliamentary Private Secretaries are not precluded from serving on Select Committees but they should not do so in the case of inquiries into their own Minister's Departments and they should avoid associating themselves with recommendations critical of or embarrassing to the Government. They should also exercise discretion in any speeches or broadcasts which they may make outside the House, taking care not to make statements which appear to be made in an official or semi-official capacity, and bearing in mind at the same time that, however careful they may be to make it clear that they are speaking only as Private Members, they are nevertheless liable to be regarded as speaking with some of the authority which is attached to a member of the Government. Generally they must act with a sense of responsibility and with discretion; and they must not associate themselves with particular groups advocating special policies.

2.10 Parliamentary Private Secretaries making official visits in the United Kingdom may receive the normal Civil Service travelling and subsistence allowances in respect of absences on official (or Departmental) business, as would other MPs undertaking work for Government Departments. It is for the Minister concerned to decide whether or not the Parliamentary Private Secretary, when accompanying the Minister, is engaged on Departmental business. It may occasionally be useful for a Parliamentary Private Secretary to accompany the Minister on an official visit abroad but no such arrangements should be made without the prior written approval of the Prime Minister. Where a Minister has to pull out of an event (United Kingdom or overseas) at the last minute and no other Minister is available to represent the Government, a Parliamentary Private Secretary may stand in for the Minister. However, such attendance should be exceptional and very much a last resort. It is for the Minister in charge of the relevant Department to justify the use of a Parliamentary Private Secretary in individual cases. The Prime Minister's approval will be required where this involves attendance at an overseas event.

**Special  
Advisers**

2.11 The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished "experts" in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support. With the exception of the Prime Minister, Cabinet Ministers may each appoint up to two Special Advisers. The Prime Minister may also authorise the appointment of one or two Special Advisers by Ministers who regularly attend Cabinet. The Government expects the appointment of experts normally to be made to permanent or temporary Civil Service posts in accordance with the rules of the Civil Service Commissioners. Where, however, an individual has outstanding skills or experience of a non-political kind which a Minister wishes to have available while in a particular post, the Prime Minister may exceptionally permit their appointment as an expert adviser within the usual limit of two advisers per Cabinet Minister. All appointments require the prior

written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. Any departures from the rule of two Special Advisers per Cabinet Minister will need to be explained publicly. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract for Special Advisers and the Code of Conduct for Special Advisers. The Model Contract and Code of Conduct for Special Advisers will also apply to expert advisers except for those aspects which relate to political commitment.

2.12 The responsibility for the management and conduct of Special Advisers, including discipline, rests with the Minister who made the appointment. Individual Ministers will be accountable to the Prime Minister, Parliament and the public for their actions and decisions in respect of their Special Advisers. It is, of course, also open to the Prime Minister to terminate employment by withdrawing his consent to an individual appointment.

2.13 The Government is committed to making an annual statement to Parliament setting out the numbers, names and paybands of Special Advisers, the appointing Minister and the overall salary cost. This statement will also include similar details in respect of expert and Unpaid Advisers. Where an adviser has a particular expertise or works mainly in a particular area of the department's work, this will also be indicated.

#### **Unpaid Advisers**

2.14 The appointment of an Unpaid Adviser is to provide advice to a Minister in their ministerial capacity. Such appointments are exceptional, and the prior written approval of the Prime Minister should be sought for any such appointment before a commitment is entered into. These appointments carry no remuneration or reimbursement from public funds. The appointment of an Unpaid Adviser is a personal appointment by the Minister concerned and there is no contractual relationship between such an adviser and the Department. In making an appointment Ministers must ensure that there is no conflict of interest between the matters on which the Unpaid Adviser will be advising and their private concerns. A letter of appointment must be issued by the employing Minister making this clear. Where an adviser is acting on similar terms to a Special Adviser but on an unpaid basis then they should conduct themselves as if they were a Special Adviser. As with Special Advisers, Unpaid Advisers are required to uphold the political impartiality of the Civil Service. The letter should indicate the subjects with which an Unpaid Adviser may (or may not) deal and their access to papers. The normal rules of confidentiality also apply. Unpaid Advisers are subject to the Official Secrets Act and Business Appointment Rules. Aside from the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system, an Unpaid Adviser should constitute no cost to the public purse. Ministers are responsible for the management and conduct of Unpaid Advisers.

### 3 MINISTERS AND CIVIL SERVANTS

3.1 Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.

#### **The role of the Accounting Officer**

3.2 Heads of Departments and the chief executives of executive agencies are appointed as Accounting Officers. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their Departments.

3.3 Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a Department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions, send relevant papers to the Comptroller and Auditor General, and inform the Treasury of what has occurred. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Committee of Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.

3.4 The role of Accounting Officers is described in detail in the Treasury memorandum, *The Responsibilities of an Accounting Officer*. There is also a Treasury handbook, *Regularity, Propriety and Value for Money*.

#### **Civil servants and Party Conferences**

3.5 Ministers should not ask civil servants to attend, or take part in, Party Conferences or meetings of policy or subject groups of any of the Parliamentary parties. In their official capacity, civil servants

should not accept invitations to conferences convened by party political organisations except when their presence is required for carrying through essential Departmental business unconnected with the conference. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend Party functions, including the annual Party conference (but they may not speak publicly at the conference) and maintain contact with Party members. Further guidance is available in the *Directory of Civil Service Guidance, Volume 2* ([www.cabinet-office.gov.uk/guidance](http://www.cabinet-office.gov.uk/guidance)). If a Minister wishes to have a factual brief for a party political occasion to explain Departmental policies or actions, there is no reason why this should not be provided.

#### 4 MINISTERS' CONSTITUENCY AND PARTY INTERESTS

4.1 It is wrong in principle for Ministers to use for Party or constituency work facilities provided at Government expense to enable them to carry out their official duties. This point of principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their constituents, and to the reimbursement of their secretarial expenses and the expenses of living away from home when attending to constituency business, within the limits prescribed by the relevant Resolutions of the House of Commons. Ministers should thus have their constituency work done at their own expense, as they would if they were private Members of Parliament.

4.2 Government property should not generally be used for constituency work or party activities. A particular exception is recognised in the case of Nos. 10 and 11 Downing Street, Carlton Gardens and other official residences where senior Ministers are required to live for the purposes of the job. Where Ministers host Party events in these residences or other Government property, it should be at their own or Party expense with no cost falling to the public purse.

4.3 Where Ministers have to take decisions within their Departments which might have an impact on their own constituencies, they should, of course, take particular care to avoid any possible conflict of interest, see paragraph 4.6.

##### **Parliamentary Commissioner for Administration cases**

4.4 Ministers in the Commons who are asked by members of the public to submit cases to the Parliamentary Commissioner for Administration (PCA) should, where possible, act no differently from other MPs. Ministers should accordingly consider requests on their merits in deciding whether to refer complaints to the PCA, to take them up with the Minister of the Department concerned, to refer the case to another MP (where the complaint is not from a constituent of the Minister) or to decline to take action. Any Minister who has in mind the reference of a case to the PCA would naturally wish to inform in advance the Minister of the Department concerned.

4.5 Where a complaint from a constituent is against the Minister's own Department the Minister will generally wish to investigate it personally unless he or she, or one of the other Ministers in the Department, has already been directly involved in the case. Where a Minister has been so involved, the PCA should be asked to investigate if the case is within his jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the PCA straight away.

##### **Deputations**

4.6 Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituents' representative and not as a Minister. Particular problems arise over views expressed on planning applications and certain other cases involving exercise of



discretion by Ministers (e.g. on school or hospital closures, highway or power station inquiries) in which representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity. Ministers are advised to take particular care in such cases to represent the views of their constituents rather than express a view themselves; but when they find it unavoidable to express a view they should ensure that their comments are made available to the other parties, avoid criticism of Government policies, confine themselves to comments which could reasonably be made by those who are not Ministers, and make clear that the views they are putting forward are ones expressed in their capacity as constituency MPs. Once a decision has been announced, it should be accepted without question or criticism. It is important, in expressing such views, that Ministers do so in a way that does not create difficulty for Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments could have on their own Departmental responsibilities. Particular care needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case they should write to the Minister responsible, as with constituency cases, but they should make clear their personal connection or interest. The responsible Minister should ensure that any inquiry is dealt with rigorously and without special treatment.

4.7 Parliamentary Private Secretaries, particularly those in Departments with planning responsibilities should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their constituency interests they should abide by the guidance in paragraph 4.6.

**Lottery Bids**

4.8 In order to avoid the impression that Ministers are seeking to influence decisions on awards of Lottery money, Ministers should not normally give specific public support for individual applications for Lottery funding. Where a Minister is the constituency MP for a potential Lottery application he or she should be guided by the principles set out in paragraph 4.6 Ministers lending support to a specific project should do so on the very clear understanding that it is in a constituency capacity.

**Co-ordination of Government Policy**

4.9 Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Communication Network are set out in *Guidance on Government Communications*.

## 5 MINISTERS' PRIVATE INTERESTS

- General principle** 5.1 Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise.
- Responsibility for avoiding a conflict** 5.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government including the Secretary of the Cabinet, or to arrange for expert or professional advice from inside or outside Government. In cases of serious difficulty or doubt the matter may be referred to the Prime Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.
- Procedure** 5.3 On appointment to each new office, Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.
- 5.4 On receipt of the written list the Permanent Secretary will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further written information is needed. The Permanent Secretary will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent and the help of the Cabinet Office as necessary, or to arrange for expert or professional advice also to be made available to the Minister from inside or outside government. At the end of the exercise Ministers are advised to record in writing what action has been considered and taken, and to provide the Permanent Secretary with a copy of that record.
- 5.5 Where it is proper for a Minister to retain a private interest it is the rule that he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and that the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary if a matter under consideration in the Department relates in some way to a Minister's previous or existing private interests such that there is or may be thought to be a conflict of interest. Particular care needs to be taken where financial interests are involved: see paragraphs 5.11 to 5.18 below.

5.6 The personal information which Ministers disclose to those who advise them is treated in confidence. Should the Department receive a request for this information it will take account of a range of factors including the confidentiality of the information. The relevant Minister will also be consulted and his or her views taken into account before a decision would be made on disclosure. If an allegation is made that a particular Minister has a conflict of interest it must be for that Minister to explain their position and justify what has been done. In doing so, they may wish to make public the list of their private interests (required under paragraph 5.3) and the steps taken to avoid an actual or perceived conflict. It is open to them if they wish to confirm (if it is the case) that they have consulted their Permanent Secretary in accordance with the Code. The Minister should however consult the Permanent Secretary about the content of any such statement before making it to ensure that there is agreement about the content, and any disagreement should be referred to the Prime Minister.

5.7 The intention of these procedures is not to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life, but to ensure that systemic steps are taken to avoid the danger of an actual or perceived conflict of interest. The following paragraphs set out in more detail particular measures which should be taken based on experience over successive governments.

**Public appointments**

5.8 When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the Prime Minister must be consulted.

**Non-Public Bodies**

5.9 Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of or otherwise offer support to pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Prime Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

**Trade Unions**

5.10 There is, of course, no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence; they should take no active

part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

**Financial interests**

5.11 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. It is particularly important that the procedure described in paragraphs 5.3 and 5.4 is followed in the case of financial interests. The Permanent Secretary as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department's business, and his or her advice must be given particular weight where such issues arise.

5.12 Two particular ways in which a conflict of financial interest, or the perception of it, can arise are as follows:

- a. from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
- b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

5.13 Apart from the risk to the Minister's reputation, two legal obligations must be born in mind:

- a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
- b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

**Financial interests: alternatives to disposal**

5.14 If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the Department and, where necessary, an external adviser what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

**Steps to be taken where financial interests are retained**

5.15 As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a 'blind' trust, i.e. one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to receive regular reports on the performance of the trust, and to receive both the capital and income generated. A blind trust is only blind in the case of a widely-spread portfolio of interests, managed by external advisers. Once a blind trust has been established the Minister should not be involved or advised of decisions on acquisition or disposal relating to the portfolio, although he can advise on the overall structure of the portfolio to be acquired. Ministers should remember that Part VI of the Companies Act 1985 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things there may be tax consequences in establishing this kind of arrangement.

5.16 Another step which (perhaps in conjunction with other steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings etc for a period.

5.17 Unless adequate steps can be taken in relation to the financial interests themselves, the Minister and the Department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions. For example:

- a. in the case of a junior Minister, it should be possible for the Ministerial head of the Department to take the decision or for the case to be handled by another junior Minister in the Department;
- b. in the case of the Ministerial head of Department or the holder of a specific office in whom powers are vested, it will normally be possible without risk of legal challenge to pass the handling of the matter to a junior Minister or appropriate official in the Department, or, exceptionally, to another Secretary of State. In such cases, legal advice should always be sought to ensure that the relevant powers can be exercised in this way.

5.18 In some cases, it may not be possible to devise such a mechanism to avoid actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the Department's work. In such a case, or in any case where, after taking legal advice and the advice of the Permanent

Secretary, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the Prime Minister. In such a case it may be necessary for the Minister to cease to hold the office in question.

**Partnerships**

5.19 Ministers who are partners, whether in professional firms, for example solicitors, accountants etc, or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm's affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions, as described in paragraph 5.17 above. Ministers in doubt about their personal position should consult the Prime Minister.

**Directorships**

5.20 Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is honorary. The only exception to this rule is that directorships in private companies established in connection with private family estates or in a company formed for the management of flats of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and public duty, the Minister should even in those cases resign the directorship. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

**Membership of Lloyds**

5.21 A Minister holding office as Prime Minister, Chancellor of the Exchequer or Secretary of State for Trade and Industry, or a Minister holding office as a Minister in the Treasury who is responsible under the Chancellor of the Exchequer for taxation matters relating specifically to Lloyd's, or as a Minister in the Department of Trade and Industry responsible under the Secretary of State for Trade and Industry for insurance matters relating specifically to Lloyd's, should not become an underwriting member of Lloyd's. Such a Minister, if already a member of Lloyd's on appointment, should cease underwriting during tenure of office.

5.22 Other Ministers who are underwriting members of Lloyd's should not take an active part in the management of the affairs of syndicates of which he/she is a member, and should on appointment as a Minister withdraw from any such active participation in its management. Ministers with underwriting connections to Lloyd's (whether past or present) should seek the advice of their Permanent Secretary as there can be implications for handling Departmental or collective discussions or decisions which are not always obvious.

**Nomination for prizes and awards**

5.23 From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, e.g. the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable

that some people would assume that the Government was itself thereby giving its sponsorship.

**Acceptance of gifts and hospitality**

5.24 It is a well established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of their family.

5.25 This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Prime Minister's guidance. The same rules apply to the acceptance of gifts from donors with whom a Minister has official dealings in this country as to those from overseas (paragraph 10.19), that is:

- a. Receipt of gifts should be reported to the Permanent Secretary;
- b. Gifts of small value (currently this is set at up to £140) may be retained by the recipient;
- c. Gifts of a higher value should be handed over to the Department for disposal, except that:
  - i. the recipient may purchase the gift at its cash value (abated by £140);
  - ii. if the Department judges that it would be of interest, the gift may be displayed or used in the Department;
  - iii. if the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose for a period of up to five years;
- d. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract.

5.26 Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests. Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Peers' Interests.

**Annual List of Gifts**

5.27 The Government publishes an annual list of gifts received by Ministers valued at more than £140. The list provides details of the value of the gifts and whether they were retained by the department or purchased by the Minister. Departments must ensure that they

maintain records of gifts received in such a way as to be able to provide this information on an annual basis to the Cabinet Office.

5.28 In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared in Register of Members' or Peers' Interests. Registration of hospitality would normally be required for hospitality over £550<sup>1</sup> in value for the Commons and £1000<sup>1</sup> for the Lords.

**Acceptance of appointments after leaving ministerial office**

5.29 On leaving office, Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office. This is not necessary for unpaid appointments in non-commercial organisations or appointments in the gift of the Government, such as Prime Ministerial appointments to international organisations. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. The Advisory Committee may recommend a delay of up to two years before the appointment is taken up if:

- a. an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the firm or organisation concerned;
- b. an employer could make improper use of official information to which a former Minister has had access.

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<sup>1</sup> These figures will be updated from time to time by the Houses.



## **The Seven Principles of Public Life**

### **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

## PART II - PROCEDURAL GUIDANCE FOR MINISTERS

### 6 MINISTERS AND THE GOVERNMENT

#### **Attendance at meetings of the Privy Council**

6.1 Once a Minister has accepted a Summons to a meeting of the Privy Council this should take precedence over all other engagements. If a Minister is subsequently unable to attend because of illness, or an inescapable public duty, the Clerk of the Council must be informed immediately. If a Minister has a meeting immediately before a Council, the agenda should be arranged to leave ample time to reach the Palace. In no circumstances is it permissible for a Minister not to attend because an earlier meeting has overrun its time. The failure of a Minister to attend a Council after a summons has been accepted is not only discourteous to The Queen but could result in no quorum being present to transact essential Government business.

#### **Cabinet and Ministerial Committee business**

6.2 The business of the Cabinet and Ministerial Committees consists in the main of:

- a. questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- b. questions on which there is an unresolved argument between Departments.

6.3 Matters wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility as defined above need not be brought to the Cabinet or to a Ministerial Committee unless the Minister wishes to inform his colleagues or to have their advice. A precise definition of such matters cannot be given: in borderline cases a Minister is advised to seek collective consideration. Questions involving more than one Department should be examined interdepartmentally, before submission to a Ministerial Committee, so that the decisions required may be clearly defined.

#### **Ministerial Committees**

6.4 The Cabinet is supported by Ministerial Committees which have a two-fold purpose. First, they relieve the pressure on the Cabinet itself by settling as much business as possible at a lower level or, failing that, by clarifying the issues and defining the points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may never reach the Cabinet itself, the decision will be fully considered and the final judgement will be sufficiently authoritative to ensure that the Government as a whole can be properly expected to accept responsibility for it. When there is a difference between Departments, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including personal correspondence or discussions between the Ministers concerned.

6.5 If the Ministerial Committee system is to function effectively, appeals to the Cabinet must be infrequent. Those who chair Committees are required to exercise their discretion in advising the

Prime Minister whether to allow them. The only automatic right of appeal is if Treasury Ministers are unwilling to accept expenditure as a charge on the reserve; otherwise the Prime Minister will entertain appeals to the Cabinet only after consultation with the Minister who chairs the Committee concerned. Departmental Ministers should normally attend in person meetings of Committees of which they are members or to which they are invited. Unless they make it possible for their colleagues to discuss with them personally issues which they consider to be important, they cannot - except where their absence is due to factors outside their control - expect the Prime Minister to allow an appeal against an adverse decision taken in their absence.

**The priority of Cabinet meetings**

6.6 Cabinet meetings take precedence over all other business except meetings of the Privy Council, although it is understood that Ministers may occasionally have to be absent for reasons of Parliamentary business. Requests by Cabinet Ministers for permission to be absent should be made only in the most exceptional circumstances, and should be made at the earliest opportunity and in writing to the Prime Minister, copied to the Secretary of the Cabinet. A minute is not necessary when the reason for absence from Cabinet is an overseas visit for which the Prime Minister's approval has already been obtained. As is indicated in paragraph 10.2(a), a copy of the letter seeking the Prime Minister's approval for the overseas visit or absence for any other reason should be sent to the Secretary of the Cabinet. (See paragraph 6.5 above for attendance at Cabinet Committees.)

6.7 In order not to disturb the proceedings of the Cabinet and Ministerial Committees, Ministers should see that messages are not sent to them during meetings unless this is absolutely essential. A Minister invited to attend for a particular item will be called into the meeting by the Prime Minister's Private Secretary (or the Secretary of the Committee) as soon as the item for which he or she is required has been reached.

**Preparation of business for Cabinet and Ministerial Committees**

6.8 Guidelines on the conduct of Cabinet and Ministerial Committee business are set out in *Cabinet Committee Business* published by the Cabinet Office. This is expected to be replaced by Autumn 2005 with a website on the Cabinet Secretariat and Cabinet Committees. In all cases the Secretary should be given at least seven full working days' notice of any business likely to require substantive policy discussion (including business to be raised orally) which a Minister wishes to bring before the Cabinet or a Committee. Papers should be circulated in sufficient time to enable Ministers to read and digest them, and to be properly briefed. Papers for Cabinet and Ministerial Committees should be circulated at least four full working days in advance of the meeting at which they are to be discussed. Where a Minister wishes to advise Cabinet of an issue on which no substantive policy discussion is expected, the Private Office should alert the Secretary of the Cabinet in the morning of the day before Cabinet.

6.9 Ministers' Private Secretaries can help the Secretary by indicating where Ministers other than members of the Cabinet are likely to be concerned with a subject, so that arrangements may be made for their attendance.

6.10 It is the responsibility of the initiating Department to ensure that proposals have been discussed with other interested Departments and the results of these discussions reflected in the memorandum submitted to Cabinet or a Ministerial Committee. Proposals involving expenditure or affecting general financial policy should be discussed with the Treasury before being submitted to the Cabinet or a Ministerial Committee. The result of the discussion together with an estimate of the cost to the Exchequer (or estimates, including the Treasury's estimate, if the Department and the Treasury disagree) should be included, along with an indication of how the cost would be met (e.g. by offsetting savings). The estimate of the cost should identify any impact on other Departments. The list of other Departments to be consulted will depend on the proposal but, as a general guide, proposals involving legal implications, especially if there is a risk of successful legal challenge, should be cleared with the Law Officers. The Scotland Office, Northern Ireland Office and Wales Office must be consulted where proposals have implications for their areas of responsibility. Papers should also include a Regulatory Impact Assessment; confirmation that the European Law Checklist has been followed if European requirements are being implemented; any significant costs or benefits to the environment; any change in local government responsibilities; consequences for European Union, European Court of Human Rights and other international obligations; and presentational aspects including, where appropriate, a draft statement or announcement. If, exceptionally, papers are circulated as minutes addressed to the Prime Minister, they are subject to the same requirements.

6.11 These rules do not limit the right of Ministers to submit to the Cabinet memoranda setting out their views on general issues of policy.

6.12 Papers for the Cabinet and Committees of the Cabinet should be as clear and as brief as possible. They should not normally exceed three pages at most, and the Cabinet Office may not accept an over-long paper for circulation. Time spent in making a paper short and clear is saved many times over in reading and in discussion; and it is the duty of Ministers to ensure that this is done and that, where necessary, papers submitted to them are revised accordingly. The model paper explains at the outset what the problem is, indicates briefly the relevant considerations, and concludes with a precise statement of the decisions sought. Paragraphs should be numbered for ease of reference. Detailed analysis and argument, together with supplementary detail, should be dealt with, where necessary, in annexes.

**Cabinet  
Conclusions  
and Ministerial  
Committee  
minutes**

6.13 The record of Cabinet and Committee proceedings is limited to the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The Cabinet Office is instructed to avoid, so far as practicable, recording the opinions expressed by particular Ministers. Matters of special secrecy or political sensitivity may be recorded in a limited circulation annex.

6.14 Any suggestions for amendment of Cabinet Conclusions or

Committee minutes must reach the Secretary not later than 24 hours after the circulation of the minutes.

6.15 Ministers are responsible for instructing their Departments to give effect to the conclusions of the Cabinet or of one of its Committees, and for telling subordinate Departments or branches about decisions affecting them. When immediate action is required by a Department not represented at the meeting, the Secretary will ensure that the Department concerned is notified forthwith. Where urgent action has to be taken by a Department, the Department may ask the Secretary for an advance copy of the relevant conclusions.

**Collective  
responsibility**

6.16 The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.

6.17 Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained. Moreover Cabinet and Committee documents will often contain information which needs to be protected in the public interest. It is therefore essential that, subject to the requirements on the disclosure of information set out in the Freedom of Information Act 2000, Ministers take the necessary steps to ensure that they and their staff preserve the privacy of Cabinet business and protect the security of Government documents.

6.18 The principle of collective responsibility and the need to safeguard national security, relations with other countries and the confidential nature of discussions between Ministers and their civil servants impose certain obligations on former Ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their draft manuscript to the Secretary of the Cabinet for comment and approval and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see also paragraph 9.17).

**Cabinet  
documents**

6.19 Ministers relinquishing office without a change of Government should hand over to their successors those Cabinet documents required for current administration and should ensure that all others have been destroyed. Former Ministers may at any time, and subject to undertakings to observe the conventions governing Ministerial memoirs, have access in the Cabinet Office to copies of Cabinet or Ministerial Committee papers issued to them while in office.

6.20 On a change of Government, the outgoing Prime Minister

issues special instructions about the disposal of the Cabinet papers of the outgoing Administration.

6.21 Some Ministers have thought it wise to make provision in their wills against the improper disposal of any official or Government documents which they might have retained in their possession by oversight.

**The Law  
Officers**

6.22 The Law Officers<sup>1</sup> must be consulted in good time before the Government is committed to critical decisions involving legal considerations. It will normally be appropriate to consult the Law Officers in cases where:

- a. the legal consequences of action by the Government might have important repercussions in the foreign, European Union or domestic field;
- b. a Departmental Legal Adviser is in doubt concerning:
  - i. the legality or constitutional propriety of proposed primary or subordinate legislation which Government proposes to introduce; or
  - ii. the vires of proposed subordinate legislation; or
  - iii. the legality of proposed administrative action, particularly where that action might be subject to challenge in the courts;
- c. Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations, which are likely to come before the Cabinet or Cabinet Committee;
- d. there is a particular legal difficulty (including one which arises in the context of litigation) which may raise sensitive policy issues;
- e. two or more Departments disagree on legal questions and wish to seek the view of the Law Officers.

6.23 By convention, written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding Administrations.

6.24 When advice from the Law Officers is included in correspondence between Ministers, or in papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.

6.25 The fact that the Law Officers have advised (or have not advised) and the content of their advice must not be disclosed outside

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<sup>1</sup> The Attorney General, Solicitor General and Advocate General for Scotland.

Government without their authority.

**Legal  
proceedings  
involving  
Ministers**

6.26 Where Ministers become involved in legal proceedings, there may be implications for them in their official positions. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his or her private position. But almost any type of legal proceedings in which a serving Minister becomes involved – for example, an action to recover a debt – may turn out to have wider ramifications and is always capable of attracting considerable publicity as a consequence of the Minister's position. In all such cases, Ministers should consult the Law Officers so that they may offer guidance on the potential implications and handling of the proceedings. As regards the timing of an approach to the Law Officers, the following should be applied:

- a. a Minister should consult the Law Officers as soon as he or she is minded to threaten legal proceedings or to take any action – for example, writing a hostile letter – which might be perceived as being the first step towards litigation. He or she should certainly consult the Law Officers before instructing solicitors to commence legal proceedings, and ideally before making any approach to solicitors;
- b. similarly, when a Minister is a defendant in an action, he or she should notify the Law Officers as soon as possible. Preferably, this should be before he or she has instructed his own solicitors in the matter but, in any event, the Law Officers should be notified as soon as the Minister is aware that legal proceedings are threatened;
- c. it is not necessary for the Law Officers to be consulted before a Minister seeks legal advice on a matter, provided that the Minister at that time has no intention to commence proceedings and there is no indication that proceedings are to be commenced against him;
- d. a Minister may become involved in proceedings other than as a party – for example, if he or she is a witness in proceedings. A Minister who agrees to volunteer a statement for one side rather than another in such a case may, for example, inadvertently give the appearance that the Crown is backing one side in private litigation. More seriously, acting as witness may carry a risk that the Minister is asked to disclose sensitive information or documents for which public interest immunity should be claimed, and in those circumstances the Law Officers need to be alerted to that possibility from the outset. In these circumstances, the Minister should inform the Law Officers as soon as he or she is aware of his or her potential involvement in the proceedings.

6.27 In criminal proceedings the Law Officers act wholly independently of the Government. In civil proceedings a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and

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action undertaken by them in the general interest, for example, to enforce the law on behalf of the general community.



## 7 MINISTERS AND PARLIAMENT

### Parliamentary statements and other Government announcements

7.1 When Parliament is in session, the most important announcements of Government policy should be made, in the first instance, in Parliament. Even when Government announcements are not of major importance their timing may require careful consideration in order to avoid clashes with other Government publications, statements or announcements or with the planned Parliamentary business. The Leader of the House of Commons, the Chief Whip and the No 10 Press Office should be given as long an opportunity as possible, and wherever possible at least two working days, to comment on the content and timing of all important Government announcements, whether in the form of a Written Ministerial Statement or an oral statement in Parliament, White Paper or press conference. Whenever possible they should also be shown the draft announcement in advance.

7.2 If too many announcements are made by oral statement at the end of Questions, Parliamentary business could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Ministerial Statement. Ministers proposing to make a statement after Questions (whether or not it is related to a Question on the order paper) or to answer a Question by leave at the end of Questions or to make an important announcement by means of a Written Ministerial Statement are therefore asked to conform with the following procedure:

a. as much notice as possible of the intention to make an announcement should be given to (i) the Prime Minister's Private Secretary; (ii) the Private Secretary to the Leader of the House of Commons; (iii) the Private Secretary to the Chief Whip; (iv) the No 10 Press Office. This notification should indicate the broad content of the proposed announcement; if necessary, why an oral statement is thought to be appropriate; and an indication whether the policy with which it is concerned has been approved by Ministers, including references to relevant discussions in Cabinet or Cabinet Committees. If agreement in principle is given, a draft of the oral statement or Written Ministerial Statement should be circulated to the same recipients as soon as possible, having been approved in broad terms, though not necessarily in detail, by the Minister in charge of the Department. Draft statements or answers should be accompanied by background notes which identify the likely points of attack and suggest how these can best be met;

b. in the case of announcements by Written Ministerial Statement, particular care must be taken to avoid making a press announcement before the Written Ministerial Statement has been made available to the House. Written Ministerial Statements can be made after 9.30am each day. On a Monday where there is an accompanying document

which needs to be laid before both Houses, the Written Ministerial Statement can be made after 11.30am. When making an announcement Written Ministerial Statements should be issued in both Houses.

7.3 Ministers should not give undertakings, either in or outside the House of Commons, that an oral statement will be made to the House on any subject at a specific time or within a particular period until agreement has been given by the Private Secretaries to the Prime Minister, the Leader of the House of Commons and the Chief Whip, to the proposed timing and by the Ministers concerned to the terms of the statement.

7.4 Ministers will be conscious of the pressures of other Parliamentary business when deciding on the timing of statements. For example, on Thursdays a considerable amount of Parliamentary time after Questions is already pre-empted by discussion of the following week's business. It is also desirable, except in special circumstances, to avoid oral statements on Fridays:

- a. copies of the final version of such announcements should be sent to the Private Secretaries to the Prime Minister, the Leader of the House and the Chief Whip and to the No 10 Press Office as soon as they are available;
- b. a copy of the text of any oral statement to be made at the end of Questions should usually be shown to the Opposition Parties shortly before it is made. For this purpose fifteen extra copies of the final text must reach the office of the Chief Whip in the House of Commons as early as possible and in any case not later than 2.45 pm (Monday and Tuesday), 11.45 am (Wednesday), 10.45 am (Thursday) or 10.15 am (Friday) on the day on which the statement is to be made;
- c. a copy of the final text of an oral statement should in all cases be sent in advance to the Speaker;
- d. the texts of oral statements should be made available in the Vote Office as soon as the Minister responsible for making the statement stands up. However, there may be occasions when this will not be possible, for example, for reasons of market confidentiality (e.g. the Budget). All advance copies will be released on the assumption that Ministers can and will make changes to the statements up to and including the point when they are at the Despatch Box;
- e. every effort must be made to ensure that where a former Minister or a Ministerial colleagues and/or a fellow MP is mentioned in a statement or report which prompts a Ministerial statement, he or she is given as much notice as is reasonably possible. The current practice is that those concerned should be given a copy of the report on the morning of the announcement;

f. both the Leader and the Chief Whip of the House of Lords should be informed of a forthcoming oral statement in the House of Commons and consulted about the desirability of repeating it in the Lords;

g. a copy of any important Ministerial statement as actually delivered should be placed as quickly as possible in the Library of the House. This gives Members an opportunity of studying it in advance of publication in the Official Report.

7.5 Every effort should be made to avoid leaving significant announcements to the last day before a Recess.

**Supply of  
Parliamentary  
publications**

7.6 A Minister in charge of an item of business in the House of Commons must ensure that reasonable numbers of copies of any documents published during the last two Sessions which may be needed for the debate are placed in the Vote Office and is responsible for supplying the House of Commons Library in advance with a list of all those older papers which the Minister considers relevant to the item. When any document is out of print the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate the Minister's Private Secretary should consult the Chief Whip's Private Secretary. Similar arrangements should be made with the Chief Whip's or the Leader's offices for debates in the House of Lords.

**Money  
Resolutions**

7.7 All Money Resolutions are placed on the order paper in the name of the Financial Secretary, Treasury. But he or she is not responsible for seeing a Resolution through the House of Commons. It has always been the practice (as for Civil Estimates) that, although Resolutions appear in the name of the Financial Secretary, the Minister having Departmental responsibility for the relevant Bill is also responsible for the Money Resolution in the House of Commons.

**Select  
Committee  
Reports**

7.8 Any Minister or Parliamentary Private Secretary who receives a copy of a Select Committee Report in advance of publication [excluding copies sent to Departments at the Confidential Final Revise (CFR) stage] should make no use of them and should return them without delay to the Clerk of the Committee. Civil servants, including Special Advisers, are also covered by this ruling.

**Membership of  
Select  
Committee/All  
Party  
Parliamentary  
Groups**

7.9 In order to avoid any conflict of interest, Ministers on taking up office, should give up membership or chairmanship of a Select Committee or All Party Parliamentary Groups. This is to avoid any risk of criticism that a Minister is seeking to influence the Parliamentary process. Ministers must also avoid being drawn into a situation whereby their membership of a Committee could result in the belief that Ministerial support is being given to a particular policy or funding proposal.

## 8 MINISTERS AND THEIR DEPARTMENTS

### Changes in Ministerial responsibilities

8.1 The Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of Departments. His approval should therefore be sought where changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions. This applies whether the functions in question are derived from statute or from the exercise of the Royal prerogative, or are general administrative responsibilities.

8.2 The Prime Minister's written approval should be sought where it is proposed to transfer functions:

- a. between Ministers in charge of Departments (unless the changes are de minimis, can be made administratively and do not justify public announcement – but see paragraph 8.7 below);
- b. within the field of responsibility of one Minister – where the change is likely to be politically sensitive or to raise wider issues of policy or organisation, for instance by "hiving off" the discharge of some functions to a Non-Departmental Public Body;
- c. between junior Ministers within a Department when a change in Ministerial titles is involved (see also paragraph 8.8 below).

8.3 In addition, the Prime Minister's written approval should be sought for proposals to allocate new functions to a particular Minister where the function does not fall wholly within the field of responsibilities of one Minister, or where there is disagreement about who should be responsible.

8.4 The Prime Minister will also determine questions where there is disagreement, for instance because one Minister has proposed a transfer of functions that is not accepted by the other(s) affected.

8.5 In giving approval or in determining disputed issues, the Prime Minister may want to take the advice of the Head of the Home Civil Service. The Minister responsible should therefore ensure that the Head of the Home Civil Service is consulted directly by the Permanent Secretary of the Department concerned, or that the officials in Economic and Domestic Secretariat are approached so that they can bring the proposals to his or her attention, before proposals for a transfer or allocation of functions are submitted to the Prime Minister. The submission to the Prime Minister should be copied to the Head of the Home Civil Service.

8.6 Responsibility for making a submission to the Prime Minister should normally lie with the ceding Minister in the case of transfers of existing functions, and the principal receiving Minister in the case of allocation of new functions.

8.7 Unresolved disputed issues concerning the allocation of functions should preferably be referred to the Head of the Home Civil Service before a submission is made to the Prime Minister; and it may be appropriate for him or her to make the submission on behalf of the Minister concerned. All proposals for a transfer of functions, including those not considered to require the Prime Minister's approval, should be notified to the Economic and Domestic Secretariat in the Cabinet Office before they are implemented.

**Ministers  
outside the  
Cabinet**

8.8 The Minister in charge of a Department is alone answerable to Parliament for the exercise of the powers on which the administration of that Department depends. The Minister's authority may, however, be delegated to a Minister of State, a Parliamentary Secretary or to an official; and it is desirable that Ministers should devolve to their junior Ministers responsibility for a defined range of Departmental work, particularly in connection with Parliament. A Minister's proposal for the assignment of duties to junior Ministers, together with any proposed "courtesy titles" descriptive of their duties should be agreed in writing with the Prime Minister, copied to the Secretary of the Cabinet. Secretaries of State also need to consider the governance structures in their departments, together with the role played by junior Ministers in these arrangements.

8.9 Ministers of State and Parliamentary Secretaries will be authorised to supervise the day-to-day administration of a defined range of subjects. This arrangement does not relieve the Permanent Secretary of general responsibility for the organisation and discipline of the Department or of the duty to advise on matters of policy. The authority of Ministers outside the Cabinet is delegated from the Minister in charge of the Department; the Permanent Secretary is not subject to the directions of junior Ministers. Equally, junior Ministers are not subject to the directions of the Permanent Secretary. Any conflict of view between the two can be resolved only by reference to the Minister in charge of the Department or, if the latter is absent and a decision cannot be postponed, by reference to the Prime Minister or to a Minister whom he has nominated for the purpose.

**Arrangements  
during absence  
from London**

8.10 The Secretary of the Cabinet should be informed of Ministers' out-of-town engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, he or she can inform the Prime Minister which Ministers are immediately available.

8.11 When a Minister in charge of a Department will be unable to be contacted for a considerable period because of absence or illness a Minister of State will normally take Ministerial charge of the Department. On some occasions, it may be desirable that arrangements should be made for another member of the Cabinet to be available to oversee the Department and to represent the Department's interests in discussions in Cabinet or Cabinet Committees. The Prime Minister's prior approval should be sought for the arrangements for superintending the work of a Department when the Minister in charge will be absent.

8.12 When one member of the Cabinet is acting in this way on behalf of another, special care must be taken over the exercise of statutory powers. Powers vested formally in "the Secretary of State", as distinct from a specific Secretary of State, can be exercised by any Secretary of State in the absence of another. Otherwise the statutory powers of one Minister cannot formally be exercised in the Minister's absence by a colleague in charge of another Department, and a Minister who is acting for an absent colleague should be careful to avoid appearing formally to exercise powers which are expressed by statute as exercisable by that colleague. The powers of a Board or Council may, however, be exercisable in the absence of its principal member. There may also be statutory authority for formal documents to be signed on behalf of an absent Minister by junior Ministers or officials. Ministers should seek legal advice in cases of doubt.

8.13 There is no similar difficulty about submissions to Her Majesty. Submissions made in the absence of a Minister can however be made only by a junior Minister who is a Privy Counsellor or by another member of the Cabinet. Submissions on behalf of an absent Secretary of State must be made by another Secretary of State.

**Royal Commissions, Committees of Inquiry**

8.14 The Prime Minister should be consulted in good time about any proposal to set up:

- a. Royal Commissions: these can only be set up with the sanction of the Cabinet and after The Queen's approval has been sought by the Prime Minister;
- b. independent Committees of Inquiry into any aspect of public policy.

8.15 Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning appointments set out in paragraph 2.1. The Lord Chancellor should also be consulted where there is a proposal to appoint a judge or legal officer (e.g. a Law Commissioner) to any of the above inquiries. Indeed it may be preferable for the individuals concerned to be approached by the Lord Chancellor, rather than the Department concerned.

**Contacts with outside interest groups, including Lobbyists**

8.16 Ministers receive deputations from many outside interest groups which Ministers will wish to consider as part of the formulation of Government policy. The basic facts of formal meetings between Ministers and outside interest groups should be recorded, setting out the reasons for the meeting, and the names of those attending and the interests represented.

**References for constituents**

8.17 On occasions, Ministers are asked to provide personal or job references for constituents. Ministers can of course do this provided they make clear that they are doing so as a constituency MP and not a Minister. However, particular care needs to be taken to avoid any conflicts of interests and in some cases it may not be appropriate for

a Minister to do this, even as an MP. For example, Ministers should not provide references for jobs in the public sector for which their department is responsible.

## 9 MINISTERS AND THE PRESENTATION OF POLICY

- Co-ordination of Government Policy** 9.1 Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Communication Network are set out in *Guidance on Government Communications*.
- 9.2 In order to ensure the effective presentation of government policy, all major interviews and media appearances, both print and broadcast, should be agreed with the No 10 Press Office before any commitments are entered into. The policy content of all major speeches, press releases and new policy initiatives should be cleared in good time with the No 10 Private Office. The timing and form of announcements should be cleared with the No 10 Strategic Communications Unit.
- Press conferences** 9.3 In order to explain policies or to announce new policies a Minister may decide to hold a press conference. This will be convened by the Department's Communications Directorate. All press conferences are on the record and open to any representative of the home and overseas media. It is often the practice of Ministers to give separate radio and TV interviews afterwards in order to secure the most effective presentation of their views or announcement. Where a Minister wishes to address the Lobby the No 10 Press Office should be consulted both about the desirability of such a briefing and the method of organising it. This paragraph applies to overseas as well as to the home media.
- Publication of White and Consultation Papers** 9.4 Before publishing a White or a Consultation Paper, Departments should consider whether it raises issues which require full collective Ministerial consideration, and, after consulting the Cabinet Office as necessary, seek clearance through the appropriate Cabinet Committee. Any Command Paper containing a major statement of Government policy should be circulated to the Cabinet before publication. This is usually done at the Confidential Final Revise (CFR) stage and should be done under cover of a letter from the Minister's Private Secretary. This rule applies to Papers containing major statements even when no issue requiring collective consideration is required.
- 9.5 Except where such Papers are of a routine character or of minor importance, the timing of their publication is governed by similar considerations to those applying to announcements made in Parliament. Ministers are therefore asked to apply to White Papers the procedure laid down in paragraph 7.2(a). From time to time, White Papers are laid before Parliament in the name of the Prime Minister. In all such cases, the lead Department on the policy issues concerned takes responsibility for the processing and distribution of the White Paper. This should be handled in close consultation with the Parliamentary Clerk at No 10.
- 9.6 Care should be taken to avoid infringing Parliamentary privilege when publicity is being arranged for White Papers and similar documents. A procedure is available whereby Confidential Final Revise proof copies (CFRs) of White Papers can be made available under embargo to the Lobby and Upper Gallery, and with discretion to members of other organised groups of correspondents, a short time



before copies are laid in the Vote Office (i.e. before publication). In some cases (for instance, where commercially sensitive information is involved, or where the disadvantages of any breach of an embargo are thought to outweigh the benefits of making advance copies available to the media) no copies should be made available to the media before publication. Where it is considered that the balance of advantage favours the issue of advance copies to the media under embargo, so as to enable their representatives to digest the contents of a White Paper before general publication, the interval between issue of CFRs under embargo and publication should not normally exceed a few hours: for instance, where a White Paper is to be published in the afternoon, CFRs should be issued under embargo during the morning of the same day. Only in special circumstances - for instance, if a White Paper is particularly long or technical - should CFRs be issued under embargo overnight. Any proposal to issue CFRs under an embargo of longer than 24 hours must be cleared with the No 10 Press Office. CFRs may be given only to representatives of the media and then only under strict embargo. Any breach of an embargo is a serious matter and should be reported immediately by the Department's Communications Directorate to the Minister in charge of the Department and to No 10.

## Speeches

9.7 Ministers cannot speak on public affairs for themselves alone. In all cases other than those described in paragraph 4.6 they speak as Ministers; and the principle of collective responsibility applies. They should ensure that their statements are consistent with collective Government policy and should not anticipate decisions not yet made public. Ministers should exercise special care in referring to subjects which are the responsibility of other Ministers. Any Minister who intends to make a speech which deals with, or makes observations which bear upon, matters which fall within another Minister's responsibilities should consult that Minister.

9.8 The Prime Minister should always be consulted before any mention is made of matters which either affect the conduct of the Government as a whole or are of a constitutional character. The Foreign and Commonwealth Secretary should always be consulted before any mention is made of matters affecting foreign and Commonwealth affairs, relations with foreign and Commonwealth countries and the political aspects of the affairs of dependent territories. Ministers wishing to refer in a speech or any other public statement to economic policy or to proposals involving additional public expenditure or revenue costs should in all cases consult the Chancellor of the Exchequer or the Chief Secretary. Ministers wishing to refer to defence policy should in all cases first consult the Secretary of State for Defence. Ministers wishing to discuss or refer to Northern Ireland should in all cases first consult the Secretary of State for Northern Ireland.

9.9 Ministers should use official machinery for distributing texts of Ministerial speeches only when such speeches are made on official occasions and deal with Government as distinct from Party policy. Speeches made in a party political context should be distributed through the Party machinery.

9.10 Ministers should not accept payment for speeches of an official nature or which directly draw on their responsibilities or experience as

Ministers, either on their own or their Department's account, or with a view to donating the fee to charity. If the organisation receiving the Minister insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

**Broadcasts**

9.11 The provisions of paragraphs 9.1-9.3 apply to Ministerial broadcasts as well.

9.12 Radio and television broadcasts by ministers are of four types: party political; Budget; special broadcasts by Ministers; and interviews with Ministers for news and feature programmes:

a. Party political broadcasts on radio and television within the Government's quota are arranged through the Chief Whip acting on behalf of the Prime Minister;

b. Budget broadcasts (by the Chancellor of the Exchequer and a member of the main Opposition Parties in reply) constitute a special series of party political broadcasts. These are arranged through Parliamentary channels and agreed by the Chancellor of the Exchequer;

c. the broadcasting authorities may provide opportunities within the regular framework of their programmes for Ministers to give factual explanations of legislation or policies approved by Parliament, or to seek the co-operation of the public on matters where there is a general consensus of opinion. The Opposition have no automatic right of reply. The British Broadcasting Corporation (BBC) may also provide the Prime Minister or a senior Cabinet Minister designated by him with an opportunity to broadcast to the nation to explain events of prime national or international importance or to seek public co-operation over such events. These are traditionally known as "Ministerial" broadcasts. The Opposition have the right to make an equivalent broadcast in reply. In this event the BBC will arrange as soon as possible for a broadcast discussion of the issues involved. A member of the Cabinet, a senior member of the opposition, and, if they so desire, representatives of third parties with appreciable electoral support would be invited to participate. The Independent Television Commission (ITC) is not obliged to relay either type of special broadcast, but if they transmit a "Ministerial" broadcast they must also take any Opposition reply and arrange a third stage, the discussion programme. Proposals for a special broadcast of either type should be referred as soon as possible to the Press Office at No 10. The Leader of the House of Commons and the Chief Whip should also be consulted. No approach should be made to the BBC or to the ITC for a broadcast of either type without the approval of the Prime Minister.

9.13 Ministers invited to broadcast on radio and television in a private and not a Ministerial capacity will wish to consider if such a broadcast would have a bearing on another Department's responsibility in which

case they should clear the matter with the colleague concerned before agreeing to the invitation. Ministers invited to take part in programmes to be broadcast outside the United Kingdom should consult the Foreign and Commonwealth Secretary and any other Minister who may be concerned with the subject of the broadcast. Ministers invited to broadcast while on a visit to another country should seek the advice of Her Majesty's Representative in that country. Ministers will wish to use their discretion as to whether the nature of any such invitation at home or abroad is such that they should consult the Prime Minister before agreeing to broadcast.

9.14 Ministers should not accept payment for official broadcasts on radio or television, either on their own or on their Department's account or with a view to donating the fee to charity. If the organisation receiving the Minister insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

#### **Press articles**

9.15 Ministers may contribute occasionally to a book, journal or newspaper (including a local newspaper in their constituency) for the purpose of supplementing other means of informing the public about the work of their Department provided that publication will not be at variance with their obligations to Parliament and their duty to observe the principle of collective Ministerial responsibility. Any Minister wishing to practice regular journalism, including the contribution of weekly or fortnightly articles to local newspapers in their constituencies, must have the prior approval of the Prime Minister. In cases of doubt, and in all cases where a Minister is contemplating the contribution of an article going beyond the strict confines of his or her Departmental responsibility, the Prime Minister should be consulted, before work has begun and in any case before any commitment to publish is entered into. In all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Ministers should not accept payment for writings, either on their own or on their Department's account, or with a view to donating the fee to charity. If the organisation receiving the Minister's written contribution insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

9.16 Ministers are advised not to engage in controversy in the correspondence columns of either the home or the overseas press. Ministers may however see advantage in correcting serious errors or misstatements of fact which lead to false conclusions. Such letters should be brief and confined to the exposition of facts.

#### **Books**

9.17 Ministers may not, while in office, write and publish a book on their Ministerial experience. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position, without the agreement of the Prime Minister. Former Ministers are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see paragraphs 6.18 and 6.19). Ministers may not

receive payment for a book written before becoming a Minister if the decision to publish was taken afterwards.

**Party and other publications**

9.18 The rule in paragraph 9.15 does not debar Ministers from contributing to the publications of the political organisations with which they are associated. However, in all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Payment should not be accepted for articles which draw on Ministerial experience or which have been prepared with any assistance from public resources.

9.19 The prohibition of the practice of journalism by Ministers above, does not extend to writings of a literary, sporting, artistic, musical, historical, scientific, philosophical or fictional character which do not draw on their Ministerial experience. While payment for the occasional piece is acceptable, regular payments are not.

9.20 Ministers are sometimes asked to give interviews to historians or to other persons engaged in academic research or in market opinion surveys, or to fill in questionnaires at the request of such people or organisations. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as members of the Government. Careful consideration should therefore be given to such invitations before they are accepted; in cases of doubt, the Prime Minister should be consulted.

**Complaints**

9.21 Ministers who wish to make a complaint against a journalist or a particular section of the media either to the Press Complaints Commission or to the Broadcasting Complaints Commission must have the authority of the Prime Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a letter to the Chief Press Secretary at No 10, copied to the Secretary of the Cabinet. Paragraph 6.26 of the Ministerial Code is also relevant in relation to defamation proceedings.

**Royal Commissions**

9.22 The Prime Minister should be consulted if any Minister is invited to address a Royal Commission or Committee of Inquiry.

## 10 MINISTERS' VISITS

### Ministers' visits overseas

10.1 Overseas visits should not normally be made while Parliament is in session. Ministers should arrange such visits only in the Recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union or there are other compelling reasons of Government business. In particular, overseas visits which are largely of a fact-finding kind should be reserved for the Parliamentary Recess. Moreover, in planning overseas visits Ministers should take account of paragraph 6.7, i.e. that Cabinet meetings take precedence over all other business (other than meetings of the Privy Council). Sufficient Ministers must also be available during Recesses to ensure effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

10.2 Any member of the Cabinet who wishes to be absent from the United Kingdom for any reason, except for visits to European Union countries on official business, or visits to member countries for NATO business should:

a. seek the Prime Minister's written approval. This must be done before any commitment, even of an informal nature, is made. The reasons for the visit and a list of the countries to be visited should be given; where it is considered to be clearly in the public interest that a Minister be accompanied by his or her spouse/partner at public expense the Prime Minister's permission should be sought. Copies of the letter should be sent to the Foreign and Commonwealth Secretary and to the Chief Whip: their views will be taken into account by the Prime Minister before reaching a decision. A copy should also be sent to the Secretary of the Cabinet;

b. after the Prime Minister's approval has been obtained the Minister should, for all visits abroad other than visits to European Union or NATO countries on official business, seek The Queen's permission to leave the country. At the same time Her Majesty should be informed of the arrangements made for the administration of the Minister's Department during his or her absence.

10.3 Other Ministers who propose to leave the United Kingdom whether on duty or on holiday must seek the approval of the Ministerial head of the Department concerned, the Foreign and Commonwealth Secretary and the Chief Whip. They need not obtain the Prime Minister's or The Queen's permission but the Prime Minister's written approval must be sought for official visits overseas by Ministers' spouses or partners, Special Advisers, Unpaid Advisers and Parliamentary Private Secretaries (paragraphs 2.10, 2.14, 10.17 and 10.18).

10.4 Ministers' Private Secretaries should not themselves approach diplomatic posts direct nor should they make tentative preparations for overseas visits (other than those to EU countries on

official business) before telling the Foreign and Commonwealth Office: arrangements for official Ministerial visits should invariably be put in the hands of the diplomatic post concerned.

10.5 Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which their Department is responsible. (Where a delegation includes a Foreign and Commonwealth Office Minister the agreement of the Foreign and Commonwealth Secretary in the size and composition of the delegation should also be obtained.) Each Minister in charge of a Department should ensure that the Department draws up and maintains a comprehensive and central record of travel by Ministers in the Department. This record should contain details of the numbers and costs of all Ministerial delegations whose travel has been at public expense, including visits to EU countries for the purpose of attending meetings of EU Councils. Ministers should give a lead in keeping down the size of parties of visitors, by keeping their own parties as small as possible.

**Annual PQ on Ministerial Travel**

10.6 The Government publishes an annual list of all travel overseas by Cabinet Ministers costing over £500 together with the total cost of all Ministerial travel overseas. Departments must ensure that they maintain records of visits in such a way as to provide this information on an annual basis to the Cabinet Office.

**Relations with other governments**

10.7 Ministers should remember the importance of sending to the Foreign and Commonwealth Secretary a note of the salient points of any discussions which they may have with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business.

**Visits by Commonwealth or foreign Ministers**

10.8 Ministers should inform the Foreign and Commonwealth Secretary before extending invitations to Ministers in other governments to pay official visits to this country; and in any case of doubt or difficulty, they should consult him. Departments should also inform the Foreign and Commonwealth Office about all visits which become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status potentially at risk, so that the security implications can be considered at the earliest possible stage.

**Entertainment overseas**

10.9 Ministers should not overlook the possible foreign policy implications of such day-to-day matters as offering hospitality to prominent political figures visiting this country, accepting social commitments of a similar kind, giving public support for petitions, open letters, etc. Such actions may be construed as significant by foreign observers of the United Kingdom. In any case of doubt Ministers should consult the Foreign and Commonwealth Secretary before making commitments. In addition the Foreign and Commonwealth Secretary should be consulted whenever a Minister intends to make a speech touching on matters affecting foreign and Commonwealth affairs.

10.10 If it is thought that a Minister may need to provide

entertainment while overseas, the advice of the Foreign and Commonwealth Office should be sought both on the desirability and on the form of such entertainment.

**Ministers recalled from abroad**

10.11 If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons - including to vote - the cost of the extra journey back and forth may be met by public funds.

**Ministers' visits in the United Kingdom**

10.12 Ministers who are planning official visits to Scotland, Wales and Northern Ireland should inform the Secretary of State concerned and the Chief Whip. It is also customary to inform the Lord Chancellor of prospective visits to the Channel Islands and the Isle of Man. In addition Ministers wishing to visit a Government establishment not sponsored by the Department in which they are a Minister (e.g. the barracks of a unit of the Armed Forces) should advise the sponsor Department in advance.

10.13 It is the custom for a Minister when preparing to make a visit within the United Kingdom to inform the Members for the constituencies to be included within his itinerary. Special care should be taken not to overlook this courtesy. Ministers cannot, of course, invite Members to accompany them to functions organised by a third party, but adequate notice to the relevant constituency MP will enable them to ensure that they have an opportunity to request invitations from local organisers to functions of an official nature, should they wish to attend. It will also enable them to make suggestions to the Minister about the inclusion in the itinerary of places which it would be helpful to visit. Similar information should be provided when United Kingdom Ministers are visiting the constituency of Members of the Scottish Parliament and The National Assembly for Wales.

**Expenses on travel and hospitality**

10.14 In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. Detailed guidance is set out in *Travel by Ministers*. When Ministers travel on official business, their travel expenses should normally be borne by the Departmental Vote. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved.

10.15 Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the Prime Minister should be consulted.

## 統合性政府倫理法制之研究

- Air Miles** 10.16 Air Miles and other benefits earned through travel paid for from public funds, other than where they are de minimis (for example, access to special departure lounges or booking arrangements which go with membership of regular flier clubs), should be used only for official purposes or else foregone. However, if it is impracticable to use the benefits for Government travel, there is no objection to Ministers donating them to charity if this is permissible under the terms of the airline's scheme and the charity is one chosen by the airline.
- Travelling expenses of spouses/partners** 10.17 The expense of a Minister's spouse/partner when accompanying the Minister on the latter's official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the Prime Minister's prior assent should be obtained on each occasion (see paragraph 10.3). For official visits within the United Kingdom, this is at the discretion of the Minister in charge of the Department concerned who should consult the Permanent Secretary. The Prime Minister's prior written approval is however required for any arrangement whereby a Minister's spouse/partner may regularly travel at public expense within the United Kingdom.
- Travelling expenses of Special Advisers** 10.18 If necessary, a Minister may take a Special Adviser on an overseas visit at the public expense, but when an Unpaid Adviser whose salary is not met from public funds accompanies a Minister on Government business, any additional expenditure which may be incurred should not normally fall on public funds. The written approval of the Prime Minister should be obtained before a Special Adviser or an Unpaid Adviser accompanies a Minister overseas.
- Offers of hospitality, gifts, etc.** 10.19 Detailed rules on the acceptance of gifts, services and hospitality can be found at paragraphs 5.24-5.28. While these paragraphs make clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation (see paragraph 5.24), there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy. On the other hand the acceptance of a gift or the knowledge that one will be offered may in some countries and in some circumstances entail the offer of a gift in exchange. As a general rule Ministers should not offer gifts or initiate an exchange. In deciding whether to accept gifts from or offer gifts to members of other governments (or governmental organisations) Ministers should wherever possible consult their Permanent Secretaries who will be able to advise them of the rules applicable in such circumstances.
- Foreign decorations** 10.20 It is a well-established convention that Ministers should not normally, while holding office, accept decorations from foreign countries.



## 11 MINISTERIAL PENSIONS

### **Participation in the Parliamentary Contributory Pension Fund**

11.1 Ministers in both the Commons and the Lords have the option of participating in the Parliamentary Contributory Pension Fund (PCPF) in respect of their Ministerial salary. The House of Commons Pensions Unit will provide details of the pension benefits and the contributions payable. Ministers who have accrued pension rights in another pension scheme may, if they elect to participate in the PCPF in respect of their Ministerial salary, and if the rules of the other scheme permit, opt to have the value of those accrued rights transferred to the Fund. The Pensions Unit will advise on the additional benefits which would be secured by such a transfer payment. Ministers interested in pursuing this option should note that time limits may apply and an early discussion with the Pensions Unit is recommended.

### **Participation in other pension schemes**

11.2 Ministers with accrued pension rights in another pension scheme who do not (or cannot) elect for a transfer payment may leave these as "frozen" rights in the other scheme, with no further contributions being payable during their tenure of office. Alternatively, if the rights are secured by an insurance policy (and assuming that the rules of the other scheme and the policy itself so permit) the policy could be transferred to them, either on a paid-up basis or with the right to continue payment of the premiums themselves (subject to Inland Revenue limits). Similarly, a Minister may wish to continue contributing to an existing retirement annuity contract or personal pension scheme. Ministers must be aware, though, that under no circumstances can they participate in the PCPF if they wish to continue as a contributing member of another pension arrangement (of whatever type) in respect of their Ministerial salary.

11.3 Ministers who expect to resume their former employment on ceasing to hold Ministerial office and who elect not to participate in the Parliamentary Fund in respect of their Ministerial salary may remain in active membership (that is, with continued payments of contributions, and with their period of office counting as continued pensionable employment) of any pension scheme relating to that employment provided that this can be done under the rules of the scheme. In these circumstances the continued contributions may be paid by the Ministers alone, or by the former employer alone, or jointly, depending on the rules of the other scheme. As noted in paragraph 11.2 Ministers would not, in these circumstances, be able to participate in the PCPF in respect of their Ministerial salary.

11.4 It must be emphasised that any arrangements made under paragraph 11.3 must not go outside the terms of the particular pension scheme. There would be no objection to a general alteration of the rules of a scheme when this is necessary to permit such arrangements; but approval could not be given for the addition to the scheme of a special provision relating only to the tenure of a Ministerial Office. If Ministers have any doubts about the propriety of any arrangements they intend making, the Prime Minister's Private Secretary may be consulted.

11.5 Ministers who elect not to participate in the Parliamentary scheme in respect of their Ministerial salary, and who make no arrangements of the kind set out in paragraph 11.2, may wish to pay premiums to a personal pension or stakeholder pension scheme to provide additional pension etc, benefits for themselves or provision for their families in the event of death. Such contracts are issued subject to the limitations and conditions laid down in the Tax Acts. Tax relief on premiums is limited to a percentage of the Ministerial salary. This percentage is age-related, being 17.5 per cent for individuals up to 35, rising to 40 per cent for those aged 61 and over.

11.6 The taxation effects of arrangements such as are mentioned in the paragraphs above may vary according to the Minister's particular circumstances. Furthermore, from 6 April 2006, the existing Inland Revenue restrictions on contributions will be removed and replaced by an overall limit on tax-relieved pension saving. The Deputy Director, Inland Revenue Audit and Pensions Schemes Services, 2 Yorke House Castle Meadow Road, Nottingham, NG2 1BG, will be willing to explain the effects for tax purposes of any proposed arrangements under paragraph 11.5; he will also give, on request, further information on the legislation and reliefs available in respect of retirement annuity contracts or personal pension schemes.

## 附錄 3-2 加拿大政府倫理法制

### 壹、加拿大政府倫理法制沿革與背景

加拿大公共服務倫理法制以及其他相關法規的產生背景，與其他國家相較，不僅在年代上屬於相當晚近，而且產生背景也有所不同。以年代而言，西元 2003 年九月才正式公布生效的公共服務價值與倫理法，算是加拿大政府最為完備的統合性政府倫理法，之後，相關政策與法規陸續增加。這與其他國家相較，例如早在 1829 年就已產生聯邦政府第一個正式倫理要求（Torpey, 1990; 引自施能傑，1999：231）的美國而言，更是晚了許多年。

再以產生背景而言，加拿大政府統合性倫理法制的出現，與許多國家，尤其是亞洲國家相較，例如香港、新加坡或韓國等，多是因為整體公共服務，出現嚴重且持續違反公共服務價值與倫理的現象與重大事件，引發公民對政府極端不信任，為重振官箴挽回公民信心，因而制訂政府相關的價值倫理規範與立法制體系，亦有所不同。

那麼，促成加拿大政府制訂公共服務價值與倫理法制，並且將其明定為每年加拿大政府永續發展策略最核心要素（加拿大公共服務人力資源管理局；PSHRMAC, 2007a），並且嚴格落實的原因為何呢？

促成現行加拿大政府此一統合性公共服務價值與倫理法誕生的最重要推手，基本上係源於〈礎石：公共服務價值與倫理任務小組報告〉（A Strong Foundation: Report of the Task Force on Public Service Values and Ethics）（Canadian Center for Management Development, CCMD, 2000），此報告首次公布於 1996 年 12 月，旋即引發加拿大各界對公共服務價值與倫理熱烈討論的關鍵報告。此報告於 2000 年 1 月，復由加拿大管理發展中心（Canadian Centre for Management Development）再次重印發表。此次重刊，不僅使此經典報告，成為加拿大公職人員（尤其是各級管理者），必讀的經典報告，而且除了持續自 1996 年首次公布後，各界對公共服務價值與倫理的相關討論

之外，更獲得包含國會在內的政府各級領導者與管理者的積極承諾。終於在 2003 年通過立法，建制了一部幾乎完全依照此報告所建議的各項原則、規範面向與負責架構所量身定做的統合性價值與倫理法--「公共服務價值與倫理法」（附錄 3-2-1），並且成為規範加拿大政府各類公職人員的基準法。

〈礎石：公共服務價值與倫理任務小組報告〉之所以產生，主要是源於 1995 年樞密院書記長 Jocelyne Bourgon 領導九位副部長，成立九個有關政府革新的研究小組。其中之一，即是政府公共服務價值與倫理研究小組，此一小組係由歷任加拿大政府重要部會副部長，兼具學者身份的樞密院辦公室資深顧問 John C. Tait 所領導。

誠如本報告所指出，雖然始自 1987 年，加拿大政府即已開始試圖釐清公共服務應有的基本價值，並且正式寫在政府施政白皮書中，後續亦有一些政策執行。但一直到負責本報告的任務小組成立時，加拿大公職人員的價值與倫理行為，不僅未被民眾高度認可，公職人員更是普遍認為，自己已被政府所謂的價值與倫理教條「使命化與價值化至垂死」（missioned and valued to death）。由 Tait 所領導的此任務小組，發現此一弔詭現象，其實是源於過去政府的相關報告與政策，都是從規範點著眼，而非從現實中，真正探究加拿大公共服務價值與倫理的現況、問題與應有對策。

因此，於此報告中，研究小組首先透過深度訪談，與各級公共服務者進行所謂的「誠實對話」（honest dialogue），大規模且深入地蒐集各級公職人員對拿大公共服務價值與倫理相關議題的深入意見。而後，再依據這些一手的實證資料，論述加拿大公共服務價值與倫理法制建立的必要性、應有的重要面向、建制原則，以及架構等。整個報告共計分成六個部分，分別是導論、民主系絡與課責的挑戰、公共服務雇用關係與價值、舊價值與新價值、倫理的挑戰公共服務變遷時刻的領導，以及結論：公共服務的原則等。

由於此一報告係以現實面為基礎，深入瞭解公職人員對公共服務價值與倫理相關議題的意見。並且，以加拿大政府如何能提供公民，更優質的公共服務與鞏固民主回應所需的政府改革為願景。因此，報告引起的迴響與重視，不僅只停留在討論層次，而是最終成為加拿大政府公共服務統合性倫理法制的立法藍圖。

目前從價值與倫理面向，規範加拿大公職人員日常行政行為，最重要、最基礎也是最上位的統合性法典，就是於 2003 年 9 月正式公布的〈公共服務價值與倫理法〉（Values and Ethics Code for the Public Service）（參見附錄二之一）。此一法典共包含四章，第一章為有關公共服務價值與倫理的陳述；第二章則是有關利益衝突的相關規範；第三章為離職後的相關規定；第四章則規範對此法制有疑義時的解決途徑，以及其他相關規範。

不過，有關於〈公務員揭露保護法〉（Public Servants Disclosure Protection Act; PSDPA）（即一般所稱的弊端揭發人保護法），公共服務倫理負責與執法架構，以及政治活動規範等，則並非統一規範於此統合性法典，而是散見於其他部分。以下有關加拿大政府倫理法制之說明，將依序介紹倫理法制負責與執法架構、公共服務倫理核心價值、利益衝突迴避相關規範、離職後的相關規定（即是一般所稱的旋轉門條款）、財產申報、其他規範、公務員揭露保護法相關規範，以及爭議解決的途徑與機制。

## 貳、加拿大政府倫理法制負責與執行架構

從加拿大政府公共服務價值與倫理相關法制負責與執行架構來看（PSHRM, 2007b; 附錄 3-2-1），基本上係區分呈聯邦政府，以及各部會（各機關）兩個緊密合作的上下層級，以下分別說明。

### 一、聯邦政府層級

#### （一）、樞密院辦公室（Privy Council Office; PCO）

由文官長（Clerk）領導的樞密院辦公室，提供總理和內閣各部會，為了使加拿大政府運作更順暢有效，所需的公共服務支持。文官長領導與設定公共服務運作的總體方向，尤其是確保公共服務價值與倫理能被貫徹在整體公共服務運作體系。PCO 也提供公共服務人力資源管理署（Public Service Human Resource Management Agency）策略性方向，以確保總理和內閣的倫理決策能被貫徹。

(二)、財政委員會與財政委員會秘書處 (Treasure Board Secretariat; TBS)

財政委員會透過秘書處，確保與公共服務價值與倫理法有關的資訊與教材，能廣泛流通。財政委員會負責管理整體公務員體系，設定公務員的雇用條件。也為副部長和部會官員，提供有關解釋與促進此法的諮詢服務，並定期檢視各部會執行公共服務價值倫理法的績效。

(三)、公共服務價值倫理局 (Office of Public Service Value and Ethic ; OPSVE)

OPSVE 是加拿大負責公共服務倫理法制最重要的機關，其隸屬於公共服務人力資源管理署，負責有關倫理性的決策。提供各部會局處應用倫理典章、內部不當行為揭露法、職場騷擾解決法的建議。以確保公共服務體系運作符合價值與倫理相關法典和管理課責架構。政策研究局、評估及課責局、學習及溝通局組成了 OPSVE，以確保公共服務體系的高標準，維護公益。同時，OPSVE 根據「管理課責架構」(Management Accountability Framework)，將價值與倫理納入各部會 機關績效評估的一部份。

OPSVE 的主要使命，在於以下三項：

1. 將價值和倫理整合入文官體系以創造創新、無騷擾與歧視的工作環境。
2. 透過價值導向的領導以驅使聯邦公共服務現代化，鼓勵各級管理者對部長和公民負責。
3. 建構一個有活力，價值導向的工作環境，以吸引聰明的年青人從事公職，同時留住有特殊知識和專業的人才。

(四)、領導網絡(The Leadership Network; TLN)

領導網絡隸屬公共服務人力資源管理署，負責高級文官的津貼、福利、績效、工作環境的發展與執行，及聯邦政府的獎勵計劃。此外，還負責高級文官績效管理計畫，監督其在七十多個單位的執行。

(五)、公共服務清廉官 (Public Service Integrity Offices; PSIO)

此職務的角色是接受、紀錄、和檢視職場不當行為 (wrongdoing) 資訊

的揭露，並提供副首長建議。清廉官也可在呈給總理的年度報告中，陳述倫理法制有關的執行情形或任何個案。

#### (六)、倫理委員局 (Office of the Ethics Commissioner; OEC)

此一單位負責利益衝突法、離職法、遊說規範相關法規，並且提供相關建言給部長、國會秘書處、部長的政治幕僚等。

#### (七)、公共服務委員會 (Public Service Commission; PSC)

公共服務委員會是一獨立機關，負責根據公務員雇用法，建立招募公務員的原則，這些原則必須反映功績制、中立性、代表性。同時也負責公務員有關價值與倫理議題與提昇道德領導的訓練和發展計畫。

#### (八)、加拿大文官學院 (Canada School of Public Service; CSPS)

CSPS 是負責公務員訓練的最重要機構，對於增進公務員績效表現，將價值與倫理引入領導教育計畫以及所有領導方案，貢獻卓著。

## 二、各部會機關層級

### (一)、副首長 (Deputy Head)

加拿大各部會副首長與資深管理者，有特殊義務在行動與行為方面，展現公共服務的價值。他們有責任須將這些價值嵌入組織工作的每一層面，並被期待應隨時遵守此法律之精神和特定要求。副首長尤其必須恪盡下列義務：

1. 確保被任用者瞭解公共服務價倫理法的相關規定語法律，在給新進者的信函中，必須包含「你將得到一份加拿大公共服務價值與倫理法的影本。此一法律是人力資源管理的重大政策，亦是你雇用條件的一部份」等字眼。副首長必須確保新進者確實獲得此文件、已被明確告知應有的要求。
2. 鼓勵組織內部對服務價值和倫理，以及組織所遭遇的相關情境的對話與討論。
3. 確保機制與協助公務員提出和解決有關倫理法制的疑義與問題，並指

派資深官員協助。

4. 決定公務員應循哪些途徑服從價與倫理法，以避免利益衝突。於此過程中，副首長應盡量與公務員達成相互協議。
5. 確保個人機密報告被妥善保存，而且符合隱私法。
6. 此外，為反應部會特定責任，副首長可另外加入其他的規範，但必須先向加拿大財政委員會諮詢。並確保實行新措施前，參與協議團體都能在部會層級被諮詢。副首長將書面報告財政委員會附加的條款及生效日期。副首長可授權他人執行此法，但最終課責性仍在副首長，以確保此法被貫徹執行。

## (二)、資深官員 (Senior Official)

部會副首長可指派資深官員協助公務員作為符合倫理典章的規範，聽取他們的難處，提供解決之道。該員需是高階主管階級(EX)或職業代表團體才可被指派。不過，如果在較小的單位，沒有屬於 EX 層級的人員，則可指派較為低階者擔任。這些資深官員同時也負責接受組織內部不當行為揭露的申訴案件。

## 參、加拿大公共服務倫理核心價值與責任義務 (附錄 3-2-1 Chapter 1)

加拿大政府最完備的統合性公共服務倫理法，係公布於 2003 年九月。於這部法典中，第一章是有關公共服務價值與倫理的陳述、立法目的與相關議題的說明。由此，足可以看出作為一個民主國家，加拿大政府為何特別強調公共服務價值與倫理相關議題，並嚴格要求公務員於日常行政作為必須嚴格加以遵守。

### 一、加拿大公共服務的角色

加拿大公共服務體系是重要的國家機制，也是國會民主基礎架構的重要部份。公務員對良善政府、民主、和加拿大社會做出了重要貢獻。文官體系



的角色是協助加國政府建立和平、秩序與良善政府的治理體系。憲法亦提供文官體系角色、責任、和價值的基礎。公共服務的民主使命，是在法律規範下協助部長為公共利益服務。

## 二、立法目的

公共服務價值倫理法的目標，在於為公共服務建立價值和倫理，以指引和支持公務員從事他們的專業。此將有助於維持和提升公民對文官體系廉潔度的信心。此一法律，也能強化文官體系在加國民主政治受尊敬的角色。此法建制公務員體系價值、利益衝突、和官員離職後的處理方法。部會首長負責維持公民對各部會管理與運作廉潔的信心，確保公共服務政治中立的傳統，以及持續提供政府專業與正直建言的能力。

## 三、公共服務的價值

公務員的工作與專業行為，應受一套包含民主、專業、倫理、及人本等，各項價值平衡的公共服務價值架構所導引。這些價值並非截然不同，而是有所重疊。這些價值基本上均可視為是公共服務價值的普遍體現。

(一)、民主價值：公務員應在法律規範下協助部長服務公共利益。

1. 公務員應給予部長誠實、無私，以及有助於決策的建言。
2. 公務員應在適法性下，忠心執行部會決策。
3. 公務員應同時支持部會個別與集體課責性，並且提供國會和人民有關工作成果的相關資訊。

(二)、專業價值：能力、卓越、效率、客觀與無私。

1. 公務員應在加國法律規範內工作，和維持政治中立的傳統。
2. 公務員應適當且有效運用公共經費。
3. 對公共服務而言，目標與手段同等重要。
4. 公務員應藉由持續不斷的提升服務品質、透過創新適應變遷需求、改

善對政府方案效率與效能，以及以雙官方語言（法文與英文）提供服務等，不斷地更新對加拿大公共服務的承諾。

5. 公務員服從法定義務和機保守國家機密的同時，也需確保政府的透明性。

(三)、倫理價值：時時刻刻以倫理行為促進公共利益。

1. 公務員應盡義務並妥善安排私事，以利公民源於對政府清廉、客觀與無私的公共信任得以被保存與提昇。
2. 公務員應時刻以符合最嚴格的公共監督之作爲行事；而不應僅簡單地依法行事而已。
3. 公務員除了重法定義務與責任之外，決策時亦應以公共利益爲念。
4. 假如公務員的私利和法定的義務有所衝突，應以公共利益爲先。

(四)、人本價值：與公民和其他公務員互動時應表現出尊重、公平、和禮貌。

1. 行使公權力與責任時，應尊重每一個人的尊嚴與價值。
2. 人性價值應該強化公共服務價值。那些被公正與文明對待的人，將會被激勵表現出同等的價值。
3. 公共服務組織應該透過參與、開放、溝通、尊重多元性與使用官方語言被領導。
4. 公務員的甄補任命決策應以功績原則爲基礎。
5. 公共服務價值應在甄補、績效評估、和升遷扮演重要角色。

#### 四、適用範圍與對象

此法典適用於所有部會、局處、和其他公共機構。此法是加國政府的政策，其他不被列於規範之內的公共機構應尊重其精神，和採用類似的條款。

## 五、公務員的責任

### (一)、所有公務員的一般性責任:

所有公共服務活動應符合此法相關規定，當適用上有疑問時，必須參閱公共服務價值與倫理法第四章「解決方針」。除了遵守公共服務價值與倫理法相關規定外，公務員亦應服從個別部會或組織的內部規定，以及須遵守下列各相關法律：

1. 資訊取得法。
2. 加拿大刑法。
3. 財務行政法。
4. 官方語言法。
5. 隱私法。
6. 公務員雇用法。
7. 公務員關係法。

此外，與財政委員會政策相關的法如下：

1. 合約法。
2. 職場內部資訊揭露政策。
3. 預防職場受侮辱和解決方針之政策。

### (二)、公務員應盡義務

公共服務價值倫理法是加國公務員雇用條件的一部份，公務員在被任用時應體認到此一條件。所有公務員應服從此法，並落實在行為中。尤其是下列應盡義務：

1. 需在任命或其他職務調動的六十天內報告可能引發利益衝突的外部行為、資產、和負債，並將機密報告（**confidential report**）呈給他們的副首長。
2. 凡遇個人職務異動或義務改變，均需重新檢視於此法律規範下，應有

的義務，假如有明顯或潛在利益衝突存在，就必須呈給副首長新的報告。

3. 當和外部團體協商財務事項時，需服從利益衝突和離職法。當有疑問時，公務員應立即報告並尋求上司的指導。當面臨倫理困境，公務員被鼓勵去運用副首長所建立機制，以解決與此典章相關的問題。如果公務員感到被要求做的事不符合第一章所列之精神，應先用正常的報告程序，再有疑義，則可循公共服務價值倫理法第四章途徑加以解決。

#### 肆、利益衝突迴避相關規範（附錄 3-2-1 Chapter2）

加拿大政府對公務員利益衝突迴避，有著非常周延的相關規定。有關在職期間的利益衝突迴避規範，主要呈現在公共服務價值倫理法第二章。離職後的相關規範，則是呈現在公共服務價值倫理法第三章。本節主要在介紹在職期間的利益衝突相關規範。

##### 一、立法目的

加拿大政府對於在職期間利益衝突相關規範，主要立法目的在於建立處理利益衝突的規則，希望盡可能最小化公務員個人利益與公共利益產生衝突的機會，以實現公共服務價值倫理法第一章所主張的各項價值。

##### 二、預防利益衝突應盡的責任與義務

利益衝突迴避是公務員維持人民對政府公共信任的主要方法之一，同時亦可幫助公務員避免利益衝突的訴訟。利益衝突並不單指金錢交易和經濟利益的移轉，雖然財務活動很重要，但它並不是唯一的利益衝突來源。由於規範每一種利益衝突來源是不可能的，當遇到疑問時，公務員應請示他們的管理者和由局處首長指派的資深文官，並參閱公共服務價值倫理法第一章所主張的各項價值內涵。

(一)、公務員的一般責任

1. 執行官方義務時，公務員應先對安排個人私事安排妥當，以避免任何實質、明顯或潛在利益衝突的產生。
2. 假如個人利益和官方義務有衝突，應以公共利益為先。

(二)、公務員的特定義務:

1. 不應因為參與任何政府活動，而明顯或特定的增加私人利益。
2. 不應該索賄，或接受經濟利益移轉。
3. 不應逾越規定代為協助任何私人與團體向官方交涉，圖利他人。
4. 不應利用職務之便獲得不許公開的資訊，從中得利。
5. 除了官方活動，他們不應直接或間接使用政府財產。

三、利益衝突迴避一般性規範

一般而言，要使公務員避免利益衝突，通常藉由呈給局處首長的機密報告 (confidential report) 就夠了。但報告中必須舉出公務員的資產、收禮狀況、或其他得到的利益，和其他可能引起利益衝突的業外活動。具體而言，主要有以下幾項。

(一)、財產申報

機密報告應包括各項資產與獲利的種類，注意公務員不可以為了避免服從這些規定，而將資產轉移給家人或其他人。相關規定主要呈現在公共服務價值倫理法的附錄 A，具體規範如下。

1.機密報告中必須呈現的資產和負債

公務員需仔細評估他們的資產和負債是否須陳述於機密報告中，他們必須考量職權的本質，及資產和負債的特性。假如可能有潛在的利益衝突，就必須上呈機密報告。下列是可能引起利益衝突的資產與負債的清單:

- (1).企業或外國政府的有價證券，或擁有這些證券的「退休儲蓄計畫」、

「教育儲蓄計畫」，而這些證券是被直接擁有的。

- (2).與私人公司和家族企業有利益關係，尤其是擁有公營事業部分股票或和政府交易的公司。
- (3).營利性質的農地。
- (4).非公務員或其家族成員個人使用的不動產。
- (5).商品、期貨、或外幣。
- (6).信託的資產，或該公務員是受益人的資產。
- (7).有擔保或無擔保的貸款。
- (8).其他任何可能引起潛在利益衝突的資產與負債。

## 2.無需機密報告的資產

個人或家族使用的資產，和非商業性的資產不需包含在機密報告內:

- (1).公務員和家人使用的居所和農地。
- (2).居家用品。
- (3).藝術和古董等收藏品。
- (4).汽車和其他交通工具。
- (5).現金和存款。
- (6).加拿大儲蓄債券，和其他各級政府發行的類似固定價值的證券。
- (7).非自行購買而是國家設置的退休儲蓄計畫和教育儲蓄計畫。
- (8).共同基金。
- (9).投資憑證。
- (10).年金和壽險保單。
- (11).退休俸。

## 3.脫產(divestment)

假如副首長認為可能造成潛在利益衝突的話，公務員就必須脫產。無論是透過交易或交付信託，該行動須在就職後的一百二十天內進行。如果是透過仲介人交易，需提供副首長交易明細。假如需要信託，倫理顧問辦公室會協助副首長和公務員辦理信託手續。

## (二)、業外活動

除非可能引起潛在利益衝突，公務員可以參加公共服務以外的活動。假如這些活動可能使公務員違反規定，使人懷疑其中立性，就必須陳繳交報告。如果局處首長認為活動可能引起潛在利益衝突，可以要求公務員減少、甚至中止活動。

## (三)、收禮、或其他的利益

公務員被要求運用最嚴格最佳的判斷，以避免利益衝突的情況，他們應考量下列收禮、住宿招待及其他利益標準，並且時刻僅記公共服務價值倫理相關規定。公務員不應接受或要求任何可能使執行公務不公平的禮物、住宿招待及其他利益、捐獻，這其中也包括免費或優待的運動與藝文活動。簡言之，凡所有與該公務員所管有關的直接或潛在商業關係均需避免。下列情況則是可被允許的：

- 1.非經常性和低價物品(餐點和無現金價值的紀念品)。
- 2.與公務有關的活動。
- 3.符合正常禮儀規範。
- 4.不使組織或公務員清廉度受損。

假如不可能避免收禮，或認為其有益組織，公務員應請求副首長的書面指示與批准。副首長需以書面告知公務員這些利益是否應被保留，或捐給慈善機構。

## (四)、索賄

公務員絕不可直接或間地，由自己或透過家庭成員或任何其他個人，向和政府交易關係的私部門個人或組織要求、同意或協議任何禮物、招待、利益或其他經濟有價物。假如是為慈善組織募款，公務員應得到副首長的授權，

而活動若可能引起潛在利益衝突，則可要求減少或終止活動。

#### (五)、避免偏差待遇

當參與任何人事決策時，公務員不應對家人或朋友有偏差待遇。當須給予外部團體經濟利益時，公務員不應對家人或朋友有偏差待遇。如果非官方義務，公務員不應給予和政府交易的團體任何協助。假如一般大眾都能容易得到的資訊，那麼公務員提供資訊給家人或朋友並不算是有差別待遇。

### 四、利益衝突迴避特殊考量

一般而言，公務員如果在職期間，要避免違反利益衝突迴避相關規定，遵循以上三所舉各項規定，撰寫機密報告就行，然而，遇到以下情形，則需做進一步規範與處理。

- (一)、避免捲入可能引起潛在利益衝突的情況。
- (二)、雖然出售資產或信託，但仍可能有利益衝突。

在以上情形下，副首長局處首長會做出應有決，並和公務員溝通，達成雙方協議。決策時主要考量下列因素：

- (一)、公務員的特定責任。
- (二)、有關的資產、利益的價值和種類。
- (三)、因為脫產導致的實際成本。

### 伍、離職後相關規範（附錄 3-2-1 Chapter3）

#### 一、立法目的

規範於公共服務價值倫理法第三章，有關於公務員離職後的相關規定，亦是屬於廣義利益衝突迴避之一環，同時，也是對公共服務價值與倫理做更具體的補充與落實。



## 二、公務員的責任

### (一)、一般公務員

在沒有限制尋找其他工作的情形下，離職公務員應盡可能降低，與最小化新職與之前擔任聯邦公職有利益衝突的可能性。離職前，公務員應事先告知其副首長未來就職意向，並且討論可能的潛在利益衝突。

### (二)、主管職級公務員

上述責任適用於一般公務員，但副首長可對適用主管職(EX)，或等同職權(EX minus1、EX minus2)者，進行應盡責任的特別規範。除了以上幾類主管職級之外，副首長亦可將其他職位列入規範內(假如他認為某一職位的離職人員須特別約束)，或排除某些職位於規定外，但做相關決定前須先和財政委員會協商。

## 三、離開公職前的準備

公務員需於呈給副首長的機密報告中，陳述可能擔任的新職位，實質、明顯或潛在的利益衝突，一旦決定接受某一新職，就必須立刻告知。

## 四、限制期間

離開公職後一年內，公務員不應有以下情事。

- (一)、任職任何與官方有交易關係的委員會或職位。
- (二)、代表任何組織或個人，透過其本身或部屬，與官方有交易關係。
- (三)、提供一般民眾不知道的訊息給客戶，而該訊息是來自之前任職或有直接和密切關係的公務機關。

## 五、縮短限制期間

副首長有權可以決定縮短或取消公務員離職後的限制期間，但須依據下

列因素做考量，而且所做決策需以書面保存。

- (一)、職位終止時的情況。
- (二)、公務員被雇用的前景。
- (三)、公務員擁有的資訊對政府的重要性。
- (四)、外界雇主因僱用公務員而可能得到不公平的商業或私人利益程度。
- (五)、公務員職時的影響力。

## 陸、公務員揭露保護草案相關規範

加拿大政府為了鼓勵公務員勇於對各機關內部不當行為進行揭露，以更加强公共服務的倫理與清廉度。因此，從 2001 年即已制定有關保護揭露機關內部不當行為與事件的相關政策（對此，有些國家係以弊端揭發人稱之）。但是真正嘗試以較為完整的法制草案形式出現，則是始自 2004 年的「公務員揭露保護法」（Public Servants Disclosure Protection Act; PSDPA）。然而，由於這個法係屬於 2006 年 12 月甫獲得皇室批准的「聯邦課責法」（Federal Accountability Act）架構下，被列為希望能儘速立法通過的優先法案之一，因此，至目前為止，仍屬於草案階段。以下，僅對於此一草案的大致內容作一簡要說明(PSHRM, 2007d)。

### 一、立法目的與適用對象

加拿大政府認為公務員體系是重要的國家制度，因此，本法立法目的，就是在於希望能夠藉此強化聯邦公共服務的清廉度。加拿大政府相信，透過公務員對於組織內部嚴重不當作為（wrongdoing）予以揭露，並保護揭露者免於被報復，會是一個提昇公共服務價值與倫理的重要機制。因此，本草案的適用對象，未來將會遍及所有部會、機關、委員會、法院與其他公共組織的員工，但不包括部長、部長幕僚、國會暨所屬機關、聯邦任命的法官、以及一些具有國家機密性質的委員會與獨立機關。此草案希望最終可以獲致以

下幾項結果：

- (一)、提昇組織確認與處理揭露事件，以及保護揭露者的能力
- (二)、讓揭露者感受到被支持與被保護。
- (三)、提昇領導者倫理領導以及鼓勵公務員作對的事。
- (四)、建立公務機關舉倫理性的組織氣候。
- (五)、提昇公民對公部門的公共信任與信心。

## 二、名詞界定與相關配套措施

### (一)、不當作爲的意義

PSDPA 對於不當行爲的定義，主要是指公務員違反國會或各省法律、法規

濫用公共財物或資產、對公共組織錯誤管理、嚴重違法行爲法、對加拿大人民與環境的生活、健康與安全，造成明顯與特定的危險，以及教唆或提供他人建議助其進行不當作爲。

### (二)、相關配套

PSDPA 要求財政委員會，未來需爲聯邦公務員建立行爲法（Code of Conduct），各機關部會首長，也需提出符合財政委員會行爲法，並符合個別組織需求的相關法規。PSDPA 也要求公部門清廉委員(PSIC)需負責確保所有人都能在調查中擁有程序正義，保護揭露過程中的個人與維護機密。

## 三、不當作爲揭露程序

PSDPA 對於公務員揭露組織不當作爲的過程，有以下五點規範：

- (一)、公務員可向 PSIC 或他的主管接露不當行爲，而 PSIC 有調查權。
- (二)、聯邦部門的高階管理者應建立內部揭露機制，除非組織太小。
- (三)、當公務員向 PSIC 揭露時，委員將調查不當行爲，報告發現和做出矯

正作為的建議。

- (四)、只有在沒有足夠時間透過內部機制或 PSIC 的情況下，或是揭露者認為有違法律、有立即人身安全顧慮的狀況下，才可公開揭露。
- (五)、任何人皆可提供不當作為的資訊。

#### 四、防止報復的保護程序

- (一)、PSIC 將會收受所有公務員被報復的申訴。
- (二)、假如 PSIC 決定調查，將會指派一名調查官。在調查期間的任何時候，調查官可以向 PSIC 推薦或指定調停者。
- (三)、收到調查報告後，如果 PSIC 認為有必要，會請公務員揭露保護法庭決定是否有報復行為存在。
- (四)、假如法庭認為確有此事，會允許申訴者回到原工作崗位，金錢補償，撤除任何對該員的處罰。
- (五)、法庭可處罰施行報復的人。

#### 五、報告義務

- (一)、PSIC 或資深官員需向行政首長報告調查發現。
- (二)、PSIC 可向國會提出特別報告，並需一年向國會做一次報告。
- (三)、PSIC 需在發現不當作為的六十天內向國會報告。
- (四)、行政首長須公開報告不當作為的發現。
- (五)、PSHRMAC 需向每年向國會報告整個公部門的不當作為案件與相關情形。

## 柒、政治活動規範

公務員應該恪守政治中立(political neutrality)的價值，一向是被視為加拿大政府體系與良善治理的核心。政治中立意指公務員忠誠的對象是加拿大政府，而非特定的黨派。因此，為了使政治中立的價值，得以落實在公務員日常行政決策與行為，所以始自 1908 年加拿大最早的「公務員雇用法」(Public Service Employment Act; PSEA) 中，即已強調公共服務的非黨派性與功績原則(PSC, 2006)。而在 2003 年重新建制與其後經過數次修法的現行公務員雇用法中，除了透過第 30 條有關對公務員任用必須遵守功績原則的規定之外，在第七部分(第 111 條至 222 條)，亦是對公務員的政治活動(political activity) 予以規範。以下，僅對於此法中，加拿大政府有關公務員政治活動的規範略以說明(參見附錄二之二)。

### 一、立法目的與範圍

公務員雇用法在第 112 條指出，此一部分立法目的，在於維持公共服務政治中立性的前提下，肯定公務員參與政治活動的權利。所謂的政治活動，在第 111 條界定如下：

- (一)、持續參與支持或反對特定政黨的活動；
- (二)、在選舉之前或期間，持續參與支持或是反對特定候選人的活動；
- (三)、在選舉之前或期間，尋求被提名為候選人。
- (四)、至於本法所謂「選舉」(election) 規範的對象與範圍(111 條)，則是包含了聯邦、省(provincial)、特區(territorial)與市(municipal)的選舉。聯邦選舉意指參議員的選舉；省選舉意指省立法者的選舉；特區選舉意指特區議會或立法會選舉；而市的選舉，則包括了各級地方政府的民選手長與民意代表。

## 二、一般公務員參與政治活動的規範

### (一)、允許的政治活動與管制

此一部分第 113 條規定，基本上，公務員只要在執行勤務時，不會因為個人政治偏好而有政治不中立的行為，或是被認為政治不中立，均可參與政治活動。以聯邦政府層級而言，對於閣員或高級文官，治理委員會（Governor in Council）基於公共服務委員會的推薦，於考慮政治活動的本質，以及特定職務與職級的工作性質與義務後，可以另訂管制規則。

### (二)、參與選舉的相關規範

一般公務員無論上述所規範的哪一種選舉，在選舉前或選舉期間，欲尋求政黨提名時，均需要事先向公共服務委員會提出申請，並獲得留職停薪許可後，才得以參選。委員會必須考慮該項申請是否符合 113 條的規定、該申請人有無能力表現出公正的行為、選舉的性質、該公務員應盡的義務性質，以及職位的層級與能見度等因素，決定是否批准該項申請。一旦公務員申請參與政治活動的案件被公共服務委員會批准，只要其公開宣佈參選，就不再是公務員（114 條至 116 條）。但是，由於加拿大政府與其他 OECD 國家想法與作法類似，均認為越高層級者的政治活動，應受到越嚴格的規範。所以，各機關副首長，即使連選舉投票，在 117 條都規定為「不應該參與」（shall not engage in）。

## 三、公共服務委員會的職權

此一部分法律從第 118 條至 122 條，主要都在規範公共服務委員會有關政治活動規範的職權與行使方式。基本上，文官委員會對於公務員（包含副首長在內）違反上述政治活動規範的任何申訴（allegation）案件，都有權力進行調查。委員會可以自行進行調查或指派定人員負責，一旦調查屬實，該名公務員就會解職，或是採取適當的矯正處理。以副首長而言，如果有違法政治活動規範相關法律，經委員會調查屬實就會向內閣的治理委員會報告，治理委員會就會解除該副首長的職務。

## 捌、疑義解決途徑與機制（附錄 3-2-1 Chapter4）

公共服務價值倫理法的第四章，對於倫理相關法制與規範的疑義與爭議，提供原則性的解決途徑與機制。

### 一、有關公共服務價值與倫理內涵之疑義

公共服務價值倫理法的第四章建議，針對以下四種情形，公務員可以循適當途徑處理。

- (一)、任何想討論或澄清該法內容公務員，應先與其上司討論，或是由副首長指派的資深官員協助。
- (二)、公務員目睹或知道工作場所有不當行為發生的公務員，可以根據「工作場所不當行為內部資訊揭露政策」( Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace) 此規定，無須害怕被報復。
- (三)、公務員確信自己正被命令去做不符公共服務價值與倫理精神的事時，可以秘密的越級向更高級主管報告，無須害怕被報復。
- (四)、假如公務員認為問題不能在該層級解決，或不可能在單位內保持機密，也可將問題提至公共服務清廉官進行處理。然而基本上還是希望能在單位內就被解決。

### 二、利益衝突和離職後相關規定之爭議解決

為了適當的避免利益衝突和對遵行離職相關規定，副首長必須和公務員協商，確認解決方案，採取適當行動。當公務員和副首長不能達成協議時，須循既有的申訴管道辦理。

### 三、違反規定的處理

當公務員違反價值倫理法制相關規定，就須受到懲罰，甚至解職。

### 四、有關倫理法制疑義的處理

公務員有關相關法制的疑問，先上呈到部會機關負責的官員，再由部會官員交由下列機關作解釋：

- (一)、價值與倫理辦公室 (Office of Values and Ethics) 。
- (二)、政策與計畫部門(Policy and Planning Sector) 。
- (三)、人力資源管理辦公室(Human Resources Management Office; HRMO) 。
- (四)、加拿大財政委員會秘書處 。



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## 附錄 3-2-1 加拿大公共服務價值與倫理法

### Values and Ethics Code for the Public Service

#### Chapter 1: Statement of Public Service Values and Ethics

##### **The Role of the Public Service of Canada**

The Public Service of Canada is an important national institution, part of the essential framework of Canadian parliamentary democracy. Through the support they provide to the duly constituted government, public servants contribute in a fundamental way to good government, to democracy and to Canadian society.

The role of the Public Service is to assist the Government of Canada to provide for peace, order and good government. The *Constitution of Canada* and the principles of responsible government provide the foundation for Public Service roles, responsibilities and values. The democratic mission of the Public Service is to assist Ministers, under law, to serve the public interest.

##### **Objectives of this Code**

The *Values and Ethics Code for the Public Service* sets forth the values and ethics of public service to guide and support public servants in all their professional activities. It will serve to maintain and enhance public confidence in the integrity of the Public Service. The Code will also serve to strengthen respect for, and appreciation of, the role played by the Public Service within Canadian democracy.

The Code sets out Public Service values as well as Conflict of Interest and Post-Employment Measures.

The Code should be read in the context of the duties and responsibilities set out in *A Guide for Ministers and Secretaries of State*.

Ministers are responsible for preserving public confidence in the integrity of management and operations within their departments and for maintaining the tradition of political neutrality of the Public Service and its continuing ability to provide professional, candid and frank advice.

### **Public Service Values**

Public servants shall be guided in their work and their professional conduct by a balanced framework of public service values: democratic, professional, ethical and people values.

These families of values are not distinct but overlap. They are perspectives from which to observe the universe of Public Service values.

**Democratic Values:** *Helping Ministers, under law, to serve the public interest.*

- Public servants shall give honest and impartial advice and make all information relevant to a decision available to Ministers.
- Public servants shall loyally implement ministerial decisions, lawfully taken.
- Public servants shall support both individual and collective ministerial accountability and provide Parliament and Canadians with information on the results of their work.

**Professional Values:** *Serving with competence, excellence, efficiency, objectivity and impartiality.*

- Public servants must work within the laws of Canada and maintain the tradition of the political neutrality of the Public Service.
- Public servants shall endeavour to ensure the proper, effective and efficient use of public money.
- In the Public Service, how ends are achieved should be as important as the achievements themselves.

- Public servants should constantly renew their commitment to serve Canadians by continually improving the quality of service, by adapting to changing needs through innovation, and by improving the efficiency and effectiveness of government programs and services offered in both official languages.
- Public servants should also strive to ensure that the value of transparency in government is upheld while respecting their duties of confidentiality under the law.

**Ethical Values:** *Acting at all times in such a way as to uphold the public trust.*

- Public servants shall perform their duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.
- Public servants shall act at all times in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law.
- Public servants, in fulfilling their official duties and responsibilities, shall make decisions in the public interest.
- If a conflict should arise between the private interests and the official duties of a public servant, the conflict shall be resolved in favour of the public interest.

**People Values:** *Demonstrating respect, fairness and courtesy in their dealings with both citizens and fellow public servants.*

- Respect for human dignity and the value of every person should always inspire the exercise of authority and responsibility.
- People values should reinforce the wider range of Public Service values. Those who are treated with fairness and civility will be motivated to display these values in their own conduct.

- Public Service organizations should be led through participation, openness and communication and with respect for diversity and for the official languages of Canada.
- Appointment decisions in the Public Service shall be based on merit.
- Public Service values should play a key role in recruitment, evaluation and promotion.

### **Application**

This Code applies to all public servants working in departments, agencies and other public institutions listed in Part I, Schedule I, of the *Public Service Staff Relations Act*.

This Code is a policy of the Government of Canada. Public service institutions not covered by this Code should respect its spirit and should adopt similar provisions for their organizations.

### **Responsibilities, Authorities and Accountabilities**

#### **Overall Responsibility of all Public Servants**

All public service activities should be consistent with the *Values and Ethics Code for the Public Service*. Where questions arise about its application, see Chapter 4, "Avenues of Resolution."

In addition to the stipulations outlined in this Code, public servants are also required to observe any specific conduct requirements contained in the statutes governing their particular department or organization and their profession, where applicable. They are also required to observe the relevant provisions of more general application including the following:

- *Access to Information Act*;
- *Criminal Code of Canada*;
- *Financial Administration Act*;

- *Official Languages Act and Regulations;*
- *Privacy Act;*
- *Public Service Employment Act;*
- *Public Service Staff Relations Act.*

Related Treasury Board policies:

- *Contracting Policy;*
- *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace;*
- *Policy on the Prevention and Resolution of Harassment in the Workplace.*

### **Public Servants**

This Code forms part of the conditions of employment in the Public Service of Canada. At the time of signing their letter of offer, public servants acknowledge that the *Values and Ethics Code for the Public Service* is a condition of employment. All public servants are responsible for ensuring that they comply with this Code and that they exemplify, in all their actions and behaviours, the values of public service. In particular, they have the following obligations:

- a. Public servants must report, within 60 days of their first appointment or any subsequent appointment, transfer or deployment, all outside activities, assets, and direct and contingent liabilities that might give rise to a conflict of interest with respect to their official duties. To this end, a Confidential Report must be filed with their Deputy Head.
- b. Every time a major change occurs in the personal affairs or official duties of public servants, they must review their obligations under this Code. If a real, apparent or potential conflict of interest exists, they must file a new Confidential Report with their Deputy Head.
- c. When negotiating financial arrangements with outside parties, public servants must assure compliance with the Conflict of Interest and

Post-Employment Measures in accordance with directives on this matter issued by Treasury Board. When in doubt, public servants must immediately report the situation to their supervisors in order to seek advice or direction on how to proceed.

When faced with an ethical dilemma, public servants are encouraged to use the opportunities and mechanisms established by their Deputy Head to raise, discuss and resolve issues of concern related to this Code.

Public servants who feel they are being asked to act in a way that is inconsistent with the values and ethics set out in Chapter 1 of this Code should first attempt to raise the matter using the usual reporting relationship. Further avenues for resolution are contained in Chapter 4 of this Code.

### **Deputy Heads**

Deputy Heads and senior managers have a particular responsibility to exemplify, in their actions and behaviours, the values of public service. They have a duty to infuse these values into all aspects of the work of their organizations. It is expected that they will take special care to ensure that they comply at all times with both the spirit and the specific requirements of this Code.

In particular, Deputy Heads have the following obligations:

- a. To ensure that the letter of offer, for an initial appointment, includes the following: "You will find enclosed a copy of the *Values and Ethics Code for the Public Service*. This Code is a key policy for the management of human resources and is part of your conditions of employment." Deputy Heads must ensure that public servants are provided with a copy of the Code on any subsequent appointment. They must ensure that public servants in their organization are informed of the requirements of this Code on an annual basis.

- b. To encourage and maintain an ongoing dialogue on public service values and ethics within their organizations, in a manner that is relevant to the specific issues and challenges encountered by their organizations.
- c. To ensure that mechanisms and assistance are in place to help public servants raise, discuss and resolve issues of concern related to this Code. This includes designating a senior official to assist public servants to resolve issues arising from the application of the Code.
- d. To determine the appropriate method for a public servant to comply with the Code, as set out in Chapters 2 and 3, in order to avoid conflicts of interest. In doing so, the Deputy Head will try to achieve mutual agreement with the public servant.
- e. To ensure that the personal information in Confidential Reports is secured in a central repository and treated in complete confidence, in accordance with the *Privacy Act*.

Deputy Heads may add compliance measures beyond those specified in this Code to reflect their department's particular responsibilities or the statutes governing its operations. They must consult with the Treasury Board of Canada Secretariat and ensure that bargaining agents are consulted at the departmental level in advance of implementing new measures. The Deputy Head will inform the Treasury Board of Canada Secretariat, in writing, of any additional measures and their effective dates.

Deputy Heads may delegate responsibilities and authorities for the implementation of the Code, but they may not delegate their accountability for ensuring that the Code is fully upheld and advanced within their organization or for the specific matters outlined in this section.

### **Treasury Board**

Treasury Board will ensure through its Secretariat that information and educational materials related to the *Values and Ethics Code for the Public*



*Service* are widely available. It will also maintain an advisory support service for Deputy Heads and for designated departmental officials on the interpretation and promotion of the Code.

Treasury Board, through its Secretariat, will monitor the implementation of the Code in departments and agencies. On a regular basis, Treasury Board, through its Secretariat, will review the performance of departments in the implementation of the Code through its modern management accountability framework.

The *Values and Ethics Code for the Public Service* will be subject to a review five years after it comes into effect.

### **Public Service Integrity Officer**

The role of the Public Service Integrity Officer is to receive, record and review disclosures of wrongdoing in the workplace, including breaches to the Code, and to make recommendations where warranted to Deputy Heads for resolution. Further, the Public Service Integrity Officer may report on any cases dealing with breaches of the Code as part of his or her annual report to the President of the Privy Council that is tabled in Parliament.

### **Effective Date**

The effective date of the *Values and Ethics Code for the Public Service* is September 1, 2003.

## Chapter 2: Conflict of Interest Measures

### **Objective**

The objective of these measures is to establish rules of conduct respecting conflict of interest and to minimize the possibility of conflicts arising between private interests and public service duties of public servants. These measures serve to uphold the Public Service Values set out in Chapter 1, as well as the Post-Employment Measures in Chapter 3.

### **Measures to Prevent Conflict of Interest**

Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest, is one of the primary means by which a public servant maintains public confidence in the impartiality and objectivity of the Public Service.

These Conflict of Interest Measures are adopted both to protect public servants from conflict of interest allegations and to help them avoid situations of risk. Conflict of interest does not relate exclusively to matters concerning financial transactions and the transfer of economic benefit. While financial activity is important, it is not the sole source of potential conflict of interest situations.

It is impossible to prescribe a remedy for every situation that could give rise to a real, apparent or potential conflict. When in doubt, public servants should seek guidance from their manager, from the senior official designated by the Deputy Head, or from the Deputy Head, and refer to the Public Service Values stated in Chapter 1 as well as the following measures as benchmarks against which to gauge appropriate action.

Public servants have the following overall responsibilities:

- a. In carrying out their official duties, public servants should arrange their private affairs in a manner that will prevent real, apparent or potential conflicts of interest from arising.
- b. If a conflict does arise between the private interests and the official duties of a public servant, the conflict should be resolved in favour of the public interest.

Public servants also have the following specific duties:

- a. They should not have private interests, other than those permitted pursuant to these measures, that would be affected particularly or significantly by government actions in which they participate.
- b. They should not solicit or accept transfers of economic benefit.

- c. They should not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to the entities or persons.
- d. They should not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.
- e. They should not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

### **Methods of Compliance**

For a public servant to comply with these measures, it will usually be sufficient to submit a Confidential Report to the Deputy Head. The Confidential Report outlines the public servant's ownership of assets, receipt of gifts, hospitality or other benefits, or participation in any outside employment or activities that could give rise to a conflict of interest.

There will be instances, however, where other measures will be necessary. These include the following:

- a. avoiding or withdrawing from activities or situations that would place the public servant in real, potential or apparent conflict of interest with his or her official duties; and
- b. having an asset sold at arm's length or placed in a blind trust where continued ownership would constitute a real, apparent or potential conflict of interest with the public servant's official duties.

In such cases, the Deputy Head will make the decision and communicate it to the public servant. In determining appropriate action, the Deputy Head will try to achieve mutual agreement with the public servant in question and will take into account such factors as:

- a. the public servant's specific responsibilities;

- b. the value and types of assets and interests involved; and
- c. the actual costs to be incurred by divesting the assets and interests, as opposed to the potential that the assets and interests represent for a conflict of interest.

### **Assets**

The types of assets and interests that should be included in a Confidential Report, those that need not be declared, as well as procedures for divesting assets are all set out in Appendix A.

It is to be noted that a public servant may not sell or transfer assets to family members or others for purposes of circumventing the compliance measures.

### **Outside Employment or Activities**

Public servants may engage in employment outside the Public Service and take part in outside activities unless the employment or activities are likely to give rise to a conflict of interest or in any way undermine the neutrality of the Public Service.

Where outside employment or activities might subject public servants to demands incompatible with their official duties, or cast doubt on their ability to perform their duties in a completely objective manner, they shall submit a Confidential Report to their Deputy Head. The Deputy Head may require that the outside activities be curtailed, modified or terminated if it is determined that real, apparent or potential conflict of interest exists.

### **Gifts, Hospitality and Other Benefits**

Public servants are called upon to use their best judgment to avoid situations of real or perceived conflict. In doing so, public servants should consider the following criteria on gifts, hospitality and other benefits, keeping in mind the full context of this Code.

Public servants shall not accept or solicit any gifts, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship directly related to the public servant's official duties.

The acceptance of gifts, hospitality and other benefits is permissible if they

- a. are infrequent and of minimal value (low-cost promotional objects, simple meals, souvenirs with no cash value);
- b. arise out of activities or events related to the official duties of the public servant concerned;
- c. are within the normal standards of courtesy, hospitality or protocol; and
- d. do not compromise or appear to compromise in any way the integrity of the public servant concerned or his or her organization.

Where it is impossible to decline gifts, hospitality and other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the organization to warrant acceptance of certain types of hospitality, a public servant shall seek written direction from their Deputy Head. The Deputy Head will then notify the public servant in writing whether the gifts, hospitality and other benefits are to be declined or retained by the department, donated to charity, disposed of, or retained by the public servant concerned.

### **Solicitation**

At no time should public servants solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or organization in the private sector who has dealings with the government.

In the case of fundraising for charitable organizations, public servants should ensure that they have prior authorization from their Deputy Head to solicit donations, prizes or contributions in kind from external organizations or

individuals. The Deputy Head may require that the activities be curtailed, modified or terminated where it is determined that there is a real or apparent conflict of interest or an obligation to the donor.

#### Legal framework

The above provisions are designed to ensure the *Values and Ethics Code for the Public Service* is consistent with paragraph 121(1)(c) of the *Criminal Code*, which states the following:

*... every one commits an offence who, being an official or employee of the government, demands, accepts, or offers or agrees to accept, from a person who has dealings with the government, a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies on him.*

#### **Avoidance of Preferential Treatment**

When participating in any decision making related to a staffing process, public servants shall ensure that they do not grant preferential treatment or assistance to family or friends.

When making decisions that will result in a financial award to an external party, public servants shall not grant preferential treatment or assistance to family or friends.

Public servants should not offer any assistance to entities or persons that have dealings with the government, where this assistance is not part of their official duties, without obtaining prior authorization from their designated superior and complying with the conditions for that authorization.

Providing information that is easily accessible to the public to relatives or friends or to entities in which public servants or their family members or friends have interests is not considered preferential treatment.

## Chapter 3: Post-Employment Measures

### **Objective**

The objective of these measures is to establish rules of conduct respecting post-employment. These measures complement the Public Service Values set out in Chapter 1, as well as the Conflict of Interest Measures in Chapter 2.

### **Overall Responsibility**

Without unduly restricting their ability to seek other employment, former public servants should undertake to minimize the possibility of real, apparent or potential conflicts of interest between their new employment and their most recent responsibilities within the federal public service. Before leaving employment, public servants should disclose their intention of future employment and discuss potential conflicts with their Deputy Head.

### **Application**

The overall responsibility cited above applies to all public servants covered by the Code. The measures that follow apply specifically to those public servants staffed in executive positions (EX) or their equivalent as well as EX minus 1 and EX minus 2 positions and their equivalent (e.g., PM-06, IS-05, AS-07).

A Deputy Head may designate other positions as being subject to these measures (where the position involves official duties that raise post-employment concerns), or exclude positions from the application of the post-employment measures (when the official duties of these positions do not raise concerns for post-employment). Before doing this, the Deputy Head must consult the Treasury Board of Canada Secretariat as well as appropriate bargaining agents when applicable.

### **Before Leaving Office**

Public servants must disclose, in a Confidential Report to their Deputy Head, all firm offers of employment that could place them in a real, apparent or potential conflict of interest situation. They must also disclose immediately the acceptance of any such offer.

### **Limitation Period**

Former public servants shall not, within a period of one year after leaving office

- a. accept 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;
- b. make representations for, or on behalf of, persons to any department or organization 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; or
- c. give advice to their clients using information that is not available to the public concerning the programs or policies of the departments or organizations with which they were employed or with which they had a direct and substantial relationship.

### **Reduction of Limitation Period**

A Deputy Head has the authority to reduce or waive the limitation period of employment for a public servant or former public servant. Such a decision should take into consideration the following:

- a. the circumstances under which the termination of their service occurred;
- b. the general employment prospects of the public servant or former public servant;



- c. 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;
- d. 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;
- e. the degree to which the new employer might gain unfair commercial or private advantage by hiring the public servant or former public servant; and
- f. the authority and influence possessed while in the Public Service, and the disposition of other cases.

A decision by a Deputy Head to waive or reduce the limitation period will be recorded in writing.

#### **Exit Arrangements**

A Deputy Head must ensure that a public servant who is intending to leave the Public Service is aware of these post-employment measures.

#### **Reconsideration**

A public servant or former public servant may apply to the Deputy Head for reconsideration of any determination respecting his or her compliance with the post-employment measures.

### Chapter 4: Avenues of Resolution

#### **Public Service Values and Ethics**

Any public servant who wants to raise, discuss and clarify issues related to this Code should first talk with his or her manager or contact the senior official designated by the Deputy Head under the provisions of this Code, according to the procedures and conditions established by the Deputy Head.

Any public servant who witnesses or has knowledge of wrongdoing in the workplace may refer the matter for resolution, in confidence and without fear of reprisal, to the Senior Officer designated for the purpose by the Deputy Head under the provisions of the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*.

Furthermore, any public servant who believes that he or she is being asked to act in a way that is inconsistent with the values and ethics set out in Chapter 1 of this Code can report the matter in confidence and without fear of reprisal to the Senior Officer, as described above.

If the matter is not appropriately addressed at this level, or the public servant has reason to believe it could not be disclosed in confidence within the organization, it may then be referred to the Public Service Integrity Officer, in accordance with the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*.

It is expected that most matters arising from the application of this Code can and should be resolved at the organizational level.

### **Measures on Conflict of Interest and Post-employment**

With respect to the appropriate arrangements necessary to prevent conflict of interest or to comply with the post-employment measures described in Chapters 2 and 3 of this Code, it is expected that most situations will be addressed by discussing the matter with the public servant, identifying avenues of resolution and taking appropriate action. When a public servant and the Deputy Head disagree on the appropriate arrangements to prevent conflict of interest or to comply with the post-employment measures in this Code, the disagreement shall be resolved through the established grievance procedures.

### **Failure to Comply**

A public servant who does not comply with the requirements of this Code is subject to appropriate disciplinary action, up to and including termination of employment.

### **Enquiries**

Enquiries about this Code should be referred to the responsible departmental officer who, in turn, may direct questions regarding policy interpretation to the following:

Office of Values and Ethics  
Policy and Planning Sector  
Human Resources Management Office (HRMO)  
Treasury Board of Canada Secretariat

### **Form**

#### **Confidential Report**

This form can be accessed through the Treasury Board of Canada Secretariat Web site at the following address: [www.tbs-sct.gc.ca/](http://www.tbs-sct.gc.ca/)

## Appendix A - Assets, Liabilities and Trusts

### **Assets and Liabilities Subject to a Confidential Report**

Public servants must carefully evaluate on a regular basis whether their assets and liabilities need to be included in a Confidential Report. In doing so, they must take into consideration the nature of their official duties and the characteristics of their assets and liabilities. If there is any real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities, a Confidential Report must be filed. If there is no relationship, no report is required.

The following is a list of examples of assets and liabilities that must be reported in a Confidential Report if they do, or could, constitute a conflict of interest. **This list is not exhaustive.**

- a. publicly traded securities of corporations and foreign governments, and self-administered Registered Retirement Savings Plans (RRSPs), and self-administered Registered Education Savings Plans (RESPs) that are composed of these securities, where these securities are held directly and not through units in mutual funds;
- b. interests in partnerships, proprietorships, joint ventures, private companies and family businesses, in particular those that own or control shares of public companies or that do business with the government;
- c. commercially operated farm businesses;
- d. real property that is not for the private use of public servants or their family members;
- e. commodities, futures and foreign currencies held or traded for speculative purposes;
- f. assets placed in trust or resulting from an estate of which the public servant is a beneficiary;
- g. secured or unsecured loans granted to persons other than to members of the public servant's immediate family;
- h. any other assets or liabilities that could give rise to a real, apparent or potential conflict of interest due to the particular nature of the public servant's official duties; and
- i. direct and contingent liabilities in respect of any of the assets described in this section.

#### **Assets Not Requiring a Confidential Report**

Assets and interests for the private use of public servants and of their family members, as well as non-commercial assets, are **not** subject to the compliance measures.

For example, such assets include the following:

- a. residences, recreational properties and farms used or intended for use by public servants or their families;
- b. household goods and personal effects;
- c. works of art, antiques and collectibles;
- d. automobiles and other personal means of transportation;
- e. cash and deposits;
- f. Canada Saving Bonds and other similar investments in securities of fixed value issued or guaranteed by any level of government in Canada or agencies of those governments;
- g. Registered Retirement Savings Plans and Registered Education Saving Plans that are not self-administered;
- h. investments in open-ended mutual funds;
- i. guaranteed investment certificates and similar financial instruments;
- j. annuities and life insurance policies;
- k. pension rights;
- l. money owed by a previous employer, client or partnership; and
- m. personal loans receivable from members of public servants' immediate families and small personal loans receivable from other persons where public servants have loaned the moneys receivable.

### **Divestment of Assets**

Public servants must divest assets where their Deputy Head determines that such assets constitute a real, apparent or potential conflict of interest in relation to their duties and responsibilities. Divestment, where required, must take place within 120 days of appointment, transfer or deployment. Divestment of assets is usually achieved by selling them through an arm's-length transaction or by making them subject to a blind trust arrangement.

Where divestment is by means of sale, confirmation of the sale, such as a broker's sales receipt, shall be provided to the Deputy Head.

Where divestment is by means of a blind trust, the Office of the Ethics Counsellor will assist the Deputy Head and the public servant to set up a blind trust and to determine whether a specific blind trust meets the requirements of the Conflict of Interest Measures. The Ethics Counsellor will also make recommendations to the Deputy Head on the reimbursement of certain trust costs to the public servant by the home organization.

## 附錄 3-2-2 加拿大公務員雇用法第七部分：政治活動規範

### Public Service Employment Act

#### PART 7

#### POLITICAL ACTIVITIES

Interpretation

#### Definitions

**111.** (1) The following definitions apply in this Part.

"election"

«*élection*»

"election" means a federal, provincial, territorial or municipal election.

"federal election"

«*élection fédérale*»

"federal election" means an election to the House of Commons.

"municipal election"

«*élection municipale*»

"municipal election" means an election as the mayor or a member of the council of a municipality.

"municipality"

«*municipalité*»

"municipality" means

(a) an incorporated or unincorporated regional municipality, city, town, village, rural municipality, township, county, district or other municipality, however designated; or

(b) any other local or regional authority that is determined by the Governor in Council to be a municipality for the purposes of this Part.

"political activity"

«*activité politique*»

"political activity" means

(a) carrying on any activity in support of, within or in opposition to a political party;

(b) carrying on any activity in support of or in opposition to a candidate before or during an election period; or

(c) seeking nomination as or being a candidate in an election before or during the election period.

"provincial election"

«*élection provinciale*»

"provincial election" means an election to the legislature of a province.

"territorial election"

«*élection territoriale*»

"territorial election" means an election to the Council of the Northwest Territories or the Legislative Assembly of Yukon or of Nunavut.

Meaning of "deputy head"

(2) For the purposes of this Part, "deputy head" includes a Commissioner appointed under subsection 4(5) and the Chairperson of the Tribunal designated under subsection 88(5).

2003, c. 22, ss. 12 "111", 272.

## Purpose of Part

Purpose



**112.** The purpose of this Part is to recognize the right of employees to engage in political activities while maintaining the principle of political impartiality in the public service.

## Employees

### Permitted activities

**113.** (1) An employee may engage in any political activity so long as it does not impair, or is not perceived as impairing, the employee's ability to perform his or her duties in a politically impartial manner.

### Regulations

(2) The Governor in Council may, on the recommendation of the Commission, make regulations specifying political activities that are deemed to impair the ability of an employee, or any class of employees, to perform their duties in a politically impartial manner.

### Factors

(3) In making regulations, the Governor in Council may take into consideration factors such as the nature of the political activity and the nature of the duties of an employee or class of employees and the level and visibility of their positions.

### Seeking candidacy

**114.** (1) An employee may seek nomination as a candidate in a federal, provincial or territorial election before or during the election period only if the employee has requested and obtained permission from the Commission to do so.

### Being a candidate before election period

(2) An employee may, before the election period, be a candidate in a federal, provincial or territorial election only if the employee has requested and obtained permission from the Commission to do so.

### Being a candidate during election period

(3) An employee may, during the election period, be a candidate in a federal, provincial or territorial election only if the employee has requested and obtained a leave of absence without pay from the Commission.

Granting of permission

(4) The Commission may grant permission for the purpose of subsection (1) or (2) only if it is satisfied that the employee's ability to perform his or her duties in a politically impartial manner will not be impaired or perceived to be impaired.

Granting of leave

(5) The Commission may grant leave for the purpose of subsection (3) only if it is satisfied that being a candidate during the election period will not impair or be perceived as impairing the employee's ability to perform his or her duties in a politically impartial manner.

Factors

(6) In deciding whether seeking nomination as, or being, a candidate will impair or be perceived as impairing the employee's ability to perform his or her duties in a politically impartial manner, the Commission may take into consideration factors such as the nature of the election, the nature of the employee's duties and the level and visibility of the employee's position.

Conditions

(7) The Commission may make permission under subsection (4) conditional on the employee taking a leave of absence without pay for the period or any part of the period in which he or she seeks nomination as a candidate, or for the period or any part of the period in which he or she is a candidate before the election period, as the case may be.

Effect of election

(8) An employee ceases to be an employee on the day he or she is declared elected in a federal, provincial or territorial election.

Candidacy in municipal elections

**115.** (1) An employee may seek nomination as, or be, a candidate in a municipal election before or during the election period, only if the employee has requested and obtained permission from the Commission to do so.

Granting of permission

(2) The Commission may grant permission only if it is satisfied that seeking nomination as, or being, a candidate in the election will not impair or be perceived as impairing the employee's ability to perform his or her duties in a politically impartial manner.

Factors

(3) In deciding whether seeking nomination as, or being, a candidate will impair or be perceived as impairing the employee's ability to perform his or her duties in a politically impartial manner, the Commission may take into consideration factors such as the nature of the election, the nature of the employee's duties and the level and visibility of the employee's position.

Conditions

(4) The Commission may make permission under this section conditional on

(a) the employee taking a leave of absence without pay

(i) for the period or any part of the period in which he or she seeks nomination as a candidate, or for the period or any part of the period in which he or she is a candidate before the election period, as the case may be, or

(ii) for the period in which he or she is a candidate during the election period; and

(b) the employee taking a leave of absence without pay or ceasing to be an employee if he or she is declared elected.

Notice

**116.** On granting an employee permission under subsection 114(4), leave under subsection 114(5) or permission under subsection 115(2), the Commission shall cause notice that it has done so, together with the name of that employee, to be published in the *Canada Gazette*.

#### Deputy Heads

##### Political activities

**117.** A deputy head shall not engage in any political activity other than voting in an election.

#### Allegations

##### Investigation and corrective action — employees

**118.** The Commission may investigate any allegation, in accordance with the regulations, that an employee has failed to comply with any of subsections 113(1), 114(1) to (3) and 115(1) and, if it concludes that the allegation is substantiated, may dismiss the employee or may take any corrective action that it considers appropriate.

##### Investigation and dismissal — deputy head

**119.** (1) The Commission may investigate any allegation, made to it by a person who is or has been a candidate in an election, that a deputy head has contravened section 117 and, if it concludes that the allegation is substantiated, the Commission shall report its conclusion to the Governor in Council and the Governor in Council may dismiss the deputy head.

##### Exception

(2) Subsection (1) does not apply in respect of any deputy head whose removal from office is expressly provided for by this or any other Act, otherwise than by termination of his or her appointment at pleasure.

##### Powers under *Inquiries Act*

**120.** In conducting any investigation under this Part, the Commission has all the powers of a commissioner under Part II of the *Inquiries Act*.

Persons acting for Commission

**121.** (1) The Commission may direct that any investigation under this Part be conducted, in whole or in part, by one or more Commissioners or other persons.

Powers of Commissioner

(2) A Commissioner directed under subsection (1) has the powers referred to in section 120 in relation to the matter before the Commissioner.

Powers of other person

(3) Subject to any limitations specified by the Commission, a person directed under subsection (1), other than a Commissioner, has the powers referred to in section 120 in relation to the matter before the person.

Right to be heard

**122.** A person making an allegation under section 118 or 119 and the employee or deputy head against whom it is made — or their representatives — are entitled to be heard by the Commission, Commissioner or other person, whichever is conducting the investigation.

## 附錄 3-3 德國政府倫理法制介紹

### 壹、德國政府倫理法制背景

德國基本法對於公務人員制度之基本決定乃是基本法第三十三條第四項所規定之「功能保留」：「國家之經常性任務中涉及高權之行使者，原則上應委由處於公法上勤務與忠誠關係之公務人員為之。」及第三十三條第五項：「關於公務員之法律，應斟酌職業公務員制度之傳統原則。」基本法第三十三條第四項所規定之功能保留預設了一個雙軌的公務人員體制，亦即與勤務主處於公法上勤務與忠誠關係之職業公務員（Beamte）與處於私法上勞動關係之職員（Angestellte）及勞工（Arbeiter）（Kunig, 1999: § 6 Rn.29ff.）。公務員關係是經由行政機關之任命行為（行政處分）而成立之特別的法律關係。其特色在於雙方之忠誠義務。從勤務主的角度來看，其對於公務員及其家庭負有照顧與保護義務（Fürsorge- und Schutzpflicht）。職員及勞工，與其勤務主間之關係為私法上之勞動關係。勞動關係中之主要內容並非完全取決於個別的勞動契約，而是取決於僱主與工會間之團體協約（Tarifsvertrag）。聯邦、各邦及鄉鎮之職員及勞工，乃是適用 1961 年 2 月 13 日成立之「聯邦職員團體協約」（Bundes-Angestellentarifvertrag; BAT），但團體協約之內容受公務員法影響很大（Kunig, 1999: § 6 Rn.183ff.）。

目前從價值與倫理面向，規範德國公務員義務，最重要也是最上位的統合性法律，就是於 1953 年 7 月公布的聯邦公務員法（Bundesbeamtengesetz，簡稱 BBG）及公務員基準法（Rahmengesetz zur Vereinfachung des Beamtenrechts,亦稱 Beamtenrechtsrahmengesetz，簡稱 BRRG）。德國公務員法制之法律體系，乃先由聯邦制定「公務員基準法」，再由各邦依基準法所定之原則，分別對其所屬公務員制定相關公務員法，例如「柏林邦公務員法」或「巴伐利亞邦公務員法」等（Vgl. Battis, 2000: § 31 Rn.115; Kunig, 1999: § 6 Rn.54.）。

德國關於聯邦公務員之義務及違反義務的法律效果，主要規定於聯邦公務員法（請參見附錄 3-3-1）第五十二條至第七十八條。不過，關於公務員的迴避、政府資訊公開、以及賄賂黑名單的公告等規範，則並非統一規範於此統合性法律，而是散見於其他法律（例如行政程序法等）。以下有關德國政府倫理法制之說明，將依序介紹德國公務員之義務、公務員倫理法制負責與執法架構、利益衝突迴避相關規範、反貪污的刑法及相關規範，以及公務員違法之法律責任。

關於公務員的某些義務，在聯邦公務員法上並未明確詳盡之規定，而是採用不少不確定法律概念，並且有「慎重與節制條款」這一類之概括條款，使得公務員某些義務的明確內涵，有下列三種具體化的方式(Battis, 2000: § 31 Rn.18.)：

- 一、由行政機關訂定法規命令加以具體化，例如聯邦司法部訂定之「關於聯邦公務員、職業軍人、軍人兼職之法規命令」Verordnung über die Nebentätigkeit der Bundesbeamten, Berufssoldaten und Soldaten auf Zeit (簡稱 Bundesnebenständigkeitsverordnung - BNV) (1964 年 4 月 22 日生效)
- 二、由行政機關訂定行政規則加以解釋，或 2004 年 11 月 8 日聯邦內政部發布了新的《聯邦行政禁止接受酬勞或贈與要點》(Rundschreiben zum Verbot der Annahme von Belohnungen oder Geschenken in der Bundesverwaltung)，對聯邦公務員法第七十條「禁止接受酬勞或贈與」之規定，就做了詳盡的解釋；2004 年聯邦內政部發布了新的《聯邦政府在聯邦行政防範貪污行為要點》(Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung) (2004 年 8 月 11 日生效)。
- 三、必須仰賴司法裁判實務經驗之累積，例如對於公務員政治活動之限制，在立法上並未明確規定，而是採行「慎重與節制條款」這樣之概括規定，使得公務員政治活動之明確界限，必須仰賴聯邦憲法法院及聯邦行政法院裁判經驗之累積。

## 貳、德國聯邦公務員法規定之公務員義務

### 一、概說

德國關於公務員之義務及違反效果，主要規定於聯邦公務員法（請參見附錄三之一）第五十二條至第九十二條及 1957 年制定之公務員基準法第三十五條至第六十條，後者係統一規範各邦公務員法律之基準，主要涉及邦公務員之權義應如何做最低基準之規定，與聯邦公務員法頗多相似之處。聯邦公務員法對公務員義務之規定，大體上是其他相關法規的典範。例如聯邦公務員法第 53 條規定之慎重與節制義務，公務員基準法及各邦的公務員法多有相同的規定。在職員與勞工方面，「聯邦職員團體協約」（Bundes-Angestellentarifvertrag; BAT）第八條第一項第一句規定：「職員應如公務員所受期待者一般，而從事其行為。」法官法第三十九條也規定：「法官在職務內、外之行為，也包括其從事政治活動時，不得危及對其獨立性之信賴。」此一規定雖未明白提及慎重與節制義務，但亦被解釋為法官於政治活動時也負有此等義務。因此，本文除有特別必要之外，關於公務員義務的探討，以聯邦公務員法為主要依據。

德國聯邦公務員法規定，公務員除了於在職期間與退休後享有一切法律保障的權利外，亦負有履行其職務之義務。根據聯邦公務員法規定，公務員之義務計有：慎重與節制義務（§53 BBG）、職務義務（§54 S 1 BBG）、服從義務（§55, 56 BBG）、中立義務（§53, 57 BBG）、保密義務（§61 ff. BBG）等。

#### （一）、忠誠義務（Treuepflicht）及服勤務義務（Dienstleistungspflicht）

公務員關係為公法上之任職與忠誠關係，此不僅見於基本法第三十三條第四項，也於聯邦公務員法及公務員基準法第二條第一項明文規定。公務員必須忠誠維護其所宣誓之憲法秩序，但並不禁止對國家之批評或對目前施政狀況的批評，但批評必須在憲法所允許的範圍並以合憲的手段為之。公務員不僅應消極的遵守憲法秩序，且須積極的維護憲法秩序。違反公務員政治上



的忠誠義務者，屬於職務上不法行為，得加以懲戒，但以有具體違法行為，且得證明者為限(Battis, 2000: § 31 Rn.28ff.; Kunig, 1999: § 6 Rn.76ff.)。

## (二)、政治中立及行政中立

聯邦公務員法第五十二條第一項規定：「1 公務員應為國民全體，而非為特定政黨服務。2 公務員應公平且適當地履行其任務，且其職務之執行應考量公共利益。」同條第二項規定：「公務員執行職務之整體行為應維護基本法所肯認之自由民主基本秩序。」

聯邦公務員法第五十二條第一項第一句乃是要求公務員之政治中立，且此政治中立義務可解釋為公務員對於任何合法產生之政府之效忠義務；至於聯邦公務員法第五十二條第一項第二句則要求，公務員履行任務上之中立性。公務員應公平且適當地履行其任務，且其職務之執行應考量公共利益。在此所要求之中立性乃是要求公務員不偏頗地、客觀地履行其職務。公益導向是公務員倫理對照私部門職業之特殊要求。公務員執行職務時，必須維持政黨政治上的中立性，才有可能實現公共利益(Battis, 2000: § 31 Rn.115; Kunig, 1999: § 6 Rn.135f.)。

## (三)、從事政治活動時之慎重與節制義務

聯邦公務員法第五十三條規定：「公務員從事政治活動時，應遵守基於其為國民全體服務之地位及其職務上義務之考慮所導出之慎重與節制義務。」此一條文規定公務員從事政治活動時之慎重與節制義務，但立法意旨並非要原則性地禁止公務員之政治或政黨活動，反而是原則上允許公務員參與合法之政治活動，包括公開表達其政黨支持之意向、參與選舉活動（例如投票、助選、參選）、加入政黨或政治團體、參與政黨活動及政治活動。公務員加入違憲政黨，並積極地從事活動，則違反其政治忠誠義務，並無疑問。但如公務員只是消極的黨員，或該政黨雖是敵視國家或憲法，但尚未被宣告違憲，則公務員是否違反其政治忠誠義務，尚難斷言。惟就算可認為尚未違反政治忠誠義務，仍應考慮其是否違反慎重與節制義務(Battis, 2000: § 31 Rn.123ff.)。

政治活動也包括與政黨政治無直接關聯之活動。首先值得注意的是公務員之工會活動。基本法第九條第三項第一句所保障之為維護及促進勞動及經濟條件之結社自由，亦及於公務員。聯邦公務員法第九十一條及公務員基準

法第五十七條因此明文保障公務員組織工會或職業聯盟之權，並且規定公務員不得因其工會或職業聯盟之活動而受處罰或受到歧視(Kunig, 1999: § 6 Rn.172)。

#### (四)、職務義務 (Berufspflichten)

聯邦公務員法第五十四條規定：「公務員執行職務時，必須全心全力投入 (Voller Einsatz der Arbeitskraft)，而且應依據最佳之良知，不得謀求個人利益。公務員不論是否在執行職務，其行為均應使人尊重及信賴。」法律解釋上，職務義務包括「禁止罷工」(Streikverbot)之義務。公務員不得藉「拒絕服勤」(Dienstverweigerung)或「停止工作」(Arbeitsniederlegung)等手段以促進或要求工作條件之提高或改善(Battis, 2000: Rn. 34f; Kunig, 1999: § 6 Rn.173)。

#### (五)、服從及協商義務 (Gehorsam-und Beratungspflicht)

聯邦公務員法第五十五條規定：「公務員應對其長官為建議及支持。公務員對其長官 (Vorgesetzten) 之指令，有服從之義務，但依法律之特別規定，公務員僅應遵守法律，不受指揮之拘束者，不在此限。」同法第五十六條規定：「(1) 公務員對其勤務行為之合法性，自行負完全責任。(2) 公務員對勤務指令之合法性有疑慮者，應立即向直接長官報告。經維持該指令，而公務員對該指令之合法性仍有疑慮者，應向再上級長官報告。再上級長官確認指令者，公務員應執行之。但受交付之行為應受刑罰或行政罰制裁，為公務員所能認識，或受交付之行為侵害人性尊嚴者，不在此限；免除公務員之責任。確認，經請求應以書面為之。(3) 因有遲誤之危險，而不能及時取得再上級長官之決定，上級長官要求立即執行指令時，準用第二項第三及第四句規定。」換言之，違法之指令並不具有絕對之拘束力，公務員此時並無絕對服從義務，但是有協商義務。

#### (六)、宣誓義務 (Diensteid)

聯邦公務員法第五十八條第一項規定，公務員有宣誓之義務，其誓詞為：「余宣誓遵守聯邦基本法及所有在聯邦有拘束力之法律，並依良心執行本人之職務，願上帝保佑！」。同條第二項規定，宣誓時得將「願上帝保佑！」(so wahr mir Gott helfe) 之誓詞刪除。同條第三項規定，如公務員為特殊宗

教團體 (Relionsgemeinschaft) 之成員時，「余宣誓」之用語得改用其他之用語。同條第四項規定，在例外之情形，公務員得不經宣誓而任用。

#### (七)、職務行為之免除及禁止

聯邦公務員法 (請參見附錄 3-3-1) 第五十九條第一項規定，公務員之職務行為，若涉及自己或家屬之利益，應免除該職務行為。同條第二項規定，前項所稱之家屬是指依刑事訴訟法上享有拒絕證言權 (Zeugnisverweigerungsrecht) 者。

聯邦公務員法第六十條第一項規定，公務員之最上級職務機關或其某特定之上級機關，居於急迫之職務上之理由，得禁止公務員執行其職務。但是，於發布該禁止命令前，應先聽取該公務員之意見。如果命公務員停止執行職務之期間逾三個月，而未進行懲戒程序或其他撤銷對該公務員之任命或結束公務員關係之程序者，該禁止執行職務之命令失其效力。

#### (八)、保密義務 (Amtsverschwiegenheit)

聯邦公務員法第六十一條第一項規定，公務員縱使於公務員關係終止之後，對其因職務上活動而知悉之秘密仍有保密義務。同條第二項規定，公務員在未經許可前，對於須保密之事務，不得在法庭上或法庭外為陳述或說明。此項許可權限屬於公務員之職務長官；若公務員關係已終止者，許可權者為其最後之職務長官。

聯邦公務員法第六十二條第一項規定，如果此種許可與否，涉及到做証之陳述時，只有在此種陳述會侵害聯邦或邦之利益或對公共任務之履行有嚴重危害或有嚴重危害之虞時，方得禁止公務員為陳述。

聯邦公務員法第六十二條第三項規定，如果公務員為訴訟程序之當事人或債務人或代表人時，於符合聯邦公務員法第六十二條第一項之要件下，應許可其為陳述。但如認公務員之陳述不能與所欲保護之法律上正當利益相符合時，於必要之情形，得拒絕允許公務員為陳述。

#### (九)、保管財物之返還

聯邦公務員法第六十一條規定，公務員及退休公務員，居於其職務長官或最後職務長官之要求，有返還列冊財物、標誌及圖表等之義務。此種歸還

義務，也及於該公務員之遺族及其繼承人

(十)、兼職 (Nebentätigkeit im öffentlichen Dienst)

德國聯邦公務員法 (請參見附錄 3-3-1) 第六十四條至第六十六條係規範公務人員於公務時間外的兼職行為。其中第六十四條規範公務員的兼職行為；第六十五條規範須經許可的兼職行為 (Genehmigungspflichtige Nebentätigkeit)；第六十六條規範不須經許可的兼職行為 (Nicht genehmigungspflichtige Nebentätigkeit)。

聯邦公務員法第六十四條規定，基於主管機關的請求，公務員基於業務需要，有義務在正常公務時間外另外從事兼職工作。兼職包含附帶職務及附帶工作之行政。只有具有急迫之職務上理由時，才得執行兼職行為，例如受其他行政機關委託而為鑑定、教師兼職授課等。直接或間接從事公勤務者，若從事兼職行為，原則上不得請求報酬，但於例外情形，得以法規命令允許給予報酬(林明鏘，2005：483-484)。

聯邦公務員法第六十五條規定公務員從事兼職行為須事前申請並經許可。主管機關可基於第六十五條第二項的規定拒絕許可，其拒絕理由有下列幾種：1、依兼職內容與範圍所需的勞動力，對公務員於公務時間履行其公務可能有重要妨礙；2、可能與公務員之職務義務衝突；3、公務員從事的兼職工作有可能與其所屬機關業務範圍重疊；4、可能影響公務員之公正性及中立義務；5、可能限制未來公務員職務業務的行使；6、有損公務機關的形象。此外，為協助主管機關審核公務員兼職的申請，申請人有義務說明兼職工作的內容，特別是提供報酬給付或等同於報酬給付方面的資料。兼職工作改變時，兼職者也有立即提出書面報告的義務 (林明鏘，2005：484-485)。

(十一)、離職後相關規範 (旋轉門條款) (Tätigkeit nach Beendigung des Beamtenverhältnisses)

德國聯邦公務員法 (請參見附錄 3-3-1) 六十九 a 條規定：「

- 1.公務員退休或提早離職而仍受領金錢給付者，在離職後五年內；或當公務人員於屆滿六十五歲的當月底退休，並於退休後三年內；從事與其離職前五年內的職務相關的非公職活動或工作，並且有可能因而損害公務

機關利益者，應立即告知最後服務的最高機關。

2. 所從事之前項活動或工作有損害公務機關利益之虞者，應禁止之。

3.1 前項禁止由最後服務的最高機關（die letzte oberste Dienstbehörde）決定；前項禁止最多持續至公務人員離職後五年。<sup>2</sup> 該最後服務的最高機關得將此權限委託下級機關為之。

在具體個案中，如果領有退休俸公務員之職業活動或營業活動有損害其前所擔任職務之利益時，其前上級長官得不允許其再任某職業或營業。至於未領有退休俸之前公務員，原則上係指被免職之公務員。因為其與前所服務之機關，不再存在任何法律關係，所以得不受職務上規則之拘束，易言之，即無所謂從事職業或營業之通知義務。

公務員離職或退休後，除死亡或法律有特別規定外，並未完全終止與國家間的勞動關係，但關係轉換成另一特別的權利義務狀態。因此公務人員在退休或離職後，雖不具有公務人員身份，但仍受公務員法中消極義務之規範，除了聯邦公務員法第七十條有關收受與其職務相關之報酬或禮物的禁止原則外，退休或離職之公務人員至少還受三項義務的約束：1. 不得從事違害基本法之自由民主憲政秩序的活動；2. 不得從事損害德國聯邦共和國之現有狀態或安全的活動（從事改變邦現有狀態者不在此限）；3. 不得違反公務人員對其執掌業務的沈默原則以及文件保密原則等等（Vgl. Battis, 2000: § 31 Rn.87f; Kunig, 1999: § 6 Rn.115f.）。因此，退休或離職後之公務員在不違反這些義務的情況下，有自由工作的權利。

#### （十二）、接受酬勞或贈與（Annahme von Belohnungen）

聯邦公務員法（請參見附錄 3-3-1）第七十條規定：「1 公務員不得因職務上之原因而接受酬勞及贈與，公務員關係終止之後，亦然。2 只有經最高職務機關或最後職務機關（對退休公務員而言）之同意，方得例外收受酬勞或贈與。3 同意權可委由其他機關行使。」

聯邦公務員法第七十一條規定：「公務員須經聯邦總統之許可，使得接受外國元者或外國政府頒贈之頭銜（Titeln）、勳章（Orden）或其他榮譽標誌（Ehrenzeichen）。」

依據聯邦公務員法第七十條、聯邦職員團體協約第十條(BAT)等規定，2004年11月8日聯邦內政部發布了新的《聯邦行政禁止接受酬勞或贈與要點》Rundschreiben zum Verbot der Annahme von Belohnungen oder Geschenken in der Bundesverwaltung，取代了1962年聯邦內政部發布，並於1977年及1981年修正過之同一主題之行政規則。

依據該要點 I 之規定，公務員、職員、勞工、義務役軍人及職業軍人，不論是否退休，均不得因為與職務相關之原因而接受酬勞或贈與。只有在在不影響公正執行公務，且經最高職務機關或最後職務機關同意之例外情形，方得收受酬勞或贈與；但無論如何不得收受任何金額之現金。

依據該要點 IV 之規定，收受價值低於 25 歐元之物品（例如原子筆、筆記本、月曆等廣告品），視為經職務機關默示同意。對物品價值之判斷，以德國市價為準。該要點 V 規定，違反禁止接受酬勞或贈與之規定者，構成失職或為反勞動契約之義務，因此，公務員應受最重可達撤職之懲戒處分；退休公務員應受最重可達剝奪退休俸之懲戒處分；義務役軍人及職業軍人應受最重可達撤職之懲戒處分；退休義務役軍人及職業軍人應受最重可達剝奪退休俸之懲戒處分；職員、勞工應依勞動法受最重可達提前解約之制裁。此外，違反禁止接受酬勞或贈與之規定者，並應依相關規定（例如§ 78 BBG，§ 14 BAT/BAT-O 等規定）負民事損害賠償責任。再者，接受酬勞或贈與之行爲，也可能構成德國刑法第三百三十一條第一項、第三百三十二條第一項或第三百三十五條第一項第一款之犯罪，而應受刑罰制裁。

### (十三)、工作時間

聯邦公務員法第七十二條第一項規定，公務員每週正常之工作時間平均不得超過四十四小時。同條第二項規定，基於職務上急迫之理由，於必要時得要求公務員逾越每週正常之工作時間，不領取報酬服勤務，但僅限於例外情形始得為之。

同條第四項規定，聯邦公務員工作時間之進一步規定，為了維持彈性，由聯邦政府以不須聯邦參議院同意之法規命令定之。

聯邦公務員法第七十二 a 條規定，領有俸給之公務員得部分時間工作或者無薪俸休假。部分時間工作，係指為創造公勤務中之就業機會，為急迫之

公共利益所必要時，依公務員本人之請求，得准許其為部分時間工作。

#### (十四)、不得曠職

聯邦公務員法第七十三條第一項規定，公務員未得職務長官之允許，不得擅自離開其職務，公務員若因病而曠職時，基於長官報告，應說明生病之情形。

#### (十五)、住宅 (Wohnung)

聯邦公務員法第七十四條規定，公務員住宅之選擇不應損害其職務之正常執行。因職務上之需要，職務長官得要求公務員居住於離辦公處所一定距離內之住宅或居住於職務宿舍。

聯邦公務員法第七十五條規定，基於特殊職務之需要，且有緊急情形時，得要求公務員於下班後，待在離辦公處所不遠之距離內。

### 參、德國公務員倫理法制負責與執行機關

德國公務員倫理法制負責與執行機關，在聯邦政府層級為聯邦內政部及聯邦人事委員會，以下分別說明：

#### 一、聯邦內政部

德國在傳統上並非由單一中央機關統籌管理所有人事行政事務，政策、法制由內政部掌理，預算由財政部掌理，各部會分別管理所屬公務員之人事行政。1949年時，不願設置新的中央人事行政機關。1950年依據聯邦公務員法第8條之規定，依聯邦人事委員會設置令，而設置聯邦人事委員會作為暫時性之機關。目前德國之中央人事行政機關包括負責公務員制度之政策、立法及其營運內政部，及基於聯邦公務員法而依1950年之聯邦人事委員會設置令設置之聯邦人事委員會。

內政部對於公務員制度之基本問題，主要具有以下之權限<sup>42</sup>：

- (一)、聯邦公務員法、俸給法、其他相關法律以及命令之制訂及實施。
- (二)、參與法官法、軍人法及其他相關法令之制訂。
- (三)、有關職員及勞工之勞動協約之締結及實施(勞動契約係由聯邦內政部長代表聯邦締結。)
- (四)、提升公務員績效，以促進公共利益的實現。

## 二、聯邦人事委員會

聯邦公務員法第九十五條（請參見附錄 3-3-1）規定，為統一執行公務員法規，設立「聯邦人事委員會（Bundespersonalausschuß）」，在法律規定範圍內獨立行使職權。此種制度設計係為避免人事權由聯邦政府之部會管轄而受到政治之不法或不當干預。該委員會係由八名正式委員（Ordentliche Mitgliedern）與八名候補委員（Stellvertretende Mitgliedern）組成，委員會主席為聯邦審計長。固定職務之正式委員為擔任主席的聯邦審計長與聯邦內政部人事法規部門主管；非固定職務之正式委員則包括其他兩個聯邦最高機關人事部門主管與另外四名聯邦公務員。候補委員包括聯邦審計部與聯邦內政部所屬之聯邦公務員各一名，以及另外其他兩個聯邦最高機關人事部門主管與另外四名聯邦公務員。其產生方式，非常任正式委員與候補委員由聯邦內政部部长提請聯邦總統任命之，任期四年。其中，四位正式委員與四位候補委員係由相關工會之最高組織，也就是工會的理事會任命（聯邦公務員法第九十六條）。

聯邦人事委員會並非聯邦內閣之部會。根據德國聯邦基本法第六十二條規定，聯邦政府是由聯邦總理及各部部長組成，目前包括外交部、內政部、國防部、財政部等。聯邦人事委員會委員在組織層級上係低於內政部等一般部會之獨立機關。

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<sup>42</sup>[http://www.bmi.bund.de/Internet/Content/Ministerium/Organigramm\\_\\_Neu/Referate/abteilung\\_d.html](http://www.bmi.bund.de/Internet/Content/Ministerium/Organigramm__Neu/Referate/abteilung_d.html)



### 三、聯邦人事委員會委員之任務

聯邦公務員法第九十八條規定，依聯邦公務員法第八條（公開甄選程序）、第二十一條（升遷要件法定原則）、第二十二條（試用種類與期限規定）及第二十四條（限制越級升遷）等規定，聯邦公務員之考選、試用、任用及升遷，係由聯邦人事委員會管轄。此外，兩性機會平等之推動及聯邦政府委辦之其他任務亦屬聯邦人事委員會的權限。關於任務之執行，聯邦人事委員會應向聯邦政府提出報告。同法第九十九條規定，聯邦人事委員會之職務規程由該會自行訂定。

### 肆、德國利益衝突與迴避的規定

德國聯邦行政程序法第二十條規定有迴避義務（Ausgeschlossene Personen），同法第二十一條規定有偏頗之虞的迴避義務(Besorgnis der Befangenheit)。

德國聯邦行政程序法第二十條規定：「

一、下列人員不得為行政機關從事行政程序：

- (一)、自己為當事人者；
- (二)、為當事人之親屬者；
- (三)、基於法律之規定或特別授權而為一般代理，或在此行政程序中為當事人之代理人者；
- (四)、在此程序中為當事人之代理人之親屬者；
- (五)、為當事人有償工作者，或為其董事會、監事會或類似機關之構成員者；但如其任命團體本身為當事人者，不在此限。
- (六)、除公務上之身分外，對該事件曾擔任鑑定人，或參與其他工作者。由其職務上行為或決定，得直接獲得與當事人相同之利益或不利益者。

上述規定，如僅因屬於職業團體或居民團體，其共同利益受事件之影響，致發生利益或不利益者，不適用之。

二、本條第一項規定，對由選舉擔任榮譽職工作，與卸去榮譽職職務者，不適用之。

三、依本條第一項之規定應迴避者，於急迫情形時，得為緊急措施。

四、委員會之委員（第八十八條）認為應迴避，或是否具備本條第一項所規定之要件而應否迴避有疑義時，應通知委員會主席。關於其迴避，由委員會裁決之。該委員不得參與裁決。應迴避之委員，不得再出席討論或參與表決。

五、第一項第二款及第四款所稱親屬係指：

(一)、訂婚人；

(二)、配偶；

(三)、直系血親或姻親；

(四)、兄弟姊妹；

(五)、兄弟姊妹之子女；

(六)、兄弟姊妹之配偶與配偶之兄弟姊妹；

(七)、父母之兄弟姊妹；

(八)、養父母子女；

(九)、經較長期間成立之保護關係，而相互如同父母子女組成家庭生活者，保護關係中之父母或子女。

第二、三與六款列舉之人，於發生親屬關係之婚姻已不存在者，亦同；第九款所列舉之人，包括：其家庭式共同生活已不存在，但仍互相如同父母子女相處者。」

德國聯邦行政程序法第二十一條規定：「

一、為行政機關從事行政程序者，如有相當原因足認其不能公平執行職務

時，或當事人主張有上述原因存在時，應將其事由告知行政機關首長或其委任者，並依其命令而不參與行政程序。行政機關首長有偏頗之虞而未自行拒絕參與行政程序時，上述不得參與之命令，由監督行政機關為之。

二、委員會之委員（第八十八條）準用第二十條第四項之規定。」

## 伍、德國反貪污的法律規定與措施（總論）

### 一、概說

德國反貪污措施包括兩方面的內容：制裁貪污和預防貪污。前者主要是指制定完善的反貪污法律，並確實執行法律。在立法及修法方面，法律應因應貪污行為的變化，而有新的規定，目前在德國常被討論到的問題有：應制定認定貪污行為的特殊證據法，德國刑法應對法人涉及貪污犯罪加以規範，對選舉的買票行為應更嚴格規範，應修改政黨法以限制政黨的支出。在執法方面，常被討論到的問題有：應增強刑事追訴的力量，例如應允許檢察官在維護特殊公共利益的情況下，無須申請法院令狀即可採取必要行動<sup>43</sup>。

德國的國際透明組織認為僅靠立法制裁貪污不足以解決問題，預防貪污也很重要，應建立一套有效遏阻貪污發生的社會機制，提出了反貪污的多元治理系統，除了立法和執行之外，應強化審計部門的監督職責、司法機關的反貪污職能，並發揮媒體的監督力量，及動員個人和社會組織的力量，建構反貪污的完整網絡。這種多元治理之所以必要，是因為政府部門的反貪污措施並不一定可靠。因為，德國的國際透明組織認為，在有些國家，政黨、警察機關、法院有時就是貪污最嚴重的機構<sup>44</sup>。

#### （一）、政府資訊公開法的實施

<sup>43</sup><http://www.transparency.de/Empfehlungen-an-Gesetzgeber-un.671.0.html>; Wiehen, 2001.

<sup>44</sup><http://www.transparency.de/Verwaltung.63.0.html>; <http://www.transparency.de/Politik.62.0.html>; Strafverfolgung der Korruption – Möglichkeiten und Grenzen 2004 (pdf) 載於 <http://www.transparency.de/Justiz.57.0.html>; von Arnim (2006), NVwZ 2006, 249ff.

德國的國際透明組織及一些學者一再要求建立政府資訊公開的制度（Wiehen, 2001），德國的聯邦政府資訊公開法（Informationsfreiheitsgesetz, IFG）終於在 2006 年 1 月 1 日生效實施<sup>45</sup>。

## （二）、賄賂黑名單的公告

2006 年 6 月 1 日起，柏林邦之賄賂公告法（Gesetz zur Einrichtung und Führung eines Registers über korruptionsauffällige Unternehmen in Berlin）（Korruptionsregistergesetz - KRG）開始生效，在北萊因西華倫邦（Nordrhein-Westfalen）也有類似的法律規定。2002 年 Schröder 政府曾擬議設立全聯邦的賄賂黑名單公告制度，但迄今尚未實施。賄賂黑名單公告制度，是將涉及賄賂且判決確定的企業列入黑名單，並依違法情節輕重，公告一定年限（例如一年或三年）。在這段期間，黑名單上的企業將被禁止參與政府採購，從而對企業施加經濟壓力，使其在參與政府採購過程中不敢使用賄賂手段。國際透明組織德國分部一再要求德國聯邦政府和所有的邦政府都設立賄賂黑名單公告制度，但因為此一制度對被列入黑名單之企業影響很大，因此推動過程阻力很大<sup>46</sup>。

## （三）、《聯邦政府在聯邦行政防治貪污行為要點》之規定

德國政府深知不僅應在貪污行為發生後嚴加查處，更應從源頭防止貪污行為的發生，因此，貪污預防措施非常重要。2004 年 7 月 7 日聯邦內閣（Bundeskabinett）通過了新的《聯邦政府在聯邦行政防治貪污行為要點》（Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung）（請參見附錄 3-3-3）（2004 年 8 月 11 日生效），取代了 1998 年的舊規定。此外，聯邦內政部也重新編撰了貪污防治手冊（Texte zur Korruptionsprävention），蒐集了防治貪污相關之重要聯邦法令規定、網站及文獻<sup>47</sup>。

《聯邦政府在聯邦行政防治貪污行為要點》之規定如下：

<sup>45</sup><http://www.transparency.de/Informationsfreiheit.85.0.html>

<sup>46</sup><http://www.transparency.de/Stellungnahme-Antikorruption.sr.77.0.html>

<sup>47</sup>[http://www.bmi.bund.de/cln\\_028/nn\\_959204/Internet/Content/Themen/Oeffentlicher\\_Dienst/WeitereThemen/Korruptionspraevention\\_Id\\_93290\\_de.html](http://www.bmi.bund.de/cln_028/nn_959204/Internet/Content/Themen/Oeffentlicher_Dienst/WeitereThemen/Korruptionspraevention_Id_93290_de.html)

1. 適用範圍（省略）
2. 確認並分析特別容易形成貪污行為的工作領域

所有的聯邦機構在環境許可下都應該定期的進行確認特別容易形成貪污的工作領域。

風險分析必須在此目的下被謹慎考量。風險評估的結果應被使用在確定組織、流程或人事任用的任何改變上。

3. 透明性與多方監察的原則

- (1).在特別容易產生貪污的領域應加強監督（確保能有成員或組織來負責進行二次確認執行）。如果是囿於法規上或不能克服的實際困難而無法進行時，則需設立二次確認系統的監察必須嚴格的進行隨機檢驗，或者透過其他補充機制或是預警方法（如更加密集的行政或任務關連監督）。

- (2).應確保決策與決策過程的透明化。（如透過清楚的權限劃分、報告系統、以資訊科技為基礎的交易和操作監視、完整和精確的文件記錄）

4. 人事

- (1).貪污可能性較高的單位，對其人員的選任應特別注意。

- (2).貪污可能性較高的單位，其人員的任期原則上應該有所限制；原則上不應超過五年。如果任期有必要延長時，其理由應該記錄在檔案中。

5. 防貪污聯絡人（Ansprechperson für Korruptionsprävention）

- (1).防貪污聯絡人應依任務和組織的規模而指派其人數。一個聯絡人可能負責數個機關。聯絡人負責以下幾種任務：

- A.有需要時，聯絡人必須作為職員、私人、管理部門不需透過正式管道而可以溝通的對象。

- B.作為主管部門的顧問

- C.確保組織成員能有充分資訊（如，透過研討會或發表）

- D.幫助培訓

E. 監控且評估任何貪污跡象

F. 幫助公務員瞭解公務員法和刑法的規定

- (2). 如果聯絡人知悉公務人員有犯罪嫌疑時，必須告知管理部門，且建議主管部門展開內部處理問題的調查，並採取防止湮滅證據的行動，及告知執法機關。主管部門應該採取必要的行動處理問題。
- (3). 聯絡人並未被直接授與懲處權限；他們並不能引領任何貪污個案的懲處程序。
- (4). 有可疑的貪污跡象發生時，被要求的機關必須立即且完整提供必要的資訊配合聯絡人的權責。
- (5). 聯絡人應獨立行使防範貪污的職權，不受任何指示拘束。他們應該有權直接對機關首長報告，且在行使職權時不受任何支配。
- (6). 即使在離職後，聯絡人仍不能揭露任何所獲得的個人背景資訊；但如果合理懷疑貪污可能發生時，可以提供這些資訊給主管機關或人事部門。個人資料應該遵守個人檔案管理原則。

## 6. 組織的防範貪污

不管是風險分析的結果或是特定環境下的要求，主管部門必須進行一定期限或長期的內部稽查；此單位必須是獨立的，且有權直接向首長報告。此任務也可以由內部稽查部門執行。如果發現有防範貪污瑕疵行為時，應直接告知首長和聯絡人，並要求機關部門或相關單位的適度改變。

## 7. 人員的認知與教育

- (1). 當宣誓或依法任命時，公務人員應清楚知道貪污行為的風險並被告知其結果。此外，所有的公務員均應被告知在特別容易貪污的工作領域或情境時，應遵守反貪污之行為準則 (Verhaltenskodex gegen Korruption) (請參見附錄 3-3-1)，使其能夠適當回應。
- (2). 組織成員工作或被轉任到易形成貪污的領域時，應給予一定時間的額外工作指導。

## 8. 基本和深入訓練

防貪污的訓練應該被包含在訓練計畫中。如此，上述訓練必須考量長官和聯絡人對貪污行為的預防措施，尤其是人員在特別容易形成貪污的領域工作時。

#### 9. 謹慎的行政和任務相關監督

- (1).長官應謹慎執行勤務與專業監督（Leitfaden für Vorgesetzte und Behördenleitungen，請參見附錄 3-3-2）。這包含採取事前的人事領導和監督。
- (2).長官應注意任何貪污的可能跡象。必須定期或環境要求下警示部屬貪污的風險。

#### 10. 可疑貪污個案的告知與行動

- (1).當可疑貪污跡象有事實依據時，單位主管必須毫不遲疑地告知檢察機關和最高行政當局；進一步地，內部調查行為必須馬上開始，且需採取防止證據湮滅的行動。
- (2).每年皆須呈報可能的貪污個案的過程和結果給聯邦內政部。此資訊應以匿名的方式呈報。

#### 11. 契約的指導原則

##### (1).競爭

公開招標的程序公開對防範貪污尤其重要。在政府採購契約的執行過程中，經常性地執行行政和專業監督，以確保排除任何被禁止的影響因素進入。

##### (2).計畫、執行和會計的基本分離

依據預算和契約執行的相關規定，執行政府採購契約時，計畫和執行的單位必須要符合組織上的區隔原則，之後的會計亦是。

##### (3).競爭的排除

機關必須確定投標者或應徵者是否涉及危及信用和有造成不利競爭的不當行為，特別是，競標者或應徵者有期約或提供利益給準備執行或正在執行的組織人員或第三人時，應被視為不當行為

## 12. 反貪污條款

- (1).反貪污條款必須被適當訂定在政府採購契約中
- (2).涉及投入公共資金之計畫的私人企業，其員工個人亦須遵守反貪污的規定。而此一要求應在簽約前即告知競標者（包含取得同意書）。上述人員應遵守反貪污之行爲準則 (Verhaltenskodex gegen Korruption) (附件一)，及禁止收受報酬及禮物的行政規則。

## 13. 對公共活動、設施的捐獻；贊助

私人對聯邦機關的金錢、物質、服務上的捐助，必須符合聯邦政府對私人捐助之行政規則的規定。（2003年7月7日聯邦內政部發布之 Allgemeine Verwaltungsvorschrift zur Förderung von Tätigkeiten des Bundes durch Leistungen Privater (Sponsoring, Spenden und sonstige Schenkungen)

## 14. 捐獻的接受

- (1).於機構性支持之範疇內接受聯邦補助者，若其透過預算法之規定而得適用「公共補助法」(Vergaberecht)之規定時(該筆資助或接受多筆資助時其總額超過10萬歐元)，應於補助處分附加特別的附款，對補助處分之相對人課予其適用此指令之義務。於補助合約中應約定適用此一行政規則。
- (2)外國的捐獻應有反貪污原則的適用

## 15. 特殊措施

必要時機關可採行額外措施

聯邦政府在聯邦行政防範貪污行爲要點（請參見附錄 3-3-3）的附件二（Leitfaden für Vorgesetzte und Behördenleitungen），針對行政機關的主管指示其爲有效預防貪污行爲發生，應採取之措施，例如將可能發生貪污的跡象分爲中性跡象和警告性跡象兩類，提醒主管留意。中性跡象（Neutrale Indikatoren）包括：公務員有不合理的高水準生活，對變換職務或者調動工作表示出令人費解的抵制，在未獲得批准或未進行說明的情況下從事其他兼職工作，出現酗酒、吸毒或賭博等問題，與某些企業有不同尋常的私人交往，



特別誇獎和照顧一些企業或獲得企業的慷慨贊助等現象。警告性跡象（Alarmindikatoren）包括：公務員無視有關規定，不斷發生“小過錯”，做出不同尋常且令人費解的決定，濫用裁量權，隱瞞某些事件和情況；試圖對不屬於自己管轄範圍的決策施加影響，對可疑的現象或事件沒有反應等情形。

## 陸、德國公務員未履行義務之法律效果

公務員未履行義務時，其法律效果主要有懲戒責任（行政責任）、民事賠償責任及刑事責任三種，簡單說明如下：

### 一、懲戒責任

關於懲戒，在德國法上係將其實體規定與程序規定分別規定在不同法律。以聯邦公務員的懲戒為例，實體法是規定於聯邦公務員法（請參見附錄 3-3-1），懲戒程序則規定於聯邦懲戒法(Bundesdisziplinarordnung; BDO)。

#### （一）、懲戒事由

在實體法上對於應受懲戒之行為並未如刑法般列出不同之具體的構成要件，而是僅於聯邦公務員法第七十七條以一個「失職」(Dienstvergehen)條款加以規範。

聯邦公務員法第七十七條第一項規定：「1 公務員有責地違反其義務者，構成失職。2 公務員之職務外行為，如依據個案情況，在特別之限度內顯示出足以嚴重影響對於其職務之尊重與信賴或公務員之威望者，為失職行為。」第一句所稱之「義務」係指聯邦公務員法第 52 條以下所規定之義務。前述之一般義務條款 - 尊嚴條款，因此可認為是失職之「基本構成要件」。由於聯邦公務員法第 54 條所規定之尊嚴條款要求公務員，即不分職務內、外之所有行為都必須維護其職業所要求之尊嚴，因此任何義務違反行為，即使是職務外行為，也可能構成失職。但依第二句規定，並非所有公務員在職務外之義務違反行為都會構成失職。

聯邦公務員法第七十七條第二項規定：「有退休俸之退休公務員或前公務員，若 1 從事違反基本法所保障之「自由民主基本秩序」行爲；或 2 參與對聯邦德國存續或安全有不利影響之行爲或；3 違反職務上之應守秘密 (§ 61 BBG)、違反旋轉門條款 (§ 69a BBG)、違反禁止接受報酬或贈與之規定 (§ 70 BBG)，其行爲也構成失職。」

## (二)、懲戒手段

公務員失職之懲戒手段，依其爲現職公務員或退休公務員而有不同：

### 1.現職公務員

對現職公務員之懲戒手段計有：申誡、罰鍰、減俸、降級、撤職 (Die Entfernung aus dem Dienst)；但對於實習公務員則僅得申誡及罰鍰。

### 2.退休公務員

對退休公務員之懲戒計有減少退休俸及剝奪退休俸兩種手段，前者至多減少退休俸之五分之一，期間最長爲五年；如退休公務員符合撤職之要件時，可剝奪其退休俸。

## 二、民事賠償責任

公務員原則上應爲其違反強制義務而有責之行爲，負民事損害賠償責任，但爲要保護公務員執行上級長官所交付之任務，因此，對因執行職務所產生之損害，由其職務長官負損害賠償責任，但公務員執行職務有故意或重大過失時不在此限。如果有多數公務員共同造成損害時，原則上這些公務員應視爲連帶債務人共同負責 (聯邦公務員法第七十八條第二項)。

公務員行使公權力而造成第三人損害時，依基本法第三十四條第一項規定，國家對該損害應負賠償責任。公務員於行使公權力時有故意或重大過失者，國家得對該公務員行使求償權 (聯邦公務員法第七十八條第二項)。

### 三、刑事責任

當公務員之失職行為，符合刑法上之構成要件時，應負刑事責任，懲戒責任與刑事責任並行，並不違反一事不再理之原則（基本法第一〇三條第三項），因為，一事不再理原則僅適用於相同的制裁體系中，而行政懲戒與刑事責任乃屬不同之制裁體系，故無「一事兩罰」可言。公務員是否應負刑事責任，仍應以刑法總則及刑法分則之規定判斷之。在刑法分則中，主要是規定於第二十八章瀆職罪章中。

## 柒、德國刑法反貪污的規定

德國反貪污的主要刑事法律依據是德國刑法（請參見附錄 3-3-2），其中規定的瀆職罪是確定貪污行為刑事法律後果的主要依據。

### 一、1997 年反貪污法的新規定

1997 年 8 月 13 日，德國議會通過了《反貪污法》。反貪污法並不是一部獨立的法律，並未列於德國法律彙編，而是一個同時修改幾部法律的包裹立法，刑法、法院法、刑事訴訟法、不正當競爭防止法、國防罪法、社會秩序維護法、限制競爭防止法、公務權利法、聯邦公務員法、聯邦公務員懲戒法、兵役法、國防紀律法、能源消費標識法等法律的相關條文一起修正。其中與狹義貪污行為關係最密切的刑法修正有：提高了賄賂罪的量刑幅度；對公職賄賂罪則規定了從重處理的情況；另外還規定了議員賄賂罪。

在瀆職犯罪方面，反貪污法對德國刑法條文做了下列重要修正：

#### （一）、擴大犯罪構成要件

瀆職罪某些犯罪構成要件的擴大，包括刑法第十一條一項第二款的公務員概念上，這一公務員概念對刑法典第三百三十一條以下的賄賂罪構成要件的運用來說具有核心意義。這一概念擴大為包括：以私法的組織形式執行行政機關委託之任務者，也被視為公務員。此外，過去將接受他人利益（第三

百三十一條)和允諾給予利益(第三百三十三條)與具體的公務行為連結在一起,但現在規定只要與履行公務有關即可構成犯罪。由於此等修改和擴大,常見之影響公務人員工作公正性之賄賂行為(例如送禮等)較易被盡早發現。此外,第三百三十一條至第三百三十四條規定的利益概念,也將捐贈第三人包括進去,以免公務人員移轉利益。接受利益(第三百三十一條)和提供利益(第三百三十三條)之刑罰的上限從二年有期徒刑增加到三年有期徒刑,也就是超過了可緩刑的刑罰界限(第五十六條第二款)。第三百三十五條針對行為人是職業犯或犯罪組織成員者(第三百三十八條),新增加了索賄(第三百三十二條)和行賄(第三百三十四條)的特別嚴厲刑期的規定和適用財產刑(第三十四條 a)和擴大適用追繳(第七十三條 d)的可能性。

#### (二)、提高刑罰幅度

反貪污法也考慮到增強的反貪污問題意識和相關的法益屬於較重要的法益,而提高了賄賂犯罪的刑罰幅度,包括修改刑法第三百三十一條第一項之“接受利益”的刑罰幅度:以前規定科處兩年以下有期徒刑或罰金,現在規定科處三年以下有期徒刑或罰金。

#### (三)、財產刑和擴大的沒收

刑法第三百三十八條關於財產刑(刑法第三十四條 a)和被擴大的沒收(刑法第七十三條 d)的規定,遵循的是目前刑事政策關於行業性或者群體性實施的賄賂和貪污的極為重要的傾向:一方面涉及到特殊預防的目的,即通過剝奪犯罪組織所需要的資源來減低其建立和存續的可能性;另一方面是要讓犯罪得不到利益。

#### (四)、為維護自由競爭而增加新的犯罪構成要件

為了維護競爭,反貪污法還在刑法中增加了包含五個新條文的第二十六章,主要規範招標時限制競爭的約定(第二百九十八條)及在業務來往中的索賄和行賄(第二百九十九條)。第二百九十八條包括在商業承包基礎上,在就商品或商業履行的招標時出售商品報價單,該行為過去依詐欺罪處罰,或當作《違反秩序法》的行為,依1990年2月20日的《限制競爭防止法》第二十五條、第三十八條第一項第八款處罰。第二百九十九條將已廢除之《非法競爭取締法》第十二條的規定吸收進普通刑法,並規範雇員在業務交往中

的索賄和行賄問題。第三百三十一條至第三百三十四條的構成要件擴大為包括為第三人索要利益。此外，原本是告訴乃論的第二百九十九條，修改為如果涉及公共利益，可依職權進行追訴（第三百零一條第一款）；情節特別嚴重者，得科處較高的刑罰。情節特別嚴重是指第三百三十五條第二項第一款和第三款的規定（第三百條第二句）。對第二百九十九條的犯罪，可適用財產刑和追繳（第三百零二條）。

## 二、德國刑法第三十章瀆職罪之規定（請參見附錄 3-3-2）<sup>48</sup>

### 第三百三十一條（接受利益）

- (一)、公務員或對公務負有特別義務之人員，針對履行其職務行為而為自己或他人索要、讓他人允諾或接受他人利益者，處三年以下有期徒刑或罰金。
- (二)、法官或仲裁人，以其已經實施或將要實施之裁判行為作為回報，為自己或他人索要、讓他人允諾或接受他人利益者，處五年以下有期徒刑或罰金。未遂犯罰之。
- (三)、行為人讓他人允諾或接受之利益，非其本人所要求之，而是主管當局在其職權範圍內事先許可者或行為人事後立即報告而被主管當局追認者，不依第一項處罰。

### 第三百三十二條（索賄）

- (一)、公務員或對公務負有特別義務之人員，以已經實施或將要實施、因而違反或將要違反其職務義務之職務行為作為回報，為自己或他人索取、讓他人允諾或接受他人利益，處六個月以上五年以下有期徒刑或罰金。情節較輕者，處三年以下有期徒刑或罰金。未遂犯罰之。
- (二)、法官或仲裁人，以已經實施或將要實施、因而違反或將要違反其裁判義務之裁判行為作為回報，為自己或為他人索要、讓他人允諾或

<sup>48</sup>關於德國近年來瀆職罪實際裁判之分析，請參閱 Heinrich (2005), NStZ 2005, 197ff.

收受他人利益，處一年以上十年以下有期徒刑。情節較輕者，處六個月以上五年以下有期徒刑。

(三)、行爲人以將來的行爲作爲回報，索要、讓他人允諾或收售他人利益者，如果行爲人已向他人表明：

- 1.他在行爲時違反其義務，或
- 2.行爲由他來斟酌決定，且他以是否獲得利益來影響決定者，適用第一項和第二項之規定。

### **第三百三十三條（給予利益）**

- (一)、針對公務員或對公務負有特別義務之人員或聯邦國防軍士兵之職務上行爲，爲其本人或第三人提供、允諾或給予利益者，處三年以下有期徒刑或罰金。
- (二)、以法官或仲裁人已經實施或將要實施之裁判行爲作爲回報，向其本人或第三人提供、允諾或給予利益者，處五年以下有期徒刑或罰金。
- (三)、主管當局在其職權範圍內事先允許上述人員接受利益，或在接受人立即報告後加以追認者，不依第一項處罰。

### **第三百三十四條（行賄）**

(一)、以公務員、或對公務負有特別義務之人員或聯邦國防軍士兵已經實施或將要實施者、因而違反或將要違反其職務義務之職務行爲作爲回報，向其本人或第三人提供、允諾或給予利益，處三個月以上五年以下有期徒刑。情節較輕者，處二年以下有期徒刑或罰金。

(二)、以法官或仲裁人

- 1.已實施者、因而以違反其裁判義務之裁判行爲作爲回報，或
- 2.將要實施者、因而違反其裁判義務之裁判行爲作爲回報，向法官或仲裁人本人或第三人提供、允諾或給予利益者，在第一項情形下處三個月以上五年以下有期徒刑，在第二項情形下處六個月以上五年以下有期徒刑。未遂犯罰之。

(三)、行爲人要求對方爲將來之行爲提供、允諾或給予利益，有下列情形之一者，適用第一項和第二項之規定：

- 1.行爲違反其職責，或
- 2.以是否獲得利益來影響裁判。

### **第三百三十五條（索賄和行賄之特別嚴重情形）**

(一)、犯下列條款之罪，情節特別嚴重者，在第一項情形下處一年以上十年以下有期徒刑，在第二項情形下處二年以上有期徒刑：

1.犯

(1).第三百三十二條第一項第一句和與之有關之第三項之罪，和

(2).第三百三十四條第一項第一句和第二項，以及與之有關之第三項之罪。

2.第三百三十二條第二項以及與之有關之第三項之罪。

(二)、具備下列情形之一者，一般認爲情節特別嚴重：

- 1.行爲所涉及之利益巨大者，
- 2.行爲人繼續索要並接受利益，以將來實施某一職務行爲作爲回報者，
- 3.行爲人以此爲職業或作爲爲繼續實施此等行爲而成立之團伙成員爲此行爲者。

### **第三百三十六條（不爲職務上之行爲）**

不爲職務上之行爲者，視同第三百三十一條至三百三十五條意義上之職務行爲或裁判行爲。

### **第三百三十七條（酬報仲裁人）**

酬報仲裁人，指仲裁人背著一方當事人向另一方索要、讓其允諾或收受利益，或當事人一方背著他方向仲裁人提供、允諾或給予利益，此行爲視爲第三百三十一條至第三百三十五條所謂之利益。

### **第三百三十八條（財產刑和擴大之追繳）**

- (一)、如行爲人以此爲職業或作爲爲繼續實施下列各條項之罪而成立之團伙成員爲此 7 行爲者，在第三百三十二條以及與之有關之第三百三十六條和第三百三十七條情形下，適用第七十三條 d 之規定。

如行爲人作爲爲繼續實施下列各條款之罪而成立之團伙成員爲此行爲者，在第三百三十四條以及與之有關之第三百三十六條和第三百三十七條情形下，適用第四十三條 a 和第七十三條 d 之規定。行爲人以此爲職業者，同樣可適用第七十三條 d 規定。



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## **附錄 3-3-1 德國聯邦公務員法**

### **( Bundesbeamtengesetz )**

#### **Abschnitt III Rechtliche Stellung der Beamten**

##### **1.**

##### **Pflichten**

##### **a)**

##### **Allgemeines**

#### **§ 52**

(1) 1Der Beamte dient dem ganzen Volk, nicht einer Partei. 2Er hat seine Aufgaben unparteiisch und gerecht zu erfüllen und bei seiner Amtsführung auf das Wohl der Allgemeinheit Bedacht zu nehmen.

(2) Der Beamte muß sich durch sein gesamtes Verhalten zu der freiheitlichen demokratischen Grundordnung im Sinne des Grundgesetzes bekennen und für deren Erhaltung eintreten.

#### **§ 53**

Der Beamte hat bei politischer Betätigung diejenige Mäßigung und Zurückhaltung zu wahren, die sich aus seiner Stellung gegenüber der Gesamtheit und aus der Rücksicht auf die Pflichten seines Amtes ergeben.

#### **§ 54**

1Der Beamte hat sich mit voller Hingabe seinem Beruf zu widmen. 2Er hat sein Amt uneigennützig nach bestem Gewissen zu verwalten. 3Sein Verhalten

innerhalb und außerhalb des Dienstes muß der Achtung und dem Vertrauen gerecht werden, die sein Beruf erfordert.

### **§ 55**

1Der Beamte hat seine Vorgesetzten zu beraten und zu unterstützen. 2Er ist verpflichtet, die von ihnen erlassenen Anordnungen auszuführen und ihre allgemeinen Richtlinien zu befolgen, sofern es sich nicht um Fälle handelt, in denen er nach besonderer gesetzlicher Vorschrift an Weisungen nicht gebunden und nur dem Gesetz unterworfen ist.

### **§ 56**

(1) Der Beamte trägt für die Rechtmäßigkeit seiner dienstlichen Handlungen die volle persönliche Verantwortung.

(2) 1Bedenken gegen die Rechtmäßigkeit dienstlicher Anordnungen hat der Beamte unverzüglich bei seinem unmittelbaren Vorgesetzten geltend zu machen. 2Wird die Anordnung aufrechterhalten, so hat sich der Beamte, wenn seine Bedenken gegen ihre Rechtmäßigkeit fortbestehen, an den nächsthöheren Vorgesetzten zu wenden. 3Bestätigt dieser die Anordnung, so muß der Beamte sie ausführen, sofern nicht das ihm aufgetragene Verhalten strafbar oder ordnungswidrig und die Strafbarkeit oder Ordnungswidrigkeit für ihn erkennbar ist oder das ihm aufgetragene Verhalten die Würde des Menschen verletzt; von der eigenen Verantwortung ist er befreit. 4Die Bestätigung hat auf Verlangen schriftlich zu erfolgen.

(3) Verlangt der unmittelbare Vorgesetzte die sofortige Ausführung der Anordnung, weil Gefahr im Verzuge besteht und die Entscheidung des nächsthöheren Vorgesetzten nicht rechtzeitig herbeigeführt werden kann, so gilt Absatz 2 Satz 3 und 4 entsprechend.

### **§ 57**

1Der Beamte muß aus seinem Amt ausscheiden, wenn er die Wahl zum Abgeordneten des Bundestages annimmt. 2Das Nähere wird durch Gesetz bestimmt.

**b)**

### **Diensteid**

#### **§ 58**

(1) Der Beamte hat folgenden Diensteid zu leisten:

"Ich schwöre, das Grundgesetz für die Bundesrepublik Deutschland und alle in der Bundesrepublik geltenden Gesetze zu wahren und meine Amtspflichten gewissenhaft zu erfüllen, so wahr mir Gott helfe."

(2) Der Eid kann auch ohne die Worte "so wahr mir Gott helfe" geleistet werden.

(3) Gestattet ein Gesetz den Mitgliedern einer Religionsgesellschaft, an Stelle der Worte "Ich schwöre" andere Beteuerungsformeln zu gebrauchen, so kann der Beamte, der Mitglied einer solchen Religionsgesellschaft ist, diese Beteuerungsformel sprechen.

(4) In den Fällen, in denen nach § 7 Abs. 3 eine Ausnahme von § 7 Abs. 1 Nr. 1 zugelassen worden ist, kann von einer Eidesleistung abgesehen werden; der Beamte hat, sofern gesetzlich nichts anderes bestimmt ist, zu geloben, daß er seine Amtspflichten gewissenhaft erfüllen wird.

**c)**

### **Beschränkung bei Vornahme von Amtshandlungen**

#### **§ 59**

(1) Der Beamte ist von Amtshandlungen zu befreien, die sich gegen ihn selbst oder einen Angehörigen richten würden.

(2) Angehörige im Sinne des Absatzes 1 sind Personen, zu deren Gunsten dem Beamten wegen familienrechtlicher Beziehungen im Strafverfahren das Zeugnisverweigerungsrecht zusteht.

(3) Gesetzliche Vorschriften, nach denen der Beamte von einzelnen Amtshandlungen ausgeschlossen ist, bleiben unberührt.

### **§ 60**

(1) 1Die oberste Dienstbehörde oder die von ihr bestimmte Behörde kann einem Beamten aus zwingenden dienstlichen Gründen die Führung seiner Dienstgeschäfte verbieten. 2Das Verbot erlischt, sofern nicht bis zum Ablauf von drei Monaten gegen den Beamten ein Disziplinarverfahren oder ein sonstiges auf Rücknahme der Ernennung oder auf Beendigung des Beamtenverhältnisses gerichtetes Verfahren eingeleitet worden ist.

(2) Der Beamte soll vor Erlass des Verbotes gehört werden.

### **d)**

### **Amtsverschwiegenheit**

### **§ 61**

(1) 1Der Beamte hat, auch nach Beendigung des Beamtenverhältnisses, über die ihm bei seiner amtlichen Tätigkeit bekanntgewordenen Angelegenheiten Verschwiegenheit zu bewahren. 2Dies gilt nicht für Mitteilungen im dienstlichen Verkehr oder über Tatsachen, die offenkundig sind oder ihrer Bedeutung nach keiner Geheimhaltung bedürfen.

(2) 1Der Beamte darf ohne Genehmigung über solche Angelegenheiten weder vor Gericht noch außergerichtlich aussagen oder Erklärungen abgeben. 2Die Genehmigung erteilt der Dienstvorgesetzte oder, wenn das Beamtenverhältnis beendet ist, der letzte Dienstvorgesetzte.

(3) 1Der Beamte hat, auch nach Beendigung des Beamtenverhältnisses, auf Verlangen des Dienstvorgesetzten oder des letzten Dienstvorgesetzten amtliche Schriftstücke, Zeichnungen, bildliche Darstellungen sowie Aufzeichnungen jeder

Art über dienstliche Vorgänge, auch soweit es sich um Wiedergaben handelt, herauszugeben. 2Die gleiche Verpflichtung trifft seine Hinterbliebenen und seine Erben.

(4) Unberührt bleibt die gesetzlich begründete Pflicht des Beamten, Straftaten anzuzeigen und bei Gefährdung der freiheitlichen demokratischen Grundordnung für deren Erhaltung einzutreten.

### § 62

(1) Die Genehmigung, als Zeuge auszusagen, darf nur versagt werden, wenn die Aussage dem Wohle des Bundes oder eines deutschen Landes Nachteile bereiten oder die Erfüllung öffentlicher Aufgaben ernstlich gefährden oder erheblich erschweren würde.

(2) Die Genehmigung, ein Gutachten zu erstatten, kann versagt werden, wenn die Erstattung den dienstlichen Interessen Nachteile bereiten würde.

(3) 1Ist der Beamte Partei oder Beschuldigter in einem gerichtlichen Verfahren oder soll sein Vorbringen der Wahrnehmung seiner berechtigten Interessen dienen, so darf die Genehmigung auch dann, wenn die Voraussetzungen des Absatzes 1 erfüllt sind, nur versagt werden, wenn die dienstlichen Rücksichten dies unabweisbar erfordern. 2Wird sie versagt, so hat der Dienstvorgesetzte dem Beamten den Schutz zu gewähren, den die dienstlichen Rücksichten zulassen.

(4) Über die Versagung der Genehmigung entscheidet die oberste Aufsichtsbehörde.

### § 63

Auskünfte an die Presse erteilt der Vorstand der Behörde oder der von ihm bestimmte Beamte.

e)

### **Nebentätigkeit und Tätigkeit nach Beendigung des Beamtenverhältnisses**

### § 64

1Der Beamte ist verpflichtet, auf Verlangen seiner obersten Dienstbehörde eine Nebentätigkeit (Nebenamt, Nebenbeschäftigung) im öffentlichen Dienst zu übernehmen und fortzuführen, sofern diese Tätigkeit seiner Vorbildung oder Berufsausbildung entspricht und ihn nicht über Gebühr in Anspruch nimmt. 2Die oberste Dienstbehörde kann die Befugnis auf nachgeordnete Behörden übertragen.

### § 65

(1) 1Der Beamte bedarf zur Übernahme jeder Nebentätigkeit, mit Ausnahme der in § 66 Abs. 1 abschließend aufgeführten, der vorherigen Genehmigung, soweit er nicht nach § 64 zu ihrer Wahrnehmung verpflichtet ist. 2Als Nebentätigkeit gilt nicht die Wahrnehmung öffentlicher Ehrenämter sowie einer unentgeltlichen Vormundschaft, Betreuung oder Pflegschaft eines Angehörigen; ihre Übernahme ist vor Aufnahme schriftlich anzuzeigen.

(2) 1Die Genehmigung ist zu versagen, wenn zu besorgen ist, daß durch die Nebentätigkeit dienstliche Interessen beeinträchtigt werden. 2Ein solcher Versagungsgrund liegt insbesondere vor, wenn die Nebentätigkeit

1. nach Art und Umfang die Arbeitskraft des Beamten so stark in Anspruch nimmt, daß die ordnungsgemäße Erfüllung seiner dienstlichen Pflichten behindert werden kann,
2. den Beamten in einen Widerstreit mit seinen dienstlichen Pflichten bringen kann,
3. in einer Angelegenheit ausgeübt wird, in der die Behörde, der der Beamte angehört, tätig wird oder tätig werden kann,
4. die Unparteilichkeit oder Unbefangenheit des Beamten beeinflussen kann,
5. zu einer wesentlichen Einschränkung der künftigen dienstlichen Verwendbarkeit des Beamten führen kann,
6. dem Ansehen der öffentlichen Verwaltung abträglich sein kann.

3Ein solcher Versagungsgrund liegt in der Regel auch vor, wenn sich die Nebentätigkeit wegen gewerbsmäßiger Dienst- oder Arbeitsleistung oder sonst nach Art, Umfang, Dauer oder Häufigkeit als Ausübung eines Zweitberufs darstellt. 4Die Voraussetzung des Satzes 2 Nr. 1 gilt in der Regel als erfüllt, wenn die zeitliche Beanspruchung durch eine oder mehrere Nebentätigkeiten in der Woche ein Fünftel der regelmäßigen wöchentlichen Arbeitszeit überschreitet. 5Die Genehmigung ist auf längstens fünf Jahre zu befristen; sie kann mit Auflagen und Bedingungen versehen werden. 6Betrifft die Genehmigung die Mitwirkung an einem Verfahren der Streitbeilegung, beginnt die Frist nach Satz 5 erst mit der Aufnahme des Verfahrens der Streitbeilegung; der Beamte hat die Aufnahme des Verfahrens entsprechend Absatz 6 Satz 2 anzuzeigen. 7Ergibt sich eine Beeinträchtigung dienstlicher Interessen nach Erteilung der Genehmigung, so ist diese zu widerrufen.

- (3) 1Nebentätigkeiten, die der Beamte nicht auf Verlangen, Vorschlag oder Veranlassung seines Dienstvorgesetzten übernommen hat oder bei denen der Dienstvorgesetzte ein dienstliches Interesse an der Übernahme der Nebentätigkeit durch den Beamten nicht anerkannt hat, darf er nur außerhalb der Arbeitszeit ausüben. 2Ausnahmen dürfen nur in besonders begründeten Fällen, insbesondere im öffentlichen Interesse, zugelassen werden, wenn dienstliche Gründe nicht entgegenstehen und die versäumte Arbeitszeit nachgeleistet wird.
- (4) 1Die Genehmigung erteilt die oberste Dienstbehörde. 2Sie kann die Befugnis auf nachgeordnete Behörden übertragen.
- (5) 1Der Beamte darf bei der Ausübung von Nebentätigkeiten Einrichtungen, Personal oder Material des Dienstherrn nur bei Vorliegen eines öffentlichen oder wissenschaftlichen Interesses mit dessen Genehmigung und gegen Entrichtung eines angemessenen Entgelts in Anspruch nehmen. 2Das Entgelt hat sich nach den dem Dienstherrn entstehenden Kosten zu richten und muß den besonderen Vorteil berücksichtigen, der dem Beamten durch die Inanspruchnahme entsteht.



- (6) 1Anträge auf Erteilung einer Genehmigung (Absatz 1) oder auf Zulassung einer Ausnahme (Absatz 3 Satz 2) und Entscheidungen über diese Anträge sowie das Verlangen auf Übernahme einer Nebentätigkeit bedürfen der Schriftform. 2Der Beamte hat dabei die für die Entscheidung seiner Dienstbehörde erforderlichen Nachweise, insbesondere über Art und Umfang der Nebentätigkeit sowie die Entgelte und geldwerten Vorteile hieraus, zu führen; der Beamte hat jede Änderung unverzüglich schriftlich anzuzeigen. 3Das dienstliche Interesse (Absatz 3 Satz 1) ist aktenkundig zu machen.
- (7) 1Eine vor Inkrafttreten des Zweiten Nebentätigkeitsbegrenzungsgesetzes vom 9. September 1997 (BGBl. I S. 2294) erteilte Genehmigung erlischt mit Ablauf von fünf Jahren nach ihrer Erteilung, frühestens aber mit Ablauf des 30. Juni 1999. 2§ 65 Abs. 2 Satz 6 gilt entsprechend.

## § 66

(1) Nicht genehmigungspflichtig ist

1. eine unentgeltliche Nebentätigkeit mit Ausnahme

- a) der Übernahme eines Nebenamtes, einer in § 65 Abs. 1 Satz 2 Halbsatz 1 nicht genannten Vormundschaft, Betreuung oder Pflegschaft sowie einer Testamentsvollstreckung,
- b) der Übernahme einer gewerblichen Tätigkeit, der Ausübung eines freien Berufes oder der Mitarbeit bei einer dieser Tätigkeiten,
- c) des Eintritts in ein Organ eines Unternehmens mit Ausnahme einer Genossenschaft sowie der Übernahme einer Treuhänderschaft,

2. die Verwaltung eigenen oder der Nutznießung des Beamten unterliegenden Vermögens,

3. eine schriftstellerische, wissenschaftliche, künstlerische oder Vortragstätigkeit des Beamten,

4. die mit Lehr- oder Forschungsaufgaben zusammenhängende selbständige Gutachtertätigkeit von Lehrern an öffentlichen Hochschulen und an Hochschulen der Bundeswehr sowie von Beamten an wissenschaftlichen Instituten und Anstalten,
  5. die Tätigkeit zur Wahrung von Berufsinteressen in Gewerkschaften oder Berufsverbänden oder in Selbsthilfeeinrichtungen der Beamten.
- (2) 1Eine Tätigkeit nach Absatz 1 Nr. 3 und 4 sowie eine Tätigkeit in Selbsthilfeeinrichtungen der Beamten nach Absatz 1 Nr. 5 hat der Beamte, wenn hierfür ein Entgelt oder ein geldwerter Vorteil geleistet wird, in jedem Einzelfall vor ihrer Aufnahme seiner Dienstbehörde unter Angabe insbesondere von Art und Umfang der Nebentätigkeit sowie der voraussichtlichen Höhe der Entgelte und geldwerten Vorteile hieraus schriftlich anzuzeigen; der Beamte hat jede Änderung unverzüglich schriftlich mitzuteilen. 2Die Dienstbehörde kann im übrigen aus begründetem Anlaß verlangen, daß der Beamte über eine von ihm ausgeübte nicht genehmigungspflichtige Nebentätigkeit, insbesondere über deren Art und Umfang, schriftlich Auskunft erteilt. 3Eine nicht genehmigungspflichtige Nebentätigkeit ist ganz oder teilweise zu untersagen, wenn der Beamte bei ihrer Ausübung dienstliche Pflichten verletzt.
- (3) Die in Absatz 2 Satz 1 geregelte Anzeigepflicht gilt entsprechend für die vor Inkrafttreten des Zweiten Nebentätigkeitsbegrenzungsgesetzes vom 9. September 1997 (BGBl. I S. 2294) aufgenommenen und nach diesem Zeitpunkt weiter ausgeübten Nebentätigkeiten.

## § 67

1Der Beamte, der aus einer auf Verlangen, Vorschlag oder Veranlassung seines Dienstvorgesetzten übernommenen Tätigkeit im Vorstand, Aufsichtsrat, Verwaltungsrat oder in einem sonstigen Organ einer Gesellschaft, Genossenschaft oder eines in einer anderen Rechtsform betriebenen Unternehmens haftbar gemacht wird, hat gegen den Dienstherrn Anspruch auf Ersatz des ihm

entstandenen Schadens. 2Ist der Schaden vorsätzlich oder grob fahrlässig herbeigeführt, so ist der Dienstherr nur dann ersatzpflichtig, wenn der Beamte auf Verlangen eines Vorgesetzten gehandelt hat.

### § 68

Endet das Beamtenverhältnis, so enden, wenn im Einzelfall nichts anderes bestimmt wird, auch die Nebenämter und Nebenbeschäftigungen, die dem Beamten im Zusammenhang mit seinem Hauptamt übertragen sind oder die er auf Verlangen, Vorschlag oder Veranlassung seines Dienstvorgesetzten übernommen hat.

### § 69

1Die zur Ausführung der §§ 64 bis 68 notwendigen Vorschriften über die Nebentätigkeit der Beamten erläßt die Bundesregierung durch Rechtsverordnung. 2In ihr kann bestimmt werden,

1. welche Tätigkeiten als öffentlicher Dienst im Sinne dieser Vorschriften anzusehen sind oder ihm gleichstehen,
2. ob und inwieweit der Beamte für eine im öffentlichen Dienst ausgeübte oder auf Verlangen, Vorschlag oder Veranlassung seines Dienstvorgesetzten übernommene Nebentätigkeit eine Vergütung erhält oder eine erhaltene Vergütung abzuführen hat,
3. welche Beamtengruppen auch zu einer der in § 66 Abs. 1 Nr. 2 und 3 bezeichneten Nebentätigkeiten der Genehmigung bedürfen, soweit es nach der Natur des Dienstverhältnisses erforderlich ist,
4. unter welchen Voraussetzungen der Beamte zur Ausübung von Nebentätigkeiten Einrichtungen, Personal oder Material des Dienstherrn in Anspruch nehmen darf und in welcher Höhe hierfür ein Entgelt an den Dienstherrn zu entrichten ist. 2Das Entgelt kann pauschaliert in einem Vomhundertsatz des aus der Nebentätigkeit erzielten Bruttoeinkommens festgelegt werden und bei unentgeltlich ausgeübter Nebentätigkeit entfallen,

5. daß der Beamte verpflichtet werden kann, nach Ablauf eines jeden Kalenderjahres seinem Dienstvorgesetzten die ihm zugeflossenen Entgelte und geldwerten Vorteile aus Nebentätigkeiten anzugeben.

### **§ 69a**

- (1) Ein Ruhestandsbeamter oder früherer Beamter mit Versorgungsbezügen, der nach Beendigung des Beamtenverhältnisses innerhalb eines Zeitraums von fünf Jahren oder, wenn der Beamte mit dem Ende des Monats in den Ruhestand tritt, in dem er das fünfundsechzigste Lebensjahr vollendet, innerhalb eines Zeitraums von drei Jahren außerhalb des öffentlichen Dienstes eine Beschäftigung oder Erwerbstätigkeit aufnimmt, die mit seiner dienstlichen Tätigkeit in den letzten fünf Jahren vor Beendigung des Beamtenverhältnisses im Zusammenhang steht und durch die dienstliche Interessen beeinträchtigt werden können, hat die Beschäftigung oder Erwerbstätigkeit der letzten obersten Dienstbehörde anzuzeigen.
- (2) Die Beschäftigung oder Erwerbstätigkeit ist zu untersagen, wenn zu besorgen ist, daß durch sie dienstliche Interessen beeinträchtigt werden.
- (3) 1Das Verbot wird durch die letzte oberste Dienstbehörde ausgesprochen; es endet spätestens mit Ablauf von fünf Jahren nach Beendigung des Beamtenverhältnisses. 2Die oberste Dienstbehörde kann ihre Befugnisse auf nachgeordnete Behörden übertragen.

### **f)**

### **Annahme von Belohnungen**

### **§ 70**

1Der Beamte darf, auch nach Beendigung des Beamtenverhältnisses, keine Belohnungen oder Geschenke in bezug auf sein Amt annehmen. 2Ausnahmen bedürfen der Zustimmung der obersten oder letzten obersten Dienstbehörde. 3Die Befugnis zur Zustimmung kann auf andere Behörden übertragen werden.

### **§ 71**

Der Beamte darf Titel, Orden und Ehrenzeichen von einem ausländischen Staatsoberhaupt oder einer ausländischen Regierung nur mit Genehmigung des Bundespräsidenten annehmen.

**g)**

### **Arbeitszeit**

#### **§ 72**

- (1) Die regelmäßige Arbeitszeit darf wöchentlich im Durchschnitt vierundvierzig Stunden nicht überschreiten.
- (2) 1Der Beamte ist verpflichtet, ohne Vergütung über die regelmäßige wöchentliche Arbeitszeit hinaus Dienst zu tun, wenn zwingende dienstliche Verhältnisse dies erfordern und sich die Mehrarbeit auf Ausnahmefälle beschränkt. 2Wird er durch eine dienstlich angeordnete oder genehmigte Mehrarbeit mehr als fünf Stunden im Monat über die regelmäßige Arbeitszeit hinaus beansprucht, ist ihm innerhalb eines Jahres für die über die regelmäßige Arbeitszeit hinaus geleistete Mehrarbeit entsprechende Dienstbefreiung zu gewähren. 3Ist die Dienstbefreiung aus zwingenden dienstlichen Gründen nicht möglich, so können an ihrer Stelle Beamte in Besoldungsgruppen mit aufsteigenden Gehältern für einen Zeitraum bis zu 480 Stunden im Jahr eine Vergütung erhalten.
- (3) Soweit der Dienst in Bereitschaft besteht, kann die Arbeitszeit entsprechend den dienstlichen Bedürfnissen verlängert werden; im wöchentlichen Zeitraum dürfen vierundfünfzig Stunden nicht überschritten werden.
- (4) 1Das Nähere zur Regelung der Arbeitszeit, insbesondere zu ihrer Dauer, zu Möglichkeiten ihrer flexiblen Ausgestaltung und zur Kontrolle ihrer Einhaltung, regelt die Bundesregierung durch Rechtsverordnung ohne Zustimmung des Bundesrates. 2Eine Kontrolle der Einhaltung der Arbeitszeit mittels automatisierter Datenverarbeitungssysteme ist zulässig, soweit diese Systeme eine Mitwirkung der Beamten erfordern. 3Die erhobenen Daten dürfen nur für Zwecke der Arbeitszeitkontrolle, der Wahrung

arbeitsschutzrechtlicher Bestimmungen und des gezielten Personaleinsatzes verwendet werden, soweit dies zur Aufgabenwahrnehmung der jeweils zuständigen Stelle erforderlich ist. 4In der Rechtsverordnung sind Löschungsfristen für die erhobenen Daten vorzusehen.

### § 72a

- (1) Beamten mit Dienstbezügen kann auf Antrag Teilzeitbeschäftigung bis zur Hälfte der regelmäßigen Arbeitszeit und bis zur jeweils beantragten Dauer bewilligt werden, soweit dienstliche Belange nicht entgegenstehen.
- (2) 1Dem Antrag nach Absatz 1 darf nur entsprochen werden, wenn der Beamte sich verpflichtet, während des Bewilligungszeitraumes außerhalb des Beamtenverhältnisses berufliche Verpflichtungen nur in dem Umfang einzugehen, in dem nach den §§ 64 bis 66 den vollzeitbeschäftigten Beamten die Ausübung von Nebentätigkeiten gestattet ist. 2Ausnahmen hiervon sind nur zulässig, soweit dies mit dem Beamtenverhältnis vereinbar ist. 3§ 65 Abs. 2 Satz 3 gilt mit der Maßgabe, daß von der regelmäßigen wöchentlichen Arbeitszeit ohne Rücksicht auf die Bewilligung von Teilzeitbeschäftigung auszugehen ist. 4Wird die Verpflichtung nach Satz 1 schuldhaft verletzt, soll die Bewilligung widerrufen werden.
- (3) 1Die zuständige Dienstbehörde kann auch nachträglich die Dauer der Teilzeitbeschäftigung beschränken oder den Umfang der zu leistenden Arbeitszeit erhöhen, soweit zwingende dienstliche Belange dies erfordern. 2Sie soll eine Änderung des Umfangs der Teilzeitbeschäftigung oder den Übergang zur Vollzeitbeschäftigung zulassen, wenn dem Beamten die Teilzeitbeschäftigung im bisherigen Umfang nicht mehr zugemutet werden kann und dienstliche Belange nicht entgegenstehen.
- (4) 1Einem Beamten mit Dienstbezügen ist auf Antrag auch bei Stellen mit Vorgesetzten- und Leitungsaufgaben, wenn zwingende dienstliche Belange nicht entgegenstehen,

1. Teilzeitbeschäftigung bis zur Hälfte der regelmäßigen Arbeitszeit zu bewilligen,
  2. Urlaub ohne Dienstbezüge bis zur Dauer von zwölf Jahren zu gewähren,  
wenn er
    - a) mindestens ein Kind unter 18 Jahren oder
    - b) einen nach ärztlichem Gutachten pflegebedürftigen sonstigen Angehörigen tatsächlich betreut oder pflegt.
- 2Die Dienststelle muss die Ablehnung von Anträgen im Einzelnen begründen. 3Bei Beamten im Schul- und Hochschuldienst kann der Bewilligungszeitraum bis zum Ende des laufenden Schulhalbjahres oder Semesters ausgedehnt werden. 4Der Antrag auf Verlängerung einer Beurlaubung ist spätestens sechs Monate vor Ablauf der genehmigten Beurlaubung zu stellen. 5Die Dauer des Urlaubs darf auch in Verbindung mit Urlaub nach § 72e Abs. 1 sowie Teilzeitbeschäftigung nach Absatz 5 zwölf Jahre nicht überschreiten. 6Absatz 3 Satz 1 gilt entsprechend. 7Die zuständige Dienstbehörde kann eine Rückkehr aus dem Urlaub zulassen, wenn dem Beamten eine Fortsetzung des Urlaubs nicht zugemutet werden kann und dienstliche Belange nicht entgegenstehen. 8Teilzeitbeschäftigte Beamtinnen und Beamte mit Familienpflichten, die eine Vollzeitbeschäftigung beantragen, und Beurlaubte mit Familienpflichten, die eine vorzeitige Rückkehr aus der Beurlaubung beantragen, müssen bei der Besetzung von Vollzeitstellen unter Beachtung des Leistungsprinzips und der Regelungen des Bundesgleichstellungsgesetzes vorrangig berücksichtigt werden.
- (5) 1Einem Beamten mit Dienstbezügen kann Teilzeitbeschäftigung mit weniger als der Hälfte der regelmäßigen Arbeitszeit bis zur Dauer von insgesamt zwölf Jahren bewilligt werden, wenn die Voraussetzungen des Absatzes 4 Satz 1 vorliegen und zwingende dienstliche Belange nicht entgegenstehen. 2Die Dauer der Teilzeitbeschäftigung darf auch zusammen mit Urlaub nach Absatz 4 Satz 1 Nr. 2 zwölf Jahre nicht überschreiten.

- (6) Während einer Freistellung vom Dienst nach Absatz 4 dürfen nur solche Nebentätigkeiten genehmigt werden, die dem Zweck der Freistellung nicht zuwiderlaufen.
- (7) 1Während der Zeit der Beurlaubung ohne Dienstbezüge nach Absatz 4 Satz 1 Nr. 2 besteht ein Anspruch auf Leistungen der Krankheitsfürsorge in entsprechender Anwendung der Beihilferegelungen für Beamte mit Dienstbezügen. 2Dies gilt nicht, wenn der Beamte berücksichtigungsfähiger Angehöriger eines Beihilfeberechtigten wird oder Anspruch auf Familienhilfe nach § 10 des Fünften Buches Sozialgesetzbuch hat.
- (8) 1Die Dienststelle hat durch geeignete Maßnahmen den aus familiären Gründen Beurlaubten die Verbindung zum Beruf und den beruflichen Wiedereinstieg zu erleichtern. 2Dazu gehören das Angebot von Urlaubs- und Krankheitsvertretungen, ihre rechtzeitige Unterrichtung über das Fortbildungsprogramm und das Angebot der Teilnahme an der Fortbildung während oder nach der Beurlaubung. 3Die Teilnahme an einer Fortbildungsveranstaltung während der Beurlaubung begründet einen Anspruch auf bezahlte Dienstbefreiung nach Ende der Beurlaubung. 4Die Dauer der bezahlten Dienstbefreiung richtet sich nach der Dauer der Fortbildung. 5Mit den Beurlaubten sind rechtzeitig vor Ablauf einer Beurlaubung Beratungsgespräche zu führen, in denen sie über die Möglichkeiten ihrer Beschäftigung nach der Beurlaubung informiert werden.

### **§ 72b**

- (1) 1Beamten mit Dienstbezügen kann auf Antrag, der sich auf die Zeit bis zum Beginn des Ruhestandes erstrecken muss, Teilzeitbeschäftigung als Altersteilzeit mit der Hälfte der bisherigen Arbeitszeit, höchstens der Hälfte der in den letzten zwei Jahren vor Beginn der Altersteilzeit durchschnittlich zu leistenden Arbeitszeit, bewilligt werden, wenn

1. sie das 55. Lebensjahr vollendet haben,



2. sie in den letzten fünf Jahren vor Beginn der Altersteilzeit drei Jahre mindestens teilzeitbeschäftigt waren,
3. die Altersteilzeit vor dem 1. Januar 2010 beginnt und
4. dringende dienstliche Belange nicht entgegenstehen.

2Altersteilzeit mit weniger als der Hälfte der regelmäßigen Arbeitszeit kann nur bewilligt werden, wenn die Zeiten der Freistellung von der Arbeit in der Weise zusammengefasst werden, dass der Beamte zuvor mit mindestens der Hälfte der regelmäßigen Arbeitszeit, im Fall des § 72a Abs. 5 oder des § 1 Abs. 3 Satz 1 der Elternzeitverordnung mindestens im Umfang der bisherigen Teilzeitbeschäftigung, Dienst leistet; dabei bleiben geringfügige Unterschreitungen des notwendigen Umfangs der Arbeitszeit außer Betracht. 3Änderungen der regelmäßigen Wochenarbeitszeit nach der Arbeitszeitverordnung gelten für die zu leistende Arbeitszeit entsprechend.

- (2) Beamten, die das sechzigste Lebensjahr vollendet haben, ist Altersteilzeit nach Maßgabe des Absatzes 1 zu bewilligen.
- (3) § 72a Abs. 2 gilt entsprechend.

#### **§ 72c**

Wird eine Reduzierung der Arbeitszeit oder eine langfristige Beurlaubung beantragt, sind die Dienstkräfte auf die Folgen reduzierter Arbeitszeit oder langfristiger Beurlaubungen hinzuweisen, insbesondere auf die Folgen für Ansprüche auf Grund beamtenrechtlicher Regelungen sowie auf die Möglichkeit einer Befristung mit Verlängerung und deren Folgen.

#### **§ 72d**

Die Ermäßigung der Arbeitszeit nach § 72a darf das berufliche Fortkommen nicht beeinträchtigen; eine unterschiedliche Behandlung von Beamten mit ermäßigter Arbeitszeit gegenüber Beamten mit regelmäßiger Arbeitszeit ist nur zulässig, wenn zwingende sachliche Gründe sie rechtfertigen.

§ 72e

- (1) Beamten mit Dienstbezügen kann in Bereichen, in denen wegen der Arbeitsmarktsituation ein außergewöhnlicher Bewerberüberhang besteht und deshalb ein dringendes öffentliches Interesse daran gegeben ist, verstärkt Bewerber im öffentlichen Dienst zu beschäftigen,
1. auf Antrag Urlaub ohne Dienstbezüge bis zur Dauer von insgesamt sechs Jahren,
  2. nach Vollendung des fünfundfünfzigsten Lebensjahres auf Antrag, der sich auf die Zeit bis zum Beginn des Ruhestandes erstrecken muß, Urlaub ohne Dienstbezüge
- bewilligt werden, wenn dienstliche Belange nicht entgegenstehen.
- (2) 1Dem Antrag nach Absatz 1 darf nur entsprochen werden, wenn der Beamte erklärt, während der Dauer des Bewilligungszeitraumes auf die Ausübung entgeltlicher Nebentätigkeiten zu verzichten und entgeltliche Tätigkeiten nach § 66 Abs. 1 nur in dem Umfang auszuüben, wie er sie bei Vollzeitbeschäftigung ohne Verletzung dienstlicher Pflichten ausüben könnte. 2Wird diese Verpflichtung schuldhaft verletzt, soll die Bewilligung widerrufen werden. 3Die zuständige Dienstbehörde darf trotz der Erklärung des Beamten nach Satz 1 Nebentätigkeiten genehmigen, soweit sie dem Zweck der Bewilligung des Urlaubs nicht zuwiderlaufen. 4Sie kann eine Rückkehr aus dem Urlaub zulassen, wenn dem Beamten die Fortsetzung des Urlaubs nicht zugemutet werden kann und dienstliche Belange nicht entgegenstehen.
- (3) 1Urlaub nach Absatz 1 darf, auch im Zusammenhang mit Urlaub nach § 72a Abs. 4 Satz 1 Nr. 2 sowie Teilzeitbeschäftigung nach § 72a Abs. 5, die Dauer von zwölf Jahren nicht überschreiten. 2Bei Beamten im Schul- und Hochschuldienst kann der Bewilligungszeitraum bis zum Ende des laufenden Schulhalbjahres oder Semesters ausgedehnt werden. 3In den Fällen des

Absatzes 1 Nr. 2 findet Satz 1 keine Anwendung, wenn es dem Beamten nicht mehr zuzumuten ist, zur Voll- oder Teilzeitbeschäftigung zurückzukehren.

- (4) 1Bis zum 31. Dezember 2004 kann Beamten Urlaub nach Absatz 1 Nr. 2 bereits nach Vollendung des fünfzigsten Lebensjahres bewilligt werden. 2Absatz 3 Satz 1 ist mit der Maßgabe anzuwenden, daß die Dauer des Urlaubs fünfzehn Jahre nicht überschreiten darf.

### **§ 73**

- (1) 1Der Beamte darf dem Dienst nicht ohne Genehmigung seines Dienstvorgesetzten fernbleiben. 2Dienstunfähigkeit infolge Krankheit ist auf Verlangen nachzuweisen.
- (2) Verliert der Beamte wegen unentschuldigter Fernbleibens vom Dienst nach dem Bundesbesoldungsgesetz seinen Anspruch auf Bezüge, so wird dadurch die Durchführung eines Disziplinarverfahrens nicht ausgeschlossen.

#### **h)**

### **Wohnung**

### **§ 74**

- (1) Der Beamte hat seine Wohnung so zu nehmen, daß er in der ordnungsmäßigen Wahrnehmung seiner Dienstgeschäfte nicht beeinträchtigt wird.
- (2) Der Dienstvorgesetzte kann ihn, wenn die dienstlichen Verhältnisse es erfordern, anweisen, seine Wohnung innerhalb bestimmter Entfernung von seiner Dienststelle zu nehmen oder eine Dienstwohnung zu beziehen.

### **§ 75**

Wenn besondere dienstliche Verhältnisse es dringend erfordern, kann der Beamte angewiesen werden, sich während der dienstfreien Zeit in erreichbarer Nähe seines Dienstortes aufzuhalten.

#### **i)**

### **Dienstkleidung**

## § 76

1Der Bundespräsident erläßt die Bestimmungen über Dienstkleidung, die bei Ausübung des Amtes üblich oder erforderlich ist. 2Er kann die Ausübung dieser Befugnis auf andere Stellen übertragen.

### k)

#### **Folgen der Nichterfüllung von Pflichten**

### aa)

#### **Verfolgung von Dienstvergehen**

## § 77

- (1) 1Der Beamte begeht ein Dienstvergehen, wenn er schuldhaft die ihm obliegenden Pflichten verletzt. 2Ein Verhalten des Beamten außerhalb des Dienstes ist ein Dienstvergehen, wenn es nach den Umständen des Einzelfalles in besonderem Maße geeignet ist, Achtung und Vertrauen in einer für sein Amt oder das Ansehen des Beamtentums bedeutsamen Weise zu beeinträchtigen.
- (2) Bei einem Ruhestandsbeamten oder früheren Beamten mit Versorgungsbezügen gilt es als Dienstvergehen, wenn er
1. sich gegen die freiheitliche demokratische Grundordnung im Sinne des Grundgesetzes betätigt oder
  2. an Bestrebungen teilnimmt, die darauf abzielen, den Bestand oder die Sicherheit der Bundesrepublik zu beeinträchtigen, oder
  3. gegen § 61 (Verletzung der Amtsverschwiegenheit), gegen § 69a (Anzeigepflicht und Verbot einer Tätigkeit) oder gegen § 70 (Verbot der Annahme von Belohnungen oder Geschenken) verstößt oder
  4. entgegen § 39 oder § 45 Abs. 1 einer erneuten Berufung in das Beamtenverhältnis schuldhaft nicht nachkommt.
- (3) Das Nähere regelt das Bundesdisziplinargesetz.

**bb)**

**Haftung**

**§ 78**

- (1) Verletzt ein Beamter vorsätzlich oder grob fahrlässig die ihm obliegenden Pflichten, so hat er dem Dienstherrn, dessen Aufgaben er wahrgenommen hat, den daraus entstehenden Schaden zu ersetzen. Haben mehrere Beamte gemeinsam den Schaden verursacht, so haften sie als Gesamtschuldner.
- (2) Ansprüche nach Absatz 1 verjähren in drei Jahren von dem Zeitpunkt an, in dem der Dienstherr von dem Schaden und der Person des Ersatzpflichtigen Kenntnis erlangt hat, ohne Rücksicht auf diese Kenntnis in zehn Jahren von der Begehung der Handlung an. Hat der Dienstherr einem Dritten Schadenersatz geleistet, so tritt an die Stelle des Zeitpunktes, in dem der Dienstherr von dem Schaden Kenntnis erlangt, der Zeitpunkt, in dem der Ersatzanspruch des Dritten diesem gegenüber vom Dienstherrn anerkannt oder dem Dienstherrn gegenüber rechtskräftig festgestellt wird.
- (3) Leistet der Beamte dem Dienstherrn Ersatz und hat dieser einen Ersatzanspruch gegen einen Dritten, so geht der Ersatzanspruch auf den Beamten über.

**Abschnitt IV**

**Personalverwaltung**

**§ 95**

Zur einheitlichen Durchführung der beamtenrechtlichen Vorschriften wird ein Bundespersonalausschuß errichtet, der seine Tätigkeit innerhalb der gesetzlichen Schranken unabhängig und in eigener Verantwortung ausübt.

**§ 96**

- (1) Der Bundespersonalausschuß besteht aus acht ordentlichen und acht stellvertretenden Mitgliedern.
- (2) 1Ständige ordentliche Mitglieder sind der Präsident des Bundesrechnungshofes als Vorsitzender und der Leiter der Personalrechtsabteilung des Bundesministeriums des Innern. 2Nichtständige ordentliche Mitglieder sind die Leiter der Personalabteilungen von zwei anderen obersten Bundesbehörden und vier andere Bundesbeamte. 3Stellvertretende Mitglieder sind je ein Bundesbeamter der in Satz 1 genannten Behörden, die Leiter der Personalabteilungen von zwei weiteren obersten Bundesbehörden sowie vier weitere Bundesbeamte.
- (3) Die nichtständigen ordentlichen Mitglieder sowie die stellvertretenden Mitglieder werden vom Bundespräsidenten auf Vorschlag des Bundesministers des Innern auf die Dauer von vier Jahren bestellt, davon vier ordentliche und vier stellvertretende Mitglieder auf Grund einer Benennung durch die Spitzenorganisationen der zuständigen Gewerkschaften.

#### § 97

- (1) 1Die Mitglieder des Bundespersonalausschusses sind unabhängig und nur dem Gesetz unterworfen. 2Sie scheiden aus ihrem Amt als Mitglied des Bundespersonalausschusses außer durch Zeitablauf durch Ausscheiden aus dem Hauptamt oder aus der Behörde, die für ihre Mitgliedschaft maßgeblich sind, oder durch Beendigung des Beamtenverhältnisses nur unter den gleichen Voraussetzungen aus, unter denen Mitglieder einer Kammer für Disziplinarsachen wegen einer rechtskräftigen Entscheidung im Strafverfahren oder Disziplinarverfahren ihr Amt verlieren; § 60 findet keine Anwendung.
- (2) Die Mitglieder des Bundespersonalausschusses dürfen wegen ihrer Tätigkeit weder dienstlich gemaßregelt noch benachteiligt werden.

#### § 98

- (1) Der Bundespersonalausschuß hat außer den in den §§ 8, 21, 22 und 24 vorgesehenen Entscheidungen folgende Aufgaben:
1. über die allgemeine Anerkennung von Prüfungen zu entscheiden,
  2. Vorschläge zur Beseitigung von Mängeln in der Handhabung der beamtenrechtlichen Vorschriften zu machen,
  3. für das Beamtenrecht Vorschläge zur Durchsetzung der Chancengleichheit von Frauen und Männern sowie zur besseren Vereinbarkeit von Familie und Beruf zu machen.
- (2) Die Bundesregierung kann dem Bundespersonalausschuß weitere Aufgaben übertragen.
- (3) Über die Durchführung der Aufgaben hat der Bundespersonalausschuß die Bundesregierung zu unterrichten.

#### **§ 99**

Der Bundespersonalausschuß gibt sich eine Geschäftsordnung.

#### **§ 100**

- (1) 1Die Sitzungen des Bundespersonalausschusses sind nicht öffentlich. 2Der Bundespersonalausschuß kann Beauftragten beteiligter Verwaltungen, Beschwerdeführern und anderen Personen die Anwesenheit bei der Verhandlung gestatten.
- (2) Die Beauftragten der Verwaltungen sind auf Verlangen zu hören.
- (3) 1Beschlüsse werden mit Stimmenmehrheit gefaßt; zur Beschlußfähigkeit ist die Anwesenheit von mindestens sechs Mitgliedern erforderlich. 2Bei Stimmengleichheit entscheidet die Stimme des Vorsitzenden.

#### **§ 101**

- (1) 1Der Vorsitzende des Bundespersonalausschusses oder sein Vertreter leitet die Verhandlungen. 2Sind beide verhindert, so tritt an ihre Stelle das dienstälteste Mitglied.
- (2) Zur Vorbereitung der Verhandlungen und Durchführung der Beschlüsse bedient er sich der für den Bundespersonalausschuß im Bundesministerium des Innern einzurichtenden Geschäftsstelle.

### **§ 102**

- (1) Der Bundespersonalausschuß kann zur Durchführung seiner Aufgaben in entsprechender Anwendung der Vorschriften der Verwaltungsgerichtsordnung in der im Bundesgesetzblatt Teil III, Gliederungsnummer 340-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Dezember 1982 (BGBl. I S. 1834), Beweise erheben.
- (2) Alle Dienststellen haben dem Bundespersonalausschuß unentgeltlich Amtshilfe zu leisten und ihm auf Verlangen Auskünfte zu erteilen und Akten vorzulegen, soweit dies zur Durchführung seiner Aufgaben erforderlich ist.

### **§ 103**

- (1) 1Beschlüsse des Bundespersonalausschusses sind, soweit sie allgemeine Bedeutung haben, bekanntzumachen. 2Art und Umfang regelt die Geschäftsordnung.
- (2) Soweit dem Bundespersonalausschuß eine Entscheidungsbefugnis eingeräumt ist, binden seine Beschlüsse die beteiligten Verwaltungen.

### **§ 104**

1 Die Dienstaufsicht über die Mitglieder des Bundespersonalausschusses führt im Auftrag der Bundesregierung der Bundesminister des Innern. 2 Sie unterliegt den sich aus § 97 ergebenden Einschränkungen.



## 附錄 3-3-2 德國刑法分則 瀆職罪章 Strafgesetzbuch

### Besonderer Teil (§§ 80 - 358)

#### 30. Abschnitt - Straftaten im Amt (§§ 331 - 358)

##### § 331

##### Vorteilsannahme

- (1) Ein Amtsträger oder ein für den öffentlichen Dienst besonders Verpflichteter, der für die Dienstausbübung einen Vorteil für sich oder einen Dritten fordert, sich versprechen läßt oder annimmt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.
- (2) Ein Richter oder Schiedsrichter, der einen Vorteil für sich oder einen Dritten als Gegenleistung dafür fordert, sich versprechen läßt oder annimmt, daß er eine richterliche Handlung vorgenommen hat oder künftig vornehme, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft. Der Versuch ist strafbar.
- (3) Die Tat ist nicht nach Absatz 1 strafbar, wenn der Täter einen nicht von ihm geforderten Vorteil sich versprechen läßt oder annimmt und die zuständige Behörde im Rahmen ihrer Befugnisse entweder die Annahme vorher genehmigt hat oder der Täter unverzüglich bei ihr Anzeige erstattet und sie die Annahme genehmigt.

##### § 332

##### Bestechlichkeit

- (1) Ein Amtsträger oder ein für den öffentlichen Dienst besonders Verpflichteter, der einen Vorteil für sich oder einen Dritten als Gegenleistung dafür fordert,

sich versprechen läßt oder annimmt, daß er eine Diensthandlung vorgenommen hat oder künftig vornehme und dadurch seine Dienstpflichten verletzt hat oder verletzen würde, wird mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren bestraft. In minder schweren Fällen ist die Strafe Freiheitsstrafe bis zu drei Jahren oder Geldstrafe. Der Versuch ist strafbar.

- (2) Ein Richter oder Schiedsrichter, der einen Vorteil für sich oder einen Dritten als Gegenleistung dafür fordert, sich versprechen läßt oder annimmt, daß er eine richterliche Handlung vorgenommen hat oder künftig vornehme und dadurch seine richterlichen Pflichten verletzt hat oder verletzen würde, wird mit Freiheitsstrafe von einem Jahr bis zu zehn Jahren bestraft. In minder schweren Fällen ist die Strafe Freiheitsstrafe von sechs Monaten bis zu fünf Jahren.
- (3) Falls der Täter den Vorteil als Gegenleistung für eine künftige Handlung fordert, sich versprechen läßt oder annimmt, so sind die Absätze 1 und 2 schon dann anzuwenden, wenn er sich dem anderen gegenüber bereit gezeigt hat,
  1. bei der Handlung seine Pflichten zu verletzen oder,
  2. soweit die Handlung in seinem Ermessen steht, sich bei Ausübung des Ermessens durch den Vorteil beeinflussen zu lassen.

### § 333

#### **Vorteilsgewährung**

- (1) Wer einem Amtsträger, einem für den öffentlichen Dienst besonders Verpflichteten oder einem Soldaten der Bundeswehr für die Dienstausbübung einen Vorteil für diesen oder einen Dritten anbietet, verspricht oder gewährt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.
- (2) Wer einem Richter oder Schiedsrichter einen Vorteil für diesen oder einen Dritten als Gegenleistung dafür anbietet, verspricht oder gewährt, daß er

eine richterliche Handlung vorgenommen hat oder künftig vornehme, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft.

- (3) Die Tat ist nicht nach Absatz 1 strafbar, wenn die zuständige Behörde im Rahmen ihrer Befugnisse entweder die Annahme des Vorteils durch den Empfänger vorher genehmigt hat oder sie auf unverzügliche Anzeige des Empfängers genehmigt.

### **§ 334**

#### **Bestechung**

- (1) Wer einem Amtsträger, einem für den öffentlichen Dienst besonders Verpflichteten oder einem Soldaten der Bundeswehr einen Vorteil für diesen oder einen Dritten als Gegenleistung dafür anbietet, verspricht oder gewährt, daß er eine Diensthandlung vorgenommen hat oder künftig vornehme und dadurch seine Dienstpflichten verletzt hat oder verletzen würde, wird mit Freiheitsstrafe von drei Monaten bis zu fünf Jahren bestraft. In minder schweren Fällen ist die Strafe Freiheitsstrafe bis zu zwei Jahren oder Geldstrafe.
- (2) Wer einem Richter oder Schiedsrichter einen Vorteil für diesen oder einen Dritten als Gegenleistung dafür anbietet, verspricht oder gewährt, daß er eine richterliche Handlung
1. vorgenommen und dadurch seine richterlichen Pflichten verletzt hat oder
  2. künftig vornehme und dadurch seine richterlichen Pflichten verletzen würde, wird in den Fällen der Nummer 1 mit Freiheitsstrafe von drei Monaten bis zu fünf Jahren, in den Fällen der Nummer 2 mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren bestraft. Der Versuch ist strafbar.
- (3) Falls der Täter den Vorteil als Gegenleistung für eine künftige Handlung anbietet, verspricht oder gewährt, so sind die Absätze 1 und 2 schon dann anzuwenden, wenn er den anderen zu bestimmen versucht, daß dieser

1. bei der Handlung seine Pflichten verletzt oder,
2. soweit die Handlung in seinem Ermessen steht, sich bei der Ausübung des Ermessens durch den Vorteil beeinflussen läßt.

### **§ 335**

#### **Besonders schwere Fälle der Bestechlichkeit und Bestechung**

(1) In besonders schweren Fällen wird

1. eine Tat nach
  - a) § 332 Abs. 1 Satz 1, auch in Verbindung mit Abs. 3, und
  - b) § 334 Abs. 1 Satz 1 und Abs. 2, jeweils auch in Verbindung mit Abs. 3, mit Freiheitsstrafe von einem Jahr bis zu zehn Jahren und
2. eine Tat nach § 332 Abs. 2, auch in Verbindung mit Abs. 3, mit Freiheitsstrafe nicht unter zwei Jahren

bestraft.

(2) Ein besonders schwerer Fall im Sinne des Absatzes 1 liegt in der Regel vor, wenn

1. die Tat sich auf einen Vorteil großen Ausmaßes bezieht,
2. der Täter fortgesetzt Vorteile annimmt, die er als Gegenleistung dafür gefordert hat, daß er eine Diensthandlung künftig vornehme, oder
3. der Täter gewerbsmäßig oder als Mitglied einer Bande handelt, die sich zur fortgesetzten Begehung solcher Taten verbunden hat.

### **§ 336**

#### **Unterlassen der Diensthandlung**

Der Vornahme einer Diensthandlung oder einer richterlichen Handlung im Sinne der §§ 331 bis 335 steht das Unterlassen der Handlung gleich.

### **§ 337**

#### **Schiedsrichtervergütung**

Die Vergütung eines Schiedsrichters ist nur dann ein Vorteil im Sinne der §§ 331 bis 335, wenn der Schiedsrichter sie von einer Partei hinter dem Rücken der anderen fordert, sich versprechen läßt oder annimmt oder wenn sie ihm eine Partei hinter dem Rücken der anderen anbietet, verspricht oder gewährt.

### **§ 338**

#### **Vermögensstrafe und Erweiterter Verfall**

- (1) In den Fällen des § 332, auch in Verbindung mit den §§ 336 und 337, ist § 73d anzuwenden, wenn der Täter gewerbsmäßig oder als Mitglied einer Bande handelt, die sich zur fortgesetzten Begehung solcher Taten verbunden hat.
- (2) In den Fällen des § 334, auch in Verbindung mit den §§ 336 und 337, sind die §§ 43a, 73d anzuwenden, wenn der Täter als Mitglied einer Bande handelt, die sich zur fortgesetzten Begehung solcher Taten verbunden hat. § 73d ist auch dann anzuwenden, wenn der Täter gewerbsmäßig handelt.

附錄 3-3-3 聯邦政府在聯邦行政防治貪污行為要點  
(Richtlinie der Bundesregierung zur Korruptionsprävention in  
der Bundesverwaltung)

**Bundesministerium des Innern**

**Richtlinie der Bundesregierung  
zur Korruptionsprävention  
in der Bundesverwaltung**

Vom 30. Juli 2004

Nach Artikel 86 Satz 1 des Grundgesetzes wird folgende Richtlinie erlassen:

**1 Anwendungsbereich**

1.1 Die Maßnahmen aller Dienststellen des Bundes zur Korruptionsprävention bestimmen sich nach dieser Richtlinie; als Dienststellen des Bundes gelten die obersten Bundesbehörden, die Behörden der unmittelbaren und mittelbaren Bundesverwaltung, die Gerichte des Bundes und Sondervermögen des Bundes. Die Vorschrift findet auch auf die Streitkräfte Anwendung; Einzelheiten regelt das Bundesministerium der Verteidigung.

1.2 Diese Richtlinie gilt sinngemäß auch für juristische Personen des öffentlichen oder privaten Rechts, an denen ausschließlich die Bundesrepublik Deutschland beteiligt ist.

1.3 Im Übrigen ist den jeweiligen organisatorischen und fachlichen Besonderheiten Rechnung zu tragen.

**2 Feststellen und Analysieren besonders korruptionsgefährdeter Arbeitsgebiete**

In allen Dienststellen des Bundes sind in regelmäßigen Abständen sowie aus gegebenem Anlass die besonders korruptionsgefährdeten Arbeitsgebiete festzustellen.

Für diese ist die Durchführung von Risikoanalysen zu prüfen. Je nach den Ergebnissen der Risikoanalyse ist zu prüfen, wie die Aufbau-, Ablauforganisation und/oder die Personalzuordnung zu ändern ist.

**3 Mehr-Augen-Prinzip und Transparenz**

3.1 Vor allem in besonders korruptionsgefährdeten Arbeitsgebieten ist das Mehr-Augen-Prinzip (Beteiligung bzw. Mitprüfung durch mehrere Beschäftigte oder Organisationseinheiten) sicherzustellen. Stehen dem Rechtsvorschriften oder unüberwindliche praktische Schwierigkeiten entgegen, kann die Mitprüfung auf Stichproben beschränkt werden oder es sind zum Ausgleich andere Maßnahmen der Korruptionsprävention (z. B. eine intensivere Dienst- und Fachaufsicht) vorzusehen.

3.2 Die Transparenz der Entscheidungen einschließlich der Entscheidungsvorbereitung ist sicherzustellen (z. B. durch eindeutige Zuständigkeitsregelung, Berichtswesen, IT-gestützte Vorgangskontrolle, genaue und vollständige verfahrensbegleitende Dokumentation).

**4 Personal**

4.1 Das Personal für besonders korruptionsgefährdete Arbeitsgebiete ist mit besonderer Sorgfalt auszuwählen.

4.2 In besonders korruptionsgefährdeten Bereichen ist die Verwendungsdauer des Personals grundsätzlich zu begrenzen; sie sollte in der Regel eine Dauer von fünf Jahren nicht überschreiten. Bei einer erforderlichen Verlängerung sind die Gründe aktenkundig zu machen.

**5 Ansprechperson für Korruptionsprävention**

5.1 Abhängig von Aufgabe und Größe der Dienststelle ist eine Ansprechperson für Korruptionsprävention zu bestellen. Sie kann auch für mehrere Dienststellen zuständig sein. Ihr können folgende Aufgaben übertragen werden:

- a) Ansprechpartner bzw. Ansprechpartnerin für Beschäftigte und Dienststellenleitung, auch ohne Einhaltung des Dienstweges, sowie für Bürgerinnen und Bürger;
- b) Beratung der Dienststellenleitung;
- c) Aufklärung der Beschäftigten (z. B. durch regelmäßige Informationsveranstaltungen);
- d) Mitwirkung bei der Fortbildung;
- e) Beobachtung und Bewertung von Korruptionsanzeichen;
- f) Mitwirkung bei der Unterrichtung der Öffentlichkeit über dienst- und strafrechtliche Sanktionen (Präventionsaspekt) unter Beachtung der Persönlichkeitsrechte der Betroffenen.

5.2 Werden der Ansprechperson Tatsachen bekannt, die den Verdacht einer Korruptionsstraftat begründen, unterrichtet sie die Dienststellenleitung und macht in diesem Zusammenhang Vorschläge zu internen Ermittlungen, zu Maßnahmen gegen Verschleierung und zur Mitteilung an die Strafverfolgungsbehörden. Die Dienststellenleitung veranlasst die zur Aufklärung des Sachverhalts erforderlichen Schritte.

5.3 Der Ansprechperson dürfen keine Disziplinarbefugnisse übertragen werden; in Disziplinarverfahren wegen Korruption wird sie nicht als Ermittlungsführer tätig.

5.4 Die Dienststellen haben die Ansprechperson zur Wahrnehmung ihrer Aufgaben rechtzeitig und

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umfassend zu informieren, insbesondere bei korruptionsverdächtigen Vorfällen.

5.5 Bei der Wahrnehmung ihrer Aufgaben zur Korruptionsprävention ist die Ansprechperson weisungsunabhängig. Sie hat ein unmittelbares Vortragsrecht bei der Dienststellenleitung und darf wegen der Erfüllung ihrer Aufgaben nicht benachteiligt werden.

5.6 Die Ansprechperson hat über ihr bekannt gewordene persönliche Verhältnisse von Beschäftigten, auch nach Beendigung ihrer Amtszeit, Stillschweigen zu bewahren; dies gilt nicht gegenüber der Dienststellenleitung und der Personalverwaltung, wenn sie Tatsachen erfährt, die den Verdacht einer Korruptionsstraftat begründen. Personenbezogene Daten sind nach den Grundsätzen der Personalaktenführung zu behandeln.

## 6 Organisationseinheit zur Korruptionsprävention

Wenn Ergebnisse von Risikoanalysen oder besondere Anlässe es erfordern, sollte befristet oder auf Dauer eine gesonderte weisungsunabhängige Organisationseinheit zur Überprüfung und Bündelung der im jeweiligen Hause praktizierten Maßnahmen zur Korruptionsprävention eingerichtet werden; es besteht ein unmittelbares Vortragsrecht bei der Dienststellenleitung. Diese Aufgabe kann auch von der Innenrevision wahrgenommen werden. Bei Mängeln in der Korruptionsprävention unterrichtet diese Organisationseinheit die Dienststellenleitung und die Ansprechperson für Korruptionsprävention unmittelbar; sie soll Empfehlungen für geeignete Änderungen unterbreiten.

## 7 Sensibilisierung und Belehrung der Beschäftigten

7.1 Die Beschäftigten sind anlässlich des Dienstes oder der Verpflichtung auf Korruptionsgefahren aufmerksam zu machen und über die Folgen korrupten Verhaltens zu belehren. Die Belehrung ist zu dokumentieren. Hinsichtlich möglicher Korruptionsgefahren sind die Beschäftigten auch in der weiteren Folge zu sensibilisieren. Darüber hinaus soll ein „Verhaltenskodex gegen Korruption“ (siehe Anlage 1) allen Beschäftigten vermitteln, was sie insbesondere in besonders korruptionsgefährdeten Arbeitsgebieten oder Situationen zu beachten haben.

7.2 Bei Tätigkeiten in besonders korruptionsgefährdeten Arbeitsgebieten – auch bei einem Wechsel dorthin – sollen in regelmäßigen Abständen eine erneute Sensibilisierung und eine vertiefte arbeitsplatzbezogene Belehrung der Beschäftigten erfolgen.

## 8 Aus- und Fortbildung

Die Aus- und Fortbildungseinrichtungen nehmen das Thema „Korruptionsprävention“ in ihre Programme

auf. Hierbei ist vor allem der Fortbildungsbedarf der Führungskräfte, der Ansprechpersonen für Korruptionsprävention, der Beschäftigten in besonders korruptionsgefährdeten Arbeitsgebieten und der Beschäftigten der in Nr. 6 genannten Organisationseinheiten zu berücksichtigen.

## 9 Konsequente Dienst- und Fachaufsicht

9.1 Die Vorgesetzten üben ihre Dienst- und Fachaufsicht konsequent aus („Leitfaden für Vorgesetzte und Behördenleitungen“; Anlage 2). Dies umfasst eine aktive vorausschauende Personalführung und -kontrolle.

9.2 In diesem Zusammenhang achten die Vorgesetzten auf Korruptionssignale. Sie sensibilisieren regelmäßig und bedarfsorientiert ihre Mitarbeiterinnen und Mitarbeiter für Korruptionsgefahren.

## 10 Unterrichtungen und Maßnahmen bei Korruptionsverdacht

10.1 Bei einem durch Tatsachen begründeten Verdacht einer Korruptionsstraftat hat die Dienststellenleitung unverzüglich die Staatsanwaltschaft und die oberste Dienstbehörde zu unterrichten; außerdem sind behördeninterne Ermittlungen und vorbeugende Maßnahmen gegen eine Verschleierung einzuleiten.

10.2 Die obersten Bundesbehörden teilen jährlich dem Bundesministerium des Innern – auch für den jeweils nachgeordneten Bereich – in vorgegebener anonymisierter Form die Verdachtsfälle mit, in denen Verfahren eingeleitet wurden (untergliedert nach Bereich, Sachverhalt, eingeleiteten Maßnahmen) sowie den Ausgang der Verfahren, die im Berichtsjahr abgeschlossen wurden.

## 11 Leitsätze für die Vergabe

### 11.1 Wettbewerb

Der Grundsatz der öffentlichen Ausschreibung bzw. des offenen Verfahrens hat im Rahmen der Korruptionsprävention besondere Bedeutung.

Bei der Vergabe öffentlicher Aufträge ist regelmäßig im Rahmen der Dienst- und Fachaufsicht zu prüfen, ob unzulässige Einflussfaktoren vorgelegen haben.

### 11.2 Grundsätzliche Trennung von Planung, Vergabe und Abrechnung

Bei der Vergabe von öffentlichen Aufträgen nach den haushalts- und vergaberechtlichen Bestimmungen sind Vorbereitung, Planung und Bedarfsbeschreibung einerseits und die Durchführung des Vergabeverfahrens andererseits sowie möglichst auch die spätere Abrechnung grundsätzlich organisatorisch zu trennen.

### 11.3 Wettbewerbsausschluss

Die Dienststellen prüfen, ob schwere Verfehlungen von Bietern bzw. Bieterinnen oder Bewerbern bzw. Bewerberinnen vorliegen, die ihre Zuverlässigkeit in Frage stellen und die zum Ausschluss vom Wettbewerb führen können.

Eine solche schwere Verfehlung liegt insbesondere vor, wenn eine der genannten Personen demjenigen, der mit der Vorbereitung oder Durchführung eines Vergabeverfahrens befasst ist, einen Vorteil für diesen oder einen Dritten anbietet, verspricht oder gewährt.

### 12 Antikorruptionsklausel, Verpflichtung von Auftragnehmern oder Auftragnehmerinnen nach dem Verpflichtungsgesetz

12.1 Bei der Vergabe von öffentlichen Aufträgen sind in geeigneten Fällen Antikorruptionsklauseln vorzusehen.

12.2 Wirken private Unternehmen bei der Ausführung von Aufgaben der öffentlichen Hand mit, sind die einzelnen Beschäftigten dieser Unternehmen – soweit erforderlich – nach dem Verpflichtungsgesetz auf die gewissenhafte Erfüllung ihrer Obliegenheiten aus dem Auftrag zu verpflichten. Ein entsprechender Hinweis ist bereits in die jeweilige Ausschreibung aufzunehmen (einschließlich der Einforderung einer Bereitschaftserklärung). Den genannten Personen sind der „Verhaltenskodex gegen Korruption“ (siehe Anlage 1) und ein Abdruck der geltenden Regelungen zur Annahme von Belohnungen und Geschenken auszuhändigen.

### 13 Zuwendungen zu Gemeinschaftsveranstaltungen und Gemeinschaftseinrichtungen; Sponsoring

Für die Annahme von Geld-, Sach- oder Dienstleistungen durch Private (Sponsoren) an eine oder mehrere Dienststellen des Bundes gilt die Allgemeine Verwaltungsvorschrift der Bundesregierung zur Förderung von Tätigkeiten des Bundes durch Leistungen Privater (Sponsoring, Spenden und sonstige Schenkungen) vom 7. Juli 2003 (BAnz. S. 14906).

### 14 Zuwendungsempfänger

14.1 Für Zuwendungen des Bundes im Rahmen institutioneller Förderungen ist der Zuwendungsempfänger durch besondere Nebenbestimmungen im Zuwendungsbescheid zu verpflichten, diese Richtlinie sinngemäß anzuwenden, wenn ihm durch Haushaltsrecht die Anwendung des Vergaberechts aufgegeben worden ist (Höhe der Zuwendung oder bei Finanzierung durch mehrere Stellen der Gesamtbetrag der Zuwendung mehr als 100.000 €). Bei Zu-

wendungsverträgen ist die entsprechende Anwendung der Richtlinie vertraglich zu vereinbaren.

14.2 Mit institutionellen Zuwendungsempfängern im Ausland sind vertraglich Grundsätze zur Korruptionsprävention zu vereinbaren.

### 15 Besondere Maßnahmen

Soweit erforderlich, können die Dienststellen weitere über die Richtlinie hinausgehende Maßnahmen treffen.

### 16 Inkrafttreten

Diese Richtlinie tritt am Tage nach ihrer Veröffentlichung im Bundesanzeiger in Kraft. Gleichzeitig tritt die Richtlinie vom 17. Juni 1998 (BAnz Nr. 127, S. 9665) außer Kraft.

Berlin, den 30. Juli 2004  
O 4 – 634 140-15/1

Der Bundesminister des Innern

Schily



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Anlage 1

**Verhaltenskodex  
gegen Korruption**

Dieser Verhaltenskodex soll die Beschäftigten auf Gefahrensituationen hinweisen, in denen sie ungewollt in Korruption verstrickt werden können. Weiterhin soll er die Beschäftigten zur pflichtgemäßen und gesetzestreu Erfüllung ihrer Aufgaben anhalten und ihnen die Folgen korrupten Verhaltens vor Augen führen:



**Daher:**

1. **Seien Sie Vorbild: Zeigen Sie durch Ihr Verhalten, dass Sie Korruption weder dulden noch unterstützen.**
2. **Wehren Sie Korruptionsversuche sofort ab und informieren Sie unverzüglich die Ansprechperson für Korruptionsprävention und Ihre Vorgesetzte oder Ihren Vorgesetzten.**
3. **Vermuten Sie, dass jemand Sie um eine pflichtwidrige Bevorzugung bitten will, so ziehen Sie einen Kollegen oder eine Kollegin als Zeugen oder Zeugin hinzu.**
4. **Arbeiten Sie so, dass Ihre Arbeit jederzeit überprüft werden kann.**
5. **Trennen Sie strikt Dienst- und Privatleben. Prüfen Sie, ob Ihre Privatinteressen zu einer Kollision mit Ihren Dienstpflichten führen.**
6. **Unterstützen Sie Ihre Dienststelle bei der Entdeckung und Aufklärung von Korruption. Informieren Sie die Ansprechperson für Korruptionsprävention und Ihre Vorge-**

**setzte oder Ihren Vorgesetzten bei konkreten Anhaltspunkten für korruptes Verhalten.**

7. **Unterstützen Sie Ihre Dienststelle beim Erkennen fehlerhafter Organisationsstrukturen, die Korruption begünstigen.**
8. **Lassen Sie sich zum Thema Korruptionsprävention aus- und fortbilden.**
9. **Und was tun, wenn Sie sich bereits verstrickt haben?  
Befreien Sie sich von der ständigen Angst vor Entdeckung! Machen Sie reinen Tisch!  
Offenbaren Sie sich aus eigenem Antrieb und führen Ihre Angaben zur vollständigen Aufklärung des Sachverhaltes, kann dies sowohl bei der Strafzumessung als auch bei dienstrechtlichen Reaktionen mildernd berücksichtigt werden.**

**zu 1.**

Korruption in der öffentlichen Verwaltung könnte besser verhindert werden, wenn sich jeder zum Ziel setzt, Korruption zu bekämpfen. Dies entspricht auch den Pflichten, die Beschäftigte bei der Einstellung gegenüber dem Dienstherrn bzw. dem Arbeitgeber übernommen haben:

Beschäftigte haben sich bei ihrer Einstellung verpflichtet, das Grundgesetz für die Bundesrepublik Deutschland und die geltenden Gesetze zu wahren und ihre Aufgaben gewissenhaft zu erfüllen. Beschäftigte haben sich so zu verhalten, wie es von Angehörigen des öffentlichen Dienstes erwartet wird und sich darüber hinaus durch ihr gesamtes Verhalten zur freiheitlich-demokratischen Grundordnung im Sinne des Grundgesetzes zu bekennen. Alle Beschäftigten haben ihre Aufgaben daher unparteiisch und gerecht zu erfüllen.

Korruptes Verhalten widerspricht diesen Verpflichtungen und schädigt das Ansehen des öffentlichen Dienstes. Es zerstört das Vertrauen in die Unparteilichkeit und Objektivität der Staatsverwaltung und damit die Grundlagen für das Zusammenleben in einem staatlichen Gemeinwesen.

Alle Beschäftigten haben daher die Aufgabe, durch ihr Verhalten Vorbild für alle anderen, für Vorgesetzte und für Bürger und Bürgerinnen zu sein.

**zu 2.**

Bei Außenkontakten, z. B. mit Personen der Auftragnehmerseite oder der antragstellenden Seite oder bei Kontrolltätigkeiten, müssen Sie von Anfang an klare Verhältnisse schaffen und jeden Korruptionsversuch sofort abwehren. Es darf nie der Eindruck entstehen, dass Sie für „kleine Geschenke“ offen sind. Scheuen Sie sich nicht, ein Geschenk zurückzuweisen oder es zurückzusenden – mit der Bitte um Verständnis für die für Sie geltenden Regeln.

Arbeiten Sie in einem Verwaltungsbereich, der sich mit der Vergabe von öffentlichen Aufträgen beschäftigt, so seien Sie besonders sensibel für Versuche Dritter, Einfluss auf Ihre Entscheidung zu nehmen. In diesem Bereich gibt es die meisten Korruptions-handlungen.

Halten Sie sich daher streng an Recht und Gesetz und beachten Sie die Richtlinien zum Verbot der An-nahme von Belohnungen oder Geschenken.

Wenn Sie von Dritten um eine zweifelhafte Gefällig-keit gebeten worden sind, so informieren Sie unver-züglich Ihre Vorgesetzte oder Ihren Vorgesetzten und die Ansprechperson für Korruptionsprävention. Das hilft zum einen, selbst jeglichem Korruptionsver-dacht zu entgehen, zum anderen aber auch, u. U. rechtliche Maßnahmen gegen Dritte einleiten zu können. Wenn Sie einen Korruptionsversuch zwar selbst abwehren, ihn aber nicht offenbaren, so wird sich Ihr Gegenüber an einen anderen wenden und es bei ihm versuchen. Schützen Sie daher auch Ihre Kollegen und Kolleginnen durch konsequentes Of-fenlegen von Korruptionsversuchen Außenstehender. Alle Beschäftigten (Vorgesetzte, Mitarbeiterinnen und Mitarbeiter) müssen an einem Strang ziehen, um einheitlich und glaubhaft aufzutreten.

**zu 3.**

Manchmal steht Ihnen ein Gespräch bevor, bei dem Sie vermuten, dass ein zweifelhaftes Ansinnen an Sie gestellt und dieses nicht leicht zurückzuweisen sein wird. Hier hilft oftmals auch eindeutige Distanzie-rung nicht. In solchen Fällen sollten Sie sich der Situation nicht allein stellen, sondern einen anderen zu dem Gespräch hinzubitten. Sprechen Sie vorher mit ihm und bitten Sie ihn, auch durch sein Verhalten jeglichen Korruptionsversuch abzuwehren.

**zu 4.**

Ihre Arbeitsweise sollte transparent und für jeden nachvollziehbar sein. Da Sie Ihren Arbeitsplatz in der Regel wieder verlas-sen werden (Übertragung neuer Aufgaben, Verset-zung) oder auch einmal kurzfristig ausfallen (Krank-heit, Urlaub), sollten Ihre Arbeitsvorgänge schon deshalb so transparent sein, dass sich jederzeit eine Sie vertretende Person einarbeiten kann. Die transpa-rente Aktenführung hilft Ihnen aber auch, sich bei Kontrollvorgängen vor dem ausgesprochenen oder unausgesprochenen Vorwurf der Unredlichkeit zu schützen. "Nebenakten" sollten Sie vermeiden, um jeden Eindruck von Unredlichkeit von vornherein auszuschließen. Handakten sind nur zu führen, wenn es für die Erledigung der Arbeit unumgänglich ist.

**zu 5.**

Korruptionsversuche werden oftmals gestartet, indem Dritte den dienstlichen Kontakt auf Privatkontakte ausweiten. Es ist bekanntermaßen besonders schwie-rig, eine „Gefälligkeit“ zu verweigern, wenn man sich privat hervorragend versteht und man selber oder die eigene Familie Vorteile und Vergünstigun-

gen erhält (Konzertkarten, verbilligter gemeinsamer Urlaub, Einladungen zu teuren Essen, die man nicht erwidern kann usw.). Bei privaten Kontakten sollten Sie daher von Anfang an klarstellen, dass Sie streng zwischen Dienst- und Privatleben trennen müssen, um nicht in den Verdacht der Vorteilsannahme zu geraten.

Diese strenge Trennung zwischen privaten Interessen und dienstlichen Aufgaben müssen Sie ohnehin – unabhängig von einer Korruptionsgefahr – bei Ihrer gesamten dienstlichen Tätigkeit beachten. Ihre Dienststelle, jeder Bürger und jede Bürgerin haben Anspruch auf Ihr faires, sachgemäßes, unparteiisches Verhalten. Prüfen Sie daher bei jedem Verfahren, für das Sie mitverantwortlich sind, ob Ihre privaten Inter-essen oder solche Ihrer Angehörigen oder z. B. auch von Organisationen, denen Sie verbunden sind, zu einer Kollision mit Ihren hauptberuflichen Ver-pflichtungen führen können. Vermeiden Sie jeden bösen Schein möglicher Parteilichkeit. Sorgen Sie dafür, dass Sie niemandem befangen erscheinen, auch nicht durch „atmosphärische“ Einflussnahmen von interessierter Seite.

Erkennen Sie bei einer konkreten dienstlichen Auf-gabe eine mögliche Kollision zwischen Ihren dienst-lichen Pflichten und Ihren privaten Interessen oder den Interessen Dritter, denen Sie sich verbunden fühlen, so unterrichten Sie darüber Ihren Vorgesetz-ten oder Ihre Vorgesetzte, damit angemessen reagiert werden kann (z. B. Befreiung von Tätigkeiten im konkreten Einzelfall).

Auch bei von Ihnen ausgeübten oder angestrebten Nebentätigkeiten muss eine klare Trennung zwischen der Arbeit und der Nebentätigkeit bleiben. Persönli-che Verbindungen, die sich aus der Nebentätigkeit ergeben, dürfen die hauptberufliche Tätigkeit nicht beeinflussen. Verzichten Sie im Einzelfall auf die Nebentätigkeit.

Bedenken Sie außerdem, dass bei Ausübung geneh-migungspflichtiger, aber nicht genehmigter Neben-tätigkeiten dienst- bzw. arbeitsrechtliche Conse- quenzen drohen; dasselbe gilt bei Versäumnis von Anzeigepflichten.

Unabhängig davon schadet es früher oder später Ihrem Ansehen – und damit dem Ansehen des ge-samten öffentlichen Dienstes – wenn Sie im Kon-fliktfall Ihren privaten Interessen den Vorrang gege-ben haben. Das gilt in besonderem Maße, wenn Sie an einflussreicher Stelle tätig sind. Achten Sie in diesem Fall besonders darauf, nur jene Konditionen in Anspruch zu nehmen, die für vergleichbare Um-stände abstrakt geregelt sind.

**zu 6.**

Korruption kann nur verhindert und bekämpft wer-den, wenn sich jeder verantwortlich fühlt und alle als gemeinsames Ziel die "korruptionsfreie Dienststelle" verfolgen. Das bedeutet zum einen, dass alle Be-schäftigten im Rahmen ihrer Aufgaben dafür sorgen müssen, dass Außenstehende keine Möglichkeit zur

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unredlichen Einflussnahme auf Entscheidungen haben.

Das bedeutet aber auch, dass korrupte Beschäftigte nicht aus falsch verstandener Solidarität oder Loyalität gedeckt werden dürfen. Hier haben alle die Verpflichtung, zur Aufklärung von strafbaren Handlungen beizutragen und die eigene Dienststelle vor Schaden zu bewahren. Ein "schwarzes Schaf" verdirbt die ganze Herde. Beteiligen Sie sich deshalb nicht an Vertuschungsversuchen.

Für jede Dienststelle gibt es eine Ansprechperson für Korruptionsprävention. Sie sollten sich nicht scheuen, mit ihr zu sprechen, wenn das Verhalten von anderen Beschäftigten Ihnen konkrete und nachvollziehbare Anhaltspunkte dafür gibt, dass sie bestechlich sein könnten. Die Ansprechperson wird Ihren Wunsch auf Stillschweigen berücksichtigen und dann entscheiden, ob und welche Maßnahmen zu treffen sind. Ganz wesentlich ist allerdings, dass Sie einen Verdacht nur dann äußern, wenn Sie nachvollziehbare Hinweise dafür haben. Es darf nicht dazu kommen, dass andere angeschwärzt werden, ohne dass ein konkreter Anhaltspunkt vorliegt.

#### zu 7.

Oftmals führen lang praktizierte Verfahrensabläufe dazu, dass sich Nischen bilden, in denen Korruption besonders gut gedeihen kann. Das können Verfahren sein, bei denen nur eine Person allein für die Vergabe von Vergünstigungen verantwortlich ist. Das können aber auch unklare Arbeitsabläufe sein, die eine Überprüfung erschweren oder verhindern.

Hier kann meistens eine Änderung der Organisationsstrukturen Abhilfe schaffen. Daher sind alle Beschäftigten aufgefordert, entsprechende Hinweise an die Organisatoren zu geben, um zu klaren und transparenten Arbeitsabläufen beizutragen.

Auch innerhalb von Arbeitseinheiten müssen Arbeitsabläufe so transparent gestaltet werden, dass Korruption gar nicht erst entstehen kann.

Ein weiteres Mittel, um Gefahrenpunkte wirksam auszuschalten, ist das Rotieren von Personal. In besonders korruptionsgefährdeten Bereichen ist daher dieses Personalführungsinstrument verstärkt einzusetzen. Dazu ist die Bereitschaft der Beschäftigten zu einem regelmäßigen Wechsel – in der Regel sollte die Verwendungsdauer fünf Jahre nicht überschreiten – der Aufgaben zwingend erforderlich, auch wenn dies im Regelfall mit einem höheren Arbeitsanfall (Einarbeitungszeit!) verbunden ist.

#### zu 8.

Wenn Sie in einem besonders korruptionsgefährdeten Bereich tätig sind, nutzen Sie die Angebote der Dienststelle, sich über Erscheinungsformen, Gefahrensituationen, Präventionsmaßnahmen, strafrechtliche sowie dienst- oder arbeitsrechtliche Konsequenzen von Korruption aus- und fortbilden zu lassen. Dabei werden Sie lernen, wie Sie selbst Korruption verhindern können und wie Sie reagieren müssen, wenn Sie korrumpiert werden sollen oder Korruption

in Ihrem Arbeitsumfeld entdecken. Aus- und Fortbildung werden Sie sicher machen, mit dem Thema Korruption in der richtigen, gesetzestreuen Weise umzugehen.

Anlage 2

**Leitfaden für  
Vorgesetzte und Behördenleitungen**

**I.**

Als Vorgesetzte und Behördenleitungen haben Sie eine Vorbildfunktion und Fürsorgepflicht für die Ihnen unterstellten Beschäftigten.

Ihr Verhalten, aber auch Ihre Aufmerksamkeit sind von großer Bedeutung für die Korruptionsprävention. Sie sollten daher eine aktive, vorausschauende Personalführung und -kontrolle praktizieren. Insbesondere sollten Sie klare Zuständigkeitsregelungen und transparente Aufgabenbeschreibungen für die Mitarbeiterinnen und Mitarbeiter sowie eine angemessene Kontrolldichte sicherstellen.

Schwachstellen und Einfallstore für Korruption sind z. B.:

1. mangelhafte Dienst- und Fachaufsicht;
2. blindes Vertrauen gegenüber langjährigen Beschäftigten und spezialisierten Beschäftigten;
3. charakterliche Schwächen von Beschäftigten in korruptionsgefährdeten Bereichen;
4. negatives Vorbild von Vorgesetzten bei der Annahme von Präsenten;
5. ausbleibende Konsequenzen nach aufgedeckten Manipulationen; dadurch keine Abschreckung.

Sie können solchen Schwachstellen durch folgende Maßnahmen begegnen:

**1. Belehrung und Sensibilisierung**

Sprechen Sie mit Ihren Beschäftigten in regelmäßigen Abständen anhand des „Verhaltenskodex gegen Korruption“ über die Verpflichtungen, die sich aus dem Verbot der Annahme von Belohnungen und Geschenken und aus den Vorschriften zur Vermeidung von Interessenkollisionen ergeben.

**2. Organisatorische Maßnahmen** (im Rahmen Ihrer Befugnisse)

Achten Sie auf klare Definition und ggf. auf Einschränkungen der Entscheidungsspielräume.

Erörtern Sie die Delegationsstrukturen, die Grenzen der Ermessensspielräume und die Notwendigkeit von Mitzeichnungspflichten.

Achten Sie in besonders korruptionsgefährdeten Arbeitsgebieten auf eine Flexibilisierung der Vorgangsbearbeitung nach numerischen oder Buchstabensystemen durch

- a) kritische Überprüfung der Sachbearbeitung nach diesen Systemen;
- b) Einzelzuweisung nach dem Zufallsprinzip oder

- c) durch wiederholten Wechsel der Nummern- oder Buchstabenzuständigkeiten einzelner Personen.

Realisieren Sie – wenn irgend möglich – das Mehr-Augen-Prinzip auch in Ihrem Verantwortungsbereich. Eventuell bietet sich die Bildung von Arbeitsteams bzw. -gruppen an. Prüfen Sie, ob die Begleitung einzelner Beschäftigter durch weitere Bedienstete zu Ortsterminen, Kontrollen vor Ort usw. oder die Einrichtung von „gläsernen Büros“ für die Abwicklung des Besucherverkehrs geboten ist, damit Außenkontakte der Dienststelle nur nach dem Mehr-Augen-Prinzip wahrgenommen werden. Wo sich das wegen der tatsächlichen Umstände nicht realisieren lässt, organisieren Sie Kontrollen – in nicht zu großen zeitlichen Abständen.

Setzen Sie personalwirtschaftliche Instrumente insbesondere bei Tätigkeiten mit schnell erlernbaren Fachkenntnissen konsequent ein:

1. In besonders korruptionsgefährdeten Bereichen in der Regel Rotation nach einem Zeitraum von 5 Jahren.
2. Ein Verzicht auf Umsetzung im Ausnahmefall – z. B. bei Tätigkeiten mit langfristig erworbenem Sachverstand – erfordert eine schriftliche Begründung und eine besonders gründliche Kontrolle des Arbeitsbereichs durch Vorgesetzte.

Ist in Ihrer Dienststelle die Zweierbelegung von Diensträumen nicht ungewöhnlich, so nutzen Sie dies ebenfalls zur Korruptionsprävention in besonders korruptionsgefährdeten Arbeitsgebieten, z. B. durch sporadischen Wechsel der Raumbesetzungen (auch ohne Aufgabenänderung für die Beschäftigten).

**3. Fürsorge**

In besonders korruptionsgefährdeten Arbeitsgebieten erfordert Korruptionsprävention auch eine erhöhte Fürsorge für Ihre Beschäftigten.

- a) Berücksichtigen Sie stets die erhöhte Gefährdung Einzelner.
- b) Auch der ständige Dialog ist ein Mittel der Fürsorge.
- c) Beachten Sie dienstliche und private Probleme Ihrer Beschäftigten.
- d) Sorgen Sie für Abhilfe z. B. durch Entbindung eines Mitarbeiters oder einer Mitarbeiterin von Aufgaben, wenn Ihnen Interessenkollisionen durch Nebentätigkeiten oder durch Tätigkeiten von Angehörigen bekannt werden.
- e) Besondere Wachsamkeit ist bei erkennbarer Überforderung oder Unterforderung Einzelner geboten.
- f) Ihre erhöhte Aufmerksamkeit verlangt es, wenn Ihnen persönliche Schwächen (z. B. Suchtprobleme, Hang zu teuren, schwer zu

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finanzierenden Hobbys) oder eine Überschuldung bekannt werden; Beschäftigte, deren wirtschaftliche Verhältnisse nicht geordnet sind, sollen im Beschaffungswesen sowie auf Dienstposten, auf denen sie der Gefahr einer unlauteren Beeinflussung durch Dritte besonders ausgesetzt sind, nicht eingesetzt werden.

- g) Schließlich müssen Sie auch bei offen vorge-tragener Unzufriedenheit mit dem Dienst-herrn besonders wachsam sein und versu-chen, dem entgegenzuwirken.

#### 4. Aufsicht; Führungsstil

Machen Sie sich bewusst, dass es bei Korruption keinen beschwerdeführenden Geschädigten gibt und Korruptionsprävention deshalb wesentlich von Ihrer Sensibilität und der Sensibilisierung Ihrer Beschäftigten abhängt. Sie erfordert aber auch Ihre Dienst- und Fachaufsicht – ohnehin Ihre Kernpflicht als Vorgesetzter. Ein falsch verstandener kooperativer Führungsstil oder eine „laissez-faire“-Haltung können in besonders korruptionssensiblen Bereichen verhängnisvoll sein. Versuchen Sie deshalb,

- die Vorgangskontrolle zu optimieren, indem Sie z. B. Kontrollmechanismen (Wiedervorlagen o. ä.) in den Geschäftsablauf einbauen,
- das Abschotten oder eine Verselbständigung einzelner Beschäftigter zu vermeiden,
- dem Auftreten von Korruptionsindikatoren besondere Wachsamkeit zu schenken,
- stichprobenweise das Einhalten vorgegebener Ermessensspielräume zu überprüfen,
- die Akzeptanz des Verwaltungshandelns durch Gespräche mit „Verwaltungskunden“ zu ermitteln.

Nutzen Sie das Fortbildungsangebot bei Lehrgängen zur Korruptionsprävention.

## II.

### 1. Anzeichen für Korruption, Warnsignale

Trotzdem ist Korruption nicht auszuschließen. Nach dem Ergebnis einer vom Bundeskriminalamt durchgeführten Expertenbefragung<sup>1</sup> ist korruptes Verhalten häufig mit Verhaltensweisen verbunden, die als Korruptionssignale gewertet werden können. Diese Wertung ist aber mit Unwägbarkeiten verbunden, weil einige der Indikatoren als neutral oder sogar positiv gelten, obwohl sie sich nachträglich als verlässliche Signale erwiesen haben.

Keiner der Indikatoren ist ein „Nachweis“ für Korruption. Wenn Ihnen aber aufgrund von Äußerungen oder Beobachtungen ein Verhalten auffällig erscheint, müssen Sie prüfen, ob das

Auftreten eines Indikators zusammen mit den Umfeldbedingungen eine Korruptionsgefahr anzeigt.

#### 1.1 Neutrale Indikatoren

- auffallender und unerklärlich hoher Lebensstandard; aufwändiger Lebensstil; Vorzeigen von Statussymbolen;
- auffällige private Kontakte zwischen Beschäftigten und Dritten (z. B. Einladungen, Nebentätigkeiten, Berater- oder Gutachterverträge, Kapitalbeteiligungen);
- unerklärlicher Widerstand gegen eine Aufgabenänderung oder eine Umsetzung, insbesondere wenn sie mit einer Beförderung bzw. Gehaltsaufbesserung oder zumindest der Aussicht darauf verbunden wäre;
- Ausübung von Nebentätigkeiten ohne entsprechende Genehmigung bzw. Anzeige;
- atypisches, nicht erklärbares Verhalten (z. B. aufgrund eines bestehenden Erpressungsverhältnisses bzw. schlechten Gewissens); auffällige Verschlossenheit; plötzliche Veränderungen im Verhalten gegenüber Kollegen und Kolleginnen und Vorgesetzten;
- abnehmende Identifizierung mit dem Dienstherrn oder den Aufgaben;
- soziale Probleme (Alkohol-, Drogen- oder Spielsucht u. ä.);
- Geltungssucht, Prahlerei mit Kontakten im dienstlichen und privaten Bereich;
- Inanspruchnahme von Vergünstigungen Dritter (Sonderkonditionen beim Einkauf, Freihalten in Restaurants, Einladungen zu privaten oder geschäftlichen Veranstaltungen von „Verwaltungskunden“);
- auffällige Großzügigkeit von Unternehmen (z. B. Sponsoring).

#### 1.2 Alarmindikatoren

Außer diesen eher neutralen gibt es solche Indikatoren, die nach den Erfahrungen des BKA charakteristisch für die Verwaltungskorruption sind und deshalb als „Alarmindikatoren“ eingestuft werden müssen.

##### Dienststelleninterne Indikatoren:

- Umgehen oder „Übersehen“ von Vorschriften; Häufung „kleiner Unregelmäßigkeiten“; Abweichungen zwischen tatsächlichem Vorgangsablauf und späterer Dokumentation;
- mangelnde Identifikation mit dem Dienstherrn oder den Aufgaben;
- ungewöhnliche Entscheidungen ohne nachvollziehbare Begründung;
- unterschiedliche Bewertungen und Entscheidungen bei Vorgängen mit gleichem Sachverhalt bei verschiedenen antragstellenden Personen; Missbrauch von Ermessensspielräumen;
- Erteilung von Genehmigungen (z. B. mit Befreiung von Auflagen) unter Umgehung anderer zuständiger Stellen;

<sup>1</sup>Vgl. BKA Forschungsreihe „Korruption - hinnehmen oder handeln? S. 151 – 160; Wiesbaden 1995

- f) gezielte Umgehung von Kontrollen, Abschottung einzelner Aufgabenbereiche;
- g) Verheimlichen von Vorgängen;
- h) auffallend kurze Bearbeitungszeiten bei einzelnen begünstigenden Entscheidungen;
- i) Parteinahme für bestimmte antragstellende oder bietende Personen;
- j) Verharmlosung des Sparsamkeitsprinzips;
- k) Versuche der Beeinflussung von Entscheidungen bei Aufgaben, die nicht zum eigenen Zuständigkeitsbereich gehören und bei denen Drittinteressen von Bedeutung sind;
- l) stillschweigende Duldung von Fehlverhalten, insbesondere bei rechtswidrigem Verhalten;
- m) fehlende oder unzureichende Vorgangskontrolle dort, wo sie besonders notwendig wäre; zu schwach ausgeprägte Dienst- und Fachaufsicht;
- n) Ausbleiben von Reaktionen auf Verdachtsmomente oder Vorkommnisse;
- o) zu große Aufgabenkonzentration auf eine Person.

**Indikatoren im Bereich der Außenkontakte:**

- a) auffallend entgegenkommende Behandlung von antragstellenden Personen;
- b) Bevorzugung beschränkter Ausschreibungen oder freihändiger Vergaben; auch Splitten von Aufträgen, um freihändige Vergaben zu ermöglichen; Vermeiden des Einholens von Vergleichsangeboten;
- c) erhebliche bzw. wiederholte Überschreitung der vorgesehenen Auftragswerte;
- d) Beschaffungen zum marktunüblichen Preis; unsinnige Anschaffungen; Abschluss langfristiger Verträge ohne transparenten Wettbewerb mit für die Dienststelle ungünstigen Konditionen;
- e) auffallend häufige „Rechenfehler“, Nachbesserungen in Leistungsverzeichnissen;
- f) Eingänge in Vergabesachen ohne Eingangsstempel (Eingang „über die persönliche Schiene“);
- g) aufwändige Nachtragsarbeiten;
- h) Nebentätigkeiten von Beschäftigten oder Tätigkeit ihrer Angehörigen für Firmen, die gleichzeitig Auftragnehmer oder Antragsteller der öffentlichen Verwaltung sind;
- i) „kumpelhafter“ Umgangston oder auffallende Nachgiebigkeit bei Verhandlungen mit Unternehmen;
- j) Ausspielen von (vermeintlichen) Machtpositionen durch Unternehmen;
- k) häufige „Dienstreisen“ zu bestimmten Firmen (auffallend insbesondere dann, wenn eigentlich nicht erforderliche Übernachtungen anfallen);
- l) „permanente Firmenbesuche“ von Unternehmen in der Dienststelle (bei bestimmten Entscheidungsträgern oder Sachbearbeitern) und Vorsprache bestimmter Unternehmen nur dann, wenn Beschäftigte „ihrer“ Dienststelle anwesend sind;

- m) Ausbleiben von Konflikten mit Unternehmen bzw. Antragstellern/Antragstellerinnen dort, wo sie üblicherweise vorkommen.

Nach der Forschungsarbeit des BKA macht die Liste dieser Indikatoren deutlich, dass die Merkmale insbesondere dann von Interesse sein können, wenn sich etwas außerhalb der üblichen Norm bewegt („unerklärlich“, „nicht nachvollziehbar“, „sich plötzlich verändernd“, „auffallend“). Als häufiges und hervorsteckendes Warnsignal hebt es den typischerweise aufwändigen bzw. ungewöhnlich hohen Lebensstandard von Beschäftigten mit „Nebenverdiensten“ heraus, wozu auch das Vorzeigen entsprechender Statussymbole gehört. Understatement sei in diesen Täterkreisen weniger zu erwarten.

Als Warnsignale bezeichnen die vom BKA befragten Experten ferner Andeutungen im Kollegenkreis, Gerüchte von außen sowie anonyme Hinweise (z. B. von benachteiligten und dadurch in finanzielle Schwierigkeiten geratenen Unternehmen). Diese Signale würden noch deutlicher, wenn sie sich häufen und auf bestimmte Personen oder Aufgabenbereiche konzentrieren. Allerdings sei eine ständige Gewichtung und Analyse der „Gerüchteküche“ unabdingbar, um Missbrauch auszuschließen. Andererseits haben anonyme Hinweise vielfach den Anlass zu Ermittlungen gegeben, durch die dann tatsächlich Korruption aufgedeckt wurde.

**2. Verdacht**

Bei konkreten und nachvollziehbaren Anhaltspunkten für einen Korruptionsverdacht müssen Sie sich unverzüglich mit der Ansprechperson für Korruptionsprävention beraten und die Personalverwaltung bzw. Behördenleitung informieren. Eventuell aber erfordern die Umstände auch, dass Sie selbst sofort geeignete Maßnahmen gegen eine Verschleierung ergreifen. Infrage kommen z. B.

- a) der Entzug bestimmter laufender oder abgeschlossener Vorgänge,
- b) das Verbot des Zugangs zu Akten,
- c) die Sicherung des Arbeitsraumes, der Aufzeichnungen mit dienstlichem Bezug oder der Arbeitsmittel (z. B. Computer und Disketten o. ä.).

Das Maß und der Umfang der gebotenen Maßnahmen können sich nur nach den Umständen des Einzelfalles richten.

Bedenken Sie, dass Korruption kein „Kavaliersdelikt“ und Vertuschen auch Ihrem Ansehen schädlich ist.

Bei Verletzung Ihrer Pflichten können Sie sich eines Dienstvergehens schuldig und strafbar machen.

## 附錄3-3-4 柏林邦之賄賂公告法

**(Gesetz zur Einrichtung und Führung eines Registers über korruptionsauffällige Unternehmen in Berlin) (Korruptionsregistergesetz - KRG)**

358 Gesetz- und Verordnungsblatt für Berlin 62. Jahrgang Nr. 16 3. Mai 2006

**Gesetz****zur Einrichtung und Führung eines Registers  
über korruptionsauffällige Unternehmen in Berlin  
(Korruptionsregistergesetz – KRG)**

Vom 19. April 2006

Das Abgeordnetenhaus hat das folgende Gesetz beschlossen:

**§ 1**

## Zielsetzung

Im Interesse einer effektiveren Korruptionsbekämpfung und -prävention richtet das Land Berlin eine zentrale Informationsstelle ein, die zum Zweck der Sammlung und Bereitstellung von Informationen über die Unzuverlässigkeit von natürlichen und juristischen Personen ein Register führt (Korruptionsregister). Ziel des Korruptionsregisters ist es, die öffentlichen Auftraggeber bei der ihnen obliegenden Prüfung der Zuverlässigkeit von Bieterinnen und Bietern, Bewerberinnen und Bewerbern sowie potentiellen Auftragnehmerinnen und Auftragnehmern zu unterstützen. Öffentliche Auftraggeber im Sinne dieses Gesetzes sind alle in § 98 des Gesetzes gegen Wettbewerbsbeschränkungen genannten Auftraggeber.

**§ 2**

## Informationsstelle und Korruptionsregister

(1) Die zentrale Informationsstelle wird bei der Senatsverwaltung für Stadtentwicklung eingerichtet. Ihr obliegt die Führung des Korruptionsregisters. Die zentrale Informationsstelle trifft selbst keine Entscheidungen über Vergabeausschlüsse.

(2) Das Korruptionsregister kann in Form einer automatisierten Datei geführt werden. Die Datenübermittlung an die abfragenden Stellen kann im Wege eines automatisierten Abrufverfahrens erfolgen.

**§ 3**

## Eintragungsvoraussetzungen

(1) In das Korruptionsregister sind beim Nachweis korruptionsrelevanter oder sonstiger Rechtsverstöße im Geschäftsverkehr oder mit Bezug zum Geschäftsverkehr, namentlich vor dem Hintergrund von Schwarzarbeit und illegaler Beschäftigung, Steuerunehrlichkeit, wettbewerbswidriger Absprachen und sonstiger Verstöße, die den freien Wettbewerb unterlaufen, Eintragungen vorzunehmen. Einzutragen sind insbesondere Verstöße gegen folgende Rechtsvorschriften:

1. § 331 des Strafgesetzbuchs (Vorteilsannahme),
2. § 332 des Strafgesetzbuchs (Bestechlichkeit),
3. § 333 des Strafgesetzbuchs (Vorteilsgewährung),
4. § 334 des Strafgesetzbuchs (Bestechung),
5. § 335 des Strafgesetzbuchs (besonders schwere Fälle der Bestechlichkeit und Bestechung),
6. § 299 des Strafgesetzbuchs (Bestechlichkeit und Bestechung im geschäftlichen Verkehr),
7. § 298 des Strafgesetzbuchs (wettbewerbsbeschränkende Absprachen bei Ausschreibungen),
8. § 266a des Strafgesetzbuchs (Vorenthalten und Veruntreuen von Arbeitsentgelt),
9. § 266 des Strafgesetzbuchs (Untreue),
10. § 265b des Strafgesetzbuchs (Kreditbetrug),
11. § 264 des Strafgesetzbuchs (Subventionsbetrug),
12. § 261 des Strafgesetzbuchs (Geldwäsche; Verschleierung unrechtmäßig erlangter Vermögenswerte),
13. § 108e des Strafgesetzbuchs (Abgeordnetenbestechung),

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14. § 370 der Abgabenordnung (Steuerhinterziehung),
15. §§ 19, 20, 20a, 22 des Gesetzes über die Kontrolle von Kriegswaffen,
16. § 34 des Außenwirtschaftsgesetzes,
17. § 404 des Dritten Buches Sozialgesetzbuch (ungenehmigte Beschäftigung von Ausländern),
18. §§ 15, 15a, 16 des Arbeitnehmerüberlassungsgesetzes (illegale Beschäftigung),
19. §§ 5, 6 des Arbeitnehmer-Entsendegesetzes,
20. §§ 8 bis 11 des Schwarzarbeitsbekämpfungsgesetzes.

(2) Der für die Eintragung erforderliche Nachweis des jeweiligen Rechtsverstoßes gilt als erbracht, wenn

1. eine rechtskräftige Verurteilung in einem Strafverfahren vorliegt,
2. ein bestandskräftiger Bußgeldbescheid in einem Ordnungswidrigkeitenverfahren vorliegt,
3. eine endgültige Einstellung gemäß § 153a der Strafprozessordnung vorliegt oder
4. unter Berücksichtigung aller Umstände keine vernünftigen Zweifel mehr daran bestehen, dass eine Tat nach Absatz 1 begangen wurde.

(3) Eintragungen sind ferner vorzunehmen bei Vergabeausschlüssen durch die öffentlichen Auftraggeber, soweit der Ausschluss aus Gründen der Unzuverlässigkeit des Unternehmens oder der natürlichen Person im Zusammenhang mit Rechtsverstößen nach Absatz 1 erfolgt ist.

### § 4 Mitteilungspflicht

Die zur Verfolgung von Ordnungswidrigkeiten berufenen Behörden und die Strafverfolgungsbehörden sind verpflichtet, der Informationsstelle eintragungsrelevante Rechtsverstöße im Sinne von § 3 Abs. 1 und 2 mitzuteilen, soweit keine anderweitigen gesetzlichen Vorschriften einer Mitteilung entgegenstehen. Die öffentlichen Auftraggeber sind verpflichtet, der Informationsstelle Vergabeausschlüsse im Sinne von § 3 Abs. 3 mitzuteilen. Werden Umstände bekannt, die einer weiteren Speicherung entgegenstehen, so ist die Informationsstelle hiervon unverzüglich zu informieren.

### § 5 Eintragungsgegenstand

(1) Liegen die Eintragungsvoraussetzungen nach § 3 vor, so haben die nach § 4 zur Mitteilung verpflichteten Behörden der Informationsstelle folgende Daten zu übermitteln:

1. meldende Behörde,
2. Datum der Meldung,
3. Aktenzeichen des Vorgangs der meldenden Stelle,
4. betroffenes Unternehmen und betroffene Zweigniederlassung (Firma und Name, Rechtsform, Namen und Vornamen der gesetzlichen Vertreter, bei Personengesellschaften Namen und Vornamen der geschäftsführenden Gesellschafter, Sitz oder Anschrift des Unternehmens, Registergericht und Handelsregisternummer sowie Umsatzsteueridentifikationsnummer),
5. Name, Geburtsdatum, Geburtsort und Anschrift der betroffenen natürlichen Personen,
6. Anlass für die Meldung, Art der Eintragungsvoraussetzungen,
7. Datum und Dauer des Vergabeausschlusses.

Ist der Rechtsverstoß oder der Vergabeausschluss ausschließlich einer selbständigen Zweigniederlassung eines Unternehmens zuzurechnen, so werden nur die Daten dieses Unternehmensteils in das Register eingetragen.

(2) Erweisen sich Eintragungen als falsch, so ist unverzüglich die



Löschung zu veranlassen.

#### **§ 6** Abfragepflicht

(1) Die öffentlichen Auftraggeber sind verpflichtet, vor Entscheidungen über die Vergabe öffentlicher Aufträge mit einem Wert ab 15 000 Euro bei der Informationsstelle nachzufragen, inwieweit Eintragungen im Korruptionsregister zu Bieterinnen und Bieterinnen, Bewerberinnen und Bewerbern sowie potentiellen Auftragnehmerinnen und Auftragnehmern vorliegen. Die öffentlichen Auftraggeber sind berechtigt, die Nachfragen auch auf etwaige Nachunternehmerinnen und -unternehmer zu erstrecken, wenn sie dies für erforderlich halten.

(2) Bei geplanten Vergaben unterhalb der in Absatz 1 Satz 1 genannten Wertgrenze kann der öffentliche Auftraggeber bei der Informationsstelle nachfragen, ob Eintragungen zu Bieterinnen und Bieterinnen, Bewerberinnen und Bewerbern sowie potentiellen Auftragnehmerinnen und Auftragnehmern vorliegen.

#### **§ 7** Weitere Auskünfte

Die Informationsstelle erteilt auf Antrag Auskunft über Eintragungen im Korruptionsregister an:

1. die mit Vergabeentscheidungen befassten öffentlichen Stellen des Bundes und der Länder,
2. die mit der Nachprüfung von Vergabeentscheidungen befassten Vergabekammern,
3. die mit der Entscheidung über Vergaben befassten Gerichte,
4. die Gerichte und Staatsanwaltschaften zur Verfolgung von Straftaten und Ordnungswidrigkeiten,
5. die mit der Verhütung und Verfolgung von Wirtschaftskriminalität befassten Polizeidienststellen.

Die auskunftsberechtigten Stellen haben den Zweck anzugeben, für den die Auskunft begehrt wird. Die Auskunftserteilung muss der Aufgabenerfüllung der anfragenden Stelle dienen.

#### **§ 8** Tilgung

(1) Die Eintragungen im Korruptionsregister sind nach einer Frist von

1. einem Jahr, wenn im Falle eines Ordnungswidrigkeitenverfahrens die Höhe der Geldbuße nicht mehr als 1 000 Euro beträgt,
  2. drei Jahren in allen übrigen Fällen
- zu tilgen.

(2) Die Tilgung kann bei Nachweis der wiederhergestellten Zuverlässigkeit auf Antrag auch eher erfolgen. Die Zuverlässigkeit kann in der Regel als wiederhergestellt angesehen werden, wenn

1. die natürliche oder juristische Person durch geeignete organisatorische und personelle Maßnahmen Vorsorge gegen die Wiederholung des Rechtsverstößes getroffen hat und
2. ein durch den Rechtsverstoß entstandener Schaden ersetzt wurde oder eine rechtsverbindliche Anerkennung der Schadensersatzverpflichtung vorliegt.

(3) Enthält das Korruptionsregister mehrere Eintragungen, so ist die Tilgung einer Eintragung erst zulässig, wenn bei allen Eintragungen die nach Absatz 1 zu wahren Fristen abgelaufen sind oder bezüglich aller Eintragungen die nach Absatz 2 erforderlichen Zuverlässigkeitsnachweise erbracht wurden.

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(4) Wird der Nachweis der wiederhergestellten Zuverlässigkeit bei einem öffentlichen Auftraggeber erbracht, hat dieser der Informationsstelle dies mitzuteilen.

(5) Die Frist beginnt mit dem Datum der Rechtskraft der Entscheidung in den Fällen des § 3 Abs. 2 Nr. 1 und 2. In den Fällen des § 3 Abs. 2 Nr. 3 beginnt die Frist mit dem Datum der endgültigen Einstellung, in den Fällen des § 3 Abs. 2 Nr. 4 mit dem Datum der Eintragung.

### § 9

#### Unterrichtungspflicht

(1) Die betroffenen Unternehmen und natürlichen Personen sind von Eintragungen und Löschungen gemäß § 5 unverzüglich zu unterrichten.

(2) Die Informationsstelle hat darüber hinaus auf Antrag Unternehmen und natürlichen Personen Auskunft über die sie betreffenden Eintragungen im Korruptionsregister zu erteilen.

### § 10

#### Anwendbarkeit des Datenschutzgesetzes

Im Übrigen gilt das Berliner Datenschutzgesetz sinngemäß auch, soweit von diesem Gesetz andere als natürliche Personen betroffen sind.

### § 11

#### Inkrafttreten, Geltungsdauer

(1) Dieses Gesetz tritt am ersten Tage des auf die Verkündung im Gesetz- und Verordnungsblatt für Berlin folgenden Kalendermonats in Kraft.

(2) Es tritt mit dem Ablauf des 31. Dezember 2010 außer Kraft.  
Berlin, den 19. April 2006

Der Präsident des Abgeordnetenhauses von Berlin  
Martina M i c h e l s  
Vizepräsidentin

Das vorstehende Gesetz wird hiermit verkündet.  
Der Regierende Bürgermeister

Harald W o l f  
Bürgermeister

## 附錄 3-4 新加坡政府倫理法制

### 壹、新加坡政府倫理法制沿革與背景

1959 年新加坡自治時，雖延襲了英國有效率的公共服務體系，但當時因法令條文未臻完備，貪污被列為不可逮捕的罪行，調查員也沒有足夠的法定權力去有效的進行調查工作，以致罪證蒐集非常艱難，造成貪污現象滲透社會各個層面。當時公務員的薪資低於私人機構，許多公務員因平日沒有積蓄，一旦遇到緊急事故就會陷入經濟困境，因此公務員常用貪污方式支付生活費用。由於政府官員的貪污問題，在世界各國都被稱為是政治癌症，新加坡政府便向貪污腐敗現象宣戰，誓言建立清明廉潔的政治，藉由嚴刑峻法懲治貪污，力圖將一個貪污腐敗的政府轉變成一個廉潔的政府，而人民行動黨及其領導人所推行的政治理念也深深地影響了新加坡人民。以往調查局的官員都是由警察部隊短期支援的，故沒有向貪污長期挑戰的心理準備，加上人民的教育水平較低，大都不清楚自身的權利，而只知用賄賂的方法處理事務，這些都是造成貪污猖獗之原因。1965 年新加坡獨立後，政府致力於創造一個誠實、杜絕貪污的社會環境，執政的人民行動黨以保持清廉、重懲貪污為指導原則，深信唯有在貪污舞弊現象受到控制，國家方能進步發展。由於新的政治領袖們以身作則，卸下與本身有關的經濟活動，樹立廉潔公正的形象，成為所有公務員學習的榜樣。<sup>49</sup>

新加坡是以法治國，其前提當然是要「有法可依」且要「依法行政」。由於法律是嚴格地按照程序，並廣泛徵求各方意見後引之為基礎制定而成的，故大多數之法律是非常嚴密，且符合新加坡之實際狀況而與大眾生活習習相關，如此一來，也就易於執行與發揮作用。而為了實現高度法制化，新加坡制定了一整套的法律、法規及法令，大到政治體制、經濟管理和商業往來，小到停車規定、公共衛生、交通安全……等等都有相關之法律規定，因

<sup>49</sup>謝立功、董顯惠，〈新加坡反貪法制簡介〉，清流月刊，第 13 卷第 12 期，2005.6.，頁 25。

此，新加坡之法律是全面性的，涉及之範圍是相當廣泛地。又新加坡政府透過法律制度，建立公平的環境，不允許任何人可因本身職位而獲得私利，此舉乃為避免使新加坡人民在不公平的環境下而不願守法，因此新加坡的法律是立法公正的。

今日新加坡人民對於自己國家治安良好、法律公正備感驕傲。對於能有這樣的成效，實應歸功於執法嚴格，強調一切以法律為依據，賞罰分明，任何人違反法律，要受到法律制裁，不允許有任何變通或是例外，縱使是部長觸犯法律也要受到嚴厲制裁，例如新加坡自 1965 年獨立以來，政府內因貪污受賄、濫用權力……等行為受到查處之官員，計有國家發展部的住房與發展局主席陳家彥、環境發展部的政務次長黃循文、全國職工總會主席彭由國、國家發展部部長鄭章遠……等等。由上述種種顯示可以得知，新加坡執法之公正及嚴格。

然而新加坡能夠執法如此澈底，實又與其領導人有相當之關係與影響。新加坡是李光耀發揮其法律長才之舞臺，其將個人所認為的正確價值觀念予以法律化，使得新加坡依循著李光耀的理念、想法行進，在某種程度上，新加坡的法律也可以說是李光耀的法律，畢竟其所領導之人民行動黨至今仍為執政黨，國會又幾乎是人民行動黨員所組成，因而在李光耀執政期間，當然都是以李光耀之意見為意見，且深受其觀念、想法之影響。然而要有像李光耀式的民主，並非是一件簡單的事，首要條件即是需要有一個事事皆以身作則的領導者，並且其所領導之執政黨須能掌握國會，成為國會中的絕對多數，如此一來，才能阻止異議的出現，而將新加坡治理的井然有序。從李光耀的清明廉潔，自正其身以收風行草偃，上行下效之作法，加上人民行動黨又為國會中的絕對多數，在客觀上而言，法律確實發揮了統治工具之作用。李光耀認為「政府的最高領導人必須樹立好榜樣」，當然在新加坡就不可能出現國家領導者要求人民守法，而自己卻是貪污受賄的情況。以上種種或許就是使得新加坡在國際透明組織（Transparency International，簡稱 TI）所公布的貪腐印象指數（Corruption Perceptions Index，簡稱 CPI）中，該國向來是排名亞洲第一，近五年在全球排名平均也在前五名之原因<sup>50</sup>。

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<sup>50</sup> <http://app.cpiib.gov.sg/newcpib/user/default.aspx?pgID=21>（2007/01/17）。

掃除黑金、檢肅貪瀆向為我國政府標榜推動的重大政策，然而貪污問題究竟該如何根絕，新加坡公務員的廉政制度從公務員的聘任制、公務員制度中廉政要求的法律化、健全的監督機制、高薪養廉式的福利待遇等方面的成功經驗，應有值得我國參考之處。本文主要針對該國反貪之法律規範及行政預防作法等法制面進行簡介，期能作為我國未來修法之參考。

## 貳、新加坡倫理法制特色

為了有效懲治貪污腐敗，新加坡政府的主要措施是加強法制，依法治貪，相當重視法律在肅貪中的作用，因此將肅貪的各項活動都納入法律規定的範圍，使肅貪倡廉的工作可以制度化、法律化。

實施嚴格的法治是新加坡的特點，而涉及廉政內容的法律有：

### 一、憲法

新加坡憲法主要由三個基本文件組成－新加坡共和國憲法、新加坡獨立法令及馬來西亞憲法中適用於新加坡部分，以上於1980年3月31日新加坡共和國重印本後整合<sup>51</sup>。憲法中對於擔任總統、總理、內閣成員和議員的條件，以及禁止公務員經商（第2條第2款）－公務員守則及紀律條例、刑法第168條或是對於生活上的保障－刑法第161條、防止貪污法及公務委員會之設置－公務懲戒性程序規則等等都有明確之規定。

### 二、行政法令

例如《公務員守則和紀律條例》，對於公務員行為及其應遵守之紀律、準則均有明確之規定，使所有公務員都明白自己應做什麼，又不應做什麼，是非界線非常清楚，其主要規定內容－公務員每年必須申報自己及配偶的全部財產及收入情形、公務員購買股票必須經過許可、公務員私人經營買賣及兼職禁止、收受餽贈禁止、邀宴禁止；另外在《公務懲戒性程序規則》對於

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<sup>51</sup> Availbale at : <http://www.singaporelaw.sg/> (2007/1/18)

公務員怠忽職守瀆職等不法行爲，應依何種程序給予何種行政處分都有詳細具體之規定。

### 三、刑事法律

刑事法律包含了刑法及一些單行刑事法規。在刑法中有一章關於公務員或與公務員有關的犯罪，規定公務員利用職務之便而收賄之行爲即爲犯罪，同時對犯罪主體及所收之酬金、利益也作了具體規定。除了刑法外，還制定《防止貪污法》，專門懲治貪污犯罪，對於貪污犯罪的構成、處罰、偵查、起訴、審判……等等，都作有詳細規定。

### 四、貪污相關法律

另亦有制定《貪污(利益沒收)法》、《貪污、販毒和其他嚴重罪行(利益沒收)法》詳細介紹沒收貪污所得利益的認定、如何沒收與計算所得利益之價值數額，以及沒收貪污所得利益的程序。

上述法令之特色爲：

- (一)、「非法所得」之範圍甚廣，包括了以金錢或非金錢形式之利益與好處均屬之，雖範圍廣泛，但卻規定相當具體明確。
- (二)、不論是收賄或行賄者，均構成犯罪，判處最高五年以下有期徒刑得科或併科一萬新元以下罰金，當案件是涉及公務員或國會議員者，則更會加重其刑責。由此可見，新加坡肅貪法律雖立法嚴密但並不嚴酷。
- (三)、立法之著眼點在於「抓得到」，而非「罰得重」。
- (四)、對於檢舉人的保密周延，偵查過程中不提來源，亦不隨案移送，法院非有必要之時，不傳喚檢舉人作證，且在檔案中不得提其姓名或留有紀錄，使其免受身分曝光而有遭報復之顧慮，同時藉此使未來的檢舉人敢於檢舉，以達減少貪污犯罪之目的。
- (五)、只要有企圖貪污犯罪之意圖，亦屬犯罪，即須受到處罰。

- (六)、一般刑事犯罪案件，舉證責任在於控方，但在貪污犯罪案件之舉證責任，係在被告者，這樣的舉證責任轉移有助於新加坡的防貪工作。
- (七)、防止貪污法不僅對新加坡國內之公民有效外，對於在國外之公民亦是效力所及，若公民在國外任何地方觸犯貪污法之相關罪名時，則與國內觸犯該罪一樣，須受同樣的處罰。
- (八)、任何人向公務員行賄，縱使公務員未收賄，公務員仍須向其上級報告，否則會遭處六個月以下有期徒刑，並得科500元以下之罰金。
- (九)、若行賄者自首，無論其自首時間與犯罪時間之遠近，均得以免除其刑。
- (十)、對於貪污之處刑，並無是否有違背職務之差別，但在量刑之時是可以列入考慮的。

### 參、新加坡政府倫理法制負責與執行架構

#### 一、貪污調查局（Corrupt Practices Investigation Bureau; CPIB）之沿革

一朵盛開的荷花，亭亭玉立；一柄利劍在荷花正中插過，露出利刃。這是一個富有極深涵義的標誌：荷花一出汙泥而不染；利劍—法律的權威與公正。這標誌正是新加坡貪污調查局的局徽，象徵著新加坡政府是一個廉潔的政府，能公正執法，鏟除貪污腐敗<sup>52</sup>。

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<sup>52</sup> 參閱中國赴新加坡精神文明考察團，《新加坡的精神文明》，北京：紅旗出版社，1992，頁33。**Explanatory Note for the Bureau Flag**—The Bureau flag consists of: an upper white half which is emblazoned with the Bureau's logo, signifying our anti-corruption role; and a lower maroon half signifying that CPIB is a key State institution by virtue of the fact that maroon is a State colour. **Explanatory Note for the CPIB Logo**—The "cascade of squares" represents the pervasive effects of our anti-corruption action in bringing about fair practices as a square is a symbol and an icon of fairness in that a square is a metaphor for fairness as in the idiom "fair and square" and is a figure with all sides and angles equal. The "cascade of squares" is also a stylised representation of the stem of the letter 'i' in 'CPIB' and the Arabic figure 1. Together with the globe which represents the dot in the letter 'i', the stylised Arabic figure is a statement of our vision, i.e. our aspiration to be the No. 1 Anti-Corruption Agency in the world. The globe doubles as a stylised eye, denoting our watchful and vigilant stance.

殖民時代的新加坡，當時的英國殖民政府也曾對於官員貪污腐敗之問題，採取了一些措施，而於1952年成立貪污調查局，是執行這項任務的主要機構。1959年人民行動黨執政，誓言建立廉潔的政治，同時也發現殖民政府所遺留下的反貪污策略，無法有效遏制貪污現象，因而於1960年修改了1937年殖民時期通過的已過時之防止貪污法律，並匯集了1952年貪污調查局成立以來的成功經驗，並與頒布後的幾次修改共同促進了貪污調查局的發展。

貪污調查局的發展不離公眾的支持。在成立初期，亦曾遇到許多困難，一是法律的因素妨礙了針對腐敗行為的證據收集，二是缺乏公眾對於調查局的支持，不與調查局合作，原因在於公眾懷疑調查局的效力，擔心若支持或是配合調查，將會帶給他們不良的影響。

但自1959年人民行動黨執政後，貪污調查局在政府的大力支持下，對於一些貪腐官員案件的查辦，使得腐敗官員被免職亦或是自動辭職，因此人民經由這些真實查辦案件中，認識到政府反貪污的決心，因而漸漸相信貪污調查局，並且開始願意主動配合，使得貪污調查局得到前所未有的發展。

## 二、貪污調查局之組織結構

1993年貪污調查局之編制有76人，包括46名貪瀆案件調查員，以及27名非調查人員。調查員中又包括了局長、副局長、資深助理官各一名，助理官5名，以及不同等級的特別調查員41名。1995年該局之編制人員有75名，其中包括49名貪瀆案件調查員，以及26名非調查人員。非調查人員中包括4名資訊系統人員及22名書記官等辦事人員。<sup>53</sup>2005年該局之編制人員有88名，其中包括調查員57名，助理調查員9名，文書與行動人員22名<sup>54</sup>。

貪污調查局隸屬於總理，而局長是由總理任命，並直接對總統負責，未經總理的批准，任何人均無權將其免職。總理擁有絕對高度的人事決定權，

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<sup>53</sup>此資訊係依據1993年、1995年新加坡貪污調查局所印發的簡介手冊。馬英九、吳英昭、林茂榮、崔昇祥、柯麗鈴，《法務部新加坡考察報告》，台北：行政院法務部，1995，頁239。

<sup>54</sup>謝立功、董顯惠，〈新加坡防治貪污之組織與作法簡介〉，海巡雙月刊第14期，2005.4，頁47。



不接受文官制度之要求。除此之外，貪污調查局獨立行使調查權、偵查權，不受其他部門或外界所干預，總統、總理也不會過問。調查人員則是由新加坡公務員委員會公開招考遴選，並經過訓練及隨習辦案，再派至貪污調查局工作。

貪污調查局分成兩大部門，其下設組，其組織架構如下：

### (一)、行動部

#### 1.行動組

行動部援引《防止貪污法》（Prevention of Corruption）（參見附錄四之一），負責調查工作，由4個調查小組組成，其中一個單位是由精英組成的特別調查小組(Special Investigation Team，簡稱SIT)，專門處理較複雜、重大的案件。調查完畢後，行動部將根據所獲得的證據呈交報告給檢察司。根據《防止貪污法》規定，任何控訴都必須獲得檢察司的書面同意才能進行。涉嫌貪污但因證據不足致無法被提控的公務員，(在檢察司的同意下)案件轉交給有關部門的主管，以對該公務員採取紀律處分。

#### 2.行動支援組

行動支援組下設有情報小組與外勤調查小組，負責蒐集和綜合情報，同時執行外勤調查以支援行動部調查工作所需的資料。

### (二)、行政與特別支援部

#### 1.行政組

2.負責行政與人事方面的事務，為政府部門和法定機構提供檔案審查服務，並訂定該局的策略性計畫。另其下亦設有電腦資訊系統組，負責研發應用系統來保存與管理紀錄，以提高行動部的效率。

#### 3.策劃組

4.負責有關策劃和政策的工作。

#### 5.預防與檢討組

6.檢討容易發生貪污案件的政府部門工作程序，找出行政上可能促成貪污

和不當行爲的弊端，並提出改善和預防措施。<sup>55</sup>

### 三、貪污調查局之職權

新加坡貪污調查局有以下三方面的職權<sup>56</sup>：

- (一)、受理職權：受理並調查對政府、私營機構貪瀆的檢舉案件，而受理舉報是獲得犯罪情報的最主要途徑。
- (二)、調查職權：調查公務員貪污、瀆職之不正失職及犯罪行爲，而調查權的執行是爲了社會的公平正義而懲罰犯罪者，使得企圖貪污者心生警惕感而不敢貪污犯罪。
- (三)、預防職權：審查公務的執行情序及其運作狀況，以減少貪污賄賂等犯罪的發生，進而得以達到預防貪污犯罪之目的。

另依據防制貪污的主管法律，1960年頒布的《防止貪污法(Prevention of Corruption)》及1989年頒布的《貪污(利益沒收)法(Corruption 〈Confiscation of Benefits〉 Act)》，貪污調查局具有以下的職權特性<sup>57</sup>：

- (一)、身分特權：貪污調查局局長由總理任命，未經總理批准，不得予以免職，因而身分受到法律嚴格的保護。

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<sup>55</sup>此係參考 2005 年新加坡貪污調查局中文簡介。另亦可參見該局網站資料 <http://app.cpiib.gov.sg/newcpib/user/default.aspx?pgID=123> (2007/01/17) **Administration Unit** It is responsible for corporate and investigation support services, including registry, finance, procurement and personnel matters.

**Prevention & Review Unit** It carries out reviews of the work procedures of corruption-prone government departments to identify the administrative weaknesses, which could facilitate corruption and malpractices, and thereafter recommends appropriate preventive measures.

**Computer Information System Unit** It undertakes computerisation projects and develops application systems to manage the records and enhance the effectiveness of the Operations Division.

**Plans & Project Unit** It undertakes various staff work relating to planning projects, operations support and policies.

<sup>56</sup>參閱馬英九、吳英昭、林茂榮、崔昇祥、柯麗鈴：《法務部新加坡考察報告》，台北：行政院法務部，1995，頁 239。

<sup>57</sup>參閱劉守芬、李淳：《新加坡廉政法律制度之研究》，北京：北京大學，2003，頁 160-162。

- (二)、調查權：總檢察長如果確信有充分之理由，懷疑涉嫌貪污者依法已構成犯罪，則可授權局長或特別調查員，調查其及與其有牽連之人的任何銀行存款、股票存款、其他帳目或保險箱等等。
- (三)、調查保障權：有權要求任何人舉發或提供調查員所需的報表、帳目、文件或物品，未能提供或不舉發犯罪事實者，則視為觸犯了貪污防止法。
- (四)、逮捕權：局長或任何調查員無須任何逮捕文件，即可逮捕涉嫌貪污之人，且可搜查並沒收有理由相信係為犯罪贓物、其他證據或罪犯身上的一切物品。
- (五)、不明財產檢查權：若調查員查明被告人之所有金錢，而被告無法作出合理又令人滿意之解釋說明其財產增加的原因時，法院即得以此一事實，認定或考慮證明該報告曾經接受、決定、得到或是同意接受、企圖取得某種報酬的證據，並據以認定判刑之。
- (六)、跟蹤監視權：貪污調查局對於所有公務員，有權暗中派人跟蹤並觀察監視其日常行動，並且將監視調查所得之資料送至主管官員，以便核對與該公務員之日記記載是否相同，若發現有所出入時，則將該日記移送至貪污調查局審查，以便可以及時遏止貪污行為的繼續。

#### 四、貪污調查局之運作機制

貪污調查局的運作包括檢舉的受理與處理以及偵查。

##### (一)、檢舉之受理與處理：

檢舉分為匿名檢舉和具名檢舉兩種。匿名檢舉通常採用兩種方式，一是以匿名信檢舉，列舉出貪污公務員的犯罪事實或是犯罪線索。二是以電話檢舉，在不暴露檢舉人之身份條件下，打電話給貪污調查局詢問專線值勤官，密告犯罪事實或是提供犯罪線索。

由於貪污調查局的檢舉專線是24小時皆有值勤官，因而社會大眾可以利用此專線電話檢舉貪污犯罪，除此之外，尚可利用此專線電話，作貪污調查

局之相關工作內容的諮詢。

由於檢舉人對於「具名檢舉」可能會遭報復存有顧慮，因此大多數的檢舉是來自於匿名檢舉。只有在檢舉人的利益直接受到損害或雙方公開交惡時，才有可能會採取具名檢舉的方式。而匿名檢舉雖然能提供一些貪污線索，但缺點是無法進一步向檢舉人查詢細節，而是必須倚靠貪污調查局蒐集足夠的證據，若僅憑檢舉人的單方面指控則是不足以認定為有罪的。

另外，對於明知是不實內容，但卻又加以檢舉，意圖使他人受到處罰之情況，則為「惡意檢舉」。為了防止此種誣告的發生，《防止貪污法》明定惡意檢舉者應受到懲罰，判處一年以下有期徒刑或科一萬新元的罰金。由此得知，貪污調查局不僅對於貪污者懲罰嚴厲外，對於惡意檢舉而作不實指控之行爲者，亦不予以寬待之。

## (二)、偵查體制：

新加坡的肅貪體制係採檢控分立，亦即貪污調查局主偵，檢察署主控。唯有加強貪污案的偵查，取得充分的證據，檢察官才能提起公訴，法官也才可以作出適當之判決，因此，加強貪污犯罪的偵查力量，是有效肅貪的不二法門。依據《貪污防止法》規定，貪污調查局有權調查政府或私營機構人員的受賄或行賄行爲，並且移送所得之事實與證據給檢察官，由檢察官提起公訴。新加坡對於貪污賄賂行爲的取締是相當嚴厲的，主要表現在以下二方面：

- 1.若公務員接受了賄賂或不當利益時，縱使未提供任何方便或服務給行賄之人，其貪污罪仍然是成立的。
- 2.只要有證據證明公務員有貪污犯罪的企圖，即可認定該公務員犯有貪污賄賂罪。

除此之外，對於貪污罪犯的處罰，也是相當嚴厲的，主要表現在：

- 1.對於行賄或受賄人判處最高徒刑5年或7年，或是最高得處以十萬新元罰金，或是兩者併科。若是代替別人受賄或行賄之人，法院仍有權將其視為本人，判處與本人犯罪一樣的刑罰。若是政府官員或是國會議員受賄、行賄，則會因其身分特別而刑罰將會更重。（避免刑法上身分犯難

局)

2. 《貪污(利益沒收)法》規定，法院可以沒收貪污罪犯的非法所得。另值得一提的是，該法是在1989年通過的，但它規定在政府頒布此項法律之前的六年內，若有不明財產，法院仍可以貪污罪沒收這六年內所擁有的不明財產。但《貪污(利益沒收)法》於1999年9月已由憲章第65(A)的《貪污、販毒和其他嚴重罪行(利益沒收)法》【CORRUPTION, DRUG TRAFFICKING AND OTHER SERIOUS CRIMES (CONFISCATION OF BENEFITS) ACT】(參見附錄四之二)所取代。該法除了授予法庭同等凍結和沒收貪污所得之權力外，洗黑錢的罪行也被列入此法內。<sup>58</sup>

(三)、法院可以責令貪污罪犯償還其貪污所得之財物。若被告不予償還，法院則可按其所得不明之財物的數額或價值，判處被告刑罰。

#### 肆、公務員財產申報制度—財產申報法

新加坡公務員在出任時須申報個人財產，已婚者尚須將其配偶之財產予以申報之。財產申報的內容，包括個人的動產、不動產、銀行存款、法律規定範圍內的股票、債券投資.....等等。申報財產之程序是：出具財產清單；至法院公證處接受審查並由宣誓官簽名以示公證；公證處之正本須交由工作人員所屬機關之人事單位保管，副本則由法院公證處保管<sup>59</sup>。申報財產後即由所在部門及貪污調查局審查財產申報內容是否屬實又與其收入是否相符合，亦或有無故意漏報或故意將個人財產移轉至他人名下的行動.....等等。若發現財產有暴增或是財產來源有問題時，貪污調查局即有權展開進一步的調查，當該公務員無法說明其財產來源時，則有不當得利之嫌疑，而又有被調查到財產來源不正當的證據時，則可對該公務員提起控訴。若任職後財產有所變動時，亦應再次提出財產申報清單並寫明財產變動原因，以改換原財

<sup>58</sup> 《貪污(利益沒收)法》雖由《貪污、販毒和其他嚴重罪行(利益沒收)法》所取代。後法除了授予法庭同等凍結和沒收貪污所得之權力外，洗黑錢的罪行也被列入此法內，其餘內容均無變動。

<sup>59</sup> 參閱曹云華，《亞洲的瑞士—新加坡啟示錄》，北京：中國對外經濟貿易出版社，1997，頁63。

產申報清單，而貪污調查局則仍須再次審查其變動之財產內容是否屬實，以及此變動財產之來源是否符合正當性、合法性，若發現有任何違法之處，則於取得確切證據後交由法院處理。

此外，新加坡的公職人員亦須申報財產，但不公開，係屬人事資料，由人事單位保管之。對於申報之資料如有誤，則可依行政程序處理；若有失職，則可予以免職；若財產有所異動，則可於翌年七月申報時間，作為當年資料申報即可。

### 一、財產申報主體

各國規定需要申報個人財產的主要為各類高級官員，包括總統、副總統等。也有的國家規定，包括所有公務員。依據新加坡共和國憲法第 116（1）條公務（懲戒性規則）第 2 條之解釋，公務員係指從事公務的固定常設官員，也就是只要是法律上定義之公務員即負申報義務<sup>60</sup>。

### 二、財產申報內容

需要申報個人現有財產、收入、債務的情況，及與自己生活密切、有經濟往來的配偶、子女的財產、收入情況。財產包括現金、存款、資本投資、股票、彩券、房地產、車輛等；收入包括工資、額外報酬、股息、銀行利息、租金、商貿收益、一定價值的禮品等；債務包括借款、貸款、銀行透支等。除了本人外還需要申報其配偶及共同生活的家庭成員。

### 三、財產申報的時限

通常有三種，一是競選候選人或任職初期的財產申報（任職申報）；二是任職中的年度財產申報（現職申報）；三是離職後的財產申報（離職申報）。

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<sup>60</sup> <http://agcvldb4.agc.gov.sg/>；

"public service" means service under the Government and includes —

(a) service as the holder of any public office or service as a Member of Parliament; and

(b) service under any statutory body or authority designated by the Minister by notification in the *Gazette*.

新加坡法制上以初任公職及每年一月二日為主。

#### 四、財產申報程式

規定了申報書的填寫、受理機關、保存期限、查閱方式。在新加坡公務員申報資料以交由所屬部門的常務次長及貪污調查局審查，法院設置的公證處則受理對申報資料公證。

#### 五、申報違法的處理

各國對拒絕申報個人財產或弄虛作假者都制定了制裁的法律，議員候選人將被取消選舉資格，新任公務員的任命將無效，官員會被處以罰款或徒刑。

### 伍、收禮、接受餽贈、邀宴等相關規範

#### 一、一般規定

爲了防止公務員藉著職務之便，而從應酬或交際中取得好處，新加坡法律明文規定，公務員不得接受饋贈及外界邀宴，一經查出，即以貪污罪論處。新加坡政府制定了《公務員指導手冊》，以促使公務員得以道德自律。《公務員指導手冊》第207條規定，公務員不得以接受報答作爲報酬，而有以下之行爲：

- (一)、公務員不可以實施或不實施某種官方行爲，亦或是幫忙、避免、妨礙、干擾某種官方行爲。
- (二)、幫助某人或阻礙其取得合同或利益。

所謂之「報酬」，亦有明確之界定，包括<sup>61</sup>：

1. 金錢、有價證券、任何物品或其他形式的財產或財產性利益，無論這種利益是動產亦或不動產。

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<sup>61</sup> 參閱劉守芬、李淳，《新加坡廉政法律制度之研究》，北京：北京大學，2003，頁142。

2. 任何契約或職位。
3. 任何義務或其他責任的償付、免除，無論這種償付、免除是全部的亦或是部分的。
4. 任何的各種好處、服務，包括使任何處罰或剝奪資格得以免除或免受發覺，或使其免受紀律處分或刑事訴訟及刑罰，而無論這種訴訟或刑罰是否已被提起，同時還包括任何權力、職權或職責執行的適用或避免。
5. 提供或接受上述1、2意義上的報酬。
6. 由此可看出，新加坡所規定的公務員禁止接受的“報酬”範圍是相當廣泛的。
7. 雖然規定公務員不可接受禮品，但有例外准予接受不具有金錢價值的紀念物品，例如印有貪污調查局標誌的領帶。除了純粹不具有金錢價值之禮品外，不論禮品價值多少，一律不得接受之，縱使禮品只是一杯咖啡亦不得接受之。
8. 而公務員在不便於拒絕接受禮品之情況下，則可以先將禮品收下，然後必須向其上級報告，並將禮品交給負責處理禮品的人員。若想收下此禮品，則該禮品須先經會計總長的估價後，受贈者可依照估價購買下來，否則即歸公。因此公務員接受之禮品縱使價值不高，但若有隱瞞不向上級報告之情事，則仍足以構成貪污罪。

## 二、同事間的禮數

除了以上一般規定外，若是公務員之間的互送禮品，則另有規定：

- (一)、政府官員除了個人私人情誼外，政府官員不得接受下級人員贈送的任何禮品，包括現金、物品和票券。
- (二)、政府官員不得接受下級人員的邀請出席娛樂活動。
- (三)、政府官員因退休而接受下級人員的贈送，則須申報總禮品的名稱、價值，且不能超過規定之數額；而因退休而接受下級人員之款待，



則須報告時間、地點且不能超過舉辦款待活動者月薪的2%。

- (四)、在接受邀宴方面，公務員若接受與業務有關人士之邀宴，則須先向上級請示，然後決定能否參加。新加坡的公務人員遵守紀律的自覺性相當高，對於禮品饋贈，一般都會拒絕，邀宴也均不願接受。
- (五)、另外《防止貪污法》尚有規定，若公務員將接受「報酬」，作為一種其須履行或不履行本人職責之報答時，則構成犯罪，縱使公務員尚未實施履行或不履行其職責之行爲，只要公務員有接受「報酬」的事實存在，就有理由相信或懷疑這種報酬是作為其履行或不履行職責的報答，即構成犯罪。

此外，新加坡亦規定：凡國會議員向官員關說者須合於形式及實質二項要件：一是須以書面爲之。二是內容須爲選區選民之事項。此一促進「透明化」之措施，對澄清吏治甚有幫助。由上述得知，新加坡相當嚴格地執行禁止公務員接受禮品之紀律規範，無論禮品價值多少，無論接受的公務員職位高低，只要違反規定，就一律予以處罰，亦正因如此，新加坡的公務員都普遍有自覺性地規範自己的行爲，因而達成防止貪污之成效。

## 陸、其他配套措施

### 一、公務員之聘任

新加坡廉潔風氣的形成，實應歸功於政府制定了一套嚴格的公務員選拔任用制度，對於公務員的招聘一直堅持高標準，以公開考試、擇優錄取爲原則，此舉乃是爲了保障政府機構的廉潔，以及公正地選拔德才兼備的人才。李光耀曾說過，「新加坡最珍貴的資產即在於廉潔的政治環境，在這樣的環境裡，掌管政府、主要機關及大學者，必須是一群廉潔、可靠、能幹並且致力於爲國人創造一個更好前途的人。」，在這樣的觀念影響下，新加坡政府在錄用公務員時所考慮的首要因素，即是「防止新加坡被少數敗類所腐蝕」。公務員在正式錄用前，必須經過三個關卡：考試、審查、試用。

### (一)、考試

主管公務員考試錄用的機關是公務委員會，有權決定欲招聘公務員的各項資格條件、考試形式、科目、內容及日期...等事項。在政府各部門出現空缺名額，需要增補公務員之空缺名額時，即以招聘廣告公布招聘之相關事宜，若是考試或體格檢查不合格者，則當然不錄用之。

### (二)、審查

經考試或體格檢查合格者，尚須接受資格審查。此資格審查包括兩方面：一是審查學歷是否合於規定要求。因為新加坡相當注重欲聘任之公務員的學歷，往往對於每一類的公務員，都有規定最低學歷要求；二是審查人品是否良好。對於應聘者的品行會進行十分詳細且嚴格的審查。

### (三)、試用

通過考試、審查後，被錄用的公務員尚須經過一段試用期，試用期間的長短，則會因各部門而有所不同，一般而言，試用期不會超過一年。若經試用而不合格者，則會取消其聘用資格。

基本上，新加坡政府對於聘任公務員，強調公平、公正、公開，擇優錄用，並強調一定的學歷，而高度完整保障的公務員考試錄用制度，可以有效地防止已染有不良嗜好或是品行不良之人出任政府的重要職位，藉以保證、保持公務員的品質，加上主持考試的政府機構自身的廉潔、可靠，所選拔出的公務員即是國家所需的人才，這正是新加坡公務人員有高度廉潔成效而受世界矚目的原因。

## 二、公務員之考核

新加坡政府不僅注重公務員的工作能力、工作績效，還相當注重對公務員日常生活行為的合法性與正當性的審查。對於任職後的公務員須進行品德考核，此項品德考核與公務員聘任制中對應聘者個人品行的審查是有所不同的，前者是針對公務員任職期間的行為表現作考核；後者是對於應聘者被錄用前的行為表現作一審查。其方式有二：一是個人品德紀錄，另一是行為跟蹤。

### (一)、個人品德紀錄

政府會發給公務員一本日記本，日記本上已編好頁次、年、月、日，首頁由公務員本人在其主管官員面前寫下其宣誓書，保證所載之內容均為事實，若有不合事實或虛假之記載，願意接受嚴厲的處分。公務員會隨身攜帶此日記本，並將自己的活動隨時記下，每週定時交給主管官員檢查。若主管官員認為日記本內所記載內容有問題時，則須將日記本交由貪污調查局進行審查核實，一旦認定公務員有貪污行為時，則其主管官員亦須承擔責任，一併受罰。這種考核方法，促使公務員受到嚴密的監督，而主管官員必須嚴格約束、監督下屬，兩者都必須對品德負責。

### (二)、行為跟蹤

貪污調查局依法有權對所有公務員進行行為跟蹤，暗地調查他們的日常活動。調查的主要內容包括公務員的私生活是否正常，是否有嫖賭、出入酒吧的行為，有無暗中與不法團體往來之行為...等等。如果發現被跟蹤者有可疑之行為時，會馬上派人秘密攝影搜集證據。若公務員有違紀行為時，貪污調查局則會將行為跟蹤結果寫成調查報告送交其主管官員，以便審查該員之日記本所載內容是否屬實，讓當事人在事實面前無所遁逃，等待處罰。

行為跟蹤制是一項成效顯著的防貪措施，對於任何想貪污的人而言，生活中到處佈滿了隱藏鏡頭，也就無法為所欲為了。但就另一方面而言，這樣的監督跟蹤制在一定程度上是侵犯了公務員的隱私權，然而新加坡政府則認為，為了保障社會大眾之利益，並且保證公務員的廉潔，這樣的跟蹤行為是必要不可少的，因此要掌握好界限以及防止有關調查人員的濫用權力。

## 柒、結論

大致而言，新加坡廉政制度成功的關鍵，或許在於有誠信政府願意真心打擊貪污，所以成效是非常卓著的。但對公眾反貪污的教育仍自覺努力仍不夠，還有持續強化的必要。具體而言，從新加坡反腐倡廉的成功經驗中，歸納出其成功之原因如下：

- 一、明確的反貪污理念，顯現出政府堅決反貪污的意志與決心，並證明給人民看。
- 二、領導階層的以身作則與嚴格的道德自律，起了示範作用，帶動了政府成員的清明廉潔。
- 三、有效又清廉的肅貪機構，擁有強大之反貪權力，提高了反貪污的效率。
- 四、執法嚴厲，毫無例外，提高貪污成本。
- 五、健全的肅貪法律，以及防貪措施嚴密完備，用法治精神與手段來處理貪污腐敗現象，減少了貪污的機會。
- 六、高待遇、重人才，降低貪污的需求。
- 七、監督制衡機制的完善，同時加強自律。
- 八、鼓勵人民積極參與反腐敗，對人民施以廉政道德教育，加強反貪污的社會正義力量。
- 九、重視反腐倡廉的成效，有高效率的防貪運作機制。

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## 附錄 3-4-1 PREVENTION OF CORRUPTION ACT

(CHAPTER 241)

( established 17<sup>th</sup>/6/1960 ; last amended )

### PART I

#### PRELIMINARY

##### Short title

1. This Act may be cited as the Prevention of Corruption Act.

##### Interpretation

2. In this Act, unless the context otherwise requires —

"agent" means any person employed by or acting for another, and includes a trustee, administrator and executor, and a person serving the Government or under any corporation or public body, and for the purposes of section 8 includes a subcontractor and any person employed by or acting for such subcontractor;

"CPIB officer" means a public officer in the Corrupt Practices Investigation Service (Junior) Scheme of Service or in the Corrupt Practices Investigation Service (Senior) Scheme of Service;

"Director" means the Director of the Corrupt Practices Investigation Bureau appointed under section 3;

"gratification" includes

### PART II

#### APPOINTMENT OF STAFF AND PERSONNEL MATTERS

##### Appointment of Director and officers.

3. —(1) The President may appoint an officer to be the Director of the Corrupt Practices Investigation Bureau.

Provided that the President acting in his discretion may refuse to appoint or revoke the appointment of the Director if he does not concur with the advice or recommendation of the Cabinet or a Minister acting under the general authority of the Cabinet.

(2) The President may appoint a Deputy Director of the Corrupt Practices Investigation Bureau and such number of assistant directors and special investigators of the Corrupt Practices Investigation Bureau as he may think fit.

(3) Any powers conferred on and duties to be performed by the Director under this Act may, subject to the orders and directions of the Director, be exercised or performed by the Deputy Director or an assistant director of the Corrupt Practices Investigation Bureau.

(4) The Deputy Director and an assistant director of the Corrupt Practices Investigation Bureau may exercise the powers conferred by this Act on a special investigator.

(5) The President may create such different grades for assistant directors and special investigators as he may think fit.

25/81

11/91.

**Director and officers deemed to be public servants.**

4. —(1) The Director, Deputy Director, assistant directors and special investigators of the Corrupt Practices Investigation Bureau shall be deemed to be public servants within the meaning of the Penal Code.

(2) A certificate of appointment signed by the Director shall be issued to every officer of the Corrupt Practices Investigation Bureau and shall be evidence of his appointment under this Act.

Cap. 224.

25/81.

**Establishment of Occupational Superannuation Scheme**

**4A.** —(1) The Minister shall, by regulations, establish an Occupational Superannuation Scheme for the benefit of all CPIB officers appointed on or after 1st November 2001, who will be the members of the Scheme.

(2) The regulations made under subsection (1) shall provide for the payment of —

(a) any gratuity, allowance, superannuation or other like benefit to members of the Scheme, or to their legal personal representatives or dependants, on the death of the members in the service or on the resignation, retirement or discharge of the members from the service;

(b) any pension, gratuity, allowance, compensation or other benefit in respect of the death of or injuries received by any member of the Scheme in and which are attributable to service; and

(c) any allowance, subsidy or other benefit to such former members of the Scheme as may be prescribed after their retirement from the service.

(3) The regulations made under subsection (1) may provide for —

(a) the payment of contributions in respect of each member;

(b) the age or ages at which a member may retire or be required to retire from the service;

(c) the appointment of award officers to assess, award and pay pensions, gratuities and allowances and other like benefits under the Scheme and to otherwise administer the Scheme; and

(d) the bringing of appeals against decisions of award officers and the appointment of one or more persons to hear such appeals and review the decisions of award officers.

(4) In making regulations under subsection (1), the Minister shall also provide for —



(a) every CPIB officer who is appointed before 1st November 2001 and who, immediately before that date, is eligible (whether on retirement or in respect of death or injury in or attributable to service) for any pension, gratuity or other allowance under the Pensions Act (Cap. 225); and

(b) every CPIB officer who is appointed before 1st November 2001 to the service on a contract for a term and who, immediately before that date, is eligible for any gratuity or other like benefit under the contract,

an option to join the Scheme as a member and for the terms and conditions of such an option.

(5) The regulations made in relation to CPIB officers referred to in subsection (4) shall provide —

(a) in the case of an officer referred to in subsection (4) (a), that any such officer who opts to join the Scheme shall cease to be eligible to benefits under the Pensions Act but shall remain eligible under the Scheme to benefits not less in value than the amount of any pension, gratuity or other allowance for which he would have been granted under the Pensions Act if he retired from the service, or was injured or died in service, on the date immediately before his joining the Scheme; and

(b) in the case of an officer referred to in subsection (4) (b), that any such officer who opts to join the Scheme shall remain eligible to benefits not less in value than the amount of any gratuity or other like benefit for which he would have been granted under his contract if he had completed his term of service under the contract on the date immediately before his joining the Scheme.

(6) Any option exercised by any CPIB officer before 1st November 2001 to join or not to join the Scheme shall be deemed to be exercised in accordance with the regulations made under subsection (1) in relation to CPIB officers referred to in subsection (4).

**Benefits not as of right, etc.**

**4B.** —(1) No member shall have an absolute right to compensation for past services or to any pension, gratuity, allowance or other benefit under the Scheme.

(2) Nothing in this Act shall limit the right of the Public Service Commission, or any of its delegates, to dismiss any CPIB officer who is a member from the service without compensation.

(3) Subject to Article 113 of the Constitution, where it is established to the satisfaction of an award officer that a member has been guilty of negligence, irregularity or misconduct, it shall be lawful for the award officer to reduce or altogether withhold the pension, gratuity, allowance or other benefit for which the member would but for this section have become eligible under the Scheme.

**Non-assignability or attachment of benefits, etc.**

**4C.** —(1) No payments, allowance or other benefit payable under the Scheme (whether on death, retirement or resignation of a member or otherwise), and no contribution by the Government made under the Scheme, and no interest thereon shall be assignable or transferable, or liable to be garnished, attached, sequestered or levied upon for or in respect of any debt or claim, other than —

(a) a debt due to the Government; or

(b) an order of court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child (whether legitimate or not) of the member to whom the payment, allowance or other benefit has been granted.

(2) Subject to the provisions of any regulations made under section 4A, all moneys paid or payable under the Scheme on the death of a member thereof —

(a) shall be deemed to be subject to a trust in favour of the persons entitled thereto under the will or intestacy of such deceased member;

(b) shall not be deemed to form part of his estate or be subject to the payment of his debts; and

(c) shall be deemed to be property passing on his death for the purposes of the Estate Duty Act (Cap. 96).

**Recovery of benefits granted in ignorance of disqualifying facts**

**4D.** It shall be a condition of the grant of every pension, gratuity, allowance or other benefit under the Scheme that the Government may recover, cancel or reduce the grant if it is shown to have been obtained by the wilful suppression of material facts or to have been granted in ignorance of facts which, had they been known before the retirement or resignation of the member, would have justified his dismissal or a reduction of his salary.

**Effect of bankruptcy and conviction on Scheme benefits**

**4E.** —(1) No contribution by the Government made under the Scheme and no interest thereon shall be subject to the debts of any member thereof, nor shall such contributions and interest pass to the Official Assignee on the bankruptcy of the member.

(2) If a member is adjudicated a bankrupt or is declared insolvent by a court of law, such contributions and interest shall be deemed to be excluded from the property of the bankrupt for the purposes of the Bankruptcy Act (Cap. 20).

(3) If, at the date of his retirement or resignation from the service, any member has been adjudged a bankrupt by judgment of a court of competent jurisdiction, whether in Singapore or elsewhere, and he has not obtained his discharge from such adjudication or declaration, it shall be lawful for an award officer to refuse to grant any pension, gratuity or other allowance which would, if not for this subsection, be granted.

(4) If any person to whom a pension or other allowance has been granted under this Act —

(a) is adjudicated a bankrupt by judgment of a court of competent jurisdiction, whether in Singapore or elsewhere; or

(b) is sentenced to death or penal servitude or any term of imprisonment, by any court of competent jurisdiction, whether in Singapore or elsewhere, for any crime or offence,

the Minister may direct that such pension or allowance shall forthwith cease, and thereupon such pension or allowance shall cease accordingly.

(5) Where, by reason of bankruptcy of a member or former member, a pension, gratuity or allowance is not granted or where a pension or allowance ceases by virtue of a direction under subsection (4) (a), it shall be lawful for the Minister to cause all or any part of the moneys to which such person would have been entitled by way of pension, gratuity or allowance, had he not become a bankrupt or sentenced for any crime or offence, as the case may be, to be paid to, or applied for the maintenance and personal support or benefit of, all or any (to the exclusion of the others) of the following persons in such proportions and manner as the Minister thinks proper:

(a) the member or former member himself; and

(b) his spouse, child or children.

(6) The Minister may exercise his power under subsection (5), from time to time, during the remainder of the member's or former member's life, or during such shorter period or periods, either continuous or discontinuous, as the Minister thinks fit.

(7) When a person to whom a pension or allowance has not been granted or whose pension or allowance has ceased under this section obtains a full and proper discharge from his bankruptcy, his pension or allowance shall be restored to him with effect from the date of such discharge.

(8) For the purposes of subsection (5), moneys applied for the discharge of the debts of the member or former member, as the case may be, shall be regarded as applied for his benefit.

(9) Notwithstanding subsection (4), any pension or allowance that has ceased by virtue of a direction under subsection (4) (b) shall be restored with retrospective effect in the case of a person who, after conviction, at any time receives a free pardon.

(10) Where a pension or allowance ceases by virtue of a direction under subsection (4) (b), it shall be lawful for the Minister to cause all or any part of moneys to which the person would have been entitled by way of pension or allowance to be paid to or applied for the benefit of his spouse, child or children, or after the expiration of his sentence, also for the benefit of himself, in the same manner precisely and subject to the same qualifications and restrictions as in the case of bankruptcy provided in subsection (5).

**Scheme to be met out of INVEST Fund**

**4F.** —(1) There shall be paid into the INVEST Fund —

(a) such sums appropriated from the Consolidated Fund and authorised to be paid into the INVEST Fund by or under any written law to enable that Fund to meet its liabilities under this Act; and

(b) such sum from the Pension Fund established by the Pension Fund Act (Cap. 224A) as the Minister for Finance may determine as the value of that part of the Pension Fund relating to all those CPIB officers referred to in section 4A (4) (a) who exercise an option in favour of joining the Scheme in accordance with the regulations under section 4A.

(2) The INVEST Fund comprising moneys referred to in subsection (1) shall be applied to meet the following purposes only:

(a) the payment of any pension, gratuity, allowance, compensation or other like benefit granted under the Scheme; and

(b) such other expenses relating to the granting of any pension, gratuity, allowance, compensation or other like benefit under the Scheme and expressly provided by regulations made under this Act to be met from the INVEST Fund.

(3) The moneys referred to in subsection (1) shall be paid into the INVEST Fund as capital money, and shall not be used to make payment of any dividend under the Scheme.

### **PART III**

#### **OFFENCES AND PENALTIES**

##### **Punishment for corruption.**

**5.** Any person who shall by himself or by or in conjunction with any other person —

(a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of —

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or

(ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

29/89.

##### **Punishment for corrupt transactions with agents.**

**6.** If —

(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or

forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

(b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

29/89.

**Increase of maximum penalty in certain cases.**

7. A person convicted of an offence under section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract, be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

**Presumption of corruption in certain cases.**

8. Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person

in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

**Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc.**

**9.** —(1) Where in any proceedings against any agent for any offence under section 6 (a), it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing of forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so, show or forbear or that he accepted the gratification without intending to do so, show or forbear or that he did not in fact do so, show or forbear or that the act, favour or disfavour was not in relation to his principal's affairs or business.

(2) Where, in any proceedings against any person for any offence under section 6 (b), it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or reward for doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person having reason to believe or suspect that the agent had the power, right or opportunity to do so, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business, he shall be guilty of an offence under that section notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his principal's affairs or business.

**Corruptly procuring withdrawal of tenders.**

**10.** A person —



(a) who, with intent to obtain from the Government or any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing that tender; or

(b) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for that contract,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

**Bribery of Member of Parliament.**

**11.** Any person —

(a) who offers any gratification to a Member of Parliament as an inducement or reward for such Member's doing or forbearing to do any act in his capacity as such Member; or

(b) who being a Member of Parliament solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his capacity as such Member,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

**Bribery of member of public body.**

**12.** A person —

(a) who offers any gratification to any member of a public body as an inducement or reward for —

(i) the member's voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to that public body;

(ii) the member's performing, or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or

(iii) the member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

(b) who, being a member of a public body, solicits or accepts any gratification as an inducement or a reward for any such act, or any such abstaining, as is referred to in paragraph (a) (i), (ii) and (iii),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

29/89.

**When penalty to be imposed in addition to other punishment.**

**13.** —(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

(2) Where a person charged with two or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 178 of the Criminal Procedure Code for the purpose of

passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

Cap. 68.

25/81.

**Principal may recover amount of secret gift.**

**14.** —(1) Where any gratification has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of that amount or money value.

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

**PART IV**

**POWERS OF ARREST AND INVESTIGATION**

**Powers of arrest.**

**15.** —(1) The Director or any special investigator may without a warrant arrest any person who has been concerned in any offence under this Act or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.

(2) The Director or a special investigator arresting a person under subsection (1) may search such person and take possession of all articles found upon him which there is reason to believe were the fruits or other evidence of the crime, provided that no female shall be searched except by a female.

(3) Every person so arrested shall be taken to the Corrupt Practices Investigation Bureau or to a police station.

27/72.

25/81.

**Provisions as to bail or bond.**

**16.** —(1) A person who has been arrested by the Director or any special investigator may be released on bail or on his own bond granted by the Director or any special investigator or any police officer.

(2) The provisions of Chapters XXXV and XXXVI of the Criminal Procedure Code shall apply to any bail or bond granted under this section; and for this purpose —

Cap. 68.

(a) any reference to “officer”, “police officer” or “police officer not below the rank of sergeant” shall be read to include the Director or any special investigator;

(b) the reference to the Commissioner of Police in section 351 of the Criminal Procedure Code shall be read to include the Director.

[15A

29/89.

**Powers of investigation.**

**17.** —(1) In any case relating to the commission —

(a) of an offence under section 165 or under sections 213 to 215 of the Penal Code, or of any conspiracy to commit, or of any attempt to commit, or of any abetment of such an offence;

(b) of an offence under this Act; or

(c) of any seizable offence under any written law which may be disclosed in the course of an investigation under this Act,

the Director or a special investigator may, without the order of the Public Prosecutor, exercise all or any of the powers in relation to police investigations into any offence given by the Criminal Procedure Code:

Cap. 68.

Provided that an investigation into an offence under the Penal Code shall be deemed to be a police investigation to which section 122 of the Criminal Procedure Code shall apply in the same manner and to the same extent as if the Director or the special investigator concerned were a police officer.

Cap. 224.

(2) For the purposes of sections 58 (1) and 122 (5) of the Criminal Procedure Code, the Director or a special investigator shall be deemed to be an officer not below the rank of inspector of police.

[16

27/72;25/81; 29/89.

Cap. 224.

**Special powers of investigation.**

**18.** —(1) Notwithstanding anything in any other law, the Public Prosecutor, if satisfied that there are reasonable grounds for suspecting that an offence under this Act has been committed, may, by order, authorise the Director or any police of or above the rank of assistant superintendent named in such order or a special investigator so named to make an investigation in the matter in such manner or mode as may be specified in that order. The order may authorise the investigation of any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorised.

(2) Any person who fails to disclose such information or to produce such accounts or documents or articles to the person so authorised shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

[17

27/72;25/81.

**Powers of investigation authorised by Public Prosecutor.**

**19.** The Public Prosecutor may by order authorise the Director or a special investigator to exercise, in the case of any offence under any written law, all or any of the powers in relation to police investigations given by the Criminal Procedure Code.

29/89.

[18

**Public Prosecutor's power to order inspection of bankers' books.**

**20.** —(1) The Public Prosecutor may, if he considers that any evidence of the commission of an offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or of a conspiracy to commit, or an attempt to commit, or an abetment of any such offence by a person in the service of the Government or of any department thereof or of a public body is likely to be found in any banker's book relating to that person, his wife or child or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for that person, by order authorise the Director or any special investigator named in the order or any police officer of or above the rank of assistant superintendent so named to inspect any book and the Director, special investigator or police officer so authorised may, at all reasonable times, enter the bank specified in the order and inspect the books kept therein and may take copies of any relevant entry in any such book.

(2) For the purpose of this section —

"bank" means any company carrying on the business of bankers in Singapore incorporated or licensed under any written law;

"banker's book" includes any ledger, day book, cash book, account book or other book or document used in the ordinary course of the business of a bank.

[19

27/72

25/81.

**Public Prosecutor's powers to obtain information.**

**21.** —(1) In the course of any investigation or proceedings into or relating to an offence by any person in the service of the Government or of any department thereof or of any public body under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the Public Prosecutor may, notwithstanding anything in any other written law to the contrary, by written notice —

Cap. 224.

29/89

(a) require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person and by the spouse, sons and daughters of that person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

(b) require that person to furnish a sworn statement in writing of any money or other property sent out of Singapore by him, his spouse, sons and daughters during such period as may be specified in the notice;

(c) require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person

where the Public Prosecutor has reasonable grounds to believe that the information can assist the investigation;

(d) require the Comptroller of Income Tax to furnish, as specified in the notice, all information available to the Comptroller relating to the affairs of that person or of the spouse or a son or daughter of that person, and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person, spouse, son or daughter which is in the possession or under the control of the Comptroller;

(e) require the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his possession or under his control;

(f) require the manager of any bank to give copies of the accounts of that person or of the spouse or a son or daughter of that person at the bank.

(2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such time as may be specified therein and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[20

**Powers of search and seizure.**

**22.** —(1) Whenever it appears to any Magistrate or to the Director upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any place there is any document containing any evidence of, or any article or property relating to —



(a) the commission of an offence under this Act, or under sections 161 to 165, or 213 to 215, of the Penal Code; or

(b) a conspiracy to commit, or any attempt to commit, or an abetment of any such offence,

the Magistrate or the Director may, by warrant directed to any special investigator or police officer not below the rank of inspector empower the special investigator or police officer to enter that place by force if necessary and to search, seize and detain any such document, article or property.

(2) Whenever it appears to any special investigator or any police officer not below the rank of inspector that there is reasonable cause to believe that in any place there is concealed or deposited any document containing any evidence of, or any article or property relating to —

(a) the commission of an offence under this Act, or under sections 161 to 165, or 213 to 215, of the Penal Code; or

Cap. 224.

(b) a conspiracy to commit, or an attempt to commit, or an abetment of any such offence,

and the special investigator or police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of that place all the powers mentioned in subsection (1) in as full and ample a manner as if he were empowered to do so by warrant issued under that subsection.

## **PART V**

### **EVIDENCE**

#### **Evidence of custom inadmissible.**

**23.** In any civil or criminal proceeding under this Act evidence shall not be

admissible to show that any such gratification as is mentioned in this Act is customary in any profession, trade, vocation or calling.

[22

**Evidence of pecuniary resources or property.**

**24.** —(1) In any trial or inquiry by a court into an offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or into a conspiracy to commit, or attempt to commit, or an abetment of any such offence the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in the trial or inquiry that the accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that the gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property or to have obtained an accretion thereto where those resources or property are held or the accretion is obtained by any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding those resources or property or to have obtained the accretion in trust for or on behalf of the accused person or as a gift from the accused person.

[23

**Evidence of accomplice.**

**25.** Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 24, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body.

**Obstruction of search.**

**26.** Any person who —

(a) refuses the Director or any officer authorised to enter or search, access to any place;

(b) assaults, obstructs, hinders or delays him in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;

(c) fails to comply with any lawful demands of the Director or any officer in the execution of his duty under this Act; or

(d) refuses or neglects to give any information which may reasonably be required of him and which he has it in his power to give,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[25

25/81; 29/89

**Legal obligation to give information.**

**27.** Every person required by the Director or any officer to give any information on any subject which it is the duty of the Director or that officer to inquire into under this Act and which it is in his power to give, shall be legally bound to give that information.

25/81.

[26

**False statements, information, etc.**

**28.** Any person who knowingly —

(a) gives or causes to be given any false or misleading information relating to the commission of any offence under this Act or under section 165, 213, 214, or 215 of the Penal Code;

Cap. 224.

(b) gives or causes to be given to the Director or a special investigator any other false or misleading information,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

[26A

29/89.

**Abetment of offences.**

**29.** Whoever abets, within the meaning of the Penal Code —

(a) the commission of an offence under this Act; or

(b) the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act,

shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[27

**Attempts.**

**30.** Whoever attempts to commit an offence punishable under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[28

**Conspiracy.**

**31.** Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code, to commit an offence under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

[29

Cap. 224.

**Offences to be seizable.**

**32.** —(1) Every offence under this Act shall be deemed to be a seizable offence for the purposes of the Criminal Procedure Code.

(2) A public officer to whom any gratification is corruptly given or offered shall arrest the person who gives or offers the gratification to him and make over the person so arrested to the nearest police station and if he fails to do so without reasonable excuse he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

[30

Cap. 68.

29/89.

**Prosecutions to be instituted with consent of Public Prosecutor.**

**33.** A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

[31

**District Court to have jurisdiction to try offences under this Act.**

**34.** Notwithstanding the provisions of any written law to the contrary, a District Court shall have jurisdiction to try any offence under this Act and to award the full punishment for that offence.

**Examination of offenders.**

**35.** —(1) Whenever two or more persons are charged with any offence under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code or with a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the court may require one or more of them to give evidence as a witness or witnesses for the prosecution.

(2) Any such person who refuses to be sworn or to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by a Magistrate's Court or District Court, as the case may be.

(3) Every person so required to give evidence, who in the opinion of the court makes true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Magistrate or Judge, as the case may be, stating that he has made a true and full discovery of all things as to which he was examined, and that certificate shall be a bar to all legal proceedings against him in respect of all those things.

**Protection of informers.**

**36.** —(1) Except as hereinafter provided, no complaints as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

[34

**Liability of citizens of Singapore for offences committed outside Singapore.**

**37.** —(1) The provisions of this Act have effect, in relation to citizens of Singapore, outside as well as within Singapore; and where an offence under this Act is committed by a citizen of Singapore in any place outside Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against that person for the same offence, if the offence had been committed in Singapore, shall be a bar to further proceedings against him, under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Singapore.

[35

**附錄 3-4-2 CORRUPTION, DRUG TRAFFICKING AND OTHER  
SERIOUS CRIMES (CONFISCATION OF BENEFITS) ACT**

(CHAPTER 65A)

**PART I**

**PRELIMINARY**

**Short title**

1. This Act may be cited as the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

[25/99]

**Interpretation**

2. —(1) In this Act, unless the context otherwise requires —

"authorised officer" means —

(a) any officer of the Bureau; (b) any special investigator of the Corrupt Practices Investigation Bureau appointed under section 3 (2) of the Prevention of Corruption Act (Cap. 241); (c) any Commercial Affairs Officer appointed under section 64 of the Police Force Act 2004; (d) any police officer; and (e) any other person authorised in writing by the Minister for the purposes of this Act;

"bank" means a bank licensed under the Banking Act (Cap. 19);

"charging order" means an order made under section 17 (1);

"confiscation order" means an order made under section 4 or 5;

"corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the government of a foreign country to be a law providing for the control and regulation in that country of —



(a) the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30th March 1961; (b) the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the government of that country and the Government of Singapore are for the time being parties; or (c) the benefits of trafficking in the drugs or substances referred to in paragraph (a) or (b); "criminal conduct" means —

(a) doing or being concerned in, whether in Singapore or elsewhere, any act constituting —

- (i) a serious offence (other than an offence under section 44 or 47); or
- (ii) a foreign serious offence;

(b) entering into or being otherwise concerned in, whether in Singapore or elsewhere, an arrangement whereby —

- (i) the retention or control by or on behalf of another person of that other person's benefits from an act referred to in paragraph (a) is facilitated; or
- (ii) the benefits from an act referred to in paragraph (a) by another person are used to secure funds that are placed at that other person's disposal, directly or indirectly, or are used for that other person's benefit to acquire property by way of investment or otherwise;

(c) the concealing or disguising by a person of any property which is, or in part, directly or indirectly, represents, his benefits from an act referred to in paragraph (a); or

(d) the conversion or transfer, by a person, of any property referred to in paragraph (c) or the removal of such property from the jurisdiction;

"dealing with property" is to be construed in accordance with section 16 (7);

"defendant" means a person against whom proceedings have been instituted for a drug trafficking offence or a serious offence, as the case may be, or offences whether or not he has been convicted thereof;

"drug trafficking" means —

(a) doing or being concerned in, whether in Singapore or elsewhere, any act constituting —

- (i) a drug trafficking offence (other than an offence under section 43 or 46); or
- (ii) a foreign drug trafficking offence;

(b) entering into or being otherwise concerned in, whether in Singapore or elsewhere, an arrangement whereby —

- (i) the retention or control by or on behalf of another person of that other person's benefits from an act referred to in paragraph (a) is facilitated; or
- (ii) the benefits from an act referred to in paragraph (a) by another person are used to secure funds that are placed at that other person's disposal, directly or indirectly, or are used for that other person's benefit to acquire property by way of investment or otherwise;

(c) the concealing or disguising by a person of any property which is, or in part, directly or indirectly, represents, his benefits from an act referred to in paragraph (a); or

(d) the conversion or transfer by a person of any property referred to in paragraph (c) or the removal of such property from the jurisdiction;

"drug trafficking offence" means —

- (a) any of the offences specified in the First Schedule;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences; or

(e) aiding, abetting, counselling or procuring the commission of any of those offences;

"financial institution" means —

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) the holder of a capital markets services licence under the Securities and Futures Act 2001;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a company or society registered under the Insurance Act (Cap. 142) as a direct insurer carrying on life business;
- (g) an insurance intermediary licensed under any written law relating to insurance intermediaries if the intermediary arranges contracts of insurance in respect of life business; and
- (h) such other persons or class of persons as the Minister may by order prescribe, but excludes a money-changer licensed to conduct money-changing business and a remitter licensed to conduct remittance business under the Money-changing and Remittance Businesses Act (Cap. 187);

"foreign country" means any country or territory outside Singapore;

"foreign court" means a court of competent jurisdiction in a foreign country which is a party to any treaty, memorandum of understanding or agreement for the control of narcotic drugs or for assistance in criminal matters to which Singapore is also a party;

"foreign drug trafficking offence" means a drug trafficking offence punishable under a corresponding law;

"foreign serious offence" means an offence (other than a foreign drug trafficking offence) against the laws of, or of a part of, a foreign country stated in a certificate purporting to be issued by or on behalf of the government of that country and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted a serious offence;

"gift caught by this Act" is to be construed in accordance with section 12 (7) or (8);

"interest" , in relation to property, includes any right;

"making a gift" is to be construed in accordance with section 12 (9);

"material" includes any book, document or other record in any form, and any container or article relating thereto;

"Monetary Authority of Singapore" means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186);

"officer of customs" has the same meaning as in the Customs Act (Cap. 70);

"officer of the Bureau" means the Director or any officer of the Central Narcotics Bureau appointed under section 3 of the Misuse of Drugs Act (Cap. 185);

"property" means money and all other property, movable or immovable, including things in action and other intangible or incorporeal property;

"realisable property" means —

(a) any property held by the defendant; and

(b) any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act;

"Registrar" means, in relation to proceedings in —

(a) the High Court — the Registrar, Deputy Registrar or Assistant Registrar of the Supreme Court;

(b) a District Court or a Magistrate's Court — the Registrar or Deputy Registrar of the Subordinate Courts;

"restraint order" means an order made under section 16 (1);

"serious offence" means —

(a) any of the offences specified in the Second Schedule;

(b) conspiracy to commit any of those offences;

(c) inciting others to commit any of those offences;

(d) attempting to commit any of those offences; or

(e) aiding, abetting, counselling or procuring the commission of any of those offences;

"value of gift" is to be construed in accordance with section 12;

"value of property" is to be construed in accordance with section 12 (2). [25/99; 12/2000]

(2) For the purposes of this Act —

(a) property is held by any person if he holds any interest in it;

(b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

(c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested in his trustee in bankruptcy or liquidator;

(d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;

(e) proceedings for an offence are instituted in Singapore when a person is produced and charged in court with the offence;

(f) proceedings in Singapore for a drug trafficking offence or a serious offence, as the case may be, are concluded on the occurrence of one of the following events:

(i) the discontinuance of the proceedings;

(ii) the acquittal of the defendant;

(iii) the quashing of the defendant's conviction for the offence;

(iv) the grant of the President's pardon in respect of the defendant's conviction for the offence; and

(v) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default); and

(g) an order is subject to appeal as long as an appeal or further appeal is pending against the order or (if it was made on a conviction) against the conviction; and for this purpose, an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing the appeal. [25/99]

### **Application**

**3.** —(1) This Act shall apply to any drug trafficking offence or foreign drug trafficking offence whether committed before or after 30th November 1993. [25/99]

(2) Nothing in this Act shall impose any duty or confer any power on any court in or in connection with any proceedings under this Act against a person for a drug trafficking offence in respect of which he has been convicted by a court before 30th November 1993. [25/99;12/2000]

(3) This Act shall apply to any serious offence or foreign serious offence whether committed before or after 13th September 1999. [25/99]

(4) Nothing in this Act shall impose any duty or confer any power on any court in connection with any proceedings under this Act against a person for a serious

offence in respect of which he has been convicted by a court before 13th September 1999. *[25/99;12/2000]*

(5) This Act shall apply to any property, whether it is situated in Singapore or elsewhere.

## **PART II**

### **CONFISCATION OF BENEFITS OF DRUG TRAFFICKING OR CRIMINAL CONDUCT**

#### **Confiscation orders**

**4.** —(1) Subject to section 27, where a defendant is convicted of one or more drug trafficking offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from drug trafficking if the court is satisfied that such benefits have been so derived.

(2) If the court is satisfied that benefits have been derived by the defendant from drug trafficking, the court shall, at any time after sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 10 the amount to be recovered in his case by virtue of this section. *[25/99]*

(3) The court shall not take into account any application or proposed application for a confiscation order in determining the appropriate sentence or other manner of dealing with the defendant in respect of the drug trafficking offences concerned. *[25/99]*

(3A) Where the court which convicted the defendant is for any reason unable to determine the amount to be recovered under subsection (2), the determination and confiscation order, if any, may be made by the Registrar. *[25/99]*

(3B) Any relevant evidence admitted in the proceedings against the defendant for the drug trafficking offence concerned shall, if the court or the Registrar thinks fit,

be taken into account in determining the amount to be recovered under subsection (2) or (3A). [25/99]

(4) Subject to section 28, for the purposes of this Act, a person who holds or has at any time (whether before or after 30th November 1993) held any property or any interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking. [25/99]

(4A) Any expenditure by a person referred to in subsection (4) (whether incurred before or after 30th November 1993) shall, until the contrary is proved, be presumed to have been met out of his benefits derived from drug trafficking. [25/99]

(5) The presumption referred to in subsection (4) or (4A) shall not be rebutted merely by adducing proof to the effect that the property or interest therein was derived from criminal conduct. [25/99]

(6) In this section, a reference to property or interest therein shall include a reference to income accruing from such property or interest. [25/99]

#### **Confiscation orders for benefits derived from criminal conduct**

**5.** —(1) Subject to section 27, where a defendant is convicted of one or more serious offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from criminal conduct if the court is satisfied that such benefits have been so derived. [25/99]

(2) If the court is satisfied that benefits have been derived by the defendant from criminal conduct, the court shall, at any time after sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 10 the amount to be recovered in his case by virtue of this section. [25/99]



(3) The court shall not take into account any application or proposed application for a confiscation order in determining the appropriate sentence or other manner of dealing with the defendant in respect of the serious offences concerned. *[25/99]*

(4) Where the court which convicted the defendant is for any reason unable to determine the amount to be recovered under subsection (2), the determination and confiscation order, if any, may be made by the Registrar. *[25/99]*

(5) Any relevant evidence admitted in the proceedings against the defendant for the serious offence concerned shall, if the court or the Registrar thinks fit, be taken into account in determining the amount to be recovered under subsection (2) or (4). *[25/99]*

(6) Without prejudice to section 28, for the purposes of this Act, a person who holds or has at any time (whether before or after 13th September 1999) held any property or any interest therein (including income accruing from such property or interest) disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from criminal conduct. *[25/99]*

(7) For the purposes of subsection (6), any expenditure by a person referred to in that subsection (whether incurred before or after 13th September 1999) shall, until the contrary is proved, be presumed to have been met out of his benefits derived from criminal conduct. *[25/99]*

(8) The presumption referred to in subsection (6) shall not be rebutted merely by adducing proof to the effect that the property or interest therein (including income accruing from such property or interest) was derived from drug trafficking.  
*[4A[25/99]*

#### **Live video or live television links**

**6.** —(1) Where the defendant has been charged with or convicted of a drug trafficking offence or a serious offence, the court or the Registrar may make an order that —

(a) if the defendant is represented by an advocate and solicitor, the defendant shall not be present in person in any proceedings under this Act; or

(b) the defendant shall appear in any proceedings under this Act through live video or live television link (whether or not the defendant is represented by an advocate and solicitor). [25/99]

(2) Where an order is made under subsection (1) (b), section 62A of the Evidence Act (Cap. 97) shall apply, with the necessary modifications, as if the defendant were a witness. [4B[25/99]

### **Assessing benefits of drug trafficking**

7. —(1) Subject to section 28, for the purposes of this Act —

(a) the benefits derived by any person from drug trafficking shall be any property or interest therein (including income accruing from such property or interest) held by the person at any time, whether before or after 30th November 1993, being property or interest disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court; and

(b) the value of the benefits derived by him from drug trafficking shall be the aggregate of the values of the properties and interests therein referred to in paragraph (a). [25/99]

(2) For the purpose of assessing the value of the benefits derived by the defendant from drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any such benefits of drug trafficking or criminal conduct that are shown to the court to have been taken into account in determining the amount to be recovered under that order. [5[25/99]

### **Assessing benefits derived from criminal conduct**

8. —(1) Without prejudice to section 28, for the purposes of this Act —

(a) the benefits derived by any person from criminal conduct, shall be any property or interest therein (including income accruing from such property or interest) held by the person at any time, whether before or after 13th September

1999, being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and

(b) the value of the benefits derived by him from criminal conduct, shall be the aggregate of the values of the properties and interests therein referred to in paragraph (a). [25/99]

(2) For the purpose of assessing the value of the benefits derived by the defendant from criminal conduct, in a case where a confiscation order or an order made under section 13 of the Prevention of Corruption Act (Cap. 241) has previously been made against him, the court shall leave out of account any such benefits derived from drug trafficking or criminal conduct, as the case may be, that are shown to the court to have been taken into account in determining the amount to be recovered under that order. [5A/25/99]

### **Statements relating to drug trafficking or criminal conduct**

**9.** —(1) Where —

(a) there is tendered to the court by the prosecution a statement as to any matters relevant to the determination whether benefits have been derived by the defendant from drug trafficking or from criminal conduct, as the case may be, or to the assessment of the value of those benefits; and

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates. [25/99]

(2) Where —

(a) a statement is tendered under subsection (1) (a); and

(b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.

(4) Where —

(a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b) the prosecution accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either —

(a) orally before the court; or

(b) in writing.

(6) No acceptance by the defendant under this section that benefits have been derived by him from drug trafficking or from criminal conduct, as the case may be, shall be admissible in evidence in any proceedings for an offence. [6[25/99]

**Amount to be recovered under confiscation order**

**10.** —(1) Subject to subsection (3), the amount to be recovered from the defendant under the confiscation order shall be the amount the court assesses to be the value of the benefits derived by the defendant from drug trafficking or from criminal conduct, as the case may be.

[25/99]

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 9 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the benefits derived by the defendant from drug trafficking or from criminal conduct, as the case may be, the amount to be recovered from the defendant under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised. *[25/99]*

(4) If, on an application made in accordance with subsection (5), the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the court shall issue a certificate to that effect, giving its reasons.

(5) An application under subsection (4) may be made either by the Public Prosecutor or by a receiver appointed under section 16 or 19 in relation to the realisable property of the person in question.

(6) Where a certificate has been issued under subsection (4), the Public Prosecutor may apply to the court for an increase in the amount to be recovered under the confiscation order; and on that application the court may —

(a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and

(b) increase the term of imprisonment fixed in respect of the confiscation order under section 14 (1) if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 14 (1). *[7]*

**Interest on sums unpaid under confiscation order**

**11.** —(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid. [25/99]

(2) The amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order. [25/99]

(3) The rate of interest under subsection (1) shall be at the same rate as a judgment debt. [7A [25/99]

**Definition of principal terms used**

**12.** —(1) For the purposes of sections 9 and 10, the amount that might be realised at the time a confiscation order is made against the defendant shall be —

(a) the total of the values at that time of all the realisable property held by the defendant; less

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

(2) Subject to subsections (3) to (9), for the purposes of this Act, the value of property (other than cash) in relation to any person holding the property —

(a) where any other person holds an interest in the property, shall be —

(i) the market value of the first-mentioned person's beneficial interest in the property; less

(ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

(b) in any other case, shall be its market value.

(3) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (4) as the material time) of a gift caught by this Act are references to —

(a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (4) applies, the value mentioned therein,  
whichever is the greater.

(4) Subject to subsection (9), if at the material time the recipient holds —

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly, represents in his hands the property which he received,

the value referred to in subsection (3) (b) shall be the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(5) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant to —

(a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) pay any sum which would be included among the preferential debts in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(6) For the purposes of subsection (5) (b), “preferential debts”—

(a) in relation to bankruptcy, means the debts to be paid in priority under section 90 of the Bankruptcy Act (Cap. 20) (assuming the date of the confiscation order to be the date of the bankruptcy order); and

(b) in relation to winding up, means the debts to be paid in priority in accordance with section 328 of the Companies Act (Cap. 50) (assuming the date of the confiscation order to be the commencement date of the winding up). [15/95]

(7) A gift (including a gift made before 30th November 1993) is caught by this Act if —

(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings for a drug trafficking offence were instituted against him or, where no such proceedings have been instituted, when an application under section 4 for a confiscation order is made against him; or

(b) it was made by the defendant at any time and was a gift of property which is or is part of the benefits derived by the defendant from drug trafficking.

(8) A gift (including a gift made before 13th September 1999) is caught by this Act if —

(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings for a serious offence were instituted against him or, where no such proceedings have been instituted, when an application under section 5 for a confiscation order is made against him; or

(b) it was made by the defendant at any time and was a gift of property which is or is part of the benefits derived by the defendant from criminal conduct. [25/99]

(9) For the purposes of this Act —

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant. [8]

### **Protection of rights of third party**

**13.** —(1) Where an application is made for a confiscation order under section 4 or



5, a person who asserts an interest in the property may apply to the court, before the confiscation order is made, for an order under subsection (2). [25/99]

(2) If a person applies to the court for an order under this subsection in respect of his interest in property and the court is satisfied —

(a) that he was not in any way involved in the defendant's drug trafficking or criminal conduct, as the case may be; and

(b) that he acquired the interest —

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in or derived from drug trafficking or criminal conduct, as the case may be,

the court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest. [25/99]

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

(4) A person who —

(a) had knowledge of the application under section 4 or 5 for the confiscation order before the order was made; or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3) except with the leave of the court. [25/99]

(5) A person who makes an application under subsection (1) or (3) shall give not less than 7 days' written notice of the making of the application to the Attorney-General who shall be a party to any proceedings on the application. [9

### PART III

#### ENFORCEMENT, ETC., OF CONFISCATION ORDERS

##### Application of procedure for enforcing fines

**14.** —(1) Subject to subsection (4), where a court orders the defendant to pay any amount under section 4 or 5, section 224 of the Criminal Procedure Code (Cap. 68) shall have effect as if —

(a) that amount were a fine imposed on him by the court; and

(b) the term for which the court directs the defendant to be imprisoned in default of payment of any amount under section 4 or 5 shall be as follows:

(i) if the amount does not exceed \$20,000, imprisonment for a term not exceeding 2 years;

(ii) if the amount exceeds \$20,000 but does not exceed \$50,000, imprisonment for a term not exceeding 5 years;

(iii) if the amount exceeds \$50,000 but does not exceed \$100,000, imprisonment for a term not exceeding 7 years; and

(iv) if the amount exceeds \$100,000, imprisonment for a term not exceeding 10 years. [25/99]

(2) Where —

(a) a warrant to commit the defendant to prison is issued for a default in payment of an amount ordered to be paid under section 4 or 5 in respect of an offence or offences; and

(b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b). [25/99]

(3) A District Court may, notwithstanding the provisions of any other written law, impose the maximum term of imprisonment on the defendant in default of the payment of any amount ordered to be paid under section 4 or 5. *[25/99]*

(4) Where a defendant is convicted of a drug trafficking offence or a serious offence, as the case may be, and sentenced to death, any amount which the court orders the defendant to pay under section 4 or 5 may, on an application by the Public Prosecutor to the High Court, be realised by the High Court exercising the powers conferred by section 19 (3) to (7). *[25/99]*

(5) Where a defendant is convicted of a drug trafficking offence or a serious offence, as the case may be, any amount which the court orders the defendant to pay under section 4 or 5 and which, in the case of realisable property comprising wholly or partly cash, may be realised by the High Court making a garnishee order subject to Rules of Court. *[25/99]*

**Cases in which restraint orders and charging orders may be made**

**15.** —(1) The powers conferred on the High Court by section 16 (1) to make a restraint order and by section 17 (1) to make a charging order are exercisable where —

(a) proceedings have been instituted against the defendant for a drug trafficking offence or a serious offence, as the case may be;

(b) the proceedings have not been concluded; and

(c) the Court is satisfied that there is reasonable cause to believe that benefits have been derived by the defendant from drug trafficking or from criminal conduct, as the case may be. *[25/99]*

(2) Those powers are also exercisable where the High Court is satisfied —

(a) that a person has been officially informed under section 122 (6) of the Criminal Procedure Code (Cap. 68) that he may be prosecuted for a drug trafficking offence or a serious offence, as the case may be; or

(b) that investigation for a drug trafficking offence or a serious offence, as the case may be, having been commenced against a person, he dies or cannot be found or is outside the jurisdiction,

and that there is reasonable cause to believe that benefits have been derived by that person from drug trafficking or from criminal conduct, as the case may be. [25/99]

(3) For the purposes of sections 16 and 17, at any time when those powers are exercisable before proceedings have been instituted —

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2); and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) for a drug trafficking offence or a serious offence, as the case may be. [25/99]

(4) Where the High Court has made an order under section 16 (1) or 17 (1) by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable and which shall not in any event exceed a period of 3 months. [11]

### **Restraint orders**

**16.** —(1) The High Court may make a restraint order to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply —

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to all realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 17.

(4) A restraint order —

(a) may be made only on an application by the Public Prosecutor;

(b) may be made on an ex parte application to a Judge in chambers; and

(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order —

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when proceedings for the drug trafficking offence or serious offence, as the case may be, are concluded. [25/99]

(6) Where the High Court has made a restraint order, the Court may at any time appoint the Public Trustee or any person as receiver —

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which the receiver is appointed under this section to give possession of it to the Public Trustee or such receiver.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) —

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from Singapore.

(8) Where the High Court has made a restraint order, an authorised officer may, for the purpose of preventing any realisable property being removed from Singapore, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court. [12

**Charging orders in respect of land, securities, etc.**

**17.** —(1) The High Court may make a charging order on realisable property for securing the payment to the Government —

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

(b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order may be made —

(a) only on an application by the Public Prosecutor; and

(b) on an ex parte application to a Judge in chambers.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on —

(a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act —

(i) in any asset of a kind mentioned in subsection (5); or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subsection (4) are —

(a) immovable property in Singapore; or

(b) securities of any of the following kinds:

(i) securities of the Government or of any public authority;

(ii) stock of any body incorporated in Singapore;

(iii) stock of any body incorporated outside Singapore or of any country or territory outside Singapore, being stock registered in a register kept at any place within Singapore; and

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Singapore.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5) (b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(7) Where the High Court has made a charging order, the Court may give such directions to the Public Trustee or any person as the Court thinks fit to safeguard the assets under the charging order.

(8) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the drug trafficking offence or serious offence, as the case may be, are concluded or the amount, payment of which is secured by the charge, is paid into Court. [13 [25/99]

### **Charging orders: supplementary provisions**

18. —(1) A charging order may be made either absolutely or subject to conditions

as to notifying any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(2) A caveat may be lodged under the Land Titles Act (Cap. 157) or an entry may be made under the Registration of Deeds Act (Cap. 269), as the case may be, in respect of a charging order made under section 17.

(3) Subject to any provision made under section 19 or by Rules of Court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(4) Where a charging order has been protected by a caveat lodged under the Land Titles Act or by an entry registered under the Registration of Deeds Act, an order under section 17 (8) discharging the charging order may direct that the caveat be removed or the entry be cancelled. [14

### **Realisation of property**

**19.** —(1) Where —

(a) in proceedings instituted for a drug trafficking offence or a serious offence, as the case may be, a confiscation order is made;

(b) the order is not subject to appeal; and

(c) the proceedings have not been concluded,

the High Court may, on an application of the Public Prosecutor, exercise the powers conferred by subsections (3) to (7). [25/99]

(2) The High Court may, on the application of the Public Prosecutor, also exercise the powers conferred by subsections (3) to (7) where —

(a) a confiscation order is made against a person who is, by reason of section 26, taken to be convicted of a drug trafficking offence or a serious offence, as the case may be;



- (b) the order is not subject to appeal; and
- (c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default. [25/99]
- (3) The High Court may appoint the Public Trustee or any person as receiver in respect of realisable property.
- (4) The High Court may empower the Public Trustee or any receiver appointed under subsection (3) or section 16 or in pursuance of a charging order —
  - (a) to enforce any charge imposed under section 17 on realisable property or on interest or dividends payable in respect of such property; and
  - (b) in relation to any realisable property other than property for the time being subject to a charge under section 17, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.
- (5) The High Court may order any person having possession of realisable property to give possession of it to the Public Trustee or any receiver.
- (6) The High Court may empower the Public Trustee or any receiver to realise any realisable property in such manner as the Court may direct.
- (7) The High Court may order any person holding an interest in realisable property to make such payment to the Public Trustee or any receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (8) Subsections (5) to (7) shall not apply to property for the time being subject to a charge under section 17.
- (9) The High Court shall not in respect of any property exercise the powers conferred by subsection (4) (a), (6) or (7) unless a reasonable opportunity has

been given for persons holding any interest in the property to make representations to the Court. *[15]*

**Application of proceeds of realisation and other sums**

**20.** —(1) Subject to subsection (2), the following sums in the hands of the Public Trustee or any receiver under section 16 or 19 or in pursuance of a charging order, that is —

- (a) the proceeds of the enforcement of any charge imposed under section 17;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 16 or 19; and
- (c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the Public Trustee or receiver, he shall distribute those sums —

- (a) among such of those who held property which has been realised under this Act; and
- (b) in such proportions,

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the Court. *[16]*

**Exercise of powers by High Court or receiver**

**21.** —(1) This section shall apply to the powers conferred on the High Court by sections 16 to 20 or on the Public Trustee or any receiver under section 16 or 19 or in pursuance of a charging order.

(2) Subject to subsections (3) to (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any

confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order. [17

#### **Variation of confiscation orders**

**22.** —(1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving its reasons.

(2) For the purposes of subsection (1) —

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the High Court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the High Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable, wholly or partly, to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had, directly or indirectly, made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the High Court which made the confiscation order for the amount to be recovered under the order to be reduced.

(4) The High Court which made the confiscation order shall, on an application under subsection (3) —

(a) substitute for the amount to be recovered under the order such lesser amount as the High Court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 224 of the Criminal Procedure Code (Cap. 68) in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 14) in respect of the lesser amount. [18

**Bankruptcy of defendant, etc.**

**23.** —(1) Where a person who holds realisable property is adjudged bankrupt —

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 16 (6) or 19 (6) or (7) for the time being in the hands of the Public Trustee or a receiver under section 16 or 19,

shall be excluded from the bankrupt's estate for the purposes of the Bankruptcy Act (Cap. 20).

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 16 to 20 or on the Public Trustee or a receiver shall not be exercised in relation to —

(a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act;

(b) property which is not comprised in the bankrupt's estate by virtue of section 78 (2) of that Act; and

(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 124 (3) (c) of that Act. [15/95]

(3) Nothing in the Bankruptcy Act (Cap. 20) shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall not affect the enforcement of a charging order —

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 73 of the Bankruptcy Act and any property of the debtor is subject to a restraint order —

(a) the powers conferred on the receiver by virtue of the Bankruptcy Act shall not apply to property for the time being subject to the restraint order; and

(b) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct. [15/95]

(6) For the purposes of section 127 (2) of the Bankruptcy Act, amounts payable under confiscation orders shall constitute debts due to the Government. [19  
[15/95]

#### **Winding up of company holding realisable property**

**24.** —(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to —

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 16 (6) or 19 (6) or (7) for the time being in the hands of the Public Trustee or a receiver under section 16 or 19,

but there shall be payable out of such property any expenses (including the remuneration of the liquidator or provisional liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 16 to 20 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Act (Cap. 50) shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(4) Subsection (2) shall not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section —

"company" means any company which may be wound up under the Companies Act;

"the relevant time" means —

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the making of the application for the winding up of the company by the High Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order. [20]

**Receivers: supplementary provisions**

**25.** Where the Public Trustee or a receiver appointed under section 16 or 19 or in pursuance of a charging order takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence. [21]

**PART IV**

**APPLICATION TO ABSCONDED PERSONS**

**Absconded persons**

**26.** —(1) For the purposes of this Act, a person shall be taken to be convicted of a drug trafficking offence or a serious offence, as the case may be, if the person absconds in connection with the drug trafficking offence or the serious offence, as the case may be, and any reference in Part II to the defendant shall include reference to such a person. [25/99]

(2) For the purposes of subsection (1), a person shall be taken to abscond in connection with a drug trafficking offence if whether before or after 30th November 1993 —

- (a) investigations for a drug trafficking offence have been commenced against the person; and

(b) the person —

(i) dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, the person dies before he is convicted; or

(ii) at the end of the period of 6 months from the date on which investigations referred to in paragraph (a) were commenced against him, cannot be found, apprehended or extradited. [25/99]

(3) For the purposes of subsection (1), a person shall be taken to abscond in connection with a serious offence if, whether before or after 13th September 1999 —

(a) investigations for a serious offence have been commenced against the person; and

(b) the person —

(i) dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, the person dies before he is convicted of the offence; or

(ii) at the end of the period of 6 months from the date on which the investigations referred to in paragraph (a) were commenced against him, cannot be found, apprehended or extradited. [22 [25/99]

**Confiscation order where person has absconded**

**27.** Where a person is, by reason of section 26, to be taken to have been convicted of a drug trafficking offence or a serious offence, as the case may be, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied —

(a) on the evidence adduced before it that, on the balance of probabilities, the person has absconded; and



(b) having regard to all the evidence before the court, that such evidence if unrebutted would warrant his conviction for the drug trafficking offence or serious offence, as the case may be. [23 [25/99]

**Effect of death on proceedings**

**28.** —(1) Proceedings under this Act shall be instituted or continued against the personal representatives of a deceased defendant or, if there are no personal representatives, such beneficiary or beneficiaries of the estate of the deceased defendant as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power conferred by this Act to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant.

(3) Nothing in this Act shall subject any personal representative of the estate of the deceased defendant, or any beneficiary thereof, to any imprisonment under section 14 if the property of the estate is inadequate for the payment of any amount to be recovered under the confiscation order. [S 92/97]

(3A) Sections 4 (4), 5 (6) and (7), 7 and 8 shall not apply to any deceased defendant. [25/99]

(4) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from drug trafficking or in determining those benefits or the value of those benefits:

(a) a deceased defendant shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking if he had, at any time (whether before or after 30th November 1993) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court;

(b) the benefits derived by a deceased defendant from drug trafficking shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and

(c) the value of the benefits derived by a deceased defendant from drug trafficking shall be the aggregate of the values of those properties and interests therein less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order previously made against the deceased defendant.

(4A) For the purposes of Part II, the following provisions shall apply in determining whether a deceased defendant had derived benefits from criminal conduct or in determining those benefits or the value of those benefits:

(a) a deceased defendant shall, until the contrary is proved, be presumed to have derived benefits from criminal conduct, if he had, at any time (whether before or after 13th September 1999) since the beginning of the period of 6 years ending at the date of his death, held any property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court;

(b) the benefits derived by a deceased defendant from criminal conduct shall be any property or interest therein held by him during the period mentioned in paragraph (a), being property or interest therein disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court; and

(c) the value of the benefits derived by a deceased defendant from criminal conduct shall be the aggregate of the values of those properties and interests therein referred to in paragraphs (a) and (b) less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order or any order made under

section 13 of the Prevention of Corruption Act (Cap. 241) previously made against the deceased defendant. [25/99]

(4B) The presumption referred to in —

(a) subsection (4) shall not be rebutted merely by adducing proof to the effect that the property or interest therein was derived from criminal conduct;

(b) subsection (4A) shall not be rebutted merely by adducing proof to the effect that the property or interest therein was derived from drug trafficking. [25/99]

(5) In this section, “deceased defendant” means a person who dies —

(a) after investigations for a drug trafficking offence or a serious offence, as the case may be, have been commenced against him; and

(b) before proceedings in respect of the offence have been instituted or if such proceedings have been instituted, before he is convicted of the offence. [25/99]

(6) In this section, a reference to property or interest therein shall include a reference to income accruing from such property or interest. [24 [25/99]

#### **Service of documents on absconders**

**29.** Where any document is required under this Act to be served on a person who cannot be found or who is outside Singapore and cannot be compelled to attend before a court in respect of proceedings under this Act, the court may dispense with service of the document upon him and the proceedings may be continued to their final conclusion in his absence. [25

### **PART V**

#### **INFORMATION GATHERING POWERS**

##### ***Division 1 — Production orders***

#### **Production orders**

**30.** —(1) An authorised officer may, for the purpose of an investigation into drug trafficking or criminal conduct, as the case may be, apply to a court for an order

under subsection (2) in relation to particular material or material of a particular description. [25/99]

(1A) This section shall not apply to any material in the possession of a financial institution. [25/99]

(2) Subject to section 42 (10), the court may, if on such an application it is satisfied that the conditions to subsection (4) are fulfilled, make an order that the person who appears to the court to be in possession of the material to which the application relates shall —

(a) produce the material to an authorised officer for him to take away; or

(b) give an authorised officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking or from criminal conduct, as the case may be;

(b) that there are reasonable grounds for believing that the material to which the application relates —

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard —

(i) to the benefit likely to accrue to the investigation if the material is obtained;  
and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given. [25/99]

(5) Where a court makes an order under subsection (2) (b) in relation to material on any premises, it may, on the same or a subsequent application of an authorised officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the material.

(6) Rules of Court may provide for —

(a) the discharge and variation of orders under this section; and

(b) proceedings relating to such orders.

(7) Where the material, to which an application under this section relates, consists of information contained in or accessible by means of any data equipment —

(a) an order under subsection (2) (a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under subsection (2) (b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) In subsection (7), “data equipment” means any equipment which —

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);

(d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

(9) An order under subsection (2) —

(a) shall not confer any right to production of, or access to, items subject to legal privilege;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of a public body as defined in section 42 (11).

(10) A person is not excused from producing or making available any material when required to do so by an order under this section on the ground that —

(a) the production or making available of the material might tend to incriminate the person or make the person liable to a penalty; or

(b) the production or making available of the material would be in breach of an obligation (whether imposed by law or otherwise) of the person not to disclose the existence or contents of the material.

(11) Where a person produces or makes available any material pursuant to an order under this section, the production or making available of the material, or any information or thing obtained as a direct or indirect consequence of the production or making available of the material shall not be admissible against the person in any criminal proceedings except a proceeding for an offence against section 33 (1).

(12) For the purposes of subsection (1), proceedings on an application for a restraint order or a confiscation order are not criminal proceedings. [26

**Production orders against financial institution to produce material relating to drug trafficking or criminal conduct**

**31.** —(1) The Attorney-General or any person duly authorised by him in writing may, for the purpose of an investigation into a drug trafficking offence or a serious offence, as the case may be, apply to the High Court for an order under subsection (2) in relation to any particular material or material of a particular description. *[25/99]*

(2) The High Court may, if on such an application it is satisfied that the conditions referred to in subsection (3) are fulfilled, make an order that the financial institution which appears to the Court to be in possession of the material to which the application relates shall —

(a) produce the material to the Attorney-General or the person duly authorised by him for the Attorney-General or such person to take away; or

(b) give the Attorney-General or the person duly authorised by him access to the material,

within a reasonable period, but not less than 7 days, as the order may specify.

*[25/99]*

(3) The conditions referred to in subsection (2) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking or criminal conduct, as the case may be;

(b) that there are reasonable grounds for believing that the material to which the application relates —

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that there are reasonable grounds for believing that it is in the public interest to produce the material to which the application relates. *[25/99]*

(4) A financial institution which complies with an order made under subsection (2) shall not be treated as being in breach of any restriction upon the disclosure of information or material imposed by law, contract or rules of professional conduct. [25/99]

(5) No action shall lie against a financial institution which in good faith produces materials or gives access to materials relating to the account of its customer by reason of that financial institution having produced or given access to the materials in compliance with an order made against it under subsection (2) or any act done or omitted to be done in relation to any funds, investment or property in the account of that customer in consequence of the production of or access to those materials. [25/99]

(6) The proceedings for an application for a production order under this section shall be heard in camera. [25/99]

(7) In this section, “items subject to legal privilege” has the same meaning as in section 35 (2). [26A[25/99]

#### **Variation of production order**

**32.** —(1) Where a court makes a production order requiring a person to produce any material to any authorised officer, the person may apply to the court for a variation of the order.

(2) If the court is satisfied that the material is essential to the business activities of the person, the court may vary the production order referred to in subsection (1) so that it requires the person to make the material available to an authorised officer for inspection. [27

#### **Failure to comply with production order**

**33.** —(1) Where a person is required by a production order to produce any material to an authorised officer or make any material available to an authorised officer for inspection, the person shall be guilty of an offence under this section if the person —



- (a) contravenes the order without reasonable excuse; or
  - (b) in purported compliance with the order produces or makes available any material known to the person to be false or misleading in a material particular without —
    - (i) indicating to the authorised officer to whom the material is produced or made available that the material is false or misleading and the respect in which the material is false or misleading; and
    - (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information.
- (2) A person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both. [28

### *Division 2 — Search powers*

#### **Authority for search**

**34.** —(1) An authorised officer may, for the purpose of an investigation into drug trafficking or criminal conduct, as the case may be, apply to a court for a warrant under this section in relation to specified premises. [25/99]

(2) On such application, the court may issue a warrant authorising an authorised officer to enter and search the premises if the court is satisfied that —

- (a) an order made under section 30 or 31 in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled. [25/99]

(3) The conditions referred to in subsection (2) (b) are —

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking or from criminal conduct, as the case may be; and

(b) that the conditions in section 30 (4) (b) and (c) or 31 (3) (b) and (c) are fulfilled in relation to any material on the premises. [25/99]

(4) The conditions referred to in subsection (2) (c) are —

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking or from criminal conduct, as the case may be; and

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking or criminal conduct, as the case may be, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised. [25/99]

(5) Where an authorised officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(6) Any person who hinders or obstructs an authorised officer in the execution of a warrant issued under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both. [31]

#### **Supplementary provisions to sections 30, 32 and 34**

**35.** —(1) An authorised officer may photograph or make copies of any material —

(a) produced or to which access is given under section 30; or

(b) seized under section 34.

(2) In sections 30, 32 and 34 —

"court" means the High Court and the District Court;

"items subject to legal privilege" means —

(a) communications between an advocate and solicitor and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between an advocate and solicitor and his client or any person representing his client or between such an advocate and solicitor or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose;

"premises" includes any place and, in particular, includes —

(a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and

(b) any tent or movable structure. [23

[12/2000]

### ***Division 3 — Obligations of financial institutions***

#### **Interpretation of this Division**

**36.** —(1) In this Division —

"financial transaction document" , in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its

capacity as a financial institution, and includes but is not limited to a document that relates to —

- (a) the opening or closing by a person of an account with the institution;
- (b) the operation by a person of an account with the institution;
- (c) the opening or use by a person of a deposit box held by the institution;
- (d) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
- (e) the transmission of funds between Singapore and a foreign country or between foreign countries on behalf of a person;
- (f) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); or
- (g) records of customer identification;

"minimum retention period" , in relation to a financial transaction document of a financial institution, means —

- (a) if the document relates to the opening of an account with the institution, the period of 6 years after the day on which the account is closed;
- (b) if the document relates to the opening by a person of a deposit box held by the institution, the period of 6 years after the day on which the deposit box ceases to be used by the person; or
- (c) in any other case, the period of 6 years after the day on which the transaction takes place. *[25/99]*

(2) In sections 37 and 38, a reference to a copy includes a copy retained in the form of microfilm, microfiche, electronic records in accordance with section 9 (1) of the Electronic Transactions Act (Cap. 88) or such other form as the Monetary Authority of Singapore may approve. *[35]*

*[25/99]*

**Retention of records by financial institutions**

**37.** —(1) A financial institution shall retain, or retain a copy of, each financial transaction document for the minimum retention period applicable to the document. [25/99]

(2) A financial institution required to retain documents under this section shall retain and store them in a manner that makes retrieval of the documents reasonably practicable. [25/99]

(3) A financial institution that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000. [25/99]

(4) This section does not limit any other obligation of a financial institution to retain documents. [36]

[25/99]

**Register of original documents**

**38.** —(1) Where a financial institution is required by law to release an original of a financial transaction document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original is returned, whichever occurs first.

[25/99]

(2) The financial institution shall maintain a register of documents released under subsection (1).

[25/99]

(3) A financial institution that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000. [37]

[25/99]

**Duty to disclose knowledge or suspicion**

**39.** —(1) Where a person knows or has reasonable grounds to suspect that any property —

(a) in whole or in part, directly or indirectly, represents the proceeds of;

(b) was used in connection with; or

(c) is intended to be used in connection with,

drug trafficking or criminal conduct, as the case may be, and the information or matter on which the knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, he shall disclose the knowledge or suspicion or the information or other matter on which that knowledge or suspicion is based to an authorised officer as soon as is reasonably practicable after it comes to his attention. *[25/99]*

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000. *[25/99]*

(3) The Minister may, by regulations, prescribe requirements for any person or class of persons in relation to the circumstances, manner and means of disclosure required under subsection (1). *[25/99]*

(4) Subsection (1) or (2) does not make it an offence for an advocate and solicitor or his clerks or employees or an interpreter to fail to disclose any information or other matter which are items subject to legal privilege. *[25/99]*

(5) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question. *[25/99]*

(6) Where a person discloses to an authorised officer —

(a) his knowledge or suspicion of the matters referred to in subsection (1) (a), (b) or (c); or

(b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure imposed by law, contract or rules of professional conduct and he shall not be liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure. [25/99]

(7) Without prejudice to subsection (5) or (6), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures. [25/99]

(8) A disclosure to which subsection (7) applies shall not be treated as a breach of any restriction imposed by law, contract or rules of professional conduct. [25/99]

(9) In this section, “items subject to legal privilege” has the same meaning as in section 35 (2). [38]

[25/99]

#### **Protection where information given under section 39**

**40.** Where a person or his officer, employee or agent, gives information under subsection (1) of section 39 as soon as practicable after having the knowledge referred to in that subsection, the person or his officer, employee or agent shall be taken, for the purposes of sections 43, 44, 46 and 47, not to have been in possession of that information at any time. [39]

[25/99]

#### **Communication of information to foreign authority**

**41.** —(1) Notwithstanding section 56 or any other written law or rule of law, a Suspicious Transaction Reporting Officer may communicate any thing disclosed to him or any authorised officer under section 39 (1) to a corresponding authority

of a foreign country if the conditions specified in subsection (2) are satisfied.

[12/2000]

(2) The conditions referred to in subsection (1) are as follows:

(a) there exists an arrangement under which the corresponding authority of the foreign country has agreed to communicate to Singapore, upon Singapore's request, information received by the corresponding authority that corresponds to any thing required to be disclosed to an authorised officer under section 39 (1);

(b) the Suspicious Transaction Reporting Officer is satisfied that the corresponding authority has given appropriate undertakings —

(i) for protecting the confidentiality of any thing communicated to it; and

(ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any proceedings; and

(c) such other conditions as the Minister may prescribe. [12/2000]

(3) In this section —

"corresponding authority" , in relation to a foreign country, means the authority of that foreign country responsible for receiving information that corresponds to any thing required to be disclosed to an authorised officer under section 39 (1);

"Suspicious Transaction Reporting Officer" means an authorised officer —

(a) who has been appointed by the Minister as a Suspicious Transaction Reporting Officer for the purposes of this section; and

(b) who had his appointment as a Suspicious Transaction Reporting Officer published in the *Gazette*. [39A

[12/2000]

#### ***Division 4 — Disclosure of information held by public bodies***

##### **Disclosure of information held by public bodies**

**42.** —(1) Subject to subsection (4), the High Court may, on an application by the



Public Prosecutor, order any material mentioned in subsection (3) which is in the possession of a public body to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable if —

(a) the powers conferred on the High Court by sections 16 (1) and 17 (1) are exercisable by virtue of section 15 (1); or

(b) those powers are exercisable by virtue of section 15 (2) and the High Court has made a restraint or charging order which has not been discharged.

(2A) Where the power to make an order under subsection (1) is exercisable by virtue only of subsection (2) (b), section 15 (3) shall apply for the purposes of this section as it applies for the purposes of sections 16 and 17.

(3) The material referred to in subsection (1) is any material which —

(a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by an officer of a public body in relation to the defendant or such a person; or

(c) is correspondence which passed between an officer of a public body and the defendant or such a person.

(3A) An order under subsection (1) may require the production of all material referred to in subsection (3), or of a particular description of such material, being material in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 16, 17 or 19 or on a receiver appointed under section 16 or 19 or in pursuance of a charging order.

(5) The High Court may, by order, authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material.

(5A) The High Court shall not make an order under subsection (5) unless a reasonable opportunity has been given for an officer of the public body to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the High Court.

(7) The High Court may, by order, authorise the disclosure to an authorised officer of any material produced under subsection (1) or any part of such material.

(7A) The High Court shall not make an order under subsection (7) unless —

(a) a reasonable opportunity has been given for an officer of the public body to make representations to the Court; and

(b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking or criminal conduct, as the case may be. [25/99]

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking or criminal conduct, as the case may be. [25/99]

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 30 (2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government.

(11) In this section, “public body” means —

(a) any Ministry or Government department; and

(b) any body specified by the Minister by notification published in the *Gazette* to be a public body for the purposes of this section. [40

## PART VI

### OFFENCES

#### **Assisting another to retain benefits of drug trafficking**

**43.** —(1) Subject to subsection (3), a person who enters into, or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that by the arrangement —

(a) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person’s benefits of drug trafficking is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or

(b) that other person’s benefits of drug trafficking —

(i) are used to secure funds that are placed at that other person’s disposal, directly or indirectly; or

(ii) are used for that other person’s benefit to acquire property by way of investment or otherwise,

and knowing or having reasonable grounds to believe that that other person is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, shall be guilty of an offence. [25/99]

(2) In this section, references to any person’s benefits of drug trafficking include a reference to any property which, in whole or in part, directly or indirectly, represented in his hands his benefits of drug trafficking.

(3) Where a person discloses to an authorised officer a suspicion or belief that any property, funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based —

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he shall not be guilty of an offence under this section if the disclosure is made in accordance with this paragraph, that is —

(i) it is made before he does the act concerned, being an act done with the consent of the authorised officer; or

(ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;

(b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or rules of professional conduct; and

(c) he shall not be liable in damages for any loss arising out of —

(i) the disclosure; or

(ii) any act done or omitted to be done in relation to the property, funds or investments in consequence of the disclosure. [25/99]

(4) In any proceedings against a person for an offence under this section, it is a defence to prove —

(a) that he did not know and had no reasonable ground to believe that the arrangement related to any person's proceeds of drug trafficking;

(b) that he did not know and had no reasonable ground to believe that, by the arrangement, the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that, by the arrangement, any property was used as mentioned in subsection (1); or

(c) that —

(i) he intended to disclose to an authorised officer such suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; and

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3) (a); or

(d) that, in the case of a person who was in employment at the time in question and he enters or is otherwise concerned in the arrangement in the course of his employment, he disclosed the suspicion, belief or matter as is mentioned in subsection (3) to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures. [25/99]

(5) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 7 years or to both. [41]

[25/99]

#### **Assisting another to retain benefits from criminal conduct**

**44.** —(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that, by the arrangement —

(a) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person's benefits of criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or

(b) that other person's benefits from criminal conduct —

(i) are used to secure funds that are placed at that other person's disposal, directly or indirectly; or

(ii) are used for that other person's benefit to acquire property by way of investment or otherwise,

and knowing or having reasonable grounds to believe that that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct shall be guilty of an offence. [25/99]

(2) In this section, references to any person's benefits from criminal conduct include a reference to any property which, in whole or in part, directly or indirectly, represented in his hands his benefits from criminal conduct. [25/99]

(3) Where a person discloses to an authorised officer his knowledge or belief that any property, funds or investments are derived from or used in connection with criminal conduct or any matter on which such knowledge or belief is based —

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he shall not be guilty of an offence under this section if the disclosure is made in accordance with this paragraph, that is —

(i) it is made before he does the act concerned, being an act done with the consent of the authorised officer; or

(ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;

(b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or rules of professional conduct; and

(c) he shall not be liable in damages for any loss arising out of —

(i) the disclosure; or

(ii) any act done or omitted to be done in relation to the property, funds or investments in consequence of the disclosure. [25/99]

(4) In any proceedings against a person for an offence under this section, it is a defence to prove —

(a) that he did not know and had no reasonable ground to believe that the arrangement related to any person's proceeds derived from criminal conduct;

(b) that he did not know and had no reasonable ground to believe that, by the arrangement, the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that, by the arrangement, any property was used as mentioned in subsection (1);

(c) that —

(i) he intended to disclose to an authorised officer such knowledge, belief or matter as is mentioned in subsection (3) in relation to the arrangement; and

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3) (a);

(d) that, in the case of a person who was in employment at the time in question and he enters or is otherwise concerned in the arrangement in the course of his employment, he disclosed the knowledge, belief or matter as is mentioned in subsection (3) to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures. [25/99]

(5) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 7 years or to both. [41A]

[25/99]

**Restriction on revealing disclosure under sections 43 and 44**

**45.** —(1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged —

(a) to reveal that a disclosure was made under section 43 (3) or 44 (3);

(b) to reveal the identity of any person as the person making the disclosure; or

(c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b). [25/99]

(2) Subsection (1) shall not apply in any proceedings —

(a) for an offence under section 43 or 44 or this section; or

(b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure. [25/99]

(3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest —

(a) that a disclosure was made under section 43 (3) or 44 (3); or

(b) the identity of any person as the person making the disclosure. [25/99]

(4) In subsection (3), “information” —

(a) includes a report of any civil or criminal proceedings; and

(b) does not include information published for statistical purposes by, or under the authority of, the Government.

(5) Subsection (3) shall not apply in respect of proceedings —

(a) against the person making the disclosure for an offence under section 43 or 44; or

(b) for an offence under this section. [25/99]

(6) The court may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.

(7) If information is published or broadcast in contravention of subsection (3), each of the following persons:

(a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;

(b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;

(c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or



provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(8) In this section —

"broadcast" includes broadcast by radio, film, videotape or television;

"publish" means publish in writing. [42]

#### **Concealing or transferring benefits of drug trafficking**

**46.** —(1) Any person who —

(a) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits of drug trafficking; or

(b) converts or transfers that property or removes it from the jurisdiction,

shall be guilty of an offence. [25/99]

(2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits of drug trafficking —

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or a foreign drug trafficking offence or the making or enforcement of a confiscation order shall be guilty of an offence. [25/99]

(3) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another

person's benefits of drug trafficking, acquires that property for no or inadequate consideration shall be guilty of an offence. [25/99]

(4) In subsections (1) (a) and (2) (a), references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purposes of subsection (3), consideration given for any property is inadequate if its value is significantly less than the market value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 7 years or to both. [43

[25/99]

### **Concealing or transferring benefits of criminal conduct**

**47.** —(1) Any person who —

(a) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct; or

(b) converts or transfers that property or removes it from the jurisdiction,  
shall be guilty of an offence. [25/99]

(2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a serious offence or a foreign serious offence or the making or enforcement of a confiscation order shall be guilty of an offence. [25/99]

(3) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct, acquires that property for no or inadequate consideration, shall be guilty of an offence. [25/99]

(4) In subsections (1) (a) and (2) (a), references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. [25/99]

(5) For the purposes of subsection (3), consideration given for any property is inadequate if its value is significantly less than the market value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in criminal conduct. [25/99]

(6) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 7 years or to both. [43A

[25/99]

### **Tipping-off**

**48.** —(1) Any person who —

(a) knows or has reasonable grounds to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or any subsidiary legislation made thereunder; and

(b) discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both. [25/99]

(2) Any person who —

(a) knows or has reasonable grounds to suspect that a disclosure has been made to an authorised officer under this Act (referred to in this section as the disclosure); and

(b) discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both. [25/99]

(3) Nothing in subsection (1) or (2) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter —

(a) to, or to a representative of, a client of his in connection with the giving of advice to the client in the course of and for the purpose of the professional employment, of the advocate and solicitor; or

(b) to any person —

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings. [25/99]

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

[25/99]

(5) In proceedings against a person for an offence under subsection (1) or (2), it is a defence to prove that he did not know and had no reasonable ground to suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1) or (2). [25/99]

(6) No authorised officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other written law relating to drug trafficking or a serious offence. [43B]

**PART VII**  
**MISCELLANEOUS**

**Offence of prejudicing investigation**

**49.** —(1) Where, in relation to an investigation into drug trafficking or criminal conduct, as the case may be, an order under section 30 has been made or has been applied for and has not been refused or a warrant under section 34 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation shall be guilty of an offence. [25/99]

(2) In proceedings against a person for an offence under this section, it is a defence to prove that —

(a) he did not know or suspect that the disclosure was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

(3) Any person who commits an offence under this section shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both. [44]

**Compensation**

**50.** —(1) If an investigation is begun against a person for a drug trafficking offence or a serious offence, as the case may be, or offences and any of the following circumstances occur, namely:

(a) no proceedings are instituted against that person;

(b) proceedings are instituted against that person but do not result in his conviction for any drug trafficking offence or serious offence, as the case may be;  
or

(c) proceedings are instituted against that person and he is convicted of one or more drug trafficking offences or serious offences, as the case may be, but —

(i) the conviction or convictions concerned are quashed; or

(ii) he is granted a pardon in respect of the conviction or convictions concerned,

the High Court may, on application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, the Court considers it appropriate to make such an order. [25/99]

(2) The High Court shall not order compensation to be paid under subsection (1) unless it is satisfied that —

(a) there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and

(b) the applicant has suffered loss in consequence of anything done in relation to the property by, or in pursuance of an order of, the High Court under section 16, 17 or 19.

(3) The High Court shall not order compensation to be paid under subsection (1) in any case where it appears to the Court that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred.

(4) Without prejudice to subsection (1), where —

(a) a disclosure is made by any person in accordance with section 43 (3) in relation to any property;

(b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or a serious offence or offences any act is done or omitted to be done in relation to that property; and

(c) no proceedings are instituted against any person in respect of that offence or offences or no order is made by the High Court under section 16 or 17 in relation to that property,

the High Court may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, the Court considers it appropriate to make such an order.

[25/99]

(5) The High Court shall not order compensation to be paid under subsection (4) unless it is satisfied that —

(a) there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4) (b) would not have occurred; and

(b) the applicant has, in consequence of the act or omission referred to in subsection (4) (b), suffered loss in relation to the property.

(6) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case. [45]

### **Standard of proof**

**51.** —(1) Any question of fact to be decided by a court in proceedings under this Act shall be decided on the balance of probabilities.

(2) Subsection (1) shall not apply in relation to any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act or any regulations made thereunder. [46]

### **Conduct by directors, employees or agents**

**52.** —(1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it shall be sufficient to show that a director, employee or agent of the body corporate, being

a director, employee or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind.

(2) Any conduct engaged in or on behalf of a body corporate —

(a) by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of his actual or apparent authority, had that state of mind.

(4) Conduct engaged in or on behalf of a person other than a body corporate —

(a) by an employee or agent of the person within the scope of his actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.



(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose. [47]

**Evidence of corresponding law or foreign law**

**53.** —(1) A document purporting to be issued by or on behalf of the government of a foreign country and purporting to state the terms of —

(a) a corresponding law in force in that country; or

(b) a law in relation to a foreign serious offence in force in that country,

shall be admissible in evidence for the purpose of proving the matters referred to in subsection (2), in any proceedings under this Act or any subsidiary legislation made thereunder, on its production by the Attorney-General or by any person duly authorised by him in writing. [25/99]

(2) Such document shall be sufficient evidence —

(a) that it is issued by or on behalf of the government of the foreign country stated in the document;

(b) that the terms of the corresponding law or the law of the foreign country are as stated in the document; and

(c) that any fact stated in the document as constituting an offence under that law does constitute such offence. [50]

[25/99]

**Proof of convictions and acquittals**

**54.** —(1) For the purposes of any proceedings under this Act or any subsidiary legislation made thereunder, the fact that a person has been convicted or acquitted of an offence by or before any court in Singapore or by a foreign court, shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that

offence, whether or not he is a party to the proceedings; and where he was convicted whether he was so convicted upon a plea of guilt or otherwise. [25/99]

(2) The court shall accept the conviction referred to in subsection (1) as conclusive unless —

(a) it is subject to review or appeal that has not yet been determined;

(b) it has been quashed or set aside; or

(c) the court is of the view that it is contrary to the interests of justice or the public interest to accept the conviction as conclusive. [25/99]

(3) A person proved to have been convicted of an offence under this section shall be taken to have committed the acts and to have possessed the state of mind, if any, which at law constitute that offence. [25/99]

(4) Any conviction or acquittal admissible under this section may be proved —

(a) in the case of a conviction or acquittal before a court in Singapore, by a certificate of conviction or acquittal, signed by the Registrar; or

(b) in the case of a conviction or acquittal before a foreign court, by a certificate or certified official record of proceedings issued by that foreign court and duly authenticated by the official seal of a Minister of the country of the foreign court, giving the substance and effect of the charge and of the conviction or acquittal.

[50A

[25/99]

### **Powers of arrest and investigations**

**55.** —(1) An authorised officer or an officer of customs may arrest without warrant any person whom he reasonably believes has committed an offence under this Act or the regulations made thereunder.

(2) An authorised officer who is not a police officer may exercise all or any of the powers in relation to investigations into a seizable offence conferred on a police officer by the Criminal Procedure Code (Cap. 68) in any case relating to the

commission of an offence under this Act or the regulations made thereunder or in any case where a seizable offence is disclosed under any written law in the course of an investigation under this Act.

(3) An authorised officer who is not a police officer may be authorised by the Public Prosecutor in writing to exercise all or any of the powers in relation to investigations conferred on a police officer by the Criminal Procedure Code in any case where a non-seizable offence is disclosed under any written law in the course of investigations under this Act.

(4) In this section, “seizable offence” and “non-seizable offence” have the same meanings as in section 2 of the Criminal Procedure Code. *[51]*

#### **Preservation of secrecy**

**56.** —(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no authorised officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both. *[53]*

#### **Obstructing authorised officers**

**57.** Any person who obstructs or hinders any authorised officer acting in the discharge of his duty under this Act or any regulations made thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both. *[54]*

#### **Sanction of Public Prosecutor**

**58.** No court shall take cognizance of any offence under this Act or any regulations made thereunder except with the sanction of the Public Prosecutor.  
*[55]*

**Offences committed by body corporate**

**59.** Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. [56]

**Composition of offences**

**60.** —(1) The Minister or any person authorised by him in writing may compound any offence under this Act or any regulations made thereunder which is prescribed to be a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

(2) The Minister may make regulations to prescribe the offences under this Act or any regulations made thereunder which may be compounded. [57]

**Jurisdiction of Magistrate's Court and District Court**

**61.** —(1) A Magistrate's Court or a District Court shall have jurisdiction to hear and determine any offence under this Act and, notwithstanding anything to the contrary in the Criminal Procedure Code (Cap. 68), shall have power to impose the full penalty or punishment in respect of an offence under this Act.

(2) Nothing in subsection (1) shall be construed to confer any jurisdiction or power on a Magistrate's Court or a District Court where it is expressly provided in this Act that the High Court shall have such jurisdiction or power. [58]

**Rules of Court**

**62.** Rules of Court may provide for the manner in which proceedings under this Act may be commenced or carried on. [60]

[25/99]

**Amendment of Schedules**

**63.** The Minister may, by order published in the *Gazette*, amend the First and Second Schedules. [52]

[25/99]

**Regulations**

**64.** The Minister may make regulations for prescribing anything which is required to be prescribed under this Act and generally for carrying out the purposes and provisions of this Act. [59]

**COMPARATIVE TABLE**

The following provisions in the 1993 Revised Edition of the Drug Trafficking (Confiscation of Benefits) Act (Cap. 84A) have been renumbered by the Law Revision Commissioners in this 2000 Revised Edition of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A).

This Comparative Table is provided for the convenience of users. It is not part of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

<b>2000 Ed.</b>	<b>1993 Ed.</b>
<b>2</b> — (1) definition of “realisable property”	<b>8</b> — (1)
(2)	<b>2</b> — (3) and (4)
<b>3</b> — (1) and (2)	<b>3</b> — (1)
(3) and (4)	(1A)
(5)	(2)
<b>4</b> — (4A)	Proviso to <b>4</b> — (4)
<b>5</b>	<b>4A</b>

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<b>6</b>	<b>4B</b>
<b>7</b>	<b>5</b>
<b>8</b>	<b>5A</b>
<b>9</b>	<b>6</b>
<b>10</b>	<b>7</b>
<b>11</b>	<b>7A</b>
<b>12</b> — (1) to (7)	<b>8</b> — (2) to (8)
(8)	(8A)
<b>13</b>	<b>9</b>
<b>14</b>	<b>10</b>
<b>15</b>	<b>11</b>
<b>16</b>	<b>12</b>
<b>17</b>	<b>13</b>
<b>18</b>	<b>14</b>
<b>19</b>	<b>15</b>
<b>20</b>	<b>16</b>
<b>21</b>	<b>17</b>
<b>22</b>	<b>18</b>
<b>23</b>	<b>19</b>
<b>24</b>	<b>20</b>
<b>25</b>	<b>21</b>
<b>26</b>	<b>22</b>
<b>27</b>	<b>23</b>
<b>28</b> — (1)	<b>24</b> — (1)
(2) and (3)	(2)

(3A)	(3)
<b>29</b>	<b>25</b>
<b>30</b>	<b>26</b>
<b>31</b>	<b>26A</b>
—	<b>26B</b> ( <i>Repealed by Act 12/2000</i> )
<b>32</b> — (1) and (2)	<b>27</b>
<b>33</b>	<b>28</b>
—	<b>29</b> ( <i>Repealed by Act 12/2000</i> )
—	<b>30</b> ( <i>Repealed by Act 25/1999</i> )
<b>34</b>	<b>31</b>
—	<b>32</b> ( <i>Repealed by Act 12/2000</i> )
<b>35</b>	<b>33</b>
—	<b>34</b> ( <i>Repealed by Act 12/2000</i> )
<b>36</b>	<b>35</b>
<b>37</b>	<b>36</b>
<b>38</b>	<b>37</b>
<b>39</b>	<b>38</b>
<b>40</b>	<b>39</b>
<b>41</b>	<b>39A</b>
<b>42</b> — (1)	<b>40</b> — (1)
(2) and (2A)	(2)
(3) and (3A)	(3)
(5) and (5A)	(5)
(7) and (7A)	(7)
<b>43</b>	<b>41</b>

統合性政府倫理法制之研究

<b>44</b>	<b>41A</b>
<b>45</b>	<b>42</b>
<b>46</b>	<b>43</b>
<b>47</b>	<b>43A</b>
<b>48</b>	<b>43B</b>
<b>49</b>	<b>44</b>
<b>50</b>	<b>45</b>
<b>51</b>	<b>46</b>
<b>52</b>	<b>47</b>
—	<b>48</b> ( <i>Repealed by Act 12/2000</i> )
—	<b>49</b> ( <i>Repealed by Act 12/2000</i> )
<b>53</b>	<b>50</b>
<b>54</b>	<b>50A</b>
<b>55</b>	<b>51</b>
<b>56</b>	<b>53</b>
<b>57</b>	<b>54</b>
<b>58</b>	<b>55</b>
<b>59</b>	<b>56</b>
<b>60</b>	<b>57</b>
<b>61</b>	<b>58</b>
<b>62</b>	<b>60</b>
<b>63</b>	<b>52</b>
<b>64</b>	<b>59</b>



## 附錄 3-5 香港政府倫理法制

### 壹、香港政府倫理法制沿革與背景

#### 一、前言

十九世紀英國發動對華鴉片戰爭後，經過三個不平等條約的簽署（即西元 1842 年的南京條約、1860 年的北京條約、1898 年的中英展拓界址條約），香港地區逐步淪為大英帝國的殖民地之一。

在英國長期的殖民統治之下，香港地區隨著時間的流逝，經濟發展程度日趨提升，終至成為國際所公認的貿易中心，擠身與台灣、南韓、新加坡並列為亞洲四小龍。遺憾的是，儘管香港地區在經濟上展現出傲人的成果，其內部一直存在「貪污」的隱憂，在香港地區似乎是如影隨形般與經濟發展伴隨著，也無時無刻不斷威脅著此地各項建設與社會安定。因此，為了杜絕此一大患，香港政府乃決心致力於廉政建設。經過了數十年之努力，終於逐步改革設計出一套著有成效、令人羨慕之廉政制度。

#### 二、香港貪污盛行之時代背景

關於香港貪污盛行之時代背景，可以從以下幾方面予以觀察：

##### （一）、港英政府在香港專利經營鴉片

自十九世紀以來英國發動鴉片戰爭，進而宣布香港成為自由港之後，香港就成為一個著名的鴉片加工與轉銷再出口中心，並與清政府進行長期大宗鴉片買賣交易，而大量毒品加工與交易行為，一直由港英政府所專利經營，因此，在此過程中，自然不乏有官員藉以生財之貪污受賄機會。

##### （二）、政制設計侷限人民直接參政之機會

由於政府的運作程序不為一般人民所了解，官民之間可以溝通的渠道又很少，所以一旦人民不得不與政府做接觸時，就容易尋求各種關係或走後門

等途徑以遂其願，而在此一過程中，無形中也就助長了官員貪污的動機，進而促使行賄或是受賄等貪污犯行大為增加。

### (三)、官話不通阻斷民間之直接溝通

在大英帝國統治下，港英政府將英語定為法定官方語言，但當時的香港，一般人民知識水準並不高，很多人不懂得英語，因此無法與官方做接觸，一旦為了滿足各項生活上之需求，就會委託中間人去行賄政府官員，另外有些人為了避免從事各項不法勾當而遭檢控，亦會定期或不定期提供好處給相關政府官員，所以產生了不少貪污的機會！

### (四)、行政效能偏低成為貪污的誘因

香港是一個商品經濟高度發達的社會，激烈的商業競爭對人民產生巨大的經濟壓力，由於政府工作效率和辦事效能低，商人為推動行政機器加速運轉，只好以金錢疏通。而與此構成循環的是，官員為收取賄金，通常又是以設置障礙或扯皮拖延為威嚇手段。結果行政機構的輪子越轉越慢，幾乎達到轉不動的地步，為了避免商業機會在行政扯皮中丟失，產生「運轉費」這種特殊商品似乎成為天經地義的事。而行政效能的故意日益偏低與加速運轉費的不惜給予，也逐漸形成一股龐大的貪污腐風與商業慣習。

綜上所述，各種時代背景因素使然，使得貪污在香港成為一種習慣與突出的社會現象，因此貪污在香港這樣的一個殖民地社會，有著根深蒂固的歷史淵源和人文條件，為了徹底杜絕此一貪污腐風，港英政府不斷採行各項措施以打擊貪污，而其肅貪機構，也有著一連串的沿革改進。

## 三、香港廉政肅貪機構之沿革

### (一)、反貪污科(The Anti-Corruption Branch 簡稱 ACB)時期(1952-1970)

根據 1948 年的〈防止貪污條例〉的授權，在香港警署的「犯罪調查處」(The Criminal Investigation Department 簡稱 CID) 之下，設立了「反貪污科」，儘管港英政府做了些組織上之調整，但反貪污科隸屬於警務系統，以致無法發揮肅貪功能一事，仍然使得港府不斷受到指責與批評，換言之，儘管反貪污科一直持續不斷地努力，但成果有限。

## (二)、反貪污辦公室 (Anti-Corruption Office 簡稱 ACO) 時期 (1970-1974)

反貪污辦公室於 1970 年成立，其肅貪成果頗為輝煌，相較於以往的反貪污科時期，反貪污辦公室時期偵辦移送貪污案件的效率更高（反貪污科五年間僅移送約 140 件，而反貪污辦公室再二年內就移送 152 件貪污案），所以當時的港督麥理浩（Sir Murray Maclehoze）對此甚為讚賞，亦連帶促使警察機關主動進行多項改革，以減少警員非法貪污的機會。

上述的績效表現不俗，所以警察機關的自信大為提升，因而也就更加反對將肅貪機關獨立於警務系統之外，不過，1973 年 6 月，因為爆發一名高級英籍總警司彼得葛柏（Peter Godber）涉嫌多件重大貪污案件，並且居然能夠順利潛逃回英國，促使外界對原有的體制感到徹底失望，而民眾對於設立一獨立於任何政府部門之外的專責肅貪機構，在此時也達到前所未有的冀望程度，最後為了順應時勢所需，港英政府終於在 1974 年 2 月 15 日需布成立一個獨立的反貪污委員會，亦即一般所謂的「總督特派廉政專員公署」

（Independent Commission Against Corruption）。

## (三)、廉政公署 (Independent Commission Against Corruption 簡稱 ICAC) 時期 (1974-迄今)

香港九七回歸之後，現行香港地區的肅貪專職機構，全稱為「香港特別行政區廉政專員公署」，在港英政府時期，它的全名是「總督特派廉政專員公署」（Independent Commission Against Corruption）簡稱為「廉政公署」。廉政公署擁有廣泛的調查權力，因此亦需要有完善的監察與制衡機制去防止濫權，主要包括：

### 1. 行政長官/行政會議：

- (1) 廉政公署直接向行政長官負責。
- (2) 廉政專員定期向行政會議匯報。

### 2. 立法會：

- (1) 立法會可要求廉政專員出席立法會議，解答有關聯政公署的政策及經費問題。

(2).立法會賦予或解除廉政公署的權力。

3.獨立檢控權：

調查後決定檢控與否屬律政司司長權力。調查和檢控權分立，此乃確保廉政公屬不會濫用權力的重要一環。

4.司法監督：

司法獨立對確保廉政公屬不會越軌尤為重要。在司法監督之下，廉署行使某些權力前，須事先獲得法庭的准許，同時對於法官就調查工作提出的意見或批評，廉署會謹慎研究，並就執法程序進行檢討，以確保權力不會被濫用。

5.諮詢委員會：

行政長官委任大約四十名社會賢達，組成四個諮詢委員會，負責監察廉政公屬各方面的工作，其委員會包括：

- (1).貪污問題諮詢委員會：負責監察廉政公署的整體工作方針及提供政策上的意見。
- (2).審查貪污舉報諮詢委員會：負責監察廉政公署的調查工作。
- (3).防止貪污諮詢委員會：向廉政公署建議防貪研究的優先次序及審閱公署完成所有防貪研究報告。
- (4).社區關係市民諮詢委員會：向廉政公署建議推行倡廉教育及爭取各界支持的策略。

#### 四、香港廉政之相關法制配合

香港廉政建設之有成，實有賴於廉政公署本身肅貪倡廉功能之充分發揮，但廉署設計上應有職能之完全施展，乃是各相關法制大力配合的結果，尤其司法制度、公務員制度，均是攸關廉政成效的一些法制設計，共同促成了廉政的建設。

(一)、防止貪污條例：

「防止貪污條例」是香港於 1948 年修正有關於貪污法律的基礎上形成的，是年 7 月 30 日公佈施行，之後又經過 1949 年及 1950 年的修訂，該條例共十二條，就貪污犯罪的認定、刑罰、起訴、證據等方面做出規定。

(二)、防止賄賂條例：

1. 「防止賄賂條例」於 1971 年 5 月 14 日頒布施行，是繼「防止貪污條例」之後又一重要肅貪法例。

就二個法例比較而言，「防止賄賂條例」在條款上更具體、明確，適用範圍更廣，可以說是針對「防止貪污條例」進行補充、修訂和完善的產物，因而成爲廿年來香港肅貪機構（廉政公署）的最重要法律武器。適如該條例前言的開宗明義：「本條例旨在對防止賄賂及有關事項做更詳盡之規定。」該條例分爲 5 部 35 條，第一部爲總則，第二部爲違例事項，第三部爲調查權力，第四部爲證據，第五部爲雜項規定。其中「無法解釋條款」更是現行香港廉政公署的執法利器。

2. 「無法解釋」條款：

「防止賄賂條例」第十條規定，任何現任或曾任官方雇員的人，維持或高於其現在或過去的公職薪俸相稱的生活水準；或控制與其現在或過去的公職薪俸不相稱的金錢資源或財產，除非就其如何能維持該生活水準或就該等金錢資源或財產如何歸其控制向法庭做出圓滿解釋，否則即屬犯罪。

在因控制與其現在或過去的公職薪俸不相稱金錢資源或財產而進行的法律程序中，法庭經顧及任何人與被告關係密切程度及其他情況後，如信納有理由相信該人爲被告以信託形式持有或以其他方式代被告持有金錢資源或財產，或因被告的餽贈而獲取該等金錢資源或財產，則在沒有相反證據的情形下，該等金錢資源或財產須推定爲由被告控制。

據此，廉署人員不必調查嫌疑人有無具體實際的貪污行爲，只要能夠證明其所維持之生活水準或所擁有的金錢資源或財產，高於其正常薪俸所得所能顯現之情況，而當事人對此又無法做出圓滿且令人滿意之解釋時，廉署及可依法提出檢控，進而由法庭將之審判定罪。

因爲有此條規定，廉政公署才能極力發揮應有之肅貪功能，進而受到社

會大眾之支持、信任與肯定。

## 五、香港公務員制度與廉政

公務員團隊，乃是一個國家行政上最重要的主體，政府是否廉潔，往往是透過公務員的行為來體現，所以上述肅貪倡廉之沿革，落實到有關公務員之層面，也就形成香港政府倫理法制的基礎，其中公務員制度尤其重要。

香港公務員事務局負責公務員隊伍的整體管理和發展。其中三份重要文件：「公務人員(管理)命令」、「公務人員(紀律)規例」和「公務員事務規例」列出管理公務員權力的來源及執行管理工作的架構。

「公務人員(管理)命令」是行政長官參照行政會議的意見，於1997年7月根據「基本法」第48(4)條制定的。該命令列名行政長官有權根據該命令聘任、解雇和紀律處分公務人員、處理公務人員的申述、制定紀律規例，以及把某些權利和職務轉授他人。這些規定，大部分都是改編自1997年7月1日之前在本港施行的「英皇制誥」和「殖民地規例」中相應的條文。制定該命令使管理公務員方面的基本架構得以延續。

「公務人員(紀律)規例」是根據「公務人員(管理)命令」而制定的，並規管紀律處分的事宜及解雇公務員的程序。除了部分需受各有關條例管限其紀律的公務人員(主要是紀律部隊員佐級人員)外，該規例適用於其餘大部分公務人員。

「公務員事務規例」是行政長官制定或授權制定的行政規例。這套規例詳列了公務員事務局局長以及各部門或職系首長執行對公務員隊伍的日常管理工作的權力、公職人員的聘用條款和服務條件，以及在紀律和工作表現方面應該符合的標準，是管職雙方在公務員的日常管理上主要的參考依據。公務員事務局會發出各種通告及通函，已對各條規例作出補充和闡釋。公務員事務局局長獲得授權，可以修訂、補充、施行、解釋和批准豁免遵行「公務員事務規例」。

## 貳、公共服務倫理核心價值

一、公務員必須時刻奉公守法、嚴格遵守政府規例，必須盡忠職守，履行職務時全力以赴，時時刻刻以政府的利益為依歸。簡而言之，公務員應達到下列的品格及操守總則：

- (一)、無論對待市民大眾或同事，必須誠實公正，以負責、公平的態度履行職務。
- (二)、不得以權謀私，亦不應令自己除處於本身利益與公職有衝突或使人有理由懷疑本身利益與公職存在的境況。
- (三)、不得有任何令人懷疑公務員隊伍是否公正，或令政府聲譽受損的活動或行為。

二、公務員廉潔奉公，是令公眾繼續信任和支持政府的關鍵。因此，當香港政府致力令公務員隊伍保持高度的誠信和操守。香港政府有一套基本的共同念，各級管理人員應該以身作則和起領導作用，使這些信念得以傳播、培養及發揚。這套信念可以歸納為以下幾點：

- (一)、堅守法治。
- (二)、守正忘私。
- (三)、對在履行公職時所做出的決定核行動負責。
- (四)、政治中立。
- (五)、在執行公務時不偏不倚。
- (六)、全心全意、竭盡所能，以專業精神服務市民。

### 叁、香港政府倫理法制負責與執行架構

#### 一、香港公務員事務局職權與結構

香港公務員事務局係香港政府屬下 11 個決策局之一，負責管理整體公務員隊伍的政策工作，包括公務員的招聘、薪俸及服務條件、人事管理、人力統籌、培訓、紀律及政府內部法定語文政策。香港公務員事務局負責香港公務員隊伍的整體管理與發展，主要依據為「公務員（管理）命令（詳見附錄 3-5-2）」、「公務員（紀律）規例」和「公務員事務規例」。主要規範如下：

- (一)、「公務員（管理）命令（詳見附錄 3-5-2）」是行政長官參照行政會議的意見，根據香港特別行政區基本法（詳見附錄 3-5-1 務人員、處理公務人員的申訴、制定紀律規例，以及把某些職務或權力轉授於他人。
- (二)、「公務員（紀律）規例」係根據「公務員（管理）命令」（詳見附錄 3-5-2 律部隊昨及人員外，其餘公務人員均適用之。
- (三)、「公務員事務規例」是行政長官或授權制定的規例，詳列了公務員事務局局長以及各部門或職系首長執行對公務員隊伍日常管理工作的權力、公務人員聘用條款或服務條件、以及在紀律和工作表現方面應該符合的標準，係上下級公務人員日常管理上主要的參考依據。

#### 二、品行紀律事務部

香港公務員事務局其下設置「品行紀律事務部」，主掌香港公務員倫理方面之行爲，其職責範圍如下：

- (一)、負責品行和紀律事宜。
- (二)、根據《公務人員(管理)命令》（詳見附錄 3-5-2）第 12 條有關的規定，為公眾利益而著令公務員退休。



- (三)、負責停職事宜。
- (四)、根據《公務人員(管理)命令》(詳見附錄 3-5-2) 第 20 條就有關紀律及為公眾利益而被著令退休個案，提出上訴及司法覆核的個案。
- (五)、監察由廉政公署轉介的個案。
- (六)、負責接受利益事宜。
- (七)、促進公務員的廉潔操守。
- (八)、公務員與問責制主要官員共事時的角色和責任。
- (九)、負責與公務員參與政治活動有關的事宜。
- (十)、負責為公務員提供法律援助事宜。

#### 肆、財產申報制度相關規範

香港公務員申報利益制度，香港自回歸以來就開始實行，當時特區政府依照《基本法》和有關法例規定，行政長官就任時須向終審法院首席法官申報財產，作為政府高級官員的行政會議成員也須進行利益申報，有關資料現可供市民查閱。香港政府在公務員申報私人投資方面的現行政策，是致力在下列二方面取得合理平衡為準則，及一方面要保障公務員私人投資和隱私的權利，另一方面也要維護公務員不偏不倚及向公眾交代的原則。

##### 一、現行有關申報私人投資的制度有以下主要特點

- (一)、須定期作出申報的職位分為兩層。第一層包括可取得高度敏感資料的局長級最高層公務員職位。第二層職位包括所有首長級職位和局長、部門首長指定為有較多機會引致利益衝突情況的職位。
- (二)、第一層和第二層人員分別須每年及每兩年一次申報其所有投資。在每年或每兩年一次申報期間，他們如有任何相當於或超過 20 萬元或三個月薪金(以較少者為準)的投資交易，均須在七天內呈報。

- (三)、所有第一層和第二層人員均須申報其配偶的職業。
  - (四)、第一層人員更須每年登記其投資及權益，登記資料供市民索閱。
  - (五)、非擔任指定職位的公務員，毋須定期申報投資。不過，所有公務員均有責任避免發生利益衝突的情況，並於必要時需申報個別的投资。
- 二、除上述申報規定外，各局、部門可根據個別的具體情況和運作需要，訂定補充申報規定，供員工遵守。這些規定具有等同「公務員事務規例」的約束力。目前，香港政府有 29 個局、部門已制定附加的申報指引，涵蓋的局、部門職位超過 52000 個。這些附加指引包括：規定公務員須申報某些指定行業的投資交易(不論數額或有關人員是否擔任第一層或第二層職位)；如配偶或親屬任職的公司與有關局、部門有公務往來時，須申報其工作；須更頻繁地申報投資；以及某些職系人員在受聘時須申報投資。有些局、部門亦會就指定的行業或業務範圍訂定投資限制。
- 三、如發現實質或可能出現利益衝突的情況，基於運作需要和有足夠法理依據，管理層可採取適當的措施，例如可要求有關人員放棄相關投資、停止購入或出售相關投資，或把相關投資交由他人全權託管。
- 四、罰則：不遵守相關的規定向香港公務員事務局申報者，屬違紀行為，違紀人員可能因此而被革職或迫令退休。公務員如以權謀私(例如利用公職取得敏感資料而謀取個人利益)，可遭受刑事起訴。視乎案情而定，相關人員可能遭香港政府根據普通法起訴以公職行為不當罪名，如因此而涉及索取或收受利益，則可能觸犯「防止賄賂條例」(詳見附錄 3-5-4)之規定。

## 伍、利益衝突迴避相關規範

### 一、在職公務員

香港政府明白的指示，規定公務員必須時刻保持警覺，避免任何實際上

或表面上有利益衝突的情況。如果出現這些情況，必須立即向上司報告。公務員要保持廉潔，基本規則是避免出現利益衝突的情況，無論如何，公務員均不得：

(一)、利用公職，為自己、家人、親友、曾欠下人情或有恩惠於自己的任何人士謀求利益。

(二)、令自己處於下列境況：令人有理由懷疑自己不誠實，或利用公職為自己、家人或親友謀求利益。

## 二、離職公務員

離職後利益衝突，根據《退休金條例》（第 89 章）第 16 條及《退休金利益條例》（第 99 章）第 30 條，已獲發退休金的公務員如在退休後兩年內（或行政長官所定的更長時間內）從事業務或受僱工作，而這些業務或工作主要在香港進行，須事先取得行政長官批准。因此，香港政府對於公務員離職後利益衝突的住要政策方針為旨在確保公務員在離職前休假期間或離職後，不會在政府以外從事可能與其過往政府職務有實際或潛在利益衝突，或引起公眾負面看法致令政府尷尬及影響公務員形象的工作，同時不過分約束個別公務員在停止政府職務後就業或從事其他工作的權利。

### (一)、首長級公務員

- 1.規管範圍：所有首長級公務員，不論聘用條款及離職原因，如在離職前休假期間或在離開政府後的指定管制期內擔任外間工作，而有關工作主要在香港進行，不論受薪與否，兼職或全職，均須事先取得批准。
- 2.管制期：由有關人員正式離開政府後（如在離職前休假，則在休假屆滿後）開始計算。在管制期內，有關人員必須事先取得批准方可擔任外間工作。不同類別首長級人員有不同的管制期，視乎他們離職前服務政府的年資而定，大部分首長級人員的管制期為兩年，較高級的首長級人員的管制期則為三年。
- 3.審查準則：兩項主要考慮因素，是（1）有關工作是否與申請人的前政府職務構成實際或潛在的利益衝突，以及（2）擬從事的工作是否在任

何方面引致公眾的負面看法。我們會公布具體標準，確保有關方面，包括常任秘書長、部門及職系首長，能徹底審核，並以劃一標準處理申請。

4. 工作範圍方面的劃一限制：大體上，首長級人員個人不得直接或間接參與任何競投政府土地、物業、計劃、合約或專營權，或參與和其任職政府最後三年（或更長時間）期間擔任職務在某些方面（如政策制訂或決策、接觸過的敏感資料等）有關連的工作。有關人員亦一律不得參與任何會令政府尷尬或損害公務員聲譽的活動。除上述限制外，香港政府可視個別情況就工作範圍訂定額外的限制。
5. 禁制期：已經或行將按可享退休金條款或新長期聘用條款退休的首長級薪級表第 4 點或以上（或同等薪點）人員，其最短禁制期為十二個月，而首長級薪級表第 4 點以下（或同等薪點）人員的最短禁制期則仍為六個月。鑑於此兩類人員職責輕重有別，而且所接觸的敏感資料亦有多寡之分，訂定不同的最短禁制期是合理的。在有需要更有效地防止利益衝突及避免公眾負面看法的情況下，香港政府會訂定更長的禁制期。如離職人員打算在（1）慈善、學術或其他主要不涉及商業運作的非牟利機構（2）非商業性質的區域擊國際組織（3）中央機構的非商業機構工作，而有關工作不會構成利益衝突或不大可能引起社會負面看法，政府可考慮縮短最短禁制期。至於其他外間工作（尤以商業性質工作為然），政府會嚴格執行有關最短禁制期的規定，除非有特別考慮因素，以及有關工作明顯不會引起利益衝突及公眾負面看法。舉例來說，特別考慮因素包括有關人員擬從事的工作涉及重大的公眾利益，以及有充分理由予以體恤考慮的個人情況。至於並非即將已經按可享退休金條款或新長期聘用條款退休的首長級人員，例如合約人員及辭職人員，由於他們的情況各異，政府不會為他們訂定最短禁制期。這些人員若擔任外間工作，政府會按個別情況考慮禁制期的長短。
6. 離職前休假期間擔任外間工作的限制：有關人員在離職前休假期間擔任外間工作同樣受到有關禁制期的規定所規管。此外，由於首長級人員在離職前休假期間仍以公務員身份獲支全薪，因此，除非有特別考慮因素而又不涉及雙重身分的問題，否則在此期間不得擔任任何全職受薪工作或任何商業性質（包括自僱）的工作。

- 7.透明度（資訊公開）：鑑於高級首長級公務員較其他人員接觸更多敏感資料，且在政府內較具影響力，公眾普遍對這些人員擔任外間工作較為關注。為提高透明度，如首長級薪級表第 4 點或以上（或同等薪點）人員接受獲准擔任的外間工作，有關的基本資料(如該員在政府擔任的最後職位、停止職務的日期、外間僱主的身分(如適用)等)將會載列於一登記冊內，供市民索閱。有關資料會在登記冊內保留至該員的管制期屆滿，或該員已停止從事該項外間工作為止，兩者以較早者為準。至於首長級薪級表第 4 點以下（或同等薪點）首長級人員擔任的獲准外間工作，若公眾對有關外間工作是否恰當表示關注，政府會按個別情況披露有關資料，以回應公眾查詢或質詢。
- 8.懲處及監察：管制首長級公務員在停止職務後接受外間工作的措施，基本上仍是一個以信譽為基礎的制度。但政府會清楚告知所有首長級人員，如在停止政府職務後違反有關擔任外間工作的規定，公務員事務局局長會視乎違規行為的性質及嚴重程度，考慮根據退休金條例停止發放退休金，或實施（1）循民事途徑禁制或索賠（2）撤回批准（3）在一段指定時間撤銷批准（4）如涉及專業失當或行為不當，或可能違反相關專業行為的守規，向相關專業機構報告（5）發表公開譴責聲明（6）把譴責信載列入登記冊內，供市民查閱（7）提供譴責信副本給於該員的僱主（8）提供警告信給於該員的僱主的懲處。為了促使有關人員遵守政府就其獲准受僱工作所訂定的任何限制，有關人員在開始擔任有關工作前，須通知其準僱主政府給予批准時所訂的條件，包括禁制期或工作範圍的限制。就所有獲准的外間工作，有關人員須向政府確認開始從事獲准工作的日期，報告獲准工作是否有任何實質改變，以及每年或應公務員事務局要求滙報其參與獲准工作的最新情況。
- 9.退休公務員就業申請委員會：首長級人員擔任外間工作的申請，繼續交由獨立的退休公務員就業申請諮詢委員會，以徵詢其意見。這是審查程序的重要一環，有助確保所有個案均獲公平處理。

## (二)、非首長級公務員

按可享退休金條款退休的非首長級人員的退休後就業申請，由所屬部門

首長或職系首長審議及決定，而有關數據摘要則提交退休公務員就業申請委員會備悉。

## 陸、收受利益、款待與相關規範

以下的情形是依據「防止賄賂條例」（詳見附錄 3-5-4）第三條之規定，由行政長官公告公務員可以接受利益的範圍，違反者將依第三條遭到廉政公署的起訴。

### 一、行政長官公告一般許可接受利益範圍

(一)、公務員親屬所給於的禮物（包括金錢及其他禮物）、折扣、貸款、機費、船費及車費，其所稱之親屬如下：

1. 配偶（包括妾）。
2. 與公務員共同生活，如同夫妻的任何人員。
3. 未婚夫或妻。
4. 父母、繼父母、合法的監護人。
5. 配偶的父母、配偶的繼父母、配偶的合法的監護人。
6. 祖父母、曾組父母。
7. 子女或由法院判定受其監護者。
8. 配偶的子女或由法院判定受配偶監護者。
9. 男女孫或南外孫女。
10. 子女的配偶。
11. 兄弟姊妹。
12. 配偶的兄弟姊妹。

- 13.異父或異母的兄弟姊妹。
  - 14.繼父與前妻或繼母與前夫所生之子女。
  - 15.兄弟姊妹的配偶。
  - 16.兄弟姊妹的子女。
  - 17.父母的兄弟姊妹。
  - 18.父母的兄弟姊妹的配偶。
  - 19.父母的兄弟姊妹的子女。
- (二)、以私人身分向商人、商號、公司、機構或會社索取或接受其所給予的禮物（包括金錢及其他禮物）、折扣、貸款、機費、船費及車費：
- 1.配偶、父母或子女的受僱規定可享有此等利益者。
  - 2.本人、或其配偶、父母或子女為某機構或會社的成員而享有此種利益者。
  - 3.本人、或其配偶、父母或子女為某長期顧客而享有此種利益者。
  - 4.在正常運作下而享有此種利益者。
  - 5.以上之情形，需非公務員者亦可享有此等利益或給於利益之人與公務員並無公事往來時，方得適用。
- (三)、私交友好給予的利益
- 1.向私交友好要求貸款或接受之貸款，每次以不超過 2000 元為限。但必須在 14 天內還清。
  - 2.接受（不得索取）私交友好於公務員的生日、結婚、結婚週年、訂婚或洗禮等場合，或於傳統上有致送或交換禮物習慣的節日所餽贈的一份或多份禮物（包括金錢及其他禮物）、機費、船費及車費，但每人在每一場合或節日所餽贈的禮物或旅費總值或表面總值不得超過 2000 元。
  - 3.接受（不得索取）私交友好於上述以外任何場所所餽贈的一份或多份禮物（包括金錢及其他禮物）、機費、船費及車費，但每人在每一場合或節日所餽贈的禮物或旅費總值或表面總值不得超過 400 元。

以上之情形，須非私交友好與公務員所服務的部門或機構並無公事往來；私交友好與公務員在同一部門或機構工作而該友需非公務員之下屬；或上述所稱之禮物或旅費，其該公務員須非以公務員身分或因當時所任職未出席者有關場合而接受者，方得適用。

(四)、凡公務員均獲准政府給予之下列利益

- 1.接受（不得索取）「公務員事務規例」准許或根據公務員僱用或聘用條款或條件准許公務員退休或其他情況下接受的禮物（不包括金錢餽贈）、機費、船費及車費。
- 2.索取或接受由任何政府員工福利基金撥給或支付或政府根據「公務員事務規例」准許或根據公務員僱用或聘僱條款及條件准許接受的金錢餽贈、貸款、津貼及墊款。
- 3.索取或接受根據「公務員事務規例」提供或根據公務員僱用或聘僱條款及條件准許接受的任何機費、船費或車費。

## 二、行政長官公告特別許可接受利益範圍

(一)、向授權機關申請准予接受旅費以外之利益

- 1.公務員如欲接受非「一般許可接受利益」所准許的任何禮物（不論屬於金錢及其他形式禮物）、折扣或貸款，則須在對方提出致送或正式致送該利益的合理期間內，儘訴請求機關批准該利益。
- 2.公務員如欲索取非「一般許可接受利益」所准許的任何禮物（不論屬於金錢及其他形式禮物）、折扣或貸款，則須於索取前，請求授權機關批准該利益。
- 3.就禮物方面（不包括金錢），授權機關可以
  - (1).准許該公務員無條件或按照授權機關所指定條件索取或接受該禮物。
  - (2).拒絕准許該公務員索取或接受該禮物，如該禮物已至該員者，則可以命令該員將禮物交回饋贈人；或命令將禮物轉送往由該員提議而經授權機關認可的慈善機構；或按機關指示以其他方式處置。



4.就折扣方面，授權機關可以

- (1).准許該公務員無條件或按照授權機關所指定條件索取或接受該折扣。
- (2).拒絕准許該公務員索取或接受該折扣，如該員已接受或享有該折扣，則命令該員將相等於所獲折扣價值的款項付還於餽贈人。

5.就金錢餽贈及貸款方面，授權機關可以

- (1).准許該公務員無條件或按照授權機關所指定條件索取或接受該金錢餽贈及貸款。
- (2).拒絕准許該公務員索取或接受該款項，如款項已交予該員者，則可以命令該員將款項交回饋贈人或貸與人；或命令按機關指示以其他方式處置。

(二)、接受旅費的許可

1.公務員如欲接受非「一般許可接受利益」所准許的機費、船費及車費，則須在對方給予該旅費，或致送相關票卷前，儘速請求下述人批准該利益：

- (1).行政長官。
- (2).財政司司長。
- (3).公務員事務局局長。
- (4).終審法院首席法官。
- (5).該公務員當時所受僱的局內相關的常任秘書長或部門首長或機構內擔任等同部門首長職位之人。

2 公務員如欲索取非「一般許可接受利益」所准許的機費、船費及車費，則須在索取該旅費前，請求下述人批准該利益：

- (1).行政長官。
- (2).財政司司長。
- (3).公務員事務局局長。

- (4).終審法院首席法官。
- (5).該公務員當時所受僱的局內相關的常任秘書長或部門首長或機構內擔任等同部門首長職位之人。

## 柒、政治活動與外間工作相關規範

### 一、參與政治及助選活動

公務員和市民一樣，享有公民及政治權利，但另一方面，社會大眾需要公務員隊伍保持政治中立。在現行政策下，香港政府力求在兩者之間取得合理的平衡。為了符合此原則，香港政府雖不反對個別公務員參加與本身職務無利益衝突的政治及助選活動，但對公務員申報利益制度，香港自回歸以來就開始實行，當時特區政府依照《基本法》和有關法例規定，行政長官就任時須向終審法院首席法官申報財產，宣誓就職時再次申報；作為政府高級官員的行政會議成員也須進行利益申報，有關資料現可供市民查閱。於某些高級官員或因本身工作性質而特別容易被視為有偏私之嫌的人員，則會被禁止參與任何政治及助選活動，這些人員包括所有首長級人員、政務主任、新聞主任，以及警務處的紀律部隊人員。

### 二、外間工作

香港政府有權隨時徵用公務員提供服務。公務員在辦公時間內或以外從事任何受薪的外間工作，或在辦公時間從事無薪的外間工作，均須事先申請批准。一般而言，公務員不得從事任何可能影響工作表現或可能與公職利益衝突的外間工作。

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## 附錄 3-5-1 中華人民共和國香港特別行政區基本法摘錄

### 第四章 政治體制

#### 第一節 行政長官

第四十三條 香港特別行政區行政長官是香港特別行政區的首長，代表香港特別行政區。

香港特別行政區行政長官依照本法的規定對中央人民政府和香港特別行政區負責。

第四十四條 香港特別行政區行政長官由年滿四十周歲，在香港通常居住連續滿二十年並在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。

第四十五條 香港特別行政區行政長官在當地通過選舉或協商產生，由中央人民政府任命。

行政長官的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。

行政長官產生的具體辦法由附件一《香港特別行政區行政長官的產生辦法》規定。

第四十六條 香港特別行政區行政長官任期五年，可連任一次。

第四十七條 香港特別行政區行政長官必須廉潔奉公、盡忠職守。

行政長官就任時應向香港特別行政區終審法院首席法官申報財產，記錄在案。

第四十八條 香港特別行政區行政長官行使下列職權：

(一) 領導香港特別行政區政府；

- (二) 負責執行本法和依照本法適用於香港特別行政區的其他法律；
- (三) 簽署立法會通過的法案，公佈法律；  
簽署立法會通過的財政預算案，將財政預算、決算報中央人民政府備案；
- (四) 決定政府政策和發佈行政命令；
- (五) 提名並報請中央人民政府任命下列主要官員：各司司長、副司長，各局局長，廉政專員，審計署署長，警務處處長，入境事務處處長，海關關長；建議中央人民政府免除上述官員職務；
- (六) 依照法定程序任免各級法院法官；
- (七) 依照法定程序任免公職人員；
- (八) 執行中央人民政府就本法規定的有關事務發出的指令；
- (九) 代表香港特別行政區政府處理中央授權的對外事務和其他事務；
- (十) 批准向立法會提出有關財政收入或支出的動議；
- (十一) 根據安全和重大公共利益的考慮，決定政府官員或其他負責政府公務的人員是否向立法會或其屬下的委員會作證和提供證據；
- (十二) 赦免或減輕刑事罪犯的刑罰；
- (十三) 處理請願、申訴事項。

第四十九條 香港特別行政區行政長官如認為立法會通過的法案不符合香港特別行政區的整體利益，可在三個月內將法案發回立法會重議，立法會如以不少於全體議員三分之二多數再次通過原案，行政長官必須在一個月內簽署公佈或按本法第五十條的規定處理。

第五十條 香港特別行政區行政長官如拒絕簽署立法會再次通過的法案或立法會拒絕通過政府提出的財政預算案或其他重要法案，經協商仍不能取得一致意見，行政長官可解散立法會。

行政長官在解散立法會前，須徵詢行政會議的意見。行政長官在其一任任期內只能解散立法會一次。

第五十一條 香港特別行政區立法會如拒絕批准政府提出的財政預算案，行政長官可向立法會申請臨時撥款。如果由於立法會已被解散而不能批准撥款，行政長官可在選出新的立法會前的一段時期內，按上一財政年度的開支標準，批准臨時短期撥款。

第五十二條 香港特別行政區行政長官如有下列情況之一者必須辭職：

- (一) 因嚴重疾病或其他原因無力履行職務；
- (二) 因兩次拒絕簽署立法會通過的法案而解散立法會，重選的立法會仍以全體議員三分之二多數通過所爭議的原案，而行政長官仍拒絕簽署；
- (三) 因立法會拒絕通過財政預算案或其他重要法案而解散立法會，重選的立法會繼續拒絕通過所爭議的原案。

第五十三條 香港特別行政區行政長官短期不能履行職務時，由政務司長、財政司長、律政司長依次臨時代理其職務。

行政長官缺位時，應在六個月內依本法第四十五條的規定產生新的行政長官。行政長官缺位期間的職務代理，依照上款規定辦理。

第五十四條 香港特別行政區行政會議是協助行政長官決策的機構。

第五十五條 香港特別行政區行政會議的成員由行政長官從行政機關的主要官員、立法會議員和社會人士中委任，其任免由行政長官決定。行政會議成員的任期應不超過委任他的行政長官的任期。

香港特別行政區行政會議成員由在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。

行政長官認為必要時可邀請有關人士列席會議。

第五十六條 香港特別行政區行政會議由行政長官主持。

行政長官在作出重要決策、向立法會提交法案、制定附屬法規和解散立法會前，須徵詢行政會議的意見，但人事任免、紀律制裁和緊急情況下採取的措施除外。

行政長官如不採納行政會議多數成員的意見，應將具體理由記錄在案。

第五十七條 香港特別行政區設立廉政公署，獨立工作，對行政長官負責。

第五十八條 香港特別行政區設立審計署，獨立工作，對行政長官負責。

## 第二節 行政機關

第五十九條 香港特別行政區政府是香港特別行政區行政機關。

第六十條 香港特別行政區政府的首長是香港特別行政區行政長官。

香港特別行政區政府設政務司、財政司、律政司和各局、處、署。

第六十一條 香港特別行政區的主要官員由在香港通常居住連續滿十五年並在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。

第六十二條 香港特別行政區政府行使下列職權：

- (一) 制定並執行政策；
- (二) 管理各項行政事務；
- (三) 辦理本法規定的中央人民政府授權的對外事務；
- (四) 編制並提出財政預算、決算；
- (五) 擬定並提出法案、議案、附屬法規；
- (六) 委派官員列席立法會並代表政府發言。

第六十三條 香港特別行政區律政司主管刑事檢察工作，不受任何干涉。

第六十四條 香港特別行政區政府必須遵守法律，對香港特別行政區立法會負責：執行立法會通過並已生效的法律；定期向立法會作施政報告；答覆立法會議員的質詢；徵稅和公共開支須經立法會批准。

第六十五條 原由行政機關設立諮詢組織的制度繼續保留。

### 第三節 立法機關

第六十六條 香港特別行政區立法會是香港特別行政區的立法機關。

第六十七條 香港特別行政區立法會由在外國無居留權的香港特別行政區永久性居民中的中國公民組成。但非中國籍的香港特別行政區永久性居民和在外國有居留權的香港特別行政區永久性居民也可以當選為

香港特別行政區立法會議員，其所佔比例不得超過立法會全體議員的百分之二十。

第六十八條 香港特別行政區立法會由選舉產生。

立法會的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至全部議員由普選產生的目標。

立法會產生的具體辦法和法案、議案的表決程序由附件二《香港特別行政區立法會的產生辦法和表決程序》規定。

第六十九條 香港特別行政區立法會除第一屆任期為兩年外，每屆任期四年。

第七十條 香港特別行政區立法會如經行政長官依本法規定解散，須於三個月內依本法第六十八條的規定，重行選舉產生。

第七十一條 香港特別行政區立法會主席由立法會議員互選產生。香港特別行政區立法會主席由年滿四十周歲，在香港通常居住連續滿二十年並在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。

第七十二條 香港特別行政區立法會主席行使下列職權：

(一) 主持會議；



- (二) 決定議程，政府提出的議案須優先列入議程；
- (三) 決定開會時間；
- (四) 在休會期間可召開特別會議；
- (五) 應行政長官的要求召開緊急會議；
- (六) 立法會議事規則所規定的其他職權。

第七十三條 香港特別行政區立法會行使下列職權：

- (一) 根據本法規定並依照法定程序制定、修改和廢除法律；
- (二) 根據政府的提案，審核、通過財政預算；
- (三) 批准稅收和公共開支；
- (四) 聽取行政長官的施政報告並進行辯論；
- (五) 對政府的工作提出質詢；
- (六) 就任何有關公共利益問題進行辯論；
- (七) 同意終審法院法官和高等法院首席法官的任免；
- (八) 接受香港居民申訴並作出處理；
- (九) 如立法會全體議員的四分之一聯合動議，指控行政長官有嚴重違法或瀆職行為而不辭職，經立法會通過進行調查，立法會可委托終審法院首席法官負責組成獨立的調查委員會，並擔任主席。調查委員會負責進行調查，並向立法會提出報告。如該調查委員會認為有足夠證據構成上述指控，立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定；
- (十) 在行使上述各項職權時，如有需要，可傳召有關人士出席作證和提供證據。

第七十四條 香港特別行政區立法會議員根據本法規定並依照法定程序提出法律草案，凡不涉及公共開支或政治體制或政府運作者，可由

立法會議員個別或聯名提出。凡涉及政府政策者，在提出前必須得到行政長官的書面同意。

第七十五條 香港特別行政區立法會舉行會議的法定人數為不少於全體議員的二分之一。立法會議事規則由立法會自行制定，但不得與本法相抵觸。

第七十六條 香港特別行政區立法會通過的法案，須經行政長官簽署、公布，方能生效。

第七十七條 香港特別行政區立法會議員在立法會的會議上發言，不受法律追究。

第七十八條 香港特別行政區立法會議員在出席會議時和赴會途中不受逮捕。

第七十九條 香港特別行政區立法會議員如有下列情況之一，由立法會主席宣告其喪失立法會議員的資格：

- (一) 因嚴重疾病或其他情況無力履行職務；
- (二) 未得到立法會主席的同意，連續三個月不出席會議而無合理解釋者；
- (三) 喪失或放棄香港特別行政區永久性居民的身分；
- (四) 接受政府的委任而出任公務人員；
- (五) 破產或經法庭裁定償還債務而不履行；
- (六) 在香港特別行政區區內或區外被判犯有刑事罪行，判處監禁一個月以上，並經立法會出席會議的議員三分之二通過解除其職務；
- (七) 行為不檢或違反誓言而經立法會出席會議的議員三分之二通過譴責。

#### 第四節 司法機關

第八十條 香港特別行政區各級法院是香港特別行政區的司法機關，行使香港特別行政區的審判權。

- 第八十一條 香港特別行政區設立終審法院、高等法院、區域法院、裁判署法庭和其原在香港實行的司法體制，除因設立香港特別行政區終審法院而產生變化外，予以保留。
- 第八十二條 香港特別行政區的終審權屬於香港特別行政區終審法院。終審法院可根據需要邀請其他普通法適用地區的法官參加審判。
- 第八十三條 香港特別行政區各級法院的組織和職權由法律規定。
- 第八十四條 香港特別行政區法院依照本法第十八條所規定的適用於香港特別行政區的法律審判案件，其他普通法適用地區的司法判例可作參考。
- 第八十五條 香港特別行政區法院獨立進行審判，不受任何干涉，司法人員履行審判職責的行為不受法律追究。
- 第八十六條 原在香港實行的陪審制度的原則予以保留。
- 第八十七條 香港特別行政區的刑事訴訟和民事訴訟中保留原在香港適用的原則和當事人享有的權利。任何人在被合法拘捕後，享有盡早接受司法機關公正審判的權利，未經司法機關判罪之前均假定無罪。
- 第八十八條 香港特別行政區法院的法官，根據當地法官和法律界及其他方面知名人士組成的獨立委員會推薦，由行政長官任命。
- 第八十九條 香港特別行政區法院的法官只有在無力履行職責或行為不檢的情況下，行政長官才可根據終審法院首席法官任命的不少於三名當地法官組成的審議庭的建議，予以免職。香港特別行政區終審法院的首席法官只有在無力履行職責或行為不檢的情況下，行政長官才可任命不少於五名當地法官組成的審議庭進行審議，並可根據其建議，依照本法規定的程序，予以免職。
- 第九十條 香港特別行政區終審法院和高等法院的首席法官，應由在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。除本法第八十八條和第八十九條規定的程序外，香港特別行政區終審法院的法官和高等法院首席法官的任命或免職，還須由行政

長官徵得立法會同意，並報全國人民代表大會常務委員會備案。

第九十一條 香港特別行政區法官以外的其他司法人員原有的任免制度繼續保持。

第九十二條 香港特別行政區的法官和其他司法人員，應根據其本人的司法和專業才能選用，並可從其他普通法適用地區聘用。

第九十三條 香港特別行政區成立前在香港任職的法官和其他司法人員均可留用，其年資予以保留，薪金、津貼、福利待遇和服務條件不低於原來的標準。對退休或符合規定離職的法官和其他司法人員，包括香港特別行政區成立前已退休或離職者，不論其所屬國籍或居住地點，香港特別行政區政府按不低於原來的標準，向他們或其家屬支付應得的退休金、酬金、津貼和福利費。

第九十四條 香港特別行政區政府可參照原在香港實行的辦法，作出有關當地和外來的律師在香港特別行政區工作和執業的規定。

第九十五條 香港特別行政區可與全國其他地區的司法機關通過協商依法進行司法方面的聯繫和相互提供協助。

第九十六條 在中央人民政府協助或授權下，香港特別行政區政府可與外國就司法互助關係作出適當安排。

#### 第五節 區域組織

第九十七條 香港特別行政區可設立非政權性的區域組織，接受香港特別行政區政府就有關地區管理和其他事務的諮詢，或負責提供文化、康樂、環境衛生等服務。

第九十八條 區域組織的職權和組成方法由法律規定。

#### 第六節 公務人員

第九十九條 在香港特別行政區政府各部門任職的公務人員必須是香港特別行政區永久性居民。本法第一百零一條對外籍公務人員另有規定者或法律規定某一職級以下者不在此限。

公務人員必須盡忠職守，對香港特別行政區政府負責。

第一百條 香港特別行政區成立前在香港政府各部門，包括警察部門任職的公務人員均可留用，其年資予以保留，薪金、津貼、福利待遇和服務條件不低於原來的標準。

第一百零一條 香港特別行政區政府可任用原香港公務人員中的或持有香港特別行政區永久性居民身份證的英籍和其他外籍人士擔任政府部門的各級公務人員，但下列各職級的官員必須由在外國無居留權的香港特別行政區永久性居民中的中國公民擔任：各司司長、副司長，各局局長，廉政專員，審計署署長，警務處處長，入境事務處處長，海關關長。

香港特別行政區政府還可聘請英籍和其他外籍人士擔任政府部門的顧問，必要時並可從香港特別行政區以外聘請合格人員擔任政府部門的專門和技術職務。上述外籍人士只能以個人身分受聘，對香港特別行政區政府負責。

第一百零二條 對退休或符合規定離職的公務人員，包括香港特別行政區成立前退休或符合規定離職的公務人員，不論其所屬國籍或居住地點，香港特別行政區政府按不低於原來的標準向他們或其家屬支付應得的退休金、酬金、津貼和福利費。

第一百零三條 公務人員應根據其本人的資格、經驗和才能予以任用和提升，香港原有關於公務人員的招聘、僱用、考核、紀律、培訓和管理的制度，包括負責公務人員的任用、薪金、服務條件的專門機構，除有關給予外籍人員特權待遇的規定外，予以保留。

第一百零四條 香港特別行政區行政長官、主要官員、行政會議成員、立法會議員、各級法院法官和其他司法人員在就職時必須依法宣誓擁護中華人民共和國香港特別行政區基本法，效忠中華人民共和國香港特別行政區。

## 附錄 3-5-2 公務人員（管理）命令

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### 公務人員(管理)命令

#### 第I部

#### 導言

##### 1、引稱

(1) 本命令可引稱為《公務人員(管理)命令》。(由《〈1997年公務人員(管理)命令〉2000年(修訂)令》(《修訂命令》)第2條修訂)

(2) (由《修訂命令》第2條廢除)

##### 2、釋義

在本命令中，除文意另有所指外-"乙類人員"(Category B Officer)指任

何下述人員-

- (a) 擔任非設定職位的人員；
- (b) 以按月僱用條款或試用條款擔任設定職位的人員；或
- (c) 按合約條款擔任職位的人員；

"公務人員" (public servant) 及"人員" (officer) 指任何在特區政府下擔任受薪職位 (不論該職位屬永久或臨時性質)，並在政府任何局或部門服務的人；

"公務員任用委員會" (Public Service Commission) 指根據《公務員任用委員就任條例》(第93章)第3條設條的公務員任用委員就；

"公職人員" (public officer) 指《釋義及通則條例》(第1章)第3條所指的公職人員；

"甲類人員" (Category A Officer) 指獲委任並已獲確實受聘擔任設定職位的人員；

"非設定職位" (non-established office) 指並非設定職位的職位；

"特區" (HKSAR) 指中華人民共和國香港特別行政區；

"《基本法》" (Basic Law) 指《中華人民共和國香港特別行政區基本法》；

"《規例》" (regulations) 指行政長官根據第21條訂條的規例；

"設定職位"(established office)具有《退休金條例》(第89章)第2條給予該詞的涵義；

"懲罰" (punishment) -

- (a) 包括革職、在保留退休金、酬金或其他津貼的情況下迫令退休、或在不保留該等福眾的情況下迫令退休、或在保留經扣減福眾的情況下迫令退休、罰款、降級、嚴厲譴責、譴責、停止或延遲增薪及減薪；
- (b) 不包括第12條所指的為公眾眾眾着眾眾退休。

## 第II部



## 任用

### 3、任用

- (1) 在符合《基本法》第四十八（五）條的規定下，行政長官可憑藉《基本法》第四十八（七）條並按照本命令任用和提升公務人員。
- (2) 行政長官就任用或提升任何人眾作出甄選時，須考慮公務員任用委員就根據或憑藉《公務員任用委員就任條例》（第93章）提交的任何意見。

### 4、同時委任

- (1) 如有公務人員在卸任其職位前休假，則行政長官可委任另一人以實質擔任該職位。
- (2) 如因根據第（1）款作出的委任眾引致同一職位有2名或多於2名人士擔任，則就擔任該職位的人所獲授予的任何職能眾言，最後獲委任的人須當作為擔任該職位的人。

## 第III部

### 革職、暫時停職及紀律

- 5、革職、暫時停職及紀律：在符合《基本法》第四十八（五）條的規定下，行政長官如覺得有充分因由，可憑藉《基本法》第四十八（七）條並按照本命令及《規例》將任何公務人員革職或暫時停職，或按照本命令及《規例》採取他認為適就的其他紀律行動。
- 6、紀律程序並不損害任何就懲罰作出規定的法律等：本命令及《規例》並不損害任何就由行政長官或任何其他人員或主管當局對任何人員施加懲罰作出規定的法律。
- 7、適用於甲類人員的紀律程序：第9至18條適用於甲類人員。
- 8、適用於乙類人員的紀律程序：對乙類人員所進行的紀律程序須按照《規例》及行政長官根據第21（3）條所作出的任何指示眾進行。
- 9、不足以成為革職或迫令退休理由的行為不當：

- (1) 如有人向行政長官作出申述，謂任何人員行為不當，眾行政長官認為該指稱的行為不當並非嚴重至足以成為根據第10條提起程序的理由，則行政長官可安排按由他根據第21(2)條訂條的《規例》訂明的方式對該人員的行為進行研訊。
- (2) 如在上述研訊後行政長官認為該人員行為不當，則行政長官可對該人員處以他認為公正的懲罰，但該懲罰並不包括革職或迫令退休。

(由《修訂命令》第3條修訂)

#### 10、足以成為革職或迫令退休理由的行為不當：

- (1) 如有人向行政長官作出申述，謂任何人員行為不當，眾行政長官認為該指稱的行為不當可能嚴重至足以成為該人員被革職或迫令退休的理由，則行政長官可安排按由他根據第21(2)條訂條的《規例》所訂明的方式眾對該人員的行為進行研訊。
- (2) 如在上述研訊後行政長官認為該人員行為不當，則行政長官可對該人員處以他認為公正的懲罰。
- (3) 凡任何人員擅離職守為期超逾14天並有人向行政長官作出申述，謂-
  - (a) 該人員的下落無法追尋；或
  - (b) 該人員接獲郵遞寄往其最後為人所知的地址的書面通知，規定他在通知書所指明的期限內就他擅離職守一事作出辯解，眾他沒有作出辯解或沒有作出合理的辯解，則行政長官可無須根據第(1)款安排進行研訊眾將該人員即時革職。

(由《修訂命令》第4條修訂)

#### 11、刑事檢控後的進一步行動：

如任何人員被裁定犯了刑事罪行，則行政長官在考慮法院就該項控罪進行的法律程序後，可對該人員處以他認為公正的懲罰眾無須提起進一步的程序。

#### 12、為公眾眾眾着眾眾退休

- (1) 如有人向行政長官作出申述，謂某人員適就為公眾眾眾着眾眾退休，則行政長官可於任何時間向該人員任職的任何部門的部長部取部部。該人員須獲通知部期就根據本條着令他退休所據的理由，並須獲給予作出申述的機就。
- (2) 行政長官在考慮根據第(1)款呈交的部部和作出的任何申述後，並在顧及公務人員的服務條件、該人員對公務人員隊伍的作用及該個案的所有其他情況後，如認為適就為公眾眾眾着眾眾想止該人員的服務，可令該人員退休，眾該人員的服務須據此眾在行政長官指明的日期想止。
- (3) 行政長官-
  - (a) 在考慮根據第9或10條對某人員的行為進行的研訊後；或
  - (b) 在考慮某人員在法院被裁定犯了刑事罪行的法律程序後，如認為該人員不如受懲罰，但該項研訊或該等法律程序如如了令該人員為公眾眾眾着眾眾退休的理由，則行政長官可根據本條令該人員退休，眾在該情況下，行政長官無須令行第(1)及(2)款所述的程序。

*(由《修訂命令》第5條修訂)*

- (4) 凡任何人員根據本條被着令退休，他可按照當其時施行的任何退休金法律眾獲發給退休金、酬金或其他津貼。

### **13、停止行使職位的權力及職能**

- (1) 在以下情況下，行政長官可命令任何人員停止行使其職位的權力及職能-
  - (a) 已經或行將根據第10條針對該人員眾提起程序；或
  - (b) 已經或相當可能就針對該人員眾提起刑事法律程序；或
  - (c) 該人員的行為正受研訊，眾讓他繼續行使其職位的權力及職能是違背公眾眾眾的。

*(由《修訂命令》第6條修訂)*

(2) 任何人員如-

(a) 根據第(1)(a)款被停職，該人員須獲發給行政長官認為合適不少於其職位薪酬一半的部分薪酬；或

(b) 根據第(1)(b)款被停職，該人員須獲發給行政長官認為合適不少於其職位薪酬一半的部分薪酬，直至該人員就一項嚴重至足以成為該人員被革職的理由的刑事控罪被裁定罪名成條為止，屆時該人員在其個案等候行政長官考慮的期間不得獲發給任何該等薪酬；或

(c) 根據第(1)(c)款被停職，該人員須獲發給其職位薪酬的全數。

(3) 如針對任何該等人員的程序沒有導致對該人員被處以任何懲罰，則他有權收取假如沒有被停職時本就獲發給的薪酬的全數。

(4) 如任何人員被處以革職以外的懲罰，則他可按行政長官認為合適的比率獲支付因被停職眾被扣起的薪酬。

**14、在等候控罪裁定期間暫延紀律處分程序：**

如有刑事法律程序針對任何人員提起，則在等候該刑事法律程序裁決期間，不得基於該刑事控罪涉及的任何理由採取紀律處分程序。

**15、對獲裁定無罪的人員處以懲罰的限制：**

就刑事控罪被裁定罪名不成條的人員不得就他已獲裁定罪名不成條的控罪眾受懲罰，但如有其他指控因他在該事就上的行為眾引起，眾該等指控所產生的爭論點實質上並非他獲裁定罪名不成條所關乎的同一爭論點，則該人員可就該等指控被懲罰眾適當的程序亦可為該目的眾提起。

**16、被革職即喪失福眾：**

被革職的人員喪失對任何退休金、酬金或其他類似的福眾及對其任何其他福眾或眾眾的申部權。

**17、由《修訂命令》第7條廢除)**

- 18、** 就懲罰事就就公務員任用委員就行政長官行經就就公務員任用委員就，不得根據第9至11條對任何人員處以懲罰或根據第12條着令該人員退休，但如行政長官根據第21（2）條訂條的《規例》另有規定及該人員屬《公務員任用委員就條例》第6（2）條指定的人員之一，則屬例外。

#### **第IV部**

#### **雜項條文**

#### **19、** 權力的轉授

- （1） 除第（2）款另有規定外，行政長官可將藉第3、9至18條授予他的權力或委予他的職責轉授予任何公務人員或任何其他公職人員。
- （2） 行政長官不得將根據第21（2）條訂條規例的權力轉授。
- （3） 凡賦予總督或可由總督行使的權力或職責（與第（1）款所提述者相類似）轉授予公務人員或其他公職人員，該等轉授如在緊接1997年7月1日之前是有效的，則在該日及之後繼續有效，並當作是由行政長官向特區的相如公務人員或公職人員（視屬何情況眾定）作出的。

#### **20、** 人員的申述

- （1） 任何人員如有公開或私人性質的申述向特區政府作出，如將其申述向行政長官提出。行政長官須視乎對公眾有眾和對個人公正的需要眾就每項申述作出考慮和行事。
- （2） 行政長官可委出一個覆核委員就，就致予他的某些他認為合適的眾關乎公務人員的任命、革職和紀律事就的申述提供意見。

#### **21、** 規例及指示

- （1） 除第（2）款另有規定外，行政長官可為以下事就訂條規例-
  - （a） 訂明根據本命令須藉規例訂明的任何事情；及
  - （b） 概括眾言，規管本命令下的常規及程序。
- （2） 行政長官可在就就行政就議後訂條在第9（1）、10（1）及18條中提述的規例。

- (3) 行政長官可作出書面指示，以規管關乎人員的服務條件及任用條款及紀律的事就，並為使本命令全面生效和為妥善管理公務人員眾部期或需要的事就作出一般的規定。
- (4) 《規例》及根據第(3)款作出的指示當作自1997年7月1日或行政長官所指明的其他日期起實施，並適用於任何在1997年7月1日前根據《殖民地規例》提1069起的或根據總督行使《英皇制誥》或《殖民地規例》授予的權力所訂條的規例或作出的指示眾提起的有待裁決的程序。
- (5) 《規例》以及根據第(3)款作出的指示並非《釋義及通則條例》(第1章)中一詞所指的附屬法例。

## 22、過渡性條文

任何根據-

- (a) 《英皇制誥》；
- (b) 《殖民地規例》；或
- (c) 總督行使《英皇制誥》或《殖民地規例》所賦予的權力眾訂條的規例或作出的指示，眾作出的事情，如在本命令生效日期當日或緊接該日期之前是有效的，則該等事情須繼續生效和具有效力，猶如是根據本命令或《規例》作出的一樣。

## 23、《〈1997年公務人員(管理)命令〉2000年(修訂)令》制定後的過渡性條文

- (1) 凡任何人員於某期間內擅離職守，眾該期間就第10(3)條眾言在生效日期之前已開始，則《修訂命令》第4(b)(i)條所作的修訂不適用於該人員；眾在緊接生效日期之前適用的第10(3)條，繼續適用於該人員，猶如該修訂沒有作出一樣。
- (2) 為免生疑問，現宣布《經修訂命令》適用於根據《修訂前命令》作出並在生效日期之前仍行完成的調查，如同《經修訂命令》適用於在生效日期當日或之後根據《經修訂命令》作出的研訊；據此，在生效日

期當日及之後，有關調查或就有關調查所作的任何事情須當作是根據《經修訂命令》作出的有關研訊或就有關研訊所作的事情（視屬何情況釐定）。

(3) 在本條中-

生效日期（ commencement date）指《修訂命令》開始實施的日期；《修訂命令》（Amendment Order）指《〈1997年公務人員（管理）命令〉2000年（修訂）令》（行政命令2000年第1號）；《修訂前命令》（Order as applying before amendment）指在緊接生效日期之前適用的本命令；《經修訂命令》（Order as amended）指經《修訂命令》修訂的《1997年公務人員（管理）命令》（行政命令1997年第1號）。

*（由《修訂命令》第8條增補）*

《1997年公務人員(管理)命令》修訂事項

簡要說明

- 1、《1997年公務人員(管理)命令》(行政命令1997年第1號)(《主體命令》)已由《1997年公務人員(管理)命令2000年(修訂)命令》(行政命令2000年第1號)(《修訂命令》)修訂。有關修訂由二零零零年四月十七日起實施。
- 2、為方便參閱，經修訂的《主體命令》已在修訂條文附加註釋，指出所作的修訂。註釋以斜體字顯示。
- 3、《修訂命令》的主要修訂如下：
  - (a) 更改《主體命令》的引稱，經修訂的《主體命令》可引稱為《公務人員(管理)命令》。
  - (b) 修訂《主體命令》第10(3)條，把可採取即時革職行動的擅自缺勤期限由21日縮短至14日。
  - (c) 廢除《主體命令》第17條，確保《修訂命令》符合《香港人權法案條例》(第383章)。
  - (d) 加入過渡性條文，規定有關制定《修訂命令》的過渡性安排。
  - (e) 《主體命令》內凡提述“調查”之處，均改為“研訊”。

## 附錄 3-5-3 公務人員(紀律)規例

### 第I部

#### 導言

1. (廢除)
2. 釋義
- 2A. 行政長官可委任指定人士

### 第II部

#### 甲類人員

3. 適用於甲類人員的紀律程序
4. (廢除)
5. 根據《命令》第9條進行的研訊
6. 根據《命令》第10條進行的研訊
7. 研訊程序
8. 聆訊
9. 發回案件
10. 程序從根據《命令》第9條改為根據《命令》第10條提起

### 第III部

#### 乙類人員及其他人員

11. 適用於乙類人員的紀律程序
12. 文件的送達等
13. 被控刑事罪行的人員



14. 一經定罪薪金即予扣起
15. 紀律處分程序
16. 懲罰
17. 就按第一標準薪級表支薪的人員所犯輕微違紀行為施加罰款
18. 擅離職守；可被革職
19. 本部不適用於某些人員

#### 第IV部

##### 雜項條文

20. 《2000年公務人員（紀律）（修訂）規例》制定後的過渡性條文  
公務人員(紀律)規例

#### 第I部

##### 導言

1. （由《2002年公務人員(紀律)(修訂)規例》（《2002修訂規例》）第1條廢除）
2. 釋義  
在本規例中-  
“局長”（Secretary）指公務員事務局局長；  
“《命令》”（Order）指《公務人員（管理）命令》（由《2000修訂規例》第3條修訂）；  
“具有法律專業資格的人員”（legally qualified officer）指屬《法律執業者條例》（第159章）第2條所指的律師或大律師的任何人員；  
“指定人士”（designated person）指由行政長官根據第2A條委任的人員；（由《2002修訂規例》第2條增補）  
“首長級薪級表”（Directorate Pay Scale）指在局長所發表的“Civil Service Pay

Scales”內的“Directorate Pay Scale”標題下的薪級表；（由《2002修訂規例》第2條增補）

“第一標準薪級表”（MOD 1 Pay Scale）指在局長所發表的“Civil Service Pay Scales”內的“Model Scale 1”標題下的薪級表；

“總薪級表”（Master Pay Scale）指在局長所發表的“Civil Service Pay Scales”內的“Master Pay Scale”標題下的薪級表。

#### 2A. 行政長官可委任指定人士

行政長官可為施行本規例而委任任何人員為指定人士，該項委任可一般地作出，或可特別地就以下項目而作出 —

- (a) 某些條文或根據某條文而行使的某些權力或職能；
- (b) 某些人員或某類人員；
- (c) 某些事項或某類事項；或
- (d) 上述條文、權力、職能、人員或事項的任何組合。

（由《2002修訂規例》第3條增補）

## 第II部

### 甲類人員

3. 適用於甲類人員的紀律程序，本部只適用於甲類人員。

4. （由2000《修訂規例》第4條廢除）

5. 根據《命令》第9條進行的研訊

（1）行政長官為施行《命令》第9條而命令進行的研訊須由行政長官委任的研訊人員進行。

（2）依據第(1)款獲委任的研訊人員須為較受研訊人員高級的公務人員。（由2000《修訂規例》第5條修訂）

6. 根據《命令》第10條進行的研訊

（1）行政長官為施行《命令》第10條而命令進行的研訊須由行政長官委任

的研訊委員會進行。

- (2) 依據第(1)款獲委任的研訊委員會須由2名或多於2名較受研訊人員高級的公務人員組成。(由2000《修訂規例》第6條修訂)

## 7. 研訊程序

- (1) 行政長官為施行《命令》第9或10條而命令進行的研訊-
- (a) 須按照本規例及附表以及行政長官根據《命令》第21(3)條作出的任何指示所列出的程序進行；
  - (b) 在本規例及附表列出的程序不適用的情況下，須按照研訊人員或研訊委員會(視屬何情況而定)決定的程序進行。
- (2) 研訊人員或研訊委員會完成研訊後，須向行政長官作出報告，而該報告須載有-
- (a) 研訊程序的紀錄，該紀錄可以書面，錄音或錄影形式製備；
  - (b) 研訊人員或研訊委員會認為有關的對事實的裁斷；及
  - (c) 研訊人員或研訊委員會對研訊所得事實是否構成行為不當的意見。
- (3) 為免生疑問，附表是由行政長官根據《命令》第21(1)條訂立，並可由行政長官根據該條作出修訂。(由2000《修訂規例》第7條修訂)

## 8. 聆訊

- (1) 為施行《命令》第9或10條而進行研訊的研訊人員或研訊委員會的主席，須藉向有關人員發出書面通知而-
- (a) 規定該人員在通知書內指明的時間及地點到研訊人員或研訊委員會席前；
  - (b) 規定該人員在通知書內指明的時間及地點將他意欲於抗辯時傳召的證人傳召到場以及提出他意欲於抗辯時提出的其他證據；及
  - (c) 通知該人員將要對他而進行的研訊所關乎的指稱行為不當。

- (2) 就根據《命令》第9或10條進行的研訊而言，有關人員-
  - (a) 有權知道針對他的個案的全部情況；
  - (b) 須獲給予充分機會作出其以口頭或書面形式提出的抗辯；
  - (c) 須獲給予充分機會向任何證人進行詰問。
- (3) 有關人員可由以下人士助進行其抗辯協-
  - (a) 另一名公務人員，該公務人員可以是高級公務員評議會的員工組織的代表成員，但具有法律專業資格的人員則除外；或
  - (b) 行政長官認可的其他人。
- (4) 研訊人員或研訊委員會可研訊任何事宜，並接納和考慮研訊人員或研訊委員會認為有關的任何證據或資料，並且不受任何證據規則約束。
- (5) 研訊不應循過分形式化的程序進行，雖然並無適用於每宗個案的標準常規，但須強調的是研訊人員或研訊委員會並非行使法律職能，而是查明事實。
- (6) 如接受研訊的人員沒有按根據第(1)款發出的通知書的規定出席，亦沒有按研訊人員或研訊委員會其後以口頭或書面所規定的其他時間及地點出席，則研訊可在該人員缺席的情況下繼續進行，而第(2)款的條文須當作已獲遵守。
- (7) 在本條中，“高級公務員評議會”(Senior Civil Service Council)指由政府代表和來自員工組織代表組成的中央評議會，該等員工組織指香港政府華員會、本地高級公務員會協及香港海外公務員會。(由2000《修訂規例》第8條修訂)

## 9. 發回案件

行政長官在考慮研訊人員或研訊委員會呈交的報告後，在不損害其根據《命令》第9或10條處以懲罰的權力的原則下，可-

- (a) 令研訊人員或研訊委員會進行行政長官着所命令的進一步研訊；
- 或

- (b) 令研訊人員或研訊委員會答覆行政長官着所規定須答覆的問題或查明行政長官所規定須查明的事實。(由2000《修訂規例》第9條修訂)

- 10. 程序從根據《命令》第9條改為根據《命令》第10條提起在為施行《命令》第9則行政長官可指示中止根據《命令》第9條進行的研訊並指示根據《命令》第10條提起程序。(由2000《修訂規例》第10條修訂)

### 第III部

#### 乙類人員及其他人員

- 11. 適用於乙類人員的紀律程序

- (1) 本部只適用於乙類人員。
- (2) 第12至14條除適用於乙類人員外，亦適用於其他公務人員。

- 12. 文件的送達等

與指稱行為不當的研訊有關連而須送達或給予任何人員的任何通知或其他文件可藉以下方式送達或給予-(由2000《修訂規例》第11條修訂)

- (a) 以面交方式給予該人員；
- (b) 以掛號郵遞方式寄往該人員最後為人所知的地址；或
- (c) 留在該人員最後為人所知的地址。

- 13. 被控刑事罪行的人員

- (1) 如有刑事法律程序針對任何人員提起，該人員須立即將該事實向其部門的首長報告。如該人員本身是部門首長，則他須將該法律程序向局長報告。
- (2) 部門首長須立即將有刑事法律程序針對其部門的任何人員提起一事向局長報告，但如他認為該罪行性質輕微，並且-
  - (a) 並無反映該人員的品格不良；及
  - (b) 不大可能使公務人員的聲譽受損，而在緊接該刑事法律程

序提起日期之前的12個月期間內，該人員亦從未就類似的罪行被定罪或只有一次被定罪，則屬例外。

14. 一經定罪薪金即予扣起

- (1) 除第(5)款另有規定外，被裁定犯了刑事罪行的人員在下述情況下，其薪金須自定罪日期起被扣起-
  - (a) 該人員被處監禁，不論他是否提出上訴；或
  - (b) 局長或指定人士認為有關定罪可能導致該人員被革職。(由《2002修訂規例》第4條修訂)
- (2) 該人員的部門首長須將針對該人員的刑事法律程序的結果通知局長。
- (3) 除第(5)款另有規定外，如局長將以下事宜通知庫務署署長-
  - (a) 該人員被處監禁；或
  - (b) 該人員被裁定犯了刑事罪行，而局長或指定人士認為該項定罪可能導致該人員被革職，(由《2002修訂規例》第4條修訂)則庫務署署長須在等候進一步考慮該人員的個案期間，扣起該人員的薪金。
- (4) 根據本條被扣起薪金的人員須停止履行其職責。
- (5) 根據本條被扣起薪金的人員可獲准按局長或指定人士認為適當的比率收取其薪金的一部分。(由《2002修訂規例》第4條修訂)

15. 紀律處分程序

- (1) 就紀律處分程序及有關連事宜而言，本條適用的人員須-
  - (a) 按照該人員與政府之間的合約中規定的條款處置；及
  - (b) 如該合約中的條款並無規定，則按照《命令》第7至18條及行政長官就該等程序及事宜訂立的任何規例處置。
- (2) 局長可就一般情況或就特定個案而對第(1)(b)款所提述的條文及規例作出變通。

## 16. 懲罰

- (1) 凡本條適用人員 —
  - (a) 屬按照首長級薪級表支薪的人員，而他的實職薪金在該薪級表第D1薪點或更高薪點；或
  - (b) 屬任何其他情況，而他的實職薪金等於或多於首長級薪級表第D1薪點所示薪金，則 —
  - (c) 局長可向他施加任何懲罰；及
  - (d) 指定人士可向他施加除革職以外的任何懲罰。（由《2002修訂規例》第5(a)條修訂）
- (2) 凡本條適用人員 —
  - (a) 屬按照總薪級表支薪的人員，而他的實職薪金在該薪級表第34薪點或更高薪點；或
  - (b) 屬任何其他情況，而他的實職薪金等於或多於總薪級表第34薪點所示薪金但少於首長級薪級表第D1薪點所示薪金，則局長或指定人士可向他施加任何懲罰。（由《2002修訂規例》第5(a)條修訂）
- (2A) 凡本條適用人員 —
  - (a) 屬按照總薪級表支薪的人員，而他的實職薪金在該薪級表第14薪點或更高薪點但低於該薪級表第34薪點；或
  - (b) 屬任何其他情況，而他的實職薪金等於或多於總薪級表第14薪點所示薪金但少於該薪級表第34薪點所示薪金，則 —
  - (c) 局長或指定人士可向他施加革職的懲罰；及
  - (d) 該人員的部門首長可向他施加除革職以外的任何懲罰。（由《2002修訂規例》第5(a)條增補）
- (2B) 凡本條適用人員 —

- (a) 屬按照總薪級表支薪的人員，而他的實職薪金低於該薪級表第14薪點；或
- (b) 屬任何其他情況，而他的實職薪金少於總薪級表第14薪點所示薪金，則該人員的部門首長可向他施加任何懲罰。  
(由《2002修訂規例》第5(a)條增補)

(3) 除經局長或指定人士書面批准外，第(2A)(d)及(2B)款授予部門首長的權力不得轉授。(由《2002修訂規例》第5(b)條修訂)

(4) (由《2002修訂規例》第5(c)條廢除)

17. 就按第一標準薪級表支薪的人員所犯輕微違紀行為施加罰款

- (1) 除第16條授予的權力外，部門首長可無須經正式研訊而就下列輕微違紀行為對按第一標準薪級表支薪的人員施加罰款-(由《2000修訂規例》第12條修訂)

違紀行為 最高罰款

不守時 相等於半天薪金的款額

沒有合理辯解而擅離職守 相等於擅離職守期間正

常應得薪金的款額，但

每次總額不得超逾相等

於兩天薪金的款額

- (2) 如該人員被施加罰款的款額在就該筆款額而發出的繳款通知書發出日期起計1個月之內尚未繳付，則部門首長可授權從該人員的薪金中或從政府應付予該人員或其產業或遺產的任何其他款項中扣除該筆款額。
- (3) 部門首長可將第(1)及(2)款授予的權力以書面方式轉授獲局長或指定人士認可的人員。(由《2002修訂規例》第6條修訂)

18. 擅離職守；可被革職

- (1) 本條適用的人員如-



- (a) 沒有合理因由而擅離職守；
- (b) 故意拒絕履行職責；或
- (c) 故意不履行職責，

而該人員如此擅離職守或拒絕或不履行職責的情況令局長信納該人員已或實際上已在未經准許下永久或暫時離職，則該人員自擅離職守或故意拒絕或不履行職責開始的日期起可被局長即時革職。

(2) 凡本條適用人員 —

- (a) 屬按照總薪級表支薪的人員，而他的實職薪金在該薪級表第34薪點或更高薪點；或
- (b) 屬任何其他情況，而他的實職薪金等於或多於總薪級表第34薪點所示薪金但少於首長級薪級表第D1薪點所示薪金，則第(1)款授予局長的權力可由指定人士行使。(由《2002修訂規例》第7(a)條修訂)

(2A) 凡本條適用人員 —

- (a) 屬按照總薪級表支薪的人員，而他的實職薪金低於該薪級表第34薪點；或
- (b) 屬任何其他情況，而他的實職薪金少於總薪級表第34薪點所示薪金，則第(1)款授予局長的權力可由該人員的部門首長行使。(由《2002修訂規例》第7(a)條增補)

- (3) 在沒有局長或指定人士書面批准的情況下，第(2A)款授予部門首長的權力不得轉授。(由《2002修訂規例》第7(b)條修訂)

19. 本部不適用於某些人員

本部不適用於隸屬特區政府任何局或部門而其行為是受任何條例管限的人員。

## 第IV部 雜項條文

## 20. 《2000年公務人員（紀律）（修訂）規例》

### 制定後的過渡性條文

- (1) 為免生疑問，現宣布《經修訂規例》適用於在生效日期之前按照《修訂前規例》展開及進行的調查，如同《經修訂規例》適用於在生效日期當日或之後按照《經修訂規例》展開及進行的研訊；據此，在該生效日期當日及之後-
  - (a) 有關調查或就有關調查所作的任何事情須當作是按照《經修訂規例》展開及進行的有關研訊或就有關研訊所作的事情（視屬何情況而定）；及
  - (b) 根據《修訂前規例》獲委任進行有關調查的調查人員或調查委員會，須當作是根據《經修訂規例》獲委任的研訊人員或研訊委員會（視屬何情況而定）。

### (2) 在本條中-

- “生效日期”（commencement date）指《2000年公務人員(紀律)(修訂)規例》開始實施的日期；
- “《修訂前規例》”（Regulation as applying before amendment）指在緊接生效日期之前適用的本規例；
- “《經修訂規例》”（Regulation as amended）指在生效日期當日或之後適用的本規例。

*（由2000《修訂規例》第13條增補）*

附表 [第7條]

A部

根據《命令》第9條進行的研訊

I

導言

1. 被指稱行爲不當的人員 ("該人員") 須獲給予 -
  - (a) 本附表A部的文本一份；及
  - (b) 擬提出作證據以支持有關指控的任何文件的副本一份。
2. 除非該人員已獲給予文件的副本或已取覽該文件，否則任何文件不得提出作爲針對該人員的證據。

II

程序

以下程序須予遵循 -

3. 研訊人員記錄以下人士的出席 -
  - (a) 任何獲局長或指定人士委任以協助研訊人員的人員 ("協助人員")； (由《2002修訂規例》第8(a)(i)條修訂)
  - (b) 協助該人員進行抗辯的以下人士 ("該人員的助辯人") -
    - (i) 一名不屬具有法律專業資格的人員的公務人員；或
    - (ii) 獲行政長官認可的其他人。 (由《2000修訂規例》第14條修訂)
4. 研訊人員讀出指控。 (由《2000修訂規例》第14條修訂)
5. 該人員獲告知以下事宜 -
  - A. 該人員可承認或否認任何指控的全部或部分；

- B. 該人員或該人員的助辯人將有機會向任何證人進行詰問；
  - C. 該人員可作口頭或書面陳述並傳召證人；
  - D. 該人員或該人員的助辯人將有機會在程序結束時向研訊人員陳詞。  
(由《2000修訂規例》第14條修訂)
6. 在不損害研訊人員在研訊進行的任何時間發問的權力的原則下，研訊人員可於該人員獲通知第5段所提述的事宜後，詢問該人員是否承認某些事實（例如：該人員在關鍵時間是一名公務人員，某些照片或其他文件屬準確無誤等）。該人員對任何該等事實的承認均須由研訊人員記錄在案。  
(由《2000修訂規例》第14條修訂)
7. 針對該人員的證人由協助人員傳召，並由協助人員及該人員或該人員的助辯人進行詰問，然後由協助人員進一步詰問。
8. 研訊人員可酌情決定藉以下方式錄取任何證人的證供：向該證人展示他所作出的陳述書並詢問他該陳述書的內容是否正確、他是否意欲更改其任何部分或作出增補。該陳述書須隨即被接納為證供，並由研訊人員在該陳述書上註明任何更正事項。隨後該證人可由該人員或該人員的助辯人進行詰問，然後由協助人員進一步詰問。（由《2000修訂規例》第14條修訂）
9. 支持指控的一方作證完畢後，研訊人員詢問該人員是否意欲以口頭或書面陳述方式為自己進行抗辯。任何如此作出的口頭陳述須由研訊人員記錄在案。隨後協助人員可向該人員進行詰問。（由《2000修訂規例》第14條修訂）
10. 支持該人員的證人由該人員傳召，並由該人員或該人員的助辯人進行詰問，然後由協助人員進行詰問，最後由該人員或該人員的助辯人進一步詰問。
11. 作證完畢後 -
- A. 如研訊人員提出要求，協助人員可向研訊人員陳詞；及
  - B. 該人員或該人員的助辯人有權以口頭或書面形式向研訊人員陳詞。

(由《2000修訂規例》第14條修訂)

12. 隨後，研訊人員擬備呈交行政長官的報告。研訊人員如認為有足夠理由的話，可以在報告內加入關於部門程序的建議。(由《2000修訂規例》第14條修訂)

### III

#### 雜項條文

13. 證人的證供無須經宣誓而作出。
14. 研訊查人員的職能是徹底審查有關指控及其所有情況。為此目的，研訊人員須向該人員、任何證人或協助人員提出他認為合適的問題。(由《2000修訂規例》第14條修訂)
15. 研訊人員可 -
  - A. 傳召他認為合適的證人；及
  - B. 規定交出他認為合適的文件。(由《2000修訂規例》第14條修訂)
16. 研訊人員須以書面、錄音或錄影方式記錄有關程序，並將該紀錄納入根據本規例他須呈交行政長官的報告內。(由《2000修訂規例》第14條修訂)
17. 研訊人員須確保向該人員傳譯任何以該人員不懂的語言作出的證供。研訊人員可以作證所採用的語文或以英文或中文記錄證供，並須核證該證供是真實的。(由《2000修訂規例》第14條修訂)
18. 如在研訊過程中披露了行為不當的進一步理由，則研訊人員須押後程序並將該等理由轉介行政長官。如行政長官決定須由研訊人員對該等理由進行研訊，則該人員須獲提供一份載有該等理由的書面陳述，而以上幾段概述的程序經必需的變通後須適用。(由《2000修訂規例》第14條修訂)
19. 研訊人員可 -
  - A. 自行；或

- B. 在該人員要求而研訊人員認為合理的情況下，將研訊押後一段他認為合適的時間。（由《2000修訂規例》第14條修訂）
20. 研訊人員的報告須送交局長或指定人士，而局長或該指定人士須安排將該報告的副本送交該人員。（由《2002修訂規例》第8(a)(ii)條修訂）

## B部

### 根據《命令》第10條進行的研訊

#### I

#### 導言

1. 被指稱行為不當的人員("該人員")須獲給予 -
  - (a) 本附表B部的文本一份；及
  - (b) 擬提出作證據以支持有關指控的任何文件的副本一份。
2. 除非該人員已獲給予文件的副本或已取覽該文件，否則任何文件不得提出作為針對該人員的證據。

#### II

#### 程序

以下程序須予遵循 -

3. 研訊委員會召集和記錄以下人士的出席 -
  - (a) 任何獲局長或指定人士委任以協助研訊委員會的人員("協助人員")；(由《2002修訂規例》第8(b)(i)條修訂)
  - (b) 協助該人員進行抗辯的以下人士("該人員的助辯人") -
    - (i) 一名不屬具有法律專業資格的人員的公務人員；或
    - (ii) 獲行政長官認可的其他人。(由《2000修訂規例》第14條修訂)
4. 研訊委員會主席("主席")讀出指控。(由《2000修訂規例》第14條修訂)
5. 該人員獲告知以下事宜 -
  - (a) 該人員可承認或否認任何指控的全部或部分；
  - (b) 該人員或該人員的助辯人將有機會向任何證人進行詰問；
  - (c) 該人員可作口頭或書面陳述並傳召證人；

- (d) 該人員或該人員的助辯人將有機會在程序結束時向研訊委員會陳詞。(由《2000修訂規例》第14條修訂)
6. 在不損害研訊委員會在研訊進行的任何時間發問的權力的原則下，主席可於該人員獲通知第5段所提述的事宜後，詢問該人員是否承認某些事實(例如：該人員在關鍵時間是一名公務人員，某些照片或其他文件屬準確無誤等)。該人員對任何該等事實的承認均須由主席記錄在案。(由《2000修訂規例》第14條修訂)
  7. 針對該人員的證人由協助人員傳召，並由協助人員及該人員或該人員的助辯人進行詰問，然後由協助人員進一步詰問。
  8. 主席可酌情決定藉以下方式錄取任何證人的證供：向該證人展示他所作出的陳述書並詢問他該陳述書的內容是否正確、他是否意欲更改其任何部分或作出增補。該陳述書須隨即被接納為證供，並由主席在該陳述書上註明任何更正事項。隨後該證人可由該人員或該人員的助辯人進行詰問，然後由協助人員進一步詰問。
  9. 支持指控的一方作證完畢後，主席詢問該人員是否意欲以口頭或書面陳述方式為自己進行抗辯。任何如此作出的口頭陳述須由主席記錄在案。隨後協助人員可向該人員進行詰問。
  10. 支持該人員的證人由該人員傳召，並由該人員或該人員的助辯人進行詰問，然後由協助人員進行詰問，最後由該人員或該人員的助辯人進一步詰問。
  11. 作證完畢後 -
    - (a) 如研訊委員會提出要求，協助人員可向研訊委員會陳詞；及
    - (b) 該人員或該人員的助辯人有權以口頭或書面形式向研訊委員會陳詞。(由《2000修訂規例》第14條修訂)
  12. 隨後，研訊委員會擬備呈交行政長官的報告。該報告由研訊委員會的主席及每名成員簽署。如出現意見分歧的情況，則主席及每名成員須分別提交報告。研訊委員會如認為有足夠理由的話，可以在報告內加入關於部門程序的建議。(由《2000修訂規例》第14條修訂)



## III

## 雜項條文

13. 證人的證供無須經宣誓而作出。
14. 研訊委員會的職能是徹底審查有關指控及其所有情況。為此目的，研訊委員會的主席及成員須向該人員、任何證人或協助人員提出他們認為合適的問題。（由《2000修訂規例》第14條修訂）
15. 研訊委員會可 - （由《2000修訂規例》第14條修訂）
  - (a) 傳召其認為合適的證人；及
  - (b) 規定交出其認為合適的文件。
16. 研訊委員會須以書面、錄音或錄影方式記錄有關程序，並將該紀錄納入根據本規例研訊委員會須呈交行政長官的報告內。（由《2000修訂規例》第14條修訂）
17. 研訊委員會須確保向該人員傳譯任何以該人員不懂的語言作出的證供。研訊委員會可以作證所採用的語文或以英文或中文記錄證供，並須核證該證供是真實的。（由《2000修訂規例》第14條修訂）
18. 如在研訊過程中披露了行為不當的進一步理由，則研訊委員會須押後程序並將該等理由轉介行政長官。如行政長官決定須由研訊委員會對該等理由進行研訊，則該人員須獲提供一份載有該等理由的書面陳述，而以上幾段概述的程序經必需的變通後須適用。（由《2000修訂規例》第14條修訂）
19. 研訊委員會可 -
  - (a) 自行；或
  - (b) 在該人員要求而研訊委員會認為合理的情況下，將研訊押後一段其認為合適的時間。（由《2000修訂規例》第14條修訂）
20. 研訊委員會的報告須由主席送交局長或指定人士，而局長或該指定人士須安排將該報告或該等報告的副本送交該人員。（由《2002修訂規例》

第8(b)(ii)條修訂)

《2000年公務人員(紀律)(修訂)規例》 簡要說明

1. 《公務人員(紀律)規例》(《主體規例》)已由《2000年公務人員(紀律)(修訂)規例》(《2000修訂規例》)修訂。有關修訂由二零零零年四月十七日起實施。
2. 為方便參閱，經修訂的《主體規例》已在修訂條文附加註釋，指出所作的修訂。註釋以斜體字顯示。
3. 《2000修訂規例》的主要修訂如下：
  - (a) 廢除《主體規例》第4條。該條訂明在進行正式調查之前，當局會要求有關人員提交申述書，為自己辯白。
  - (b) 修訂附表A及B部第16段和《主體規例》第7條，訂明調查程序的記錄可以用書面、錄音或錄影形式製備。
  - (c) 加入過渡性條文，規定有關制定《2000修訂規例》的過渡性安排。
  - (d) 《主體規例》中有關“調查”、“調查人員”和“調查委員會”的提述，分別改為“研訊”、“研訊人員”和“訊委員會”

《2002年公務人員(紀律)(修訂)規例》 簡要說明

1. 《2002年公務人員(紀律)(修訂)規例》(《2002修訂規例》)修訂《公務人員(紀律)規例》(由《2000年公務人員(紀律)(修訂)規例》修訂)，使行政長官所委任人員以及各部門首長可就某些類別人員行使某些關於紀律的權力及職能。該等權力及職能關乎以下事宜 —
  - (a) 將已被定罪人員的薪金扣起；
  - (b) 施加懲罰；
  - (c) 認可部門首長轉授權力；
  - (d) 將擅離職守人員即時革職；及

(e) 委任人員協助研訊的進行，以及接受研訊的報告。

2. 有關修訂由二零零二年十一月一日起實施

《2006年公務人員（紀律）（修訂）規例》簡要說明

本規例修訂經《2000年公務人員（紀律）（修訂）規例》修訂並經《2002年公務人員（紀律）（修訂）規例》進一步修訂的《公務人員（紀律）規例》，以刪除就 "其他輕微違紀行爲" 對按公務員薪級表內第一標準薪級表支薪的人員施加罰款的條文。

## 附錄 3-5-4 防止賄賂條例（香港法例第 201 章）

### 第3、4、5、10、12AA及16條摘錄

#### 索取或接受利益

3. 任何訂明人員未得行政長官一般或特別許可而索取或接受任何利益，即屬犯罪。

#### 賄賂

4. (1) 任何人（不論在香港或其他地方）無合法權限或合理辯解，向任何公職人員提供任何利益，作為該公職人員作出以下行為的誘因或報酬，或由於該公職人員作出以下行為而向他提供任何利益，即屬犯罪—
  - (a) 作出或不作出，或曾經作出或不作出任何憑其公職人員身分而作的作為；
  - (b) 加速、拖延、妨礙或阻止，或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為；或
  - (c) 協助、優待、妨礙或拖延，或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。
- (2) 任何公職人員（不論在香港或其他地方）無合法權限或合理辯解，索取或接受任何利益，作為他作出以下行為的誘因或報酬，或由於他作出以下行為而索取或接受任何利益，即屬犯罪—
  - (a) 作出或不作出，或曾經作出或不作出任何憑其公職人員身分而作的作為；
  - (b) 加速、拖延、妨礙或阻止，或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為；或

- (c) 協助、優待、妨礙或拖延，或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。
- (3) 非訂明人員的公職人員如有所屬公共機構的許可而索取或接受任何利益，且該項許可符合第(4)款的規定，則該公職人員及提供該利益的人均不算犯本條所訂罪行。
- (4) 就第(3)款而言，許可須為書面形式，並且—
  - (a) 須在提供、索取或接受利益之前給予；或
  - (b) 在利益未經事先許可而已提供或接受的情況下，須於該利益提供或接受之後在合理可能範圍內盡早申請及給予，同時，公共機構在給予該許可之前須顧及申請的有關情況，該許可方具有第(3)款所訂效力。

為合約事務上給予協助等而作的賄賂

- 5. (1) 任何人無合法權限或合理辯解，向任何公職人員提供任何利益，作為該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力的誘因或報酬，或由於該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力而向他提供任何利益，即屬犯罪—
  - (a) 以下合約的促進、簽立或促致—
    - (i) 與公共機構訂立的任何有關執行工作、提供服務、辦理事情或供應物品、物料或物質的合約；或
    - (ii) 就與公共機構訂立的合約而執行所需工作、提供所需服務、辦理所需事情或供應所需物品、物料或物質的分包合約；或
  - (b) 上述合約或分包合約中規定或以其他方式訂定的價格、代價或其他款項的支付。
- (2) 任何公職人員無合法權限或合理辯解，索取或接受任何利益，作為他在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力

的誘因或報酬，或由於該公職人員在以下事項上給予協助或運用影響力，或曾經給予協助或運用影響力而索取或接受任何利益，即屬犯罪—

- (a) 第(1)款所指合約或分包合約的促進、簽立或促致；或
- (b) 第(1)款所指合約或分包合約中規定或以其他方式訂定的價格、代價或其他款項的支付。

來歷不明財產的管有

10. (1) 任何現任或曾任訂明人員的人—

- (a) 維持高於與其現在或過去的公職薪俸相稱的生活水準；或
  - (b) 控制與其現在或過去的公職薪俸不相稱的金錢資源或財產，除非就其如何能維持該生活水準或就該等金錢資源或財產如何歸其控制向法庭作出圓滿解釋，否則即屬犯罪。
- (2) 在因第(1)(b)款所訂罪行而進行的法律程序中，法庭經顧及任何人與被控人關係的密切程度及其他情況後，如信納有理由相信該人為被控人以信託形式持有或以其他方式代被控人持有金錢資源或財產，或因被控人的饋贈而獲取該等金錢資源或財產，則在沒有相反證據的情況下，該等金錢資源或財產須推定為由被控人控制。

(3)-(4) (廢除)

- (5) 在本條中，“公職薪俸”(official emoluments) 包括根據《退休金條例》(第89章)、《退休金利益條例》(第99章)或《退休金利益(司法人員)條例》(第401章)須付的退休金或酬金。

資產的沒收

12AA.(1) 除本條另有規定外，對於一經循公訴程序被裁定犯了第10(1)(b)條所訂罪行的人，法庭除可根據第12(1)條處以刑罰外，亦可命令沒收以下金錢資源或財產—

- (a) 在審訊中按第10條訂定的情況裁定由該人控制者；及
- (b) 款額或價值不超過該人未能向法庭圓滿解釋如何獲取的金錢資

源或財產的款額或價值者。

- (2) 根據第(1)款作出命令的任何申請，須由律政司司長在定罪日期後28天內提出。
- (3) 對於由並非被定罪人的人持有的金錢資源或財產，不得根據第(1)款作出命令，但如該人已獲可能作出該項命令的合理通知，並已有機會提出不應作出該命令的因由，則屬例外。
- (4) 並非被定罪人的人如在為根據第(3)款提出因由而進行的法律程序中令法庭信納以下情況，則對於該人持有的金錢資源或財產，不得根據第(1)款作出命令—
  - (a) 該人在有關該等金錢資源或財產歸其持有的事項上本真誠行事；及
  - (b) 鑑於該人就該等金錢資源或財產行事的情況，作出該命令是不公平的。
- (5) 第(4)款不得解釋為限制法庭運用其酌情決定權，以並非該款所指明的理由拒絕根據第(1)款作出命令。
- (6) 根據第(1)款作出的命令—
  - (a) 可由法庭視該案件的有關情況而訂下其認為適當的規限條件；及
  - (b) 所針對的第10(1)(b)條所訂罪行，可以是有關犯罪事實在《1987年防止賄賂（修訂）條例》的生效日期之前發生者。
- (7) 法庭可就同一罪行而根據第(1)款及第12(3)條作出命令，但不得就同一項金錢資源或財產而根據該兩條條文分別作出命令。
- (8) 根據第(1)款作出的命令可為政府或他人代政府對該命令所適用的金錢資源或財產取得管有權及加以處置之事訂定條文。

獲得協助的權力

16. (1) 任何調查人員在對指稱或懷疑犯了本條例所訂罪行而進行調查時，可

請求任何公職人員協助其根據本條例行使權力或執行職務。

- (2) 任何公職人員無合理辯解而忽略提供或不提供調查人員根據第(1)款請求的協助，即屬犯罪，一經定罪，可處罰款\$20000及監禁1年。



## 附錄 3-5-5 立法會公務員及資助機構員工事務委員會 參考便覽

二零零一年三月十九日

### 立法會公務員及資助機構員工事務委員會參考便覽 公務員申報投資事宜

#### 目的

本參考便覽向議員簡報檢討現行公務員申報投資制度的結果。

#### 背景

在本委員會二零零零年十月三十日的會議上，我們告知議員，正檢討公務員申報投資的制度。我們現已完成檢討。本文件載列檢討結果。

#### 政策

公務員隊伍廉潔奉公，對維持公眾對政府的信任和支持至為重要。當局堅決承諾公務員隊伍恪守高尚操守及行爲。貫徹這項承諾，公務員事務規則、規例和申報投資制度訂有清晰指引，規管公務員操守及制裁違規行爲。

規管每名公務員行爲其中的原則包括：

- (a) 公務員不可讓本身的私人利益凌駕於公職之上，而任何使人有理由懷疑他有上述行爲的情況，都必須避免；
- (b) 公務員不可以權謀私；
- (c) 若某公務員因其職務使人有理由懷疑他可從中取得敏感的資料，該公務員不可從事與此職務相關的任何私人財務交易；以及
- (d) 公務員不可從事可能與政府利益有衝突的任何職業／業務，也不可作

出可能使政府聲名受損的行為。

上述原則已載列在有關的公務員事務規則內。公務員如違反這些規則，會被紀律處分；如情況嚴重，更會被革職(下文第6段)。

### 防範利益衝突

現行個別的公務員事務規例和通告訂有特別的規則和指引，規定每名公務員須避免把自己置於其公職與私人利益(不論金錢上或其他利益)發生衝突(或可視為有衝突)的情況。這些規則和指引涵蓋的事項包括：申報投資；接受利益；欠債；無力償債；使用官方資料；擔任外間工作；離職後受僱等。此外，所任職位可取得敏感資料的公務員，更須定期申報私人投資(下文第7至10段)。有關的規例和通告一覽表載於附件。

### 制裁

我們訂有要求公務員守正不阿的清晰標準(上文第4段)；指引公務員如何防範利益衝突情況並廣為傳閱的規則(上文第5段)，以及多年來不斷更新的申報／呈報詳細規定(下文第8至10段)。此外，我們還訂有公務員都清楚了解的制裁措施。不遵守有關的規則和申報／呈報規定屬違紀行為，違紀人員可能因此而被革職或迫令退休。公務員如以權謀私(例如利用公職取得敏感資料謀取個人利益)，可遭受刑事檢控。視乎案情而定，有關人員可能遭當局根據普通法控以公職行為不當罪名，如涉及索取或收受利益，則可能被控觸犯《防止賄賂條例》(詳見附錄五之四)。

### 申報投資制度

政府在公務員申報私人投資方面的現行政策，是致力在下列兩方面取得合理平衡為準則，即一方面要保障公務員私人投資和私隱的權利，另一方面也要維護公務員不偏不倚和向公眾交代的原則。須注意的是，現行申報制度是構成上文各段所述範圍較廣制度的一環，其目的是讓當局易於發現利益衝突的情況，並能盡早採取適當的防範和管理措施。該制度根據公務員自願披露資料的原則制定，並訂有紀律制裁措施，懲處違紀人員。

現行有關申報私人投資的制度有以下主要特點：

(a) 須定期作出申報的職位分為兩層。第I層共有27個主要職位，包括可

取得高度敏感資料的局長級最高層公務員職位。第II層職位包括所有首長級職位和局長／部門首長指定為有較多機會引致利益衝突情況的職位。目前，第II層職位約有3100個；

- (b) 第I層和第II層人員分別須每年及每兩年一次申報其所有投資。在每年或每兩年一次申報期間，他們如有任何相當於或超過20萬元或三個月薪金(以較少者為準)的投資交易，均須在七天內呈報；
- (c) 所有第I層和第II層人員均須申報其配偶的職業；
- (d) 第I層人員更須每年登記其投資及權益。登記冊供市民索閱；以及
- (e) 並非擔任指定職位的人員，毋須定期申報投資。不過，所有公務員均有責任避免發生利益衝突的情況，並於有需要時申報個別的投資。

除上述申報規定外，各局／部門可根據本身的具體情況和運作需要，訂定補充申報規定，供員工遵守。這些規定具有等同《公務員事務規例》的約束力。目前，有29個局／部門已制定附加的申報指引，涉及的局／部門職位超過52000個。這些附加指引包括：規定公務員須申報某些指定行業的投資交易(不論數額或有關人員是否擔任第I層或第II層職位)；如配偶／親屬任職的公司與有關局／部門有公務往來，須申報其工作；須更頻密地申報投資；以及某些職系人員在受聘時須申報投資。有些局／部門亦會就指定的行業或業務範圍訂定投資限制。

如發現實質或可能出現利益衝突的情況，基於運作需要和有足夠法理依據，管理層可採取適當的措施，例如可要求有關人員放棄有關投資、停止購入或出售有關投資，或把有關投資交由他人全權託管。

### 檢討

現行的申報投資制度上次是在一九九八年九月進行修訂，因而加入了一些改善措施。在最近一次檢討中，我們得出的結論是，現行制度大致運作良好。然而，我們發現有些地方可予改善，以助進一步加強現有申報安排的效用。這些改善建議包括：

- (a) 邀請各局局長審慎檢討指定職位的情況，並根據運作需要和出現利

益衝突的機會大小，於有需要時建議指定其他高級職位為第I層職位(上文第8段)，這些職位需向市民披露有關投資；

- (b) 載錄第I層人員申報的投資及權益(而可供公眾索閱)的登記冊，目前每年更新一次。日後，如第I層人員呈報須向公眾披露的投資交易，登記冊會在呈報後一個月內予以更新；
- (c) 目前，《公務員事務規例》界定何種投資類別必須申報和呈報的有關條文，並無明文提到擔任公司董事的事宜。今後，我們會明確說明擔任公司董事也屬於必須申報和呈報的權益；
- (d) 目前，第I和第II層人員都毋須申報銀行存款(不論貨幣或數額)。不過，凡每次超過20萬港元或三個月薪金(以較少者為準)的貨幣買賣，均須在交易後七天內呈報。為求政策一致，祇要有關貨幣交易涉及等額兌換，我們建議撤銷須呈報金額超過20萬港元的貨幣買賣這項一般規定。不過，我們會請各局／部門根據其具體需要，考慮是否就呈報貨幣買賣事宜作出規定，供轄下人員遵守；以及
- (e) 我們會向各局／部門指定的覆核人員發出更詳盡的參考指南，協助他們審核申報表。實施更積極、更高警覺的審查，將可盡早發現發生利益衝突的情況。

同時，我們會繼續保持警覺，採取積極措施鼓勵更多局／部門訂定切合其具體運作需要和情況的補充申報指引，並定時提醒所有公務員，他們有責任避免與本身或其配偶／親屬的投資發生利益衝突，並呈報有關衝突。

此外，我們會繼續推行教育及探訪計劃。根據“公務員廉潔守正計劃”，本局和廉政公署的代表自一九九九年開展開了探訪部門計劃，協助部門加強誠信管理。通過探訪，加上與高級管理階層面對面交談，我們協助部門針對機構運作的特殊情況，檢討和編制有關利益衝突和接受利益的部門指引。我們已經探訪了全部67個政府部門，其中40個已發出或正在修訂部門有關利益衝突的補充指引。由一九九九年一月起，我們已為超過32500名公務員，舉辦了以公務員誠信為題的研討會或培訓課程。此外我們又向高級管理人員發出一本名為《誠信領導實務守則》的小冊子，協助他們加強轄下員工的道德操守，以及防範所屬機構出現貪污問題。

在二零零一至零二年度，我們計劃額外為部門管理人員安排經驗分享工作坊，探討一般誠信問題，例如接受款待、獲取未經許可的貸款等。為了讓部門管理人員更快取得培養道德價值的資料，加快各政府部門分享資料及經驗，我們亦計劃在年底前設立一個有關誠信管理的電子資料及資源中心。

#### 前瞻

公務員事務局會定期檢討公務員申報投資制度的效能，亦會不斷努力提高公務員隊伍的誠信。

#### 附件

有關的公務員事務局通告、《公務員事務規例》及刊物

##### I. 利益衝突

公務員事務局通告第19/92號利益上的衝突

##### II. 接受利益及款待

公務員事務局通告第17/92號1992年接受利益(行政長官許可)公告及有關事項

公務員事務局通告第18/92號接受利益及款待

公務員事務局通告第7/94(C)號贊助訪問

公務員事務局通函

日期：85年12月12日

接受贈券

公務員事務局通函

日期：86年4月11日

接受贈券

公務員事務局通函第19/94號接受利益 – 免費獎券

公務員事務規例第431 – 435條接受款待

公務員事務規例第444條接受利益

統合性政府倫理法制之研究

公務員事務規例第448條退休禮物

### III. 投資

公務員事務局通告第8/98號公務員申報投資事宜

公務員事務局通函第19/99號

日期：99年11月1日

盈富基金

公務員事務局通函

日期：2000年9月21日

投資地下鐵路有限公司(地鐵公司)股票事宜

公務員事務規例第461 – 466條投資

### IV. 外間工作

公務員事務局通告第13/95號退休公務員接受外間機構聘用

公務員事務局通函第50/96號

日期：96年10月7日

公務員在退休前假期及退休後擔任外間工作

公務員事務局通告第3/97號批准合約人員在約滿後接受外間機構聘用

公務員事務規例第326條退休公務員接受外間機構聘用

公務員事務規例第550 – 564條擔任外間工作

### V. 欠債問題

公務員事務局通告第4/97號公務員債務問題

公務員事務局通函第28/91號公務員借貸及貸款來源

公務員事務規例第455 – 459條無力償債及破產

公務員事務規例第480 – 482條貸款收息、代放款人行事及納息借款

公務員事務規例第483條以下屬作擔保人

小冊子公務員貸款須知

VI. 舉報罪行及貪污

公務員事務局通告第20/79號舉報刑事罪行

公務員事務局通告第10/80號舉報試圖賄賂罪行

公務員事務局通告第9/94號有關公務員貪污的指控

VII. 公務員出版刊物刊登收費廣告

公務員事務局通告第6/77號

有關公務員出版刊物刊登收費廣告事 -

公務員事務規例第530條

公務員事務局通告第23/77號有關公務員出版刊物刊登收費廣告事 -

公務員事務規例第530條

公務員事務規例第530 – 531條出版刊物及向公眾募捐

VIII. 其他

小冊子公務員良好行為指南

## 附錄 3-6 日本政府倫理法制

### 壹、日本政府倫理法制沿革與背景

#### 一、日本公務員制度

日本於封建時代，公務員為君主或藩主之家臣，並未就其特別設立制度。明治維新開啓日本近代文官改革契機，但日本近代公務員制度之濫觴為明治 18 年(1885 年)制定之「各省事務整理五綱領」明定「仕進須經考試」，揭櫫官吏任用原則，明治 20 年(1887 年)公布「文官考試試用及實習規則」，文官制度真正確立。明治 32 年(1901 年)「文官任用令」、「文官分限令」、「文官懲戒令」等相關法規相繼成立，日本公務員制度至此略具雛形。第二次世界大戰後，日本文官制度大幅改革，1946 年 11 月公布「日本國憲法」，明示文官任免已非天皇權限，公務員亦由「天皇之家臣」變為「全體國民之奉獻者」，翌年(1947 年)10 月日本政府頒布「國家公務員法」，為確立國家公務員任用、職位、俸給、身分保障等之基本法。依日本「日本國憲法」及「地方自治法」之規定，地方公務員因另成體系，故日本政府於 1950 年制定「地方公務員法」(見附錄 3-6-4)，俾提供地方公務員之管理基準。日本「憲法」第 15 條第 2 項明示：「公務員係為全體國民服務，非為部分國民服務」，為要求公務員恪守「行政中立」之原則，故「國家公務員法」第 102 條約制公務員之政治行為。公務員雖屬勞動者，惟係國民之公僕，而非民間企業之勞工，故無法享有「憲法」第 28 條所定結社權、團體交涉權、團體行動權等權利，但其身分與地位仍受到保障，「國家公務員法」(見附錄 3-6-3)第 75 條明載，公務員如非法律或人事院規則所定之事由，不得違反其意思，予以降職、停職或免職。至於公務員制度之適用，亦不得因種族、信仰、性別、社會地位、政治立場或政黨身分而遭受差別待遇。

#### 二、國家公務員倫理規範之沿革

##### (一)、沿革



「國家公務員」雖係確立國家公務員任用、俸給、勤務條件、身份保障、福祉等相關制度之專法，但為使公務員可公正、誠實執行勤務，確保對國民提供民主、有效之服務，故明示國家公務員之義務，以培養公務員之使命感與倫理觀。惟近年公務員貪污瀆職等重大違法情事頻傳，「國家公務員法」似乎未能充分發揮約束公務員行為之功效，遂另立「國家公務員倫理法」(見附錄 3-6-1)，希冀整肅公務員紀律，拾回國民對公務機構之信任。

大藏省金融檢查室瀆職事件發生前，新進黨即已參考美國「政府倫理法」，擬具公務員倫理法草案，1997 年民主黨等四政黨就該草案進行部分修正後，完成議員版之公務員倫理法草案。當時，日本政府與自民黨均認為各省廳依總務省之範本而訂定之公務員倫理規程已足以約束公務員之行為，1998 年大藏省金融檢查室室長宮川宏一及管理科科長谷內敏美因接受第一勸業銀行、三和銀行等銀行之招待而遭逮捕，導致民眾對政府機構失去信心，社會亦對公務員嚴詞譴責，制定公務員倫理法成為倍受關注之話題，日本政府終於擬定政府版之公務員倫理法草案，惟政府過度參與係該法案之最大弊病，遂改由聯合執政三政黨之議員提出「國家公務員倫理法」草案，於 1999 年順利完成立法。

內閣根據「國家公務員倫理法」第 5 條第 1 項、第 6 條第 1 項及第 45 條規定，依循「國家公務員倫理法」揭櫫之倫理原則，另定「國家公務員倫理規程」(見附錄 3-6-2)，除訂定國家公務員為維持職務倫理應嚴守之倫理行動準則，亦就公務員與利害關係人之範圍予以明確定義，且並對公務員接受贈與或招待等不當行為之禁止暨限制詳加規定。

## (二)、宗旨

制定「國家公務員倫理法」之目的為，國家公務員乃全體國民之公僕，為確保其遂行職務時之倫理，故須採取必要之措施，俾防止公務員出現國民就其執行公務之公正性、產生疑慮或不信任之行為。

## 貳、日本政府倫理法制負責與執行架構

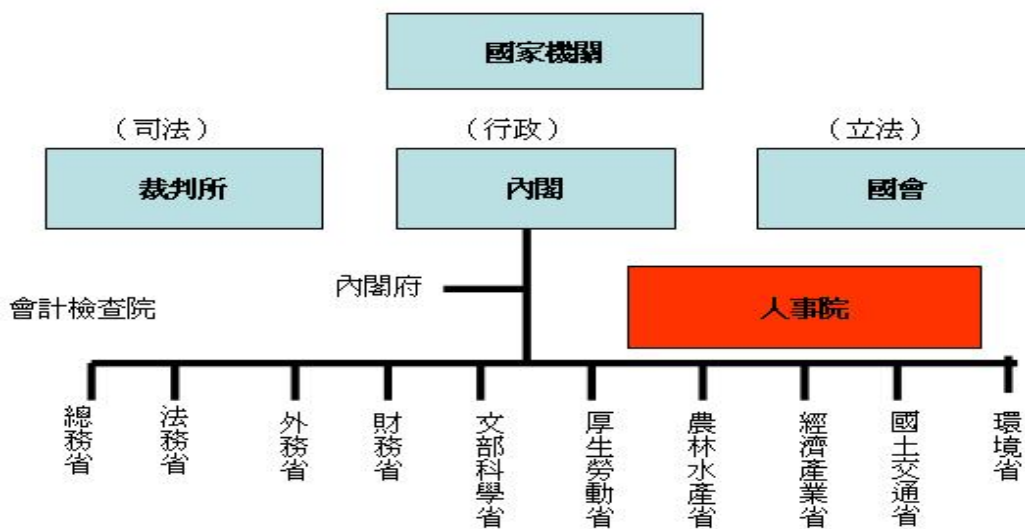
### 一、國家公務員倫理法制主要執行機構

依「國家公務員法」及「國家公務員倫理法」，違反「國家公務員倫理法」之行為其調查權及懲戒權分屬於任命權者、國家公務員倫理審查會；此外「人事院規則 22-1」與「人事院規則 22-2」亦分別訂定違反「國家公務員倫理法」之懲戒處分基準、違反「國家公務員倫理法」之調查暨懲戒程序。「任命權者」係指，「國家公務員法」第 55 條第 1 項所規定之內閣、各大臣（內閣總理大臣及各省大臣）、會計檢查院長、人事院總裁、宮內廳長官及各外部機構之首長。

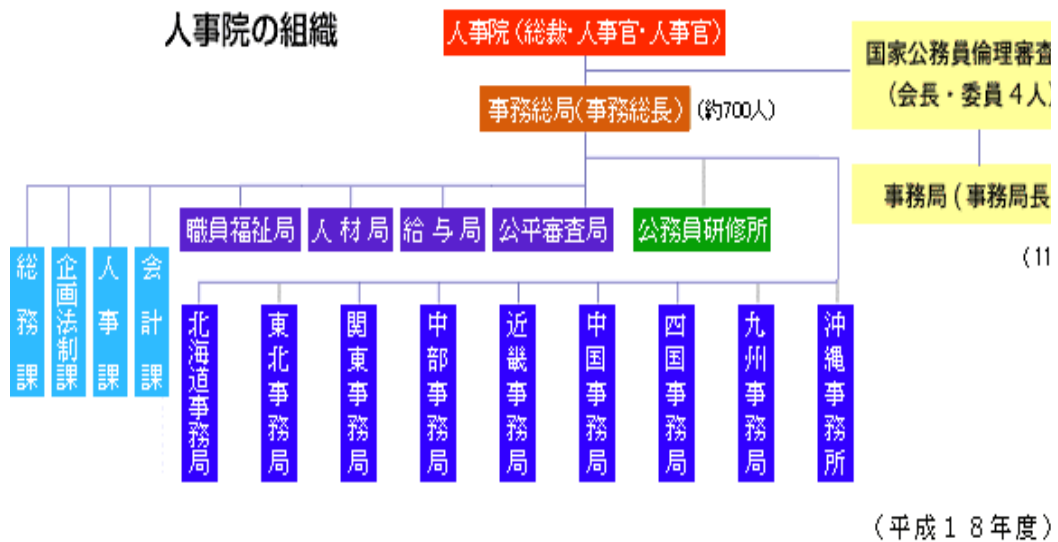
「國家公務員法」第 3 條明示，於內閣之下設人事院，掌理薪俸、改善勤務條件及改善人事行政之建議、職階制、考試暨任免、進修、身份保障、懲戒、申訴處理、維持職務倫理、確保職員之相關人事行政之公正性及維護職員利益等事務。人事院為掌理一般職公務員之職務、任免、俸給及其他之一般人事行政事務之調整、職員考試事項暨不當處分之審查等事務之行政機構，但具準立法及準司法之機能。為確保人事行政之政治中立及專門性，人事院較一般行政機構更具獨立性。依「國家公務員法」之規定，人事院由人事官三人組織之，其中一人由內閣任命為總裁。人事官由內閣提名，經參眾兩院同意後任命之，任期為 4 年，得連任，但不得持繼連任 12 年，人事官之任免須經天皇之認證。人事官不得兼任其他官職，卸任後 1 年內，亦不得擔任人事院以外之官職，應具備之資格為：一、品格高潔；二、對人事行政與功績制有專門知識或卓見；三、年齡為 35 歲以上；四、無犯罪紀錄；五、任命前 5 年內非政黨幹部、政治顧問或具同樣影響力之黨員、公職選舉之候選人。人事院得就其掌理之人事行政之相關事項進行調查，且必要時，可詢問證人或要求提出相關文件。

依據「國家公務員法」第 3 條之 2，為授權處理人事院掌理事務中維持倫理之相關事務，於人事院置國家公務員倫理審查會（以下簡稱「倫理審查會」）。「國家公務員倫理法」明定倫理審查會由會長及委員 4 人組成，會

長與委員得為兼任，會長及委員，係由品格高尚、能超然公正判斷職員是否維持其職務倫理、具法律或社會之相關學識經驗者，如具職員(檢察官及國立大學教師除外。)經歷則在職時間應未超過 20 年者，經參、眾議院同意，由內閣任命之，會長及委員之任期為四年，得連任，會長及委員不得洩漏職務上獲悉之秘密，卸任後亦同，會長及委員於任期內，不得擔任政黨或其他政治團體之幹部、積極從事政治運動，專職之會長及專職之委員於任期內不得從事營利事務或其他以金錢利益為目的之業務，除內閣許可外，亦不得從事其他可獲得報酬之職務。會長與委員獨立行使其職權，主要掌理事務為：一、於制定、修正或廢除國家公務員倫理規程時，擬案向內閣提出意見；二、訂定或修改違反倫理法或倫理規程之懲戒處分標準；三、維持職員職務倫理相關研修之綜合企劃及調整；四、就遵守國家公務員倫理體制之建立，對各省廳首長之指導及建議；五、各類報告書之審查；六、違反倫理法或倫理規程之行爲之調查暨懲戒。



圖一：日本中央政府體制圖



圖二：日本人事院組織圖

## 二、國家公務員倫理法制執行程序與執行方法

任命權者如認為職員有違反「國家公務員倫理法」之虞，應向倫理審查會報告（「國家公務員倫理法」第 22 條），任命權者擬就該違法行為進行調查時，應告知倫理審查會（「國家公務員倫理法」第 23 條第 1 項），完成調查後，應向倫理審查會報告調查結果（「國家公務員倫理法」第 23 條第 2 項），倫理審查會受理任命權者提出之報告，必要時，得與任命權者共同進行調查（「國家公務員倫理法」第 25 條），如有特殊需要，倫理審查會得單獨進行調查（「國家公務員倫理法」第 28 條），此外，倫理審查會認為職員有違法行為之虞時，亦可要求任命權者進行調查（「國家公務員倫理法」第 24 條）。調查結果顯現確有違法之情事時，任命權者如欲執行懲戒處分，須先取得倫理審查會許可（「國家公務員倫理法」第 26 條）；如係倫理審查會單獨進行之調查，倫理審查會得自行將該被調查之職員交付懲戒程序（「國家公務員倫理法」第 30 條）。倫理審查會如接獲檢舉資料，應就資料內容進行判斷，必要時，可自行或委託任命權者確認檢舉資料之可信度，證實確有

違法行爲後，即可依「國家公務員倫理法」正式進行調查。

日本近年違反倫理法引發輿論譁然甚至被列入年度重大貪瀆案之一，爲2004年厚生勞動省承辦該省教學手冊發包之職員，因圖利廠商而獲得廠商回贈現金總計460萬日圓做爲謝禮，並接受其他業者招待海外旅遊，該職員以收賄罪被逮捕，且違反「國家公務員倫理規程」第3條第1項第1款、第6款至第9款，而遭免職。

根據日本人事院「平成17年度年次報告書」，2005年就因違反「國家公務員倫理法」之虞進行之調查共17件，計114人遭懲戒處分。其中較受矚目的案件爲，厚生勞動省之某地方機構有21名職員於採購物品時要求簽約廠商開立不實收據，詐領款項（計約4億2,200萬日圓），其中2人接受廠商以該款項支付個人住宅裝修工程費用；此外，厚生勞動省之職員亦接受上揭機構之職員超出一般社交程度之招待，違反「國家公務員倫理規程」第3條第1項第1款、第4款及第5條第1項規定，而該地方機構有18名職員尚因違反「國家公務員法」之行爲，遭一併處分，計7人被免職，2人停職10個月，停職6個月、2個月、1個月各有2名職員，其餘遭減薪或警告。

### 三、「國家公務員倫理法」之適用範圍

日本公務員依「國家公務員法」第2條因職務性質分爲「特別職」與「一般職」，「特別職」係指內閣總理大臣、國務大臣、政務次官、檢察官、大使、法官、國會職員、法官及法院職員、防衛廳職員、地方自治團體之首長等地位暨職務具特殊性質，且不適用「國家公務員法」、「地方公務員法」之職務者，其餘皆屬一般職之公務員。適用「國家公務員倫理法」之職員爲，「國家公務員法」第2條第2項所定之屬一般職之國家公務員，但委員、顧問、參事或人事院指定相當於上揭職務且非專職者除外。

日本公務員依機關性質可分爲「國家公務員」及「地方公務員」；「國家公務員法」、「國家公務員倫理法」及「國家公務員倫理規程」僅適用於國家公務員。1950年頒布之「地方公務員法」除確立地方公共團體之人事機構及地方公務員相關人事行政之基本準則外，亦就地方公務員之倫理規範作出明確規定，且「國家公務員倫理法」第43條規定：「地方自治團體爲維持

地方公務員之職務倫理，應依中央政府依本法施行之對策，致力採取必要之措施。」；為提高職員之道德倫理，北海道於平成 9 年（1997 年）制定「北海道職員之公務員倫理條例」，創都道府縣制定規範地方公務員倫理之首例。

### 參、日本政務官與公職人員之倫理規範

#### 一、政務官之倫理規範

日本政府於平成 13 年（2001 年）1 月 6 日內閣會議通過「國務大臣、副大臣暨大臣政務官規範」，俾維持國務大臣、副大臣等之清廉，確保國民對政治與行政之信任，亦可確保國家公務員之政治中立性。

##### （一）、禁止至營利事業兼職

不論是否領取報酬，該「規範」嚴禁國務大臣、副大臣及大臣政務官至營利事業兼職；除無給之榮譽職之外，亦不得至公益法人或類似之團體兼職；至於自由業，原則上，亦不能從事其業務，必須從事時，國務大臣應取得內閣總理大臣之核可，副大臣應取得其上司國務大臣之許可。

##### （二）、證券交易自律暨持有之證券交付信託

國務大臣、副大臣及大臣政務官於任職期間，股票等有價證券、不動產、高爾夫球會員證等之交易應自律。此外，就任時即持有之股票、轉換公司債等有價證券應交付信託，任職期間不得解除或變更契約。

##### （三）、資產公開

國務大臣、副大臣及大臣政務官就任時與卸任時均應公開其與配偶、所撫養之子女之資產。

##### （四）、募款餐會自律

舉辦旨在籌募政治資金之餐會時，規模勿過大，俾免於招致國民之疑慮。

##### （五）、與業者之接觸等

為確保政治倫理，與相關業者接觸時，不得接受招待或收受贈禮；嚴禁

收受未上市之股票或出席特定企業之演講領取超乎常理之演講費。

(六)、接受外國之贈禮

收受外國元首或政府之贈禮時，如禮物價值逾 2 萬日圓，原則上，卸任時應歸還所屬之機關。

(七)、保守秘密之義務

國務大臣、副大臣及大臣政務官不得洩漏職務上獲悉之秘密，如因作證須就與職務上秘密有關之事項進行說明時，國務大臣應取得內閣總理大臣之核可，副大臣應取得其上司國務大臣之許可。國務大臣、副大臣及大臣政務官卸任後，亦須嚴守秘密。

(八)、國內外出差暨旅行

國務大臣欲赴國外，須經內閣會議同意，如國內出差及旅行，應取得內閣總理大臣之許可。至於副大臣等之出差或旅行，不分國內外，均應取得其上同國務大臣之許可，且須事前向內閣官房長提出申報。

## 二、公職人員之倫理規範

所謂公職人員係指眾議院議員、參議院議員及地方公共團體會議之議員(地方議員)或首長。1976 年洛克希德醜聞案後，政治倫理成爲街頭巷議的話題，更成爲昭和 58 年(1983 年)眾議院選舉時的訴求焦點。因此，就選後召開的第 101 屆國會而言，訂定確立政治倫理措施乃當務之急。昭和 60 年(1985 年)完成修正的「國會法」第 124 條之 2 明載：「議員須遵守由各議院議決訂定之政治倫理綱領及依此由各議院議決訂定之行爲規範」；爲確保其實施，根據同法第 124 條之 3 之規定，於參、眾議院分別設置政治倫理審查會。

「政治倫理綱領」及「行爲規範」係，國會議員深切反省後於 1985 年議決訂定。「政治倫理綱領」可說是政治倫理之基本方針，揭櫫國會議員之抽象的行動基準；爲使其具體化，而詳細規定遵守事項的就是「行爲規範」。

「政治倫理綱領」揭列之事項可彙整如下：

- (一)、應貫徹值得國民信賴、更高倫理之義務，杜絕政治腐敗暨努力提升政治倫理。
- (二)、應銘記身負對國民負責、隨時達成任務之義務。
- (三)、身為全體國民之代表，基於實現全體利益之宗旨，應努力謀求特定利益之實現，不得損及公共利益。
- (四)、遭質疑有違反政治倫理之虞時，應以誠摯態度親自說明，釐清責任。

「行為規範」係就國會議員之行為具體訂定應遵守之規範，其要旨為：

1. 國會議員應就其職務確保廉潔，不得有質疑其公正性之行為。
2. 國會議員如擔任企業或團體之幹部，應向議長申報該企業或團體之名稱、其職稱。
3. 議長或副議長不得至企業或團體兼職領取報酬，但每年報酬 100 萬日圓以下除外。
4. 議員於擔任常任委員長或特別委員長期間，不得至其管轄之相關企業兼職領取報酬。

為究明國會議員是否明顯違反「行為規範」，應否負政治道義責任，眾議院與參議院均設有「政治倫理審查會」，審查須由 3 分之 1 以上委員提案，且過半數委員贊成，才開始進行審查。如認為應負政治責任，得勸告該名委員遵守「行為規範」、一定期間自動暫停出席議院或辭去幹部或特別委員長，惟須 3 分之 2 以上委員同意，審查會方可進行勸告。政治倫理審查會原則上採秘密會議，議員以外人員不得傍聽，議事錄內容亦不予公開。

此外，為使國會議員的資產狀況可接受國民的監督與批判，日本於平成 4 年（1992 年）制定「確立政治倫理之國會議員資產公開法」，俾促進民主政治之健全發展。

而為防止國會議員、地方議員等公職人員針對國家或地方政府之採購契約或行政處分進行關說收取報酬，日本於平成 12 年（2000 年）制定「公職人員斡旋行為取得利益處罰法」。「刑法」之斡旋收賄罪僅限於要求公務員從事不當行為，但雖為合法行為若收取酬勞，則適用本法乃該法之特色。該



法規定，公職人員接受請託，就國家或地方政府之採購契約、對特定人員之行政處分進行關說，影響公務員執行其職務，且收受報酬，得處 3 年以下有期徒刑。國會議員之公費秘書亦適用本法為該法另一特點，該法明定，國會議員之公費秘書如因關說而獲取利益，得處 2 年以下有期徒刑。

至於地方自治團體，已制定或著手制定政治倫理條例之地方自治團體為數不少，大阪府堺市於 1983 年公布「堺市議會議員暨市長倫理條例」，是最早制定相關倫理條例的地方自治團體，懲罰收賄議員、議員暨市長資產公開為該「條例」之重點。

## 肆、財產申報暨公布

### 一、所得等之申報

- (一)、提出申報書義務之職員：各省審議官職級以上職員。
- (二)、申報日期：每年三月一日至三十一日向所屬省廳首長或受委任者提出申報書。
- (三)、申報內容：前一年之總所得金額、各種所得金額、贈與稅課稅稅額。

### 二、贈與等之申報

接受業者等提供之金錢、物品、其他財產上之利益輸送或招待(以下簡稱「贈與等」)或基於業者與職員職務上之關係而提供之人力勞動為報酬，達到國家公務員倫理規程所定報酬時(僅限接受該贈與等或接受該報酬時為該省副課長級以上之職員，且因該贈與等所接受之利益或報酬其價值為一次五千日元以上)。

- (一)、提出申報書義務之職員：各省副課長級以上之職員。
- (二)、申報日期：依 1 月至 3 月、4 月至 6 月、7 月至 9 月、10 月至 12 月之區分(簡稱「季」)，於該季的下一季首日起十四天內，向各省廳首

長或受委任者申報。

- (三)、申報內容：因該贈與等所獲得之利益或報酬之價值、因該贈與等獲得之利益或報酬之日期及取得原因、提供該贈與等之業者或支付該報酬之業者之名稱及地址。

### 三、股票交易等之申報

就前一年所為之股票等〔即股票(含畸零股)、新股票保證權之證券或證書、可轉換公司債或具新股票保證權之公司債，以下同〕之取得或轉讓提出申報。

- (一)、提出申報書義務之職員：各省審議官職級以上職員。
- (二)、申報日期：每年三月一日至三十一日向所屬省廳首長或受委任者提出申報書。
- (三)、申報內容：與該股票交易等有關之股票種類、名稱、數量、價格及交易日期。

## 伍、利益衝突迴避之相關規範

### 一、禁止不當行為

- (一)、「國家公務員倫理規程」規定之禁止行為
  - 「國家公務員倫理規程」第3條明載公務員不得有下揭行為
  - 1.收受利害關係人之金錢、物品或不動產之贈與
  - 2.接受利害關係人金錢之借貸
  - 3.接受利害關係人或由利害關係人負擔之免費物品或不動產之借與
  - 4.接受利害關係人或由利害關係人負擔之免費之勞役之提供
  - 5.接受利害關係人轉讓之未上市股票

- 6.接受利害關係人之招待
- 7.與利害關係人一同上遊樂場所或打高爾球
- 8.與利害關係人一同旅行，但公務旅行除外

#### (二)、與利害關係人以外人員間之禁止行爲

「國家公務員倫理規程」第 5 條要求，公務員不得重覆接受非利害關係人之業者之招待等超出一般社交程度之招待或財物之利益輸送；不論是否爲利害關係人，公務員自己購買或承租之物品或不動產或接受勞役，其代價不得由進行該行爲時不在場之業者等負擔。

#### (三)、禁止兼職

「國家公務員法」第 103 條第 1 項規定，公務員不得兼任商業、工業、金融業及其他以營利爲目的之私人企業或其他團體之幹部、顧問或評議員，亦不得親自經營營利事業。

#### (四)、離職後之利益衝突

##### 1.離職後之就業限制

爲防止圖利私人企業，「國家公務員法」第 103 條第 2 項明示，公務員離職後 2 年內，不得至與其離職前 5 年內任職之機構有密切關係之私人企業就業，惟依人事院規則之規定，經所屬機構首長報告人事院取得核可者，不在此限。因防衛設施廳發生公共工程圍標綁標事件，在野黨擬修法改爲離職後 5 年內，不得任職私人營利事業；但該規定有違日本「憲法」所定人民有選擇職業自由之虞，故現任首相安倍晉三擬於 2007 年通常國會提出國家公務員改革相關法案，廢除該規定，改強化「關說」等行爲之罰則。

##### 2.罰則

依「國家公務員法」第 109 條規定，違者處 1 年以下有期徒刑或 3 萬日圓以下罰金。

## 二、參與其他事業之規定

「國家公務員法」第 104 條明定，公務員獲得報酬兼任營利事業以外之團體之幹部、顧問或評議員，須取得內閣總理大臣或任職機構首長之許可。

### 三、禁止領取特定書籍之監修等之報酬

「國家公務員倫理規程」第 6 條明定，公務員不得領取下列書籍等之監修之報酬：

- (一)、以補助金或政府直接支付費用印製之書籍等。
- (二)、出版品之過半數為該公務員所屬之政府機構或特定獨立行政法人採購之書籍等。

## 陸、政治活動限制之相關規範

### 一、行政中立

- (一)、為確保公務員行政中立，「國家公務員法」第 102 條第 1 項規定，公務員不得因政黨或政治目的而參與要求或接受政治獻金或其他利益之行爲，亦不得從事行使選舉權以外之人事院規則所定之政治行爲。
- (二)、罰則。違者依「國家公務員法」第 110 條規定，處 1 年以下有期徒刑或 3 萬日圓以下罰金。
- (三)、依「國家公務員法」第 102 條第 2 項之規定，公務員不得成爲公職選舉之候選人。
- (四)、「國家公務員法」第 102 條第 3 項明載，公務員不得擔任政黨或其他政治團體之幹部、顧問或其他相同職務之職員。
- (五)、人事院規則所定之限制行爲。

## 柒、補充性之禁止事項

### 一、禁止爭議行爲

「國家公務員法」第 98 條項規定，職員不得有罷工、怠工或其他爭議性行爲，亦不得企劃上揭違法行爲或共謀、教唆、煽動上揭行爲之遂行。

### 二、禁止失信之行爲

「國家公務員法」第 99 條嚴禁公務員從事損害公務員信用或有辱全體公務員名譽之行爲。

### 三、禁止妨礙維持公務員職務倫理之行爲

「國家公務員倫理規程」第 7 條所定禁止之行爲包括：

- (一)、公務員明知所屬之政府機構或特定獨立行政法人等之其他職員因從事違反「國家公務員倫理規程」第 3 條、第 5 條及第 6 條規定之行爲而獲取利益，卻收受或享受全部或部分之利益。
- (二)、針對足以證明其他公務員有違法行爲之事實，進行不實之陳述或隱匿事實。

## 捌、相關措施

### 一、守密之義務

「國家公務員法」第 100 條明定，職員應嚴守職務上獲悉之秘密，退休後亦不得洩密，違者依同法第 109 條，處 1 年以下有期徒刑或 3 萬日圓以下罰金。

## 二、專心職務

依「國家公務員法」第 101 條規定，公務員應專心職務，法律或行政命令所

定之狀況除外，公務員不得兼任其他官職；兼任者亦不得支領薪俸。

## 三、用餐之報告

「國家公務員倫理規程」第 8 條明示，職員與利害關係人共同用餐但其費用非由利害關係人負擔時，其用餐費用如逾一萬日圓，應事先向倫理監督官報告倫理監督官規定之事項；如情況特殊未能事前報告，事後應迅速提出報告。

## 四、演講等之限制

依「國家公務員倫理規程」第 9 條規定，職員受利害關係人之請託，進行演講、討論、講習或研修之指導、傳授知識、著述、監訂、編纂或參加電台或電視台節目之演出接受報酬時，應先取得倫理監督官之許可。

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## 二、網路資料

日本人事院網站 <http://www.jinji.co.jp>

日本人事院平成 17 年度年次報告書 [http :](http://clearing.jinji.go.jp:8080/hakusyo/book/jine200602/jine200602_2_151.html)

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日本內閣官房網站 <http://www.cas.go.jp>



## 附錄 3-6-1 日本「國家公務員倫理法」

國家公務員倫理法

(平成 11 年 8 月 13 日法律第 129 號)

(修正 平成 11 年 11 月 25 日法律第 141 號)

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附則

### 第一章 總 則

(目的)

第一條 鑑於國家公務員係為全體國民服務之人，其職務係國民所託付之公務，為協助國家公務員於其職務上維持倫理，須採取必要之措施，以防止國民對其執勤公正性有所疑慮或不信，確保國民對公務之信賴，爰制定本法。

(定義等)

第二條 一、本法(第二十一條第二項及第四十二條第一項除外。)所稱「職

員」，係指「國家公務員法」(昭和 22 年法律第 120 號)第二條第二項規定之一般國家公務員(委員、顧問、參事或人事院指定相當於上述之職且非專職者除外。)

二、本法所稱「該省副課長級以上職員」，係指下列職員。

(一)適用「一般職職員俸給法」(昭和 25 年法律第 95 號，以下簡稱「一般職俸給法」。)之職員，如下列者(1 至 10 者僅限支領「一般職俸給法」第十條之二第一項規定之俸給特別調整額者。)

- 1、一般職俸給法附表第一(1)行政職俸給表(一)之職等七級以上之職員
- 2、一般職俸給法附表第二專門行政職俸給表之職等 4 級以上之職員
- 3、一般職俸給法附表第三稅務職俸給表之職等 7 級以上之職員
- 4、一般職俸給法附表第四(1)公安職俸給表(一)之職等 7 級以上之職員
- 5、一般職俸給法附表第四(2)公安職俸給表(二)之職等 7 級以上之職員
- 6、一般職俸給法附表第五(1)海事職俸給表(一)之職等 5 級以上之職員
- 7、一般職俸給法附表第六(1)教育職俸給表(一)之職等 4 級以上之職員
- 8、一般職俸給法附表第六(2)教育職俸給表(二)之職等 3 級以上之職員
- 9、一般職俸給法附表第六(3)教育職俸給表(三)之職等 3 級以上之職員
- 10、一般職俸給法附表第六(4)教育職俸給表(四)之職等 3 級以上之職員

- 11、一般職俸給法附表第七研究職俸給表之職等 4 級以上之職員
- 12、一般職俸給法附表第八(1)醫療職俸給表(一)之職等 3 級以上之職員
- 13、一般職俸給法附表第八(2) 醫療職俸給表(二)之職等 6 級以上之職員
- 14、一般職俸給法附表第八(3) 醫療職俸給表(三)之職等 6 級以上之職員
- 15、一般職俸給法附表第九福祉職俸給表之職等 5 級以上之職員
- 16、一般職俸給法附表第十指定職俸給表之適用職員

(二)適用「一般職任期制研究員之任用、俸給暨工作時間特例法」(平成 9 年法律第 65 號，以下簡稱「任期制研究員法」。)第六條第一項所定俸給表之職員。

(三)適用「國營企業職員薪給等特例法」(昭和 29 年法律第 141 號)之職員，其職務與責任為相當於第一款所列之職員，由主管大臣(即該法第四條規定之主管大臣。)規定者。

(四)適用「檢察官之俸給等法」(昭和 23 年法律第 76 號，以下簡稱「檢察官俸給法」。)之職員，如下列者。

- 1、最高檢察署長、副首席檢察官及高等檢察處長
- 2、支領檢察官俸給法附表檢察官項第十七款之月俸以上之檢察官
- 3、支領檢察官俸給法附表副檢察官項第十一款之月俸以上之副檢察官

三、本法所稱「指定職以上之職員」，係指下列職員。

(一)適用「一般職俸給法」附表第十指定職俸給表之職員

(二)適用「任期制研究員法」第六條第一項規定之俸給表者，支領該表第四款月俸以上之薪資者

(三)適用「檢察官俸給法」之職員，如下列者。

- 1、最高檢察署長、副首席檢察官及高等檢察處長
- 2、支領「檢察官俸給法」附表檢察官項第八款之月俸以上之檢察官
- 3、支領「檢察官俸給法」第九條規定之月俸或「檢察官俸給法」附表副檢察官項第一款之月俸以上之副檢察官

四、本法所稱「該省審議官級以上之職員」，係指下列職員。

(一)適用「一般職俸給法」附表第十指定職俸級表之職員，支領該表第四款月俸以上之薪資者

(二)適用「檢察官俸給法」之職員，如下列者。

- 1、最高檢察署長、副首席檢察官及高等檢察處長
- 2、支領「檢察官俸給法」附表檢察官項第五款之月俸以上之檢察官

五、本法所稱「業者等」，係指法人(含非法人之社團或財團，有代表人或管理人之規定者。)、其他團體及經營事業之個人(僅限因該事業利益而有行為之個人。)

六、因業者等之利益而行為之幹部、從業人員、代理人、其他人員，視同前項之業者等，適用本法之規定。(職員應遵守其職務之倫理原則)

### 第三條

一、職員係為全體國民服務之人，應自覺非只為某部分國民服務，不得有差別待遇，將職務上獲得之資訊只告知某部分國民，執行職務時須秉公處理。

二、職員應隨時嚴守公私分明，不得為自己所屬組織之私人利益，擅自利用

其職務或地位。

三、職員行使法律授與之權限時，不得接受該權限行使對象之饋贈等，不得有招致國民疑慮或不信之行爲。(國會報告)

第四條 內閣應每年向國會提出有關職員維持其職務倫理之狀況及爲維持職員職務倫理所採措施之報告書。

## 第二章 國家公務員倫理規程

第五條 一、內閣應根據第三條之倫理原則，制定爲維持職員職務倫理其必

要事項之相關規定(以下，簡稱「國家公務員倫理規程」)。國家公務員倫理規程應涵括禁止及限制職員接受於職務上有利害關係者之贈與等，即防止職員與職務上有利害關係者之接觸、其他招致國民疑慮或不信之行爲等應遵守之事項。

二、內閣於制定或修改、廢除國家公務員倫理規程時，須徵詢國家公務員倫理審查會之意見。

三、各省各廳之首長(即內閣總理大臣、各省大臣、會計檢查院長、人事院總裁、內閣法制局長官及警察廳長官及各外局之首長，以下亦同。)得取得國家公務員審查會之同意，制定有關該各省各廳所屬職員其職務倫理之規定。

四、內閣制定或修改、廢除國家公務員倫理規程及前項之規定後，應向國會報告之。

## 第三章 贈與等之報告暨公開

(贈與等之報告)

第六條 一、該省副課長級以上之職員接受業者等之金錢、物品、其他財產上

之利益輸送或招待(以下，簡稱「贈與等」。)或基於業者與職員職務上之關係而提供之人力勞動為報酬，即國家公務員倫理規程所定之報酬時(僅限接受該贈與等或接受該報酬時為該省副課長級以上之職員，且因該贈與等所接受之利益或報酬其價值為一次 5000 日元以上。)，應依 1 月至 3 月、4 月至 6 月、7 月至 9 月、10 月至 12 月之區分(以下，簡稱「一季」。)，將記載下列事項之贈與報告書，於該季的下一季首日起 14 天內，向各省各廳之首長或受委任者提出之。

(一)因該贈與等所獲得之利益或報酬之價值

(二)因該贈與等獲得之利益或報酬之日期及取得原因

(三)提供該贈與等之業者或支付該報酬之業者其名稱及地址

(四)前三款以外，國家公務員倫理規程規定之事項

二、各省各廳之首長或受委任者收到依前項規定提出之贈與報告書時，應將該贈與報告書(限指定職以上之職員所提出者，且第九條第二項

但書規定之事項除外。)-之副本送交國家公務員倫理審查會。

(股票交易等之報告)

第七條 一、該省審議官級以上之職員應就前一年所為之股票等〔即股票(含畸零股)、新股票保證權之證券或證書、可轉換公司債或具新股票保證權之公司債。以下，本項中亦同。〕之取得或轉讓(僅限該省審議官級以上職員之間之行為。以下，簡稱「股票交易等」。)，於每年 3 月 1 日至 31 日，向各省各廳之首長或受委任者，提出記載與該股票交易有關之股票種類、名稱、數量、價格及交易日期之股票交易報告書。

二、各省各廳之首長或受委任者收到依前項規定提出之股票交易

報告書時，應將該股票交易報告書之副本送交國家公務員倫理審查會。

(所得等之報告)

第八條 一、該省審議官級以上職員(僅限前一年一整年期間內為該省審議官級以上之職員。)應於每年3月1日至31日，向各省各廳之首長或受委任者提出記載下列規定金額及課稅價格之所得報告書。

(一)就前一年所得課徵該年之所得稅時，該年所得中之下列金額 (該金額超過一百萬日元時，則為該金額及取得之原因)

1、總所得金額〔即所得稅法(昭和40年法律第33號)第二十二

條第二項規定之總所得金額。〕與山林所得金額(即同條第

三項規定之山林所得金額。)中之各種所得金額(即同法第二條第一項第二十二款規定之各種所得金額。以下亦同。)

2、各種所得金額〔退職所得金額(即所得稅法第三十條第二項規定之退職所得金額。)與山林所得金額(即同法第三十二條第三項規定之山林所得金額)除外。〕中，依租稅特別措施法(昭和32年法律第26號)之規定，雖有所得稅法第二十二條規定，卻與其他所得分開計算之所得金額

(二)就前一年中因贈與而獲得之財產課徵該年之贈與稅時，該財產其贈與稅之課稅價格〔即繼承稅法(昭和25年法律第73號)第二十一條之二規定之贈與稅課稅價格。〕

(三)前項所得報告書之提出，得採納稅申報書〔即國稅通則法(昭和37年法律第66號)第二條第六款規定之納稅申報

書，以下亦同。〕副本爲之。但，同項第一款 1 或 2 所規定之金額超過一百萬日元時，則須於該納稅申報書副本詳載取得之原因。

三、各省各廳之首長或受任者收到第一項之所得報告書或前項之納稅申報書副本(以下，簡稱「所得報告書等」。)時，應將該所得報告書等之副本送交國家公務員倫理審查會。

(報告書之保存暨閱覽)

第九條 一、受理依前三條規定提出之贈與報告書、股票交易報告書及所得報告書等之各省各廳首長或受委任者，須自應提出上述報告書之最後期限之翌日起五年內保存該報告書。

二、任何人均得向各省各廳之首長或受委任者請求閱覽依前項規定保存之贈與報告書(僅限因贈與而獲得利益或報酬其價格爲一次超過二萬日元者。)。惟，符合下列各款且爲國家公務員倫理委員會事先認可者，不在此限。

(一)如公開則有危害國家安全之虞或損害與他國或國際機構之信賴關係之虞或將對與他國或國際機構之情誼造成不利之虞。

(二)如公開則有影響犯罪預防、鎮壓或搜查、訴訟之維持、刑罰之執行、其他公共安全或秩序之維持之虞。

#### 第四章 國家公務員倫理審查會

(設置)

第十條 於人事院設國家公務員倫理審查會(以下，簡稱「審查會」。)。

(職掌暨權限)



第十一條 審查會之職掌暨權限，除第五條第三項、第九條第二項但書、第三十九條第二項、第四十條第三項及第五項、第四十二條第三項之規定外，其餘如下。

- (一)於制定或修改、廢除國家公務員倫理規程時，擬案向內閣提出意見。
- (二)制定或修改違反本法或以本法為依據之命令(含以第五條第三項規定為依據而制定之訓令，以下亦同。)時之懲戒處分標準。
- (三)進行維持職員職務倫理相關事項之調查研究及企畫。
- (四)進行維持職員職務倫理相關研修之綜合企畫及調整。
- (五)就遵守國家公務員倫理體制之建立，對各省各廳之首長給予指導及建議。
- (六)就贈與報告書、股票報告書及所得報告書進行審查。
- (七)要求任命權者(即國家公務員法第五十五條第一項規定之任命權者、其他法律所定之任命權者及接受其委任者，以下亦同。)就違反本法或以本法為依據之命令之行爲進行調查，並就過程提出報告及陳述意見，核准其所爲之懲戒處分，並就該懲戒處分概要之公布，表達意見。
- (八)基於依國家公務員法第十七條之二規定接受委任之權限進行調查。
- (九)要求任命權者為維持職員職務倫理應採取必要之監督措施。
- (十)根據國家公務員法第八十四條之二規定接受委任之權限，將職員送交懲戒程序，並公布懲戒處分之概要。
- (十一)上述各款規定外，法律或以法律為依據之命令所規定屬於審查會之事務及權限。

(職權之行使)

第十二條 審查會之會長及委員獨立行使其職權。

(組織)

- 第十三條
- 一、審查會由會長及委員四人組成。
  - 二、會長及委員得為兼任。
  - 三、會長綜理會務，代表審查會。
  - 四、會長因故無法視事，由其事先指定之委員代理其職務。

(會長及委員之任命)

- 第十四條
- 一、會長及下一項所定委員以外之委員，係由品格高尚、能超然公正判斷職員是否維持其職務倫理、具法律或社會之相關學識經驗且如具職員(檢察官及國立大學教師除外。)經歷則在職時間未超過 20 年者，經兩議院同意，內閣任命之。
  - 二、委員其中一人係由人事官中選出，經內閣任命者充任之。
  - 三、會長或前項所定委員以外之委員其任期屆滿而出缺時，如因國會休會或眾議院解散而未能取得兩議院之同意，雖有第一項規定，內閣得自具該項規定之資格者任命會長或前項所定委員以外之委員。
  - 四、前項規定之狀況下，於任命後之首次會期內，須取得兩議院事後之認可，如未能取得兩議院事後之認可，內閣應立即罷免該會長或第二項所定委員以外之委員。

(會長暨委員之任期)

- 第十五條
- 一、會長暨委員之任期為四年。
  - 二、人事官之剩餘任期未滿四年時，雖前項規定，前條第二項所定，委員之任期，仍為該剩餘任期。
  - 三、遞補之會長暨委員之任期為前任者之剩餘任期。

四、會長及委員得連任。

五、會長暨委員之任期屆滿時，該會長暨委員於繼任者尚未就任前應繼續執行其職務。

(身份保障)

第十六條 會長或委員(第十四條第二項規定之委員除外。以下，本條、下一條、第十八條第二項及第三項、第十九條亦同。)除下列狀況外，不得於任期內背離其意罷免之。

(一)被宣告破產。

(二)被處監禁以上之刑責。

(三)審查會認定因身心之故無法執行其職務、違反職務上之義務、其他認定有不適任會長或委員之不當行為。

(罷免)

第十七條 會長或委員有符合前條各款之行為時，內閣應罷免該會長或委員。

(服務)

第十八條 一、會長及委員不得洩漏職務上獲悉之秘密，卸任後亦同。

二、會長及委員於任期內不得擔任政黨或其他政治團體之幹部，積極從事政治運動。

三、專職之會長暨專職之委員於任期內不得從事營利事務或其他以金錢利益為目的之業務，此外，除內閣許可外，亦不得從事其他可獲得報酬之職務。

(薪給)

第十九條 會長暨委員之薪給另以法律定之。

(會議)

第二十條 一、審查會由會長召開之。

- 二、如無會長與委員二人出席時，審查會不得開會進行決議。
- 三、審查會之議事，出席者過半數而表決時贊成與反對同票，由會長裁決之。
- 四、會長因故無法視事時，為適用第二項規定，第十三條第四項規定之委員視同會長。

(事務局)

- 第二十一條
- 一、為處理審查會之事務，於審查會設事務局。
  - 二、於事務局置事務局長暨必要之職員。
  - 三、事務局長承會長之命掌理局務。
  - 四、從事審查會之事務者不得洩漏職務上獲悉之秘密，離職後亦同。

(任命權者就調查原因提出報告)

- 第二十二條
- 任命權者認為職員有違反本法或以本法為依據之命令之嫌疑時，應向審查會報告之。

(任命權者之調查)

- 第二十三條
- 一、任命權者認為職員有違反本法或以本法為依據之命令之嫌疑而欲就該行為進行調查時，須告知審查會。
  - 二、審查會得要求任命權者就前項調查之經過，提出報告或陳述意見。
  - 三、任命權者完成第一項之調查後，應立即向審查會報告該調查結果。

(要求任命權者進行調查等)

- 第二十四條
- 一、審查會認為職員有違反本法或以本法為依據之命令之嫌疑時，得要求任命權者就該行為進行調查。
  - 二、前條第二項及第三項規定於前項之調查準用之。

(共同調查)

第二十五條 審查會受理依第二十三條第二項(含前條第二項中準用之狀況。)規定提出之報告而認為有必要時，得就違反本法或以本法為依據之命令之行爲，與該任命權者共同進行調查。此時，審查會應將共同進行調查之事告知該任命權者。

(任命權者執行懲戒)

第二十六條 任命權者以職員有違反本法或以本法為依據之命令之行爲為由而欲執行懲戒處分時，應先取得審查會之許可。

(任命權者公布懲戒處分之概要)

第二十七條 一、任命權者以職員有違反本法或以本法為依據之命令之行爲為由而執行懲戒處分時，如認為為維持職員之職務倫理而有必要時，得公布該懲戒處分之概要(含與該懲戒處分有關之第七條第一項股票交易報告書中股票交易部分之公布，以下亦同。)

二、任命權者執行前項懲戒處分時，審查會如認為有特殊需要，得要求該任命權者就公布該懲戒處分之概要陳述意見。

(審查會之調查)

第二十八條 一、審查會根據第二十二條之報告或其他方法認為職員有違反本法或以本法為依據之命令之嫌疑時，如認為為維持職員之職務倫理而有特殊需要，得決定就該行為開始進行調查。此時，審查會應先徵詢該調查對象職員其任命權者之意見。

二、審查會為前項之決定後，應告知該項之任命權者。

三、任命權者收到前項通知後，應協助審查會進行調查。

四、任命權者收到第二項之通知時，如欲對第一項調查對象之職員給與懲戒處分或退職處分，須先與審查會協

議。惟，收到下一條第一項規定之懲戒處分之勸告或收到第三十一條規定之通知時，不在此限。

(懲戒處分之勸告)

- 第二十九條 一、審查會認為根據前條之調查結果任命權者執行懲戒處分是適當時，得對任命權者給予執行懲戒處分之勸告。
- 二、任命權者應就前項勸告之相關措施向審查會提出報告。

(審查會之懲戒)

- 第三十條 經第二十八條之調查後，審查會認為有必要時，得將該調查對象之職員送交懲戒程序。

(調查終了暨懲戒處分之通知)

- 第三十一條 第二十八條之調查終了或依前條規定執行懲戒處分時，審查會應將該事宜及內容告知任命權者。

(審查會公布懲戒處分之概要)

- 第三十二條 審查會依第三十條規定執行懲戒處分時，如認為為維持職員之職務倫理而有特殊需要，得公布該懲戒處分之概要。

(與刑事審判有關之特例)

- 第三十三條 為使與違反本法或以本法為依據之命令之行爲有關之之「人事院」改為「國家公務員倫理審查會」。

(守密義務之特例)

- 第三十四條 為使審查會進行之調查適用國家公務員法第一百條第四項規定，將該項規定之「人事院」改為「國家公務員倫理審查會」，「調查或審理」改為「調查」。

(要求相關行政機關協助)

- 第三十五條 審查會認為為遂行其所掌事務而有必要時，得要求相關行政機關提供資料或資訊、其他必要之協助。

(要求制定人事院規則)

第三十六條 審查會得就其掌理之事務擬具草案，請求人事院制定人事院規則。

(人事院之聽取報告等)

第三十七條 人事院認為為確保人事行政之公正而有必要時，得要求審查會提出報告或陳述意見。

(委任於人事院規則)

第三十八條 除本章之規定外，審查會之相關必要事項，以人事院規則定之。

## 第五章 倫理監督官

- 第三十九條
- 一、為維持職員之職務倫理，於依法設立於內閣之各機關、內閣管轄下掌理行政事務之各機關及會計檢查院(以下，簡稱「行政機關」各置倫理監督官一人。
  - 二、倫理監督官對所屬行政機關之職員就維持職員職務倫理給與相關必要之指導及建議，並依循審查會之指示，於該行政機關建立維持職員職務倫理之體制。

## 第六章 雜則

(與教育公務員有關之特例)

- 第四十條
- 一、為使教育公務員法(昭和 24 年法律第 1 號)第二條第一項所定教育公務員中之國立大學校長、教員暨部局長暨學校教育法(昭和 22 年法律第 26 號)第五十八條第一項所定助教中之置於國立大學者(以下，簡稱「特例教育

公務員」。)適用第七條及第八條規定，將「該省審議官級以上之職員」改為「國立大學校長及副校長(僅限支領一般職俸給法附表第十指定職俸給表第四款薪資以上者)」

- 二、第十一條第七款至第十款、第二十二條至第二十六條及第二十八條至第三十二條之規定，於特例教育公務員不適用之。
- 三、審查會認為特例教育公務員有違反本法或以本法為依據之命令之嫌疑時，如為維持職員之職務倫理而有特殊需要，得經由文部大臣要求該特例教育公務員所屬大學之管理機關〔如係校長、教員及助教，則為國立學校設置法(昭和24年法律第150號)第七條之三規定之評議會(未設評議會之大學，則為教授會)；如係部局長，則為校長。以下，本條中亦同。〕進行調查。
- 四、前項之大學之管理機關應就該項調查結果，經由文部大臣向審查會報告之。
- 五、審查會根據前項之報告認為有必要時，得經由文部大臣要求就第三項之大學之管理機關所為之懲戒處分，進行教育公務員特例法第九條第一項規定之審查。
- 六、為使特例教育公務員適用第二十七條第二項規定，將「任命權者」改為「任命權者(任命權如係依國家公務員法第五十五條第二項規定受文部大臣委任時，則經由文部大臣，任命權者)」。

(與國營企業職員有關之特例)

- 第四十一條
- 一、第四章規定，於適用國營企業職員薪資等特例法之職員不適用之。
  - 二、為使適用第四章規定之國營企業勞動關係法(昭和23年法律第257號)第二條第二款規定之職員適用該法第四



十條第一項第一款規定，將該款之「第三條第二項至第四項、第三條之二」改為「第三條第二項至第四項(維持職務倫理之事務除外。)」，將「第十七條、第十七條之二」改為「第十七條(為維持職員職務倫理而為之事項除外。)」，將「第八十四條第二項、第八十四條之二」改為「第八十四條第二項〔因違反國家公務員倫理法(平成十一年法律第 129 號)或以此為依據之命令之行為而為之事項除外。〕」，將「第一百條第四項」改為「第一百條第四項(依第十七條之二規定接受權限委任之國家公務員倫理審查會所為之調查之相關事項除外。)」。

(特殊法人等採取之措施等)

- 第四十二條 一、依法直接設立之法人、依特別法律以特別設立行為設立之法人〔不適用總務廳設置法(昭和 58 年法律第 79 號)第四條第十一款規定之法人除外。〕、其他命令所定與上述法人相當之法人中，於其設立所依循之法律或賦與法人資格之法律中，其幹部、職員、其他從事該法人業務者視同依法從事公務且接受政府出資之法人(以下，簡稱「特殊法人等」。)為維持特殊法人等其職員之職務倫理，應以中央政府依本法施行之措施為標準，採取必要之措施。
- 二、各省各廳之首長應對所管轄之特殊法人就特殊法人等依前項規定施行之措施進行必要之監督。
- 三、審查會得要求各省各廳之首長，就特殊法人依前項規定施行之措施提出報告或採取必要之監督措施。

(地方自治團體採取之措施)

- 第四十三條 地方自治團體為維持地方公務員之職務倫理，應以中央政府依本法施行之措施為標準，致力採取必要之措施。

(本法之所掌)

- 第四十四條 一、以本法為依據內閣總理大臣就維持職員職務倫理其掌理之事務除第四條、第五條第四項、第十四條、第十七條及第十八條第三項規定之事務外，僅限與國家公務員倫理規程及第四十二條第一項、下一條之命令有關之事務。
- 二、前項規定之事務及本法中其他機關執行之事務外，依本法維持職員職務倫理之相關事務屬於審查會之職掌。

(委任於命令)

- 第四十五條 本法規定之事項外，本法施行上(第四章除外)之相關必要事項，應徵詢審查會之意見，以命令定之。

(罰則)

- 第四十六條 違反第十八條第一項或第二十一條第四項規定洩漏秘密者，處兩年以下有期徒刑或一百萬日元以下罰金。

附則(摘要)

(施行日期)

- 第一條 本法自平成十二年四月一日施行。

附則(平成十一年十一月二十五日法律第 141 號)(摘要)

- 一、本法自公布日施行。

## 附錄 3-6-2 日本「國家公務員倫理規程」

國家公務員倫理規程(平成十二年三月二十八日政令第一〇一號)

(倫理行動基準)

第一條 職員(即國家公務員倫理法第二條第一項規定之職員)應以身為國家公務員為榮，自覺其使命，以第一款至第三款所揭櫫國家公務員倫理法第三條之倫理原則及第四款至第五款規定之事項為維持職務倫理應遵守之基準：

- 一、職員係為全體國民服務之人，應自覺非僅為部分國民服務，於處理職務上獲悉之資訊時，不得有差別待遇，圖利部分國民，應超然公正執行職務。
- 二、職員應公私分明，不得擅自利用其職務或地位謀取所屬組織之私利。
- 三、職員行使法律授與之權限時，不得接受該權限行使對象之贈與等，不得有招致國民疑慮或不信任之行爲。
- 四、職員執行職務時，應以增進公眾利益為目標，全力以赴。
- 五、職員於工作時間外，亦須隨時警覺其行爲舉止將影響公務之信用。

(利害關係人)

第二條 本政令所稱「利害關係人」，係指與下列各款職員所負責業務相關之業者或人員。但與職員職務僅有潛在利益關係者、與職員職務鮮有裁量餘地且係各省廳首長(即國家公務員倫理法第五條第三項規定之各省各廳之首長，以下同)以訓令(即同項規定之訓令，以下同)規定者及任職於外國政府或國際機構或相當之機構者(僅限從事為謀求該外國政府或國際機構或相當機構之利益而為之職務者)除外：

- 一、辦理認可、許可等〔即行政程序法(平成五年法律第八八號)第二

- 條第三款規定之認、許可等〕事務：已獲得該認可、許可等執行業務之業者等(即國家公務倫理法第二條第五項規定之業者等及依同條第六項規定被視為業者等者，以下同)、申請該認可、許可等之業者等或個人(依同條第六項規定被視為業者等之人除外。以下簡稱「特定個人」)及確定將申請該認可、許可等之業者或特定個人。
- 二、發放補助金等〔即補助金等預算執行正確化法(昭和三十年法律第一七九號)第二條第一項規定之補助金等〕之業務：已領取該補助金等(含將該補助金等直接列為全部或部分財源，即同條第四項第一款規定之間接補助金等)執行補助對象之業務或事業之業者或特定個人、申請該補助金等之業者或特定個人及確定將申請該補助金等之業者或特定個人。
- 三、執行檢查、監查或監察(僅限依法執行之行為，以下本款簡稱「檢查等」)之事務：接受該檢查等之業者等或特定個人。
- 四、執行不利益處分(即行政程序法第二條第四款規定之不利益處分)之事務：欲執行該不利益處分時，該不利益處分之執行對象業者或特定個人。
- 五、執行行政指導(即行政程序法第二條第六項規定之行政指導)之事務：依該行政指導被要求一定作為或不作為之業者等或特定個人。
- 六、總理府或各省廳掌理之事務中與事業開發、改善及調整有關之事務(前面各款事務除外)：執行該事業之業者等。
- 七、與國家支出原因之契約有關之事務或與會計法(昭和二十二年法律第三五號)第二十九條所定契約有關之事務：已簽訂上述契約之業者等、申請簽約之業者等及確定將申請簽約之業者等。
- 八、依財政法(昭和二十二年法律第三四號)第十八條第一項規定進行必要調整之事務：接受該調整之中央政府機關。
- 九、與制定或修正一般職職員俸給法(昭和二十五年法律九五號)第

八條第一項所定職務分級之級數有關之事務：接受該制定或修正之中央政府機關。

十、與審查總務廳設置法(昭和五十八年法律第七九號)第四條第二款所定員額之設立、增減及廢止有關之事務：接受審查之中央政府機關。

為適用前項規定，該省幹部職員〔即國家公務員倫理法第二條第四項規定該省審議官級以上之職員中，任職於國家行政組織法(昭和二十三年法律第一二〇號)第八條至第九條所定機關(警察廳除外)之職員、任職於人事院事務總局及設於警察廳內類似機構之職員、支領檢察官俸給法(昭和二十三年法律七六號)附表檢察官項第二款至第五款月俸之檢察官以外者，下一項亦同〕，視同亦從事所屬行政機關(即國家公務倫理法第三十九條第一項規定之行政機關，以下同)其他職員因職務而為之前項第一款至第三款及第八款至第十款揭槩之事務者。

職員異動時，擔任該異動前官職之該職員之利害關係人(若係該省幹部職員，與依前項規定視同從事該事務者之事務有關之利害關係人除外)，異動後仍為繼任該官職其他職員之利害關係人時，該利害關係人自該異動之日起三年內(該期間內，該利害關係人已非繼任該官職之其他職員之利害關係人時，則為至該日之期間內)，視同該異動職員之利害關係人。

其他職員之利害關係人透過職員要求該其他職員運用其官職之影響力以謀取自身利益而確實與該職員接觸時，該其他職員之利害關係人視同該職員之利害關係人。

(禁止行爲)

第三條 職員不得為下列行爲：

- 一、收受利害關係人之金錢、物品或不動產之贈與(含臨別紀念品、賀禮、奠儀、花圈或其他類似之物品)。
- 二、接受利害關係人金錢之借貸(若係業務貸款，僅限免利息或利息

顯然偏低者)

- 三、接受利害關係人或由利害關係人負擔之免費物品或不動產之借與。
- 四、接受利害關係人或由利害關係人負擔之免費勞役之提供。
- 五、接受利害關係人轉讓之未上市股票〔即證券交易法(昭和二十三年法律第二五號)第二條第十六項所定未於證券交易所上市且未於同法第七十五條第一項之店頭買賣有價證券登記冊登記之股票〕。
- 六、接受利害關係人之招待。
- 七、與利害關係人一同上遊樂場所或打高爾夫球。
- 八、與利害關係人一同旅行(公務旅行除外)。

雖有前項規定，職員得為下列行為：

- 一、接受利害關係人贈與之散發給一般民眾之宣傳用物品或紀念品。
- 二、於多數人出席之聚會(提供餐飲之聚會，以茶會方式進行者，以下同)中，接受利害關係人贈與紀念品。
- 三、因職務拜訪利害關係人時，使用該利害關係人提供之物品。
- 四、因職務拜訪利害關係人時，使用(僅限依該利害關係人其辦公室等周圍之交通狀況、其他情況，認為使用該汽車乃合理之事。)該利害關係人提供之車輛(僅限該利害關係人因其業務而日常使用之車輛。)
- 五、於因職務出席之會議、其他聚會中，接受利害關係人提供之餐點。
- 六、於多數人出席之聚會，接受利害關係人提供之餐飲，或與利害關係人一同飲食。
- 七、於因職務出席之會議中，接受利害關係人提供之簡便餐飲，或與利害關係人共進簡餐。
- 八、與利害關係人一同進餐，而自行負擔費用。但僅限因職務而出席

之會議、其他洽談事務之聚會時用簡餐以外之餐飲(僅限夜間之聚餐)，倫理監督官(即國家公務員倫理法第三十九條第一項之倫理監督官，以下同)認為無招致國民對公正執行職務有疑慮或不信任之虞而認可者。

為適用第一項規定，職員向利害關係人購買物品或不動產、接受物品或不動產之借與或接受勞役之提供時，如其代價遠低於為該行為時之時價，視同該職員接受該利害關係人贈與相當於該代價與該時價價差之金錢。

(禁止行為之例外)

第四條 職員與具私人關係(係指與職員身份無關之關係，以下同)之利害關係人間，如依職務上利害關係之情況、私人關係之建立過程及現況、其欲進行之行為，無招致國民對公正執行職務之疑慮或不信任時，雖有前條第一項規定，得為該項各款規定之行為。

職員無法判斷是否有招致國民對公正執行職務有所疑慮或不信任時，應與倫理監督官協談，並遵從其指示。

職員因任命權者之要求成為特別職國家公務員等〔即國家公務員法(昭和二十二年法律第一二〇號)第八十二條第二項規定之特別職國家公務員，以下同〕而離職並繼續擔任特別職國家公務員後，繼而以該離職為前提被任用為職員時(含擔任第一款之特別職國家公務員後，繼續擔任第一款以上之特別職公務員，繼而以該離職為前提被任用為職員之狀況)，為適用第一項規定，將該項中之「職員之身份」改為「職員或特別職國家公務員等(即國家公務員法第八十二條第二項規定之特別職國家公務員等)之身份」。

職員與因任職於相同部、局或機關或一同參加中央政府舉辦之研修或由中央政府指派參加研修之關係與利害關係人一同用餐時，如係與含利害關係人以外之多數人一同出席且負擔自己所需之餐飲費用者，雖有前條第一項規定，仍得為之。

(與利害關係人以外人員間之禁止行為)

第五條 職員不得重覆接受非利害關係人業者超出一般社交程度之招待或財產之利益輸送等。

不論是否為利害關係人，職員自己購入或承租之物品或不動產，或接受之勞役，其代價不得由進行該行為時不在場之業者等負擔之。

(禁止領取特定書籍之監修等之報酬)

第六條 職員不得接受下列書籍等(書籍、雜誌等印刷品或以電子方式、磁片及其他以人的知覺無法認識之方式，記錄文字、圖形、聲音、影像或電腦程式之產品)之監修或編纂之報酬

一、利用補助金或國家直接支付之費用製成之書籍

二、(一)產品過半數由該職員所屬之政府機構或特定獨立行政法人採購之書籍

(二)前項規定之適用，獨立行政法人國立公文書館視同由內閣府管轄，獨立行政法人駐留軍等勞動者勞務管理機構視同由防衛廳管轄。

(禁止妨礙維持職員職務倫理之行爲)

第七條 職員不得明知所屬之國家機關或特定獨立行政法人等之其他職員因違反第三條或前二條規定之行爲而獲取財產上之利益，卻收受或分享全部或部分之利益。

職員不得向國家公務員倫理審會、任命權者、倫理監督官、其他該職員所屬之行政機關等之維持職員倫理之負責人或上司，就自己或所屬行政機關等之其他職員足證明有違反本法或以本法為依據之命令之虞之事實，進行不實陳述或隱匿。

本法第二條第三項所定之指定職務以上之職員、支領一般職務職員俸給法第十條之二第一項規定之俸給特別調整額之職員及倫理監督官所定其職責與之相當之職員，如其管理或監督之職員足證明有違反本法或以本法為依據之命令之虞之事實，不得予以默許。

(與利害關係人共同用餐之申報)

第八條 職員與利害關係人共同用餐但其用餐費用非由利害關係人負擔



時，其用餐費用如逾一萬日圓，下揭情況除外，應事先向倫理監督官報告倫理監督規定之事項。惟，如情況特殊未能事先報告，事後應迅速提出報告。

- 一、多數人出席之茶會，與利害關係人共同用餐。
- 二、與具私人關係之利害關係人共同用餐時，其用餐費用由自己或非私人關係之利害關係人負擔。

(演講等之限制)

第九條 職員因利害關係人之請託，進行演講、討論、講習或研修之指導、傳授知識、著述、監訂、編纂或參加電台或電視台節目之演出(取得國家公務員第一百零四條之許可時除外，以下簡稱「演講等」) 接受報酬時，應先取得倫理監督官之許可。

倫理監督官應就前項利害關係人給與之報酬，依職員之職務種類或內容，制定供職員參考之基準。

(與倫理監督官之協談)

第十條 職員無法判斷其行為之對象是否符合利害關係人或無法判斷與利害關係人之間所為之行為是否符合第三條第一項各款規定之行為時，應與倫理監督官協談。

(贈與等之報告)

第十一條 依國家公務員倫理法第六條第一項國家公務員倫理規程規定之報酬，係指下列各款報酬：

- 一、收受利害關係人業者等支付演講等之報酬。
- 二、收受非利害關係人業者等支付演講等之報酬中，係職員就目前或過去職務之相關事項進行之演講等明確為職員進行之行為之報酬。

依國家公務員倫理法第六條第一項第四款國家公務員倫理規程所規定之事項，係指下列事項：

- 一、贈與等(即國家公務員倫理法第六條第一項規定之贈與等，以下同)之內容或報酬(即同項規定之報酬，以下同)之內容。
- 二、進行贈與等或支付報酬之業者與收受該贈與或報酬之職員之關係及該業者與職員所屬行政機關之關係。
- 三、如記載估算國家公務倫理法第六條第一項第一款規定之價格，則為其估算之根據。
- 四、接受招待時，為接受該招待之場所名稱及地址、出席該招待之人數及其職業(如所接受之招待為多數人出席之茶會，則為該招待場所出席者之概數)。
- 五、如係由適用國家公務員倫理法第六條第二項規定之幹部、從業人員、代理人、其他人員(以下，簡稱「幹部等」。)進行贈與等，則為該幹部等之職務或職位及姓名(該幹部為複數時，則為該幹部等之代表人之職務或職位及姓名)。

(報告書等之送達期限)

第十二條 依國家公務倫法第六條第二項、第七條第二項或第八條第三項寄送報告書時，應於該報告書提出期限之翌日起三十日內送達之。

(贈與等報告書之閱覽)

第十三條 國家公務員倫理法第九條第二項規定贈與報告書之閱覽(以下，簡稱「贈與報告書之閱覽」)，於該贈與報告書提出期限之翌日起六十日後之翌日起始得為之。

贈與報告書之閱覽，須於各省廳或依國家公務倫理法接受其委任者指定之場所為之。

除前二項規定之事項外，贈與報告書閱覽之相關必要事項，如經國家倫理審查會許可，由各省廳之首長定之。

國家公務員倫理法第九條第二項但書所定國家公務員倫理審查會認定之申請，應由各省廳首長或依該項規定接受其委任者，以書面為之。

(各省廳首長之職責)

第十四條 各省廳首長就國家公務員倫理法或本政令規定事項之施行，應負下列職責：

- 一、依國家公務員倫理法第五條第三項規定，視需要制定訓令。
- 二、贈與報告書、股票交易書及國家公務員倫理法第八條第三項所得報告書等(以下，簡稱「報告書等」)之受理、審查及保存、報告書等之副本之送達國家公務員審查會及贈與報告書之閱覽相關體制之建立及其他為維持該省廳所屬職員職務倫理之相關體制之建立。
- 三、該省廳所屬職員違反本法或以本法為依據之命令(含訓令，以下亦同)之行爲時，應嚴格處置。
- 四、就該省廳所屬職員違反本法或以本法為依之命令之行爲，應告知倫理監督官、其他相關之機關，避免使職員遭受不利之處置。
- 五、利用研修或其他措施，致力加強該省廳所屬職員倫理感之涵養與維持。

(倫理監督官之職責等)

第十五條 對於國家公務員倫理法或本政令其規定事項之施行，倫理監督官應負下列職責：

- 一、應所屬行政機關職員依第四條第二項或第七條請求之協談，給予必要之指導及建議。
- 二、努力確認所屬行政機關職員是否招致特定人員及國民之疑慮或不信任，並視結果，為協助職員維持其職務倫理，給予必要之指導及建議。
- 三、協助所屬各省廳首長，建立所屬行政機關職員維持職務倫理之體制。
- 四、發現違反國家公務員倫理法或依本法發布命令之行爲時，應向所屬行政機關依內閣法(昭和 22 年法律第 5 號)所稱之主任大臣(法

定由內閣大臣充任首長之委員會或屬於廳者，由委員長或長官擔任倫理監督官；會計院或屬於人事院者，由會計檢查院長或人事院總裁擔任倫理監督官)報告。

倫理監督官得將國家公務員倫理法或本政令規定之部分職務交付所屬行政機關職員執行。

(與地方警務官有關之特例)

第十六條 爲使警察法(昭和二十九年法律第一六二號)第五十六條第一項規定之地方警務官(以下簡稱「地方警務官」)適用本法及本政令之規定，其「國家公安委員會」視同國家公務員倫理法及本政令中之「各省廳首長」，「國家公安委員會規則」視同「訓令」，接受第二項指定者視同「倫理監督官」。

國家公安委員會爲維持地方警務官之職務倫理，應由警察廳所屬職員中，指定一人執行與地方警務官有關之國家公務員倫理法及本政令規定倫理監督官之職務。

除前二項之規定事項外，爲使地方警務官適用國家公務員倫理法之規定，其「地方警務官」視同該法第五條第三項中之「屬於該各省廳之職員」、第三十九條第二項中之「所屬行政機關之職員」及「該行政機關之職員」。

除第一項及第二項之規定外，爲使地方警務官適用本政令之規定，「補助金〔即依地方自治法(昭和二十二年法律第六七號)第二百三十二條之二由地方自治團體支出之補助金。〕」視同本政令第二條第一項第二款中之「補助金等〔即補助金等預算執行正確化法(昭和三十年法律第一七九號)第二條第一項規定之補助金等〕」，「補助金之」視同「補助金等(含該補助金等直接列爲其全部或部分財源，即同條第四項第一款規定之間接補助金等)」及「補助金等之」，「會計法(昭和二十二年法律第三五號)第二十九條所定契約有關之事務或地方自治法第二百三十四條第一項」視同同項第七款中之「或與會

計法(昭和二十二年法律第三五號) 第二十九條」，「地方警務官」視同第十二條第二款至第五款規定中之「該省廳所屬職員」及第十三條第一項第一款至第三款及第二項中之「所屬行政機關職員」，「輔佐國家公安委員會」視同同條第一項第三款中之「協助所屬各省廳首長」。

### 附錄 3-6-3 日本「國家公務員法」

第一章：總則

第二章：中央人事行政機關

第三章：官職之基準

第一節：通則

第二節：職位分類制

第三節：考試及任免

第一款：通則

第二款：考試

第三款：任用候用者名冊

第四款：任用

第五款：休職、復職、退職及免職

第四節：給與

第一款：給與準則

第二款：給與之給付

第五節：效率

第六節：分限、懲戒及保障

第一款：分限

第二款：懲戒

第三款：保障

第一目：有關服務條件行政措施之要求

第二目：違背職員本意之不利處分之審查

第三目：因公傷病之補償

第七節：服務

第八節：退職年金制度

第九節：職員團體

第四章：罰則

附則

## 第一章 總 則

（本法之目的及效力）

第一條：本法之目的，在確立適用國家公務員之各種基本標準（包括保護職員福利及利益之適當措施），規定民主方式選拔職員並指導之，俾於執行職務時發揮最大之效率，以對國民保證公務之民主及效率之運營。本法專定日本國憲法第七十三條所稱掌理有關官吏事務之標準。

任何人對於本法制定之命令，不得有故意違反，或企圖違反或共謀企圖違反之行爲。又，任何人對於本法及依本法制定之命令之施行，不得有故意虛偽行爲或企圖爲虛偽或爲防礙行爲。本法之部分規定縱然失效或不適用，本法之其他規定或其他有關規定之適用不受影響本法之規定與已頒法律或其他有關法令有矛盾或抵觸者，以本法之規定爲優先。

（一般職及特別職）

第二條：國家公務員之職位，分爲一般職與特別職。

一般職係指包括屬於特別職以外之所有國家公務員之職位。

特別職爲下揭職員之職位

- 一、 內閣總理大臣
- 二、 國務大臣
- 三、 人事官及檢察官
- 四、 內閣法制局長官
- 五、 內閣官房副長官
- 六、 總理府總務副長官
- 七、 政務次官
- 七之二、大臣政務官



八、 內閣總理大臣秘書官（三人以內）及其他秘書官（國務大臣或特別職機關首長各一人）。

九、 就任以選舉為要件，或需國會兩院或一院之議決或同意者。

十、 宮內廳長官、侍從長、東宮大夫、式部長官及侍從次長暨法律或人事院規則指定之宮內廳其他職員。

十一、 特命全選大使、特命全選公使、特派大使、政府代表、全權委員、政府代表或全權委員之代理及特派大使、政府代表或全權委員之顧問及隨員。

十一之二、日本聯教組織之國內委員會委員。

十二、 日本學士院會員

十三、 裁判官及法院其他職員

十四、 國會議員

十五、 國會議員之祕書

十六、 防衛省之職員（防衛設施廳之總務部設置之調聽官、在防衛設施廳之勞務部勤務之職員及自衛隊離職者就職審查會、防衛設施中央審議會及防衛設施地方審議會之委員除外）

十七、 刪除

十八、 為應付失業對策，由公共職業安定所介紹之失業者而經政府雇用之職員，及為公共事業而失業經政府雇用之職員，但以非屬技術、技能、監督及擔任行政事務以外之人員為限。

十九、 本法之規定，適用於一般職之所有職位（以下稱其職為官職，占有其職位者為職員）人事院對於某職是否屬於國家公務員之職位，以及依本條之規定應屬一般職或特別職有決定之權限。

本法之規定，除因本法之修正而另有規定者外，不適用於特別職。政府不得設置一般職或特別職以外之服務人員，亦不對此類人員之服務，支給俸給或其他給與。前項之規定，對政府或其他機關與外國人間，以個人基礎而定之

服務契約不適用之。

## 第二章 中央人事行政機關

(人事院)

第三條：內閣管轄下置人事院。人事院應依本法之規定，向內閣提出報告。

人事院依法律之規定，掌理改善俸給或其他勤務條件記改善人事行政之建議、職階制、考試暨任免、俸給、研修、法定地位、懲戒、申訴處理、維持職務倫理、其他確保職員之人事行政公正及維護職員利益等相關事務。

(國家公務員倫理審查會)

第三條之二 為授權處理前條第二項所定職掌中維持職務倫理之相關事務，於人事院置國家公務員倫理審查會。

關於國家公務員倫理審查會，除本法之規定外，以國家公務員倫理法(平成十一年法律第一百二十九號)之規定為依據。

(職員)

第四條：人事院以人事官三人組織之。

人事官中之一人任命為總裁。

人事院得任命事務總長，並在預算範圍內任命業務上所必要之職員。

人事院管理其內部機構。國家行政組織法(昭和二十三年法律第一百二十號)在人事院不適用之。

(人事官)

第五條：人事官需人格高尚，理解民主之統治組織與依功績本位有效處理事

務之原則，且有人事行政上之學識，而年齡在三十五歲以上，其任命須由內閣提經兩院之同意。人事官之任免，需經天皇之認證。符合下列各款者，不得充任人事官：

- 一、 破產未取得復權者。
- 二、 被處拘役以上刑責者或犯下第四章規定之罪刑遭判刑者。
- 三、 符合地三十八條第三項或第五項者。任命之日前五年間為政黨幹部、政治顧問、或有同樣政治影響力之政黨黨員者，以及任命之日前為中央或都道府縣之公職候選人者，依人事院規則不得為人事官。人事官之任命不得有二人屬於同一政黨或同一大學畢業者。

（宣誓及職務）

第六條：人事官任命後，依人事院規則規定，須於最高法院院長面前宣誓並在宣誓書上署名，使得執行職務。第三章第七節之規定，於人事官準用之。

（任期）

第七條：人事官之任期為四年，但以補缺任命之人事官以前任所遺留之任期為任期。人事官得連任之，但不得繼續連任十二年以上。人事官退職後一年間，不得任人事院以外之官職。

（退職及罷免）

第八條：人事官除有左列各款之一者外，不得罷免之。

- 一、 有第五條第三項各款情形之一者。
- 二、 基於國會之追訴，依公開彈劾程序決定可予罷免者。
- 三、 任期屆滿未再連任，或繼續任人事官達十二年者。依前項第二款之規定而彈劾之事由，以左列各款為限。
  - 一、 因身心障礙，不堪執行職務者。
  - 二、 違反職務上之義務或有不適於人事官之不良行為者。

人事官者之中，有二人以上屬於同一政黨時；由內閣經兩院之同

意，罷免其中之一人。

前項規定，對於政黨所屬之關係無異動之人事官，其地位不受影響。

（人事官之彈劾）

第九條：人事官之彈劾，由最高法院裁判之。國會對於人事官有彈劾之追訴時，須以書面記載追訴之事由，向最高法院提出之。國會對於前項之情形，應將記載追訴理由之書面，以副本送達被追訴之人事官。最高法院需自受理第二項規書面追訴之日起在三十日以上九十日以內之期間，決定開始裁判之日，並須於裁判之日三十日以前，通知國會及受追訴之人事官。最高法院須自裁判開始之日起百日以內判決之。人事官彈劾之裁判程序，以法院規則定之。裁判費用，由國庫負擔。

（人事官之給與）

第十條：人事官之給與，另以法律定之。

（人事院總裁）

第十一條：人事院總裁，由內閣就人事官中任命之。

人事院總裁，綜理院務，代表人事院。

人事院總裁因故不能視事或出缺時，以先任之人事官代行其職務。

（人事院會議）

第十二條：定期之人事院會議，以人事院規則定之，至少每週一次，於一定場所舉行之。

人事院會議之議事，須記載於議事錄。

前項議事錄，由幹事為之。

人事院事務處理程序上必要事項，以人事院規則定之。

事務總長以幹事身分，出席人事院會議。

人事院行使左列權限時，需經人事院會議之議決。

- 一、 人事院規則之制訂，修正或廢止。
- 二、 刪除。
- 三、 依第二十二條之規定，向有關機關首長提出建議。
- 四、 依第二十三條之規定，向國會及內閣申訴意見。
- 五、 依第二十四條之規定，向國會及內閣提出之報告。
- 六、 依第二十八條之規定，向國會及內閣提出建議。
- 七、 依第二十九條之規定，制訂職位分類方案。
- 八、 依第三十六條之規定，（包括第三十七條準用者），決定甄試標準及指定甄試機關。
- 九、 依第四十八條之規定，指定考試機關。
- 十、 依第六十條之規定，承認臨時任用及其再行任用，臨時任用職員員額之限制，及資格要件之決定，以及臨時任用之取消（人事院規則另有規定者不在此限）。
- 十一、 依第六十三條之規定，制訂給與準則。
- 十二、 依第六十七條之規定，修正給與準則。
- 十三、 刪除
- 十四、 依第八十七條之規定，判定案件。
- 十五、 依第九十二條之規定，判定處分。
- 十六、 依第九十五條之規定，擬定有關補償重要事項之方案。
- 十七、 依第一百零三條之規定，對申訴案件之規定，及依同條規定向國會及內閣提出報告。
- 十八、 依第一百零八條之規定，向國會及內閣提出意見。
- 十九、 依第一百零八條之第六項之規定對職員團體登錄效力

之停止及取銷。

二十、 其他經依人事院決議，以議決為必要之事項。

（事務總局及預算）

第十三條：人事院置事務總局及法律顧問。事務總局之組織及有關法律顧問之必要事項，以人事院規則定之。人事院於每一會計年度開始前，應將次一年度必要之經費編為概算書，向內閣提出之，以便列入國家預算。在此向概算書中，應將土地之購買、房屋之建造、事務所之租用、家具、用品及消耗品之購置、俸給待遇之支給，暨其他為實施本法必要事務及有關物品之經費等計入之。內閣對人事院之經費概算書如有修正時，需將人事概算書與內閣修正概算書，一併提出於國會。人事院得經國會之承認，於必要地區設地方事務所。

（事務總長）

第十四條：事務總長為總裁執行職務之輔助者，在其一般監督之下，指揮監督人事院事務上及技術上之一切活動。樹立有關人事院職員之計畫，指

揮招考、派職，並為人事院會議之幹事。

（人事院職員兼職之禁止）

第十五條：人事官及事務總長不得兼任其他官職。

（人事院規則及人事院指令）

第十六條：人事院為實施本法，或依法律之授權，得制訂人事院規則，頒發人事院指令並規定其程序。

人事院得隨時修正或廢止人事院規則。

人事院規則之制訂，修正及廢止，應以官報公佈之。

人事院基於本法實施人事院規則或施行其他措施，得頒發人事院指令。

（調查）

第十七條：人事院或其指定之人員，得就人事院掌理之人事行政之相關事項

進行調查。

人事院或依前項規定被指名者於進行前項之調查時，如有必要，得詢問證人，得要求提出與應調查之事項有關之文件或文件副本。

人事院就第一項之調查（僅限與維持職員倫理有關者），如有必要，得要求調查對象之職員出面接受質問，或准許依該項規定被指名者得至該職員任職之地點（含職員曾任職之地點）檢查帳冊、其他必要之物件，或詢問關係人。

依前項規定進行檢查者，應攜帶可證明其身分之證件，如關係人提出要求，須出示之。

依第三項規定進行之搜查，不得視為搜查犯罪證據。

（給與支付之監理）

第十八條：人事院監理職員給與之支付。職員給與之支付，不得違反人事院規則或人事院指令。

（內閣總理大臣）

第十八條之二：內閣總理大臣依法掌理職員之效率、厚生、服務等事務（第三條第二項規定屬於人事院掌理者除外）。除前項規定外，內閣總理大臣對各行政機關之人事管理方針、計畫等，掌理其保持統一所必要之綜合調整事務。

（人事紀錄）

第十九條：內閣總理大臣管理職員人事紀錄之相關事物。

內閣總理大臣得命令內閣府、各省、其他機關，就該機關之職員之一切人事相關事項，製成人事紀錄，加以保管。

人事紀錄之記載事項暨樣式、其他有關人事紀錄之相關必要事項，另以政令定之。

內閣總理大臣命令內閣府、各省、其他機關製成、保管人事紀錄，如認定違反前項規定而訂定之政令，得命其改正，或採取其他必要措施。

統計報告)

第二十條：內閣總理大臣依政令之規定，訂定職員在職關係之統計報告制度，並實施之。內閣總理大臣對於前項統計報告，認為有必要時，得請有關機關，依一定之形式作臨時或定期之報告。

( 權限之委任)

第二十一條：人事院或內閣總理大臣，各依人事院規則或政令之規定，得將本法所規定權限之一部分，委任其他機關行使，此際人事院或內閣總理大臣，就其事務，對該機關首長得為指揮監督。

( 人事行政改善之建議)

第二十二條：人事院關於人事行政之改善，得向關係之大臣或其他機關首長建議。

有前項之情形時，人事院需將要旨向內閣報告之。(關於法令之規定修正廢止意見之提出)

第二十三條：人事院為達成實施本法之目的，有制定、修正或廢止法令之意見，得將其意見向國會與內閣同時提出。

( 業務報告)

第二十四條：人事院應每年度向國會及內閣提出業務報告。內閣應將前項報告公佈之。

( 人事管理官)

第二十五條：內閣府、各省及政令指定之其他機關，應置人事管理官。

人事管理官為人事單位之首長，輔佐前項機關之首長，掌理人事相關事務。此種狀況下，人事管理官應密切與中央人事行政機關聯繫，並致力合作。

第二十六條：刪除

### 第三章 官職之基準



## 第一節：通則

（以平等處理之原則）

第二十七條：一切國民，在本法適用上一律平等，除第三十八條第五項規定之情形外，不得因種族、信仰、性別、在社會上之身分、門第或政治意見及政治上所屬關係而有差別。

（適應情況之原則）

第二十八條：依據本法所制定之俸給、勤務時間以及其他有關勤務條件之基本事項，國會得適應社會一般情況，隨時修改。人事院對於修改上之建議，不得有所怠忽。人事院應每年至少一次向國會內閣報告現行俸給表所定俸額是否

適當。如因決定俸給之有關條件變動，致俸表上所定俸額有增減百分之五以上之必要時，人事院應於向報告同時向國會與內閣，提出適當之建議。

## 第二節：職位分類

（職位分類之確立）

第二十九條：職位分類，以法律定之。人事院應規劃職位分類，依職務之種類及工作之繁簡難易與責任輕重，將職位分類整理。職務之分類整理，必須使雇用條件內容相同時之一同一職級內官職，需要同一資格要件，且對該職位現任人員支同一幅度之俸給。前三項有關之計畫，應提出國會，得其承認。一般職職員俸給法（昭和二十五年法律第九十五號）第六條規定之職務分類；是同本條及其他條項所定之計畫，且認為適合於本法之要求，在人事院提出修正建議而經國會制定前繼續有效。一般職職員俸給法（昭和二十五年法律第九十五號）第六條所定之職務分類，視為符合本條、其他條項所定之計畫，且為本法之要求，其修正人事院提出建議，經國會制定後生效。

（職位分類之實施）

第三十條：職位分類，從可實施之部分逐一實施。職位分類實施上必要之事

項，除本法明定者外，以人事院規則定之。

（職位之歸級）

第三十一條：為實施職位分類，人事院應依人事院規則之規定，將能適用職位分類之一切職位，歸級於適當職級。人事院依據人事院規則，隨時覆查前項規定之歸級，認為必要時，應予以改訂。

（禁止不依職位分類之職務分類）

第三十二條：屬於一般職之一切職位，不得作職位分類以外之其他分類。

第三節：考試與任免

（任免之基本標準）

第三十三條：一切職員之任用，應依據本法及人事院規則之規定，憑其考試成績、服務成績或其他能力之實證為之。人事院應將考試種類酌予分為認用考試、升等考試或其兩者並兼之考試。職員之免職，應依法律所定之事由行之。前三項所規定之基本標準實施時之必要事項，除本法明定者外，以人事院規則定之。

第一款：通則

第三十四條：刪除

（缺員補充之方法）

第三十五條：職位出缺時，其任命權者，除法律或人事院規則規定之職位外，得依據錄用、升任、降任、或轉任之任一方法派任之。但人事院認有特別必要而指定派任方法者，不在此限。

（錄用方法）

第三十六條：職員之錄用，得依競爭考試。但人事院規則規定之職位，如經人事院承認，得依競爭考試以外，而能證實能力之考試方法（以下稱為甄試）。前項但書之甄試，依人事院所定之標準，由人事院或其指定之甄試機關實施之。

(升任方法)

第三十七條：職員之升任，依該職位之下級職位間之在職人員之競爭考試(以下稱為考試)決定之。但人事院認為必要時，得酌予限制應考人範圍。鑒於應升任職位之職務與責任，人事院認為在該職人員之間不宜舉行考試時，其升任得憑該職人員之歷年服務成績，予以甄試決定之。前條第二項之規定，準用於前項之甄試。(資格不符者)

第三十八條：符合下列各款之一者，人事院規則另有規定時除外，不具充任官職之能力。

- 一、禁治產人或準禁治產人
- 二、受徒刑以上之刑責處分，仍在執行期或應執行之時效尚未終止者
- 三、受免職懲戒處分，自該處分之日起未滿二年者
- 四、任人事院人事官或事務總長，犯第一〇九條至一一一條規定之罪遭判刑者
- 五、日本國憲法施行後，組織或加入主張以暴力破壞日本國憲法或依該憲法成立之政府之政黨或其他團體。

(禁止有關人事之非法行為)

第三十九條：任人不得為實現左列各項之一而授受、提供、要求、或約束授受金錢或其他利益、或用脅迫、強制以及其他類似之方法，或直接間接，利用、提供利用、要求、或約束利用職權或參與此等行為。

- (一) 不承諾退職、休職或任用。
- (二) 撤回考試或任用之志願，或中止對於任用之競爭。
- (三) 任用、升級、留職及其他職位上利益之實現、或此等事項之推薦。

(禁止有關人事之虛偽行為)

第四十條：任何人對於考試、甄試、任用或人事紀錄、不得做虛偽或不正當

之陳述、記載、說明、採分、判斷或報告。

（禁止妨害應考或任用及提供情報）

第四十一條：屬於考試機關之人員或其他職員，不得有妨害應考或任用，或對應考、任用作不當之影響為目的而提供特別或秘密之情報。

第二款：考試

（考試之實施）

第四十二條：考試依據人事院規則之規定辦理之。

（應考之欠缺資格條款）

第四十三條：除第四十四條所定有關資格之限制外，無充任公務員之能力者，不得應考。

（應考人資格要件）

第四十四條：人事院得依人事院規則，將執行職務不可或缺之最低資格要件，按職位別訂定客觀統一之標準，作為應考者必要之資格。

（考試內容）

第四十五條：考試以制定是否具有執行職務之能力為目的。

（錄用考試之公開平等）

第四十六條：錄用考試，對於具有人事院規則所定應考資格之一切國民，應以平等條件公開辦理之。

（任用考試之通告）

第四十七條：錄用考試之告知，應公告之。前項告知，對於行將考試之職位，應概要記載其職務、責任及薪俸，應考人資格要件、考試日期及地點、申請書之領取與受理地點、日期與手續及其他必要之應考手續及人事院認為必要之其他注意事項。第一項規定之公告，應依據人事院規則規定使具有應考資格之一切人員得明白應考上之必要事項。人事院對於認為具有應考資格者，應經常鼓勵踴躍參加考試。人事院得取消或變更已公告之考試或實施中之考試。

(考試機關)

第四十八條：考試依據人事院規則之規定，由人事院指定之考試機關實施之。

(考試日期與地點)

第四十九條：考試之日期與地點，應以國內之應考人最適宜之時地舉行之。

第三款：任用候補人員名冊

(名冊之製作)

第五十條：應依考試任用之人員，依人事院規則之所定，需製作任用候補人員名冊(任用候補人名冊及升任候補人員名冊)。

(登記於任用候補人員名冊上之人員)

第五十一條：在錄用後補人員名冊上，得錄用於該職位之人員，依錄用考試成績之優劣順序排列。

(登記於升候補人員名冊上之人員)

第五十二條：在升任候補人員名冊上應將得升任該職位之人員，依升任考試成績之優劣順序排列。

(名冊之閱覽)

第五十三條：任用候補人員名冊，應依應考人、任用機關及其他有關人員之請求，經常供其閱覽。

(名冊之失效)

第五十四條：任用候補人員名冊，如做成後經過一年以上，或合於人事院規定之事由時，人事院得隨時任意其失效。

第四款：任用

(任命權者)

第五十五條：任命權，除法律另有規定外，屬於內閣、各大臣(係指內閣總理大臣及各省大臣，以下亦同。)、會計檢查院長及人事院總裁及宮內廳長官、各外部機構之首長。上揭機關之

首長之任命權，僅止於其內部機構之官職，內閣之任命權，僅限於直屬機構（內閣府除外）所屬之職位。惟，外部機構首長之任命權，屬於各大臣。

前項所定機關首長之任命權者，得將任命權委託予內部之高階職員。此項委任，須於效力發生之日前，以書面提報人事院。

（依任用候補人員名冊之任用方法）

第五十六條：依據任用候補人員名冊任用職員，應從任用候補者名冊所記載之人員中，每任用一人，並就其考試分數最高之志願者五人中，予以選擇任用之。

（依據升任候補人員名冊之升任方法）

第五十七條：依據升任候補人員名冊升任職員，應從升任候補者名冊所記載之人員中，每升任一人，應依其考試分數最高之志願者五人中，予以選擇升任之。

（任用候補人員之推薦）

第五十八條：任命權者擬任用職員或升任職員，而為請求時，人事院依據人事院規則所定，應向任命權者，將任用候補人員名冊中所得予任用之候補人員，按前兩條規定之人數，予以提示。

（試用期間）

第五十九條：屬於一般職一切職位之職員之任用或升任，均為試用，於該職員服務六個月以上成績良好時，始能成為正式任用或升任。關於試用上必要事項或試用期間須超過六個月時之必要事項，以人事院規則定之。

（臨時任用）

第六十條：任命權者，依據人事院規則之所定，於緊急時，或職位屬於臨時性時，或無任用候補人員名冊時，得經由人事院之承認後，於不超過六個月之任期內，以臨時任用之，此種情形之任用，依據人事院規則之規定，得經

由人事院之承認後，於不超過六個月之任期內更新之，但不得再度更新。人事院對於臨時之任用，得規定其人數或被任用者之資格要件。人事院對違反前二項規定或人事院規則規定之臨時任用得取消之。

臨時性任用，於任用時，不得給予任何之優先權。前四項規定外，對於被臨時性任用者，適用本法與人事院規則。

第五款：休職、復職、退職及免職

（休職、復職、退職及免職）

第六十一條：關於職員之休職、復職、退職及免職，由任命權者，依照本法暨人事院規則行之。

第四節：俸給

（俸給之基本標準）

第六十二條：職員之俸給，係適應其職位之職務與責任支給之。

前項規定之宗旨，應盡速達成之。

第一款：俸給準則

（依據俸給準則之支俸）

第六十三條：職員之俸給，應依據法律所定之俸給準則支給，如不依據準則，不得支給任何款項或有價物資。人事院應為必要之調查研究，擬訂合於職位分類之俸給準則，並提出國會暨內閣。

（俸給表）

第六十四條：俸給準則，應規定俸給表。俸給表應考慮生活費、民間支薪情形，以及人事院決定之適當情事等而訂定，且應按每等級或每職級明確規定俸給額之幅度。

（俸給準則應規定事項）

第六十五條：俸給準則除前條所定俸給表外，應規定左列事項。

一、關於同一職等或職級內晉級之標準事項。

二、關於職位適用職位分類之俸給事項。

三、關於加班服務、夜間服務及例假服務之給與事項。

四、關於特別地區服務，危險性作業及其他特殊性服務之津貼事項。

五、關於扶養眷屬之人數，不需經常服務之職位，供給全部或一部份生活必需設施之職位，以及其他附有特殊條件之職位等，人事院調整俸給事項。前項第一款之標準，應考慮服務年資，服務能力以及其他有關服務之各要件訂定之。

（俸給額之規定）

第六十六條：職員之俸給，依其職位歸入職位分類之職級，支給俸給準則所定之俸額。（俸給準則支改訂）

第六十七條：人事院對於俸給準則應經常作必要之調查研究，如認有將俸給額加以增減之必要時，應立即製成修正方案提出國會與內閣。

第二款：俸給之支付

（俸給名簿）

第六十八條：對職員支付俸給時，應先將具領人列於俸給名冊上。俸給名冊應隨時準備，以供人事院職員檢查。除前二項規定外，關於俸給名冊之必要事項，以人事院規則定之。

（俸給名冊之檢查）

第六十九條：為確保職員之俸給符合法令、人事院規則或人事院指令而實施，必要時人事院得檢查俸給名冊，認為有必要時，並得命其改正。

（對於違法支付之措施）

第七十條：人事院如發現俸給之支付有違法令，人事院規則或人事院指令時，除屬於本身之權限內事項，得自行加以適當處理外，認為必要時，應視其案件之性質，報告會計檢查院或通報檢察官。

第五節：效率



（效率之基本標準）

第七十一條：職員之工作效率，應充分發揮，且須謀求增進。

關於前項基本標準之實施上必要事項，除本法規定外，以人事院規則定之。內閣總理大臣（第七十三條第一項第一款規定事項為人事院）對於職員工作效率之發揮與增進事項，應未調查研究，並為保持效率而謀求適當之方策。

（考績）

第七十二條：對於職員之執行任務，其所屬機關首長，應定期實行考績，並依其考績結果，作適當之措施。前項考績之評定手續及記錄之必要事項，以政令定之。內閣總理大臣應規劃有關服務或成績優秀者之褒獎事項暨成績明顯不良者矯正方法等事項，並為適當之措施。增進效率計畫）第七十三條：內閣總理大臣（第一項第一款規定事項為人事院）暨有關機關首長，為發揮與增進職員之服務效率，應對左列事項樹立計畫，並實施之。

- 一、有關職員之訓練進修事項。
- 二、有關職員之保健事項。
- 三、有關職員之休閒活動事項。
- 四、有關職員之安全維護事項。
- 五、有關職員之福利事項。

關於前項計畫之樹立及實施，由內閣總理大臣（同項第一款屬於人事院）任綜何計畫及對於有關機關之調整與監視之責。

第六節：分限、懲戒及保障

（分限、懲戒及保障之基本標準）

第七十四條：對於一切職員之分限、懲戒及保障，應公正處理之。前項規定之基本標準之實施上所必要事項，除本法規定者外，以人事院規則定之。

第一款：分限

（身分保障）

第七十五條：職員非依法律或人事院規則所定事由，不得違其本意而予降任、休職或免職。職員如有人事院規定之事由時，得予降給。

（缺乏資格所致之失職）

第七十六條：職員如有第三十八條各款之一之情形時，除人事院規則規定者外，當然失職。

（離職）

第七十七條：關於職員離職之規定，以本法暨人事院規則定之。

（違背本人之意思之降任及免職）

第七十八條：職員合於左列各款之一者，得依據人事院規則之規定，違其本意，予以降任或免職。

- 一、服務成績不良者。
- 二、因心身障礙而影響執行職務，或不堪執行職務者。
- 三、其他欠缺該職位所必要之適格性者。
- 四、因編制員額之修正廢止或減少預算而致發生撤銷職位及員額過剩者。

（違背本人之意思之休職）

第七十九條：職員合於左列各款之一或有人事院規則之其他事由者，得違背本意而予以休職。

- 一、因心身障礙而須長期休養者。
- 二、關於刑事案件被起訴者。

（休職之效果）

第八十條：前條第一款規定之休職期間，以人事院規則定之。休職期間中，以其原因消滅時，則認為休職當然屆滿，而應從速命其復職。前條第二款規定之休職，以其案件繫屬於法院之期間為其期間。任何休職，如期案件消滅時，視為當然期滿。休職人員仍保有職員身分，惟不得執行職務。休職人員

在休職期間中，除俸給準則別有規定外，不得支領任何俸給。

（不適用者）

第八十一條：下揭職員之身分資格（與屆齡退休有關者除外，下一項亦同。），不適用第七十五條、第七十八條至前條及第八十九條及「行政不服審查法」（昭和三十七年法律第一六〇號）之規定。

- 一、臨時性職員
- 二、附條件任用期間之職員
- 三、依職階制改辦歸級之結果，發生與降俸或降任相同結果之職員

## 第二目 屆齡退休

（屆齡退休）

第八十一條之一 法律另有規定者除外，職員達退休年齡時，應於達屆齡之日後首次之三月三十一日或第五十五條第一項所定任命權者或法律另定之任命權者事先指定之日（以下簡稱「屆齡退休日」）前退休。前項之屆齡，係指年滿六十歲。惟，下揭各款職員之退休年齡，由各款規定之。

- 一、任職於醫院、療養所、診療所等人事院規則所定醫療院所之醫師及牙醫退休年齡為六十五歲
- 二、從事廳舍之監督、其他廳務或與此相當之業務之職員，為人事院規則所定者退休年齡為六十三歲
- 三、前二款揭列之職員外，其職務或責任具特殊性且出缺時則礙難補充，如退休年齡定為六十歲係極不適當之職員，為人事院規則定者退休年齡為逾六十歲但未逾六十五歲，係人事院規則規定之年齡

前二項規定不適用於臨時性職員、依其他法律規定任期任用之職員及充任非必要之常期性勤務職位之職員

（屆齡退休之特例）

第八十一條之三 任命權者於達退休年齡之職員依前條第一項規定應退休時，如有充分理由認為該職員職務之特殊性或於職務遂行上有特殊因素，其退休顯然有礙公務運作，雖有該項規定，得規定於該職員退休日之翌日起，未逾一年之期間內，由該職員繼續從事該職務。

任命權者於前項之期限或依該項規定延長之期限到期時，如有充分理由認為前項事由依然存在，經人事院核可，得於未逾一年範圍內延長期限。惟，該期限不得逾該職員屆齡退休日之翌日起三年。

（屆齡退休者等之再任用）

第八十一條之四 任命權得自依第八十一條之二第一項規定退休者或依前條規定工作後退休者或退休日前退休者之中，考量任職期限等，為與此相當為人事院規則所定者（以下簡稱「屆齡退休者」）及「自衛隊法」（昭和二十九年法律第一六五號）規定退職者，或為相當於屆齡退休者為人事院規則所定者（下一條簡稱「依自衛隊法屆齡退休者等」），根據以往之工作績效遴選，於未逾一年範圍內規定任期，充任須常期工作之職位。惟，其如未達欲就任之職位所定之退休年齡，則不受此限。

前項之任期或依本項規定更改之任期，依人事院規則之規定，得於未逾一年範圍內進行變更。

前二項規定之任期，其最後日應為該職員年滿六十五歲後之首次三月三十一日之前。

（屆齡退休者等之短期再任用）

第八十一條之五 任命權者得於未逾一年範圍內規定任期，依以往之工作績效遴選屆齡退休者等或依自衛隊法屆齡退休者等充任短期工作之職位（任該職位之職員其每周之通常工作時間，較須常期工作之職位，其職務為任與該短期工作之職位相同之職員其每周通常工作時間為短者。第

三項亦同。 ) 。

依前項規定任用之職員其任期，準用前條第二項及第三項規定。

關於短期工作之職位，屆齡退休者等及依自衛隊法屆齡退休者等如係適用依第八十一條之二第一項及第二項規定者，僅限得任用達該職位之退休年齡者。

(退休相關事務之調整等)

第八十一條之六 內閣總理為確保職員退休事務之正確運作，除就各行政機關關於該事務之運作，進行必要之調整外，應就職員退休制度之施行措施進行調查研究，就該權限之相關事項，採取適當之措施。

第二款：懲戒

(懲戒之情況)

第八十二條：職員有下列情事者，得予以免職、停職、減俸或申戒等懲戒處分。

一、違反本法、「國家公務員倫理法」或依上揭二法所定之命令(含依「國家公務員倫理法」第五條第三項所定之訓令及同條第四項與第六項所定之規則)者。

二、違反職務上之義務或怠忽職務者

三、有不適任國民公僕之不良行為者

職員因任命權者要求轉任屬於特別職之國家公務員、地方公務員或「公庫預算暨決算法」(昭和二十六年法律第九十九號)第一條規定之公庫、其他業務為與國家事務或事業有密切關係之人事院規則所定之法人(以下本項簡稱「特別職國家公務員等」)而退休，於擔任特別職國家公務員等之後，以該退休為前提繼續被任用為職員時(含擔任一之特別職國家公務員等之後，持續擔任一之特別職國

家公務員等，繼續以該退休為前提繼續被任用為職員時），至退休前擔任職員之在職期間（該退休前同樣之退休（以下本項簡稱「先前之退休」。））、特別職國家公務員等之在職及任用為職員時，含至該退休前之繼續擔任職員之在職期間。以下本項稱為「應要求退休前之在職期間」)中有前項各款情形之一時，得予以該項所定之懲戒處分。職員為依第八十一條之四第一項或八十一條之五第一項規定被進用者，於退休前之在職期間（含應要求退休前之在職期間）或依第八十一條之四第一項或八十一條之五第一項規定被任用時之在職期間，有前項各款情形之一時，得同樣予以懲戒處分。

（懲戒之效果）

第八十三條：停職之期間在不超過一年之範圍內，以人事院規則定之。被停職人員，雖仍保持職員之身分，但不得執行職務。停職人員除依第九十二條規定外，在停職期間內，不得支領俸給。

（懲戒權者）

第八十四條：懲戒處分，由任命權者執行之。人事院得經由本法規定之調查後，將職員付於懲戒手續。

（授權於國家公務員倫理審查會）

第八十四條之二：人事院將前條第二項規定之權限(僅限違反「國家公務員倫理法」或依該法頒發之命令（含依該法第五條第三項頒發之訓令及同條第四項與第六項所定之規則）之行爲進行之處分)委任於國家公務員倫理審查會。

（與刑事審判之關係）

第八十五條：應付於懲戒之案件，即在法院繫屬中，人事院或任命權者經人事院承認後，亦得對於同一案件進行適宜之懲戒程序。依本法之懲戒處分，不妨礙該職員因同一或相關連之案件，在受刑事上之追訴。

第三款：保障

第一目：有關服務條件行政措施之要求

（有關服務條件行政措施之要求）

第八十六條：職員對於俸給、薪俸或其他服務條件，得向人事院提出要求，請由人事院、內閣總理大臣或該職員之機關首長，採取行政上之適當措施。

（案件之審查與判定）

第八十七條：人事院接到前條規定之要求時，得進行必要之調查，口頭審理及其他事實之審查，務期與一般國民及有關人員一律公平，且能發揮與增進職員之工作效率為目的而判定案件。

（判定結果應採之措施）

第八十八條：人事院依據前條規定之判定，如認為對於服務條件，需要採取一定之措施，屬其權限內之事項，應自行實施，其他事項應向內閣總理大臣或該職員機關首長建議實施之。

第二目：違背職員本意之不利益處分之審查

（發給有關違背其本意之減俸等處分之說明書）

第八十九條：對職員違反其本意而施以減俸、降任、休職、免職以及其他顯著不利益處分或行將懲戒處分時，其處分之執行者，應對被處分職員者發給記載處分事由之說明書。職員如認為受到前項規定顯著不利益處分時，得請求發給同項之說明書。第一項之說明書，應載明對該處分如有不服，得向人事院申訴，並載明其申訴期間。

（申訴）

第九十條：受前條第一項規定處分之職員，僅得向人事院依行政不服審查法之規定提出申訴（請求審查及異議申訴）。除前條第一項規定之處分，及法有規定處分外，對職員之處分，不得依行政不服審查法之規定提出申訴，對於職員之申訴不予處理時亦同。第一項規定之申訴，不適用行政不服審查法

第二章第一節至第三節之規定。

（申訴之期間）

第九十條之二：前條第一項規定之申訴，應自接到處分說明書之翌日起六十日內為之，其日受處分之翌日起，經過一年者不得申訴。

（調查）

第九十一條：人事院或其指定機關，受理第九十條第一項規定之申訴時，應立即開始調查。前項調查於該被處分之職員如有請求時，應舉行口頭審理。口頭審理如由該職員請求時，應公開行之。執行處分人員或其代理人暨被處分職員，均須出席有之口頭審理，並得選任辯護人代其陳述，或使證人出席，或提出有關文書、紀錄及其他確切事實與資料。除前項人員以外之人員，得向人事院提出對於該案件有關事項之任何資料與事實。

（調查結果應採之措施）

第九十二條：依前條規定調查之結果，判定具有執行處分之事由時，人事院應承認其處分，或依其裁量加以修正。依前條規定調查之結果，判明無處分之事由時，人事院應取消其處分，並為恢復該職員原有之權利而辦理確切措施，暨更正該職員因該處分所受之不當措施，該職員因受其不當處分而失去俸給時，人事院應指示還清。前二項之規定，係為最終之判定，依據人事院之規則，僅由人事院審查。

（申訴與訴訟之關係）

第九十二條之二：請取消因第八十九條第一項規定之處分，而向人事院提起之審查請求或異議申訴之訴，非經人事院就其審查請求或異議申訴裁決或決定，不得提起。

第三目：因公傷病之補償

（對於因公傷病之補償）

第九十三條：職員因公致死或負傷或發生疾病或因於此而死亡者，對於本人或其直接扶養眷屬所受之損害，應制訂補償制度以便補償損失。前項規定之補償制度，以法律定之。



（法律應規定事項）

第九十四條：前條之補償制度，需規定左列事項。一、有關公務上負傷或疾病為起因，而無法謀生期間，經濟窮困之職員保護事項。

二、有關公務上負傷或疾病為起因，至永久或長期損害其所得能力時，對該職員所受損害之補償事項。

三、有關公務上負傷或疾病為起因致死，對其遺族或職員死亡時受其收入維持生計者所受損害之補償事項。

（補償制度之制訂及實施任務）

第九十五條：人事院應盡速研究補償制度，將其成果提出於國會及內閣，並應實施其計畫。

第七節：服務

（服務之基本標準）

第九十六條：凡屬職員均為全體國民之公僕，必須為公共之利益服務，其執行職務須全力專心以赴。前項規定之基本標準，為實施上之必要事項，除本法所定者外，以人事院規則定之。

（服務之宣誓）

第九十七條：職員依政令之規定，須為服務服務之宣誓。

（服務法令、上司命令之義務與爭議行為之禁止）

第九十八條：職員依法執行職務，對於上司在職務上之命令須忠實服務。職員不得有同盟罷工、怠業及其他爭議行為或使政府行政效率低落之怠業行為。任何人不得有企圖、共謀、挑撥、煽動等違法行為。職員有同盟罷工及違反前項其他規定行為者，自其行為開始者，不得依其法依法保有之任命或僱用上之權利對抗國家。

（喪失信用行為之禁止）

第九十九條：職員不得有傷官職之信用，或使全體官職不名譽之行為。

（保守秘密之義務）

第一百條：職員對職務上之祕密不得洩漏，其在退職後亦同。職員為法令上之證人或鑑定人等，非經所屬機關首長之許可，不得發表屬於職務上之祕密（退職者為其退職時之職位或相當職位之所屬機關首長）。前項許可除法律或政令另有條件及程序之規定外，不得拒絕之。前三項之規定，於人事院辦理調查或審理案件時，由人事院要求提供有關資料者不適用之。任何人於人事院依權限實行調查或審理之餘，如經人事院要求陳述祕密或限制公開之資料，不必得任何人之許可。人事院正式要求之情報，不對人事院陳述及證言者，須受本法罰則之處分。

（專心職務之義務）

第一百零一條：職員除法律或命令另有規定者外，應將辦公時間及職務上之注意力，全部用於職責之遂行，並僅得從事於政府有辦理責任之職務。職員除法律或命令規定者外，不得兼任官職，職員兼任官職時，不得受領兼職之給與。前項規定在地震、火災、水災或其他重大災害時，該管官廳職員受命從事本職以外之業務者，不在此限。

（政治行為之限制）

第一百零二條：職員不得為政黨或政治目的要求捐款及其他利益，或受領捐款，亦不得以任何方法參與此等行為。除選舉權外，不得從事於人事院規則所定之政治性行為。職員不得為公選之公職候選人。職員不得為政黨或政治性團體之幹部及政治顧問或其他同性質之構成員。

（私人企業之隔離）

第一百零三條：職員不得兼任商業、工業、金融業或其他以營利為目的之私人企業（以下稱為營利事業）等團體幹部、顧問或評議員之職務，或自為營利企業。與人事院規則規定之國家機關、特定獨立行政法人或日本郵政公社有密切關係之營利企業，如該職員離職前曾於該機關任職五年，離職後二年內，不得就任或承諾至企業務任職。前兩項之規定，依人事院規則之所定，由所屬機關首長之函請，經人事院承認者不適用之。關於營利企業，依股份所有之關係及其他關係，而得參加企業經營之職員，人事院依人事院規則之規定，得徵求股份所有關係及其他關係之報告。人事院依人事院規則之規定，基於前項報告，對於企業關係全部或一部之存續，認為職員對職務執行上不

適當者，得將該意旨通知該職員。接受前項通知之職員，對通知內容有異議時，得於受領通知之次日起六十日以內，依行政不服審查法，向人事院提出異議之申訴。第九十條第三項及第九十一條第二項及第三項之規定，於有前異議之申訴時，其第九十二條之二之規定，對第五項取消通知之訴準用之。無第六項申訴異議及人事院對申訴異議調查結果，決定通知內容為正當者之職責，依人事院規則之規定；須在人事院規則所定期間內，對企業關係之全部或一部斷絕關係或辭職。人事院每年應就前年人事院對有關第三項之承認處分，按各承認處分之關係者，於離職前五年間，在第二項之人事院規則所定國家機關之官職、承認之營利企業之地位、承認之理由及其他必要事項，不得遲延向國會或內閣提出報告。人事院每年應就前一年度人事院進行之第三項之核可處分，依各核可處分之關係人離職前五年內於第二項之人事院規則所定國家機關、特定獨立行政法人或日本郵政公社之官職、與處分有關之營利企業之地位、核可之理由及其他必要事項，迅速向國會及內閣提出報告。

（關於其他事業及事務之限制）

第一百零四條：職員接受報酬兼任營利企業以外之事業團體之職員、顧問或評議員之職，或從事其他事業或執行事務者，須經內閣總理大臣或該職員所屬機關首長之許可。

（職員職務之範圍）

第一百零五條：職員依法律、命令或指令執行職務，不負除此以外之義務。

（服務條件）

第一百零六條：職員之服務條件及其他有關服務之必要事項，以人事院規則定之。前項人事院規則須遵循本法之主旨定之。

第八節：退職年金制度

（退職年金制度）

第一百零七條：職員於相當年限忠實服務而退職者，或因公負傷或疾病而退職，或因公死亡時，應樹立對其本人或其遺族支給年金之制度並實施之。前項之年金制度，應考慮退職或死亡人員當時之條件，使其本人或其退職或死

亡當時直接扶養人員能維持爾後適當之生活為目的。第一項之年金制度，應以健全之保險數理為基礎而訂定。前三項之年金制度，以法律定之。

（意見之提出）

第一百零八條：人事院對前條之年金制度，得為調查研究，並向國會及內閣提出必要之意見。

第九節：職員團體（本節係一九六五年即昭和四十年追加）

（職員團體）

第一百零八條之二：本法所稱「職員團體」，係指職員以維持及改善勤務條件為目的組成之團體或聯合體。

前項所稱「職員」，係指第五項規定以外之職員。

職員得結成或不結成、加入或不加入職員團體。惟，執行重要行政決定之職員、參與重要行政決定之管理職位之職員、就職員之任免具有直接權限之監督職位職員、或處理職員任免、身分地位、懲戒或服務、俸給及其他勤務條件或管理當局對職員團體關係之計畫及方針等機密務之職員，以其職務上之義務與責任，而認為其對職員團體成員之誠意與責任有直接抵觸之具有監督地位之職員或於其他職員團體係處於管理當局之立場遂行職務之職員（以下簡稱「管理職員等」），不得與其他職員組織同一職員團體。管理職員等與非管理職員組成之團體，非本所稱之「職員團體」。

前項但書所定管理職員等之圍範，以人事院規則定之。

警察人員及服務於海上保安廳或監獄設施之職員，不得結成或加入以維持及改善勤務條件、與當局交涉為目的之團體。

（職員團體之登記）

第一百零八條之三：職員團體得依人事院規則之規定，備具記載理事、其他幹部姓名及人事院規則規定之事項之申請書，檢附章

程，向人事院申請登記。

職員團體之章程至少須記載下列事項：

- 一、名稱。
- 二、目的暨業務。
- 三、主要辦公室所在地。
- 四、成員之範圍及取得或喪失資格之規定。
- 五、理監事及其他幹部之相關規定。
- 六、次項所定業務之執行、會議及投票之規定。
- 七、經費及會計之相關規定。
- 八、與其他團體聯合之相關規定。
- 九、章程變更之相關規定。
- 十、解散之相關規定。

職員團體如擬具備登記及繼續登記之要件，對於章程之訂定及變更，理監事之選舉或與此相當之重要行為，必須明定由所有構成員以平等、直接，秘密之投票方式，並以全體會員之過半數（幹部之選舉以投票者過半數）決定之。其手續據此明定後，決定並實施各該重要之行為應照此手續辦理。但職員團體之聯合體，或具有全國性規模之職員團體，則應按構成團體或按地區職業別，由構成員以平等條件，依過半數決之，選舉代表，再由該代表全體，以平等、直接、秘密之投票，而以過半數（幹部之選舉以投票者過半數）決定之。除前項規定外，職員團體如擬登記或繼續登記，其構成員不得有前條第五項規定之人員，但同項規定職員以外之職員違反其本意被免職因受懲戒而被免職，自該免職處分之次日起一年以內或在此期間內對該處分依據法律提出申訴中或告訴中，而未裁決或決定或判確定者，仍得為該團體之構成員或理監事。人事院於職員團體符合前三項之規定，並依據人事院規則之規定備具章程及第一項規定申請書應記載事項時，應予登記，並通知該團體。其准許非職員就任理監事之職員團體，於登記時不得據以認為不合登記條件。經登記之職員團體變更為非職員團體時、經登記之職員團體有未適合第二項至

第四項規定之事實時或經登記之職員團體未依第九項規定提出申報時，人事院得依人事院規則之規定，於未逾六十日之範圍內，停止該職員團體之登記效力或取消其登記。依前項規定取消登記時，如該職員團體請求申訴，應公開進行審理。第六項規定之取消登記，於提起取消該處分之訴之期間內，或提起取消該處分之訴正於法院進行訴訟期間，不發生效力。經登記之職員團體如變更其章程或第一項所定申請書之記載事項，應依人事院規則之規定，向人事院提出申報。此種情況準用第五項規定。經登記之職員團體如解散，應依人事院規則之規定，向人事院申報。依第六項規定之取消登記，不得依行政不服審查法提出申訴。

（爲法人之職員團體）

第一百零八條之四：經登記之職員團體，向人事院申明爲法人者，得爲法人。民法及非訟事件手續法中，民法第三十四條有關法人之規定，準用於本條之法人。此時其「主管官廳」應改爲「人事院」、「定款」應改爲「章程」。民法第四十六條第一項第四款中之「設立許可」，改爲「爲法人之申明」，同法第六十八條第一項第四款中之「設立許可」改爲「登記」，同法第七十七條第一項中「破產及設立許可之取消」改爲「破產」，非訟事件手續法第二百二十條中之「許可書」改爲「申明爲法人之管理證明書」。

（交涉）

第一百零八條之五：經登記之職員團體，對於職員之俸給、服務時間及其他服務條件提出適法之交涉，或附帶對於社會或厚生之合法活動提出交涉時，當局應予處理。職員團體與當局之交涉，不包括締結團體合約之權利。與國家之事務管理及營運有關之事項，不得爲交涉之對象。得與職員團體交涉之當局，爲對其交涉事項得爲合法之管理及決定之機關。交涉，應在職員團體及當局事先約定之人數範圍內，由職員團體從理監事中指名由當局指派之人員行之。交涉時，其議題、時間、場所及其他必要事項，應由職員團體及當局事先決定之。前項交涉人員，如有特別情事，職員團體得指定理監事以外之人員。但該員對交涉之特定事項，須得到該職員團體之執行機關適法之書面委任書。交涉如有不合前兩項之規定，或妨礙其他職員之執行職務，或阻礙國家事務之正常營運時，應即停止。本條規定之合法交涉，得在勤務時間

中爲之。職員得以不屬於職員團體爲理由，對第一項規定之事項，表示不滿，或提出意見。

（職員團體之職員行爲限制）

第一百零八條之六：職員不得專門從事於職員團體之業務，但經主管長官之許可，而專任經登錄之職員團體之理監事者，不在此限。前項但書之許可，於主管長官認爲適當時爲之，並規定其有效期間。第一項但書規定專任經登記職員團體理監事之期間，於該職員任職期間中不得超過五年（公共企業體等勞動關係法第二條第二項第二目之職員依據同法第七條第一項但書之規定專任勞動組織之業務，其期間應自五年中扣除之）。第一項但書之許可，如該職員不專任該職員團體之業務時，視同取消。依第一項但書規定專任經登記職員團體之幹部時間，於該職員任職期間不得超過五年（「特定獨立行政法人等之勞動關係法」（昭和二十三年法律第二百五十七號）第二條第四項之職員，如依同法第七條第一項但書之規定專任勞動公會之業務，其時間應自五年扣除之）。職員除人事院規則規定者外，不得領受俸給，從事於職員團體之服務，或爲活動。

（不利益處理之禁止）

第一百零八條之七：職員不因參加職員團體，或擬結成或加入團體，或在職員團體爲正當行爲而受到不利益處分。

#### 第四章 罰 則

第一百零九條：有左列各款之一者，處一年以下之有期徒刑或科處三萬元以下之罰金。

- 一、 違反第七條第三款之規定而承諾任命者。違反第八條第三款之規定故意不罷免人事官之閣員。
- 二、 人事官發生缺額後，未於六十日內任命人事官之閣員（在此期間內未經兩院同意之情形者，不在此限）。
- 三、 違反第十五條之規定兼任官職者。

四、 違反第十六條第二項之規定對人事院規則及其修正或廢止，故意遲延公佈官報者。

五、 違反第十九條之規定，故意不製成人事紀錄及保管或改正者。

六、 違反第二十條之規定故意不報告者。

七、 違反第二十七條之規定而有差別者。

八、 違反第四十七條第三項之規定，遲延考試公告或抑止職員時。

九、 違反第八十三條第一項之規定而命令停職者。

十、 依第九十二條之規定對人事院判定處置或指示故意不服從者。

十一、 違反第一百條第一項或第二項之規定洩露秘密者。違反第一百零三條之規定就任營利企業之職位者。

第一百一十條：有下列情事者，處三年以下有期徒刑或科十萬圓以下罰金。

一、 違反第二條第六項之規定者。

二、 刪除。

三、 依第十七條第二項之規定受傳喚之證人有虛偽之陳述者。

四、 依第十七條第二項之規定受傳喚之證人無正當理由而不出席或依同項之規定要求提出文書或副本，無正當理由而不提出者。依第十七條第二項之規定要求提出之文書或副本有虛偽事項之記載者。

五、 違反第十八條之規定而支付給與者。

六、 違反第三十三條第一項之規定而任命者。

七、 違反第三十九條所規定之禁止事項者。

八、 違反第四十條之規定有虛偽行為者。



- 九、 違反第四十一條之規定妨害應考、任用或提供情報者。
- 十、 違反第六十三條第一項或第六十六條之規定支付給與者。
- 十一、 違反第六十八條之規定之給給與者。
- 十二、 違反第七十條之規定對給與之支付故意不採取式當措施之人事官。
- 十三、 違反第八十三條第二項之規定對停職者支付俸給者。
- 十四、 違反第八十六條之規定故意妨礙提出有關服務條件行政措施之要求者。刪除。
- 十五、 有共謀、挑撥、煽動、預謀第九十八條第二項前段規定之違法行爲者。
- 十六、 違反第一百條第四項之規定，不爲陳述及證言者。
- 十七、 違反第一百零二條第一項規定有關政治行爲之限制者。
- 十八、 違反第一百零八條之二第五項之規定，結成團體者。有前項第八款之情形者，其收受之金錢及其他利益沒收之，其全部或一部不能沒收時，應追徵其價額。

第一百一十一條：有企圖、命令、故意容認、挑撥或幫助第一百零九條第二款至第四款及第十二款或前條第一項第一款第三款至第七款、第九款至第十五款、第十八款及第二十款之行爲者，處以各條之刑。

## 附錄 3-6-4 日本「地方公務員法」

### 第一章 總 則

#### 〈法律目的〉

第一條：本法之目的為，確立地方公共團體之人事機構及暨地方公務員之任用、職階制、俸給、工作時間、其他工作條件、法定身分地位及懲戒、服務、進修及考績、福利及權益之保護、職員團體等人事行政之相關基本準則，以保證地方公共團體行政之民主暨效能、特定地方獨立行政法人之事務及事業之進行，俾促進地自治之實現。

#### 〈法律效力〉

第二條：以往有關地方公務員（係指地方公共團體之全體公務員）之法令、條例、地方公共團體規則或其所屬機構規程之規定，與本法牴觸者，以本法之規定為優先。

#### 〈一般職地方公務員與特別職地方公務員〉

第三條：地方公務員（地方公共團體及特定地方獨立行政法人【係指「地方獨立行政法人法」（平成十五年法律第一百十八號）第二條第二項所定之特定地方獨立行政法人，以下亦同。】之全體公務員，以下亦同。）之職位，分為一般職與特別職。

一般職係指屬於特別職以外之一切職位。

特別職係指下列職位：

- 一 其就任須經民選或地方議會之選舉、議決或同意者。
  - 一之二 地方開發事業團體之理事長、理事及監事職位。
  - 一之三 地方公營企業之管理者及企業團體之企業長之職位。
- 二 依法令、條例、地方公共團體規則或其所屬機構規程設置之委員及委員會（含審議會及其他相同性質者。）之職員其職位為臨時或非專職者。

二之二 都道府縣勞動委員會之職務屬專職者

三 臨時或非專職之顧問、參事、調查、特約人員及類似之職務者

四 地方公共團體之首長、議會之議長、其他地方公共團體機關首長之秘書為條例所定者。

五 非專職之消防隊員及防水隊員職位

六 特定地方獨立行政法人之幹部

〈適用本法之地方公務員〉

第四條：本法之規定，屬於一般職之地方公務員〈以下簡稱「職員」〉均應適用之。本法規定，除法律另有規定者外，屬於特別職之地方公務員不適用之。

〈人事委員會、公平委員會及有關其職員條例之制定〉

第五條：地方公共團體，除法律另有規定外，得依本法之基本準則，以條例規定人事委員會或公平委員會之設置，適用於職員準則之實施，及其他有關職員之必要事項，但此等條例不得違背本法之立法精神。

依第七條第一或第二項規定，設有人事委員會之地方公共團體，於制定、修正或廢止前項之條例時，應在該地方公共團體議會聽取人事委員會之意見。

## 第二章 人 事 機 構

〈任命權者〉

第六條：地方公共團體之首長、議會議長、選舉管理委員會、監察委員代表、教育委員會、人事委員會、公平委員會及警視總監、道府縣警察局局長、市町村之消防隊隊長(含特別區聯合維持消防之消防隊隊長。)及其他法令或條例所定之任命權者，除法律另規定外，依本法及根據本法訂定之條例、地方公共團體規則及其所屬機構規程，行使職員之任命、停職、免職及懲戒等權限。

〈人事委員會或公平委員會之設置〉

第七條：都道府縣及地方自治法〈昭和二十二年法律第六十七號〉第二百五十二條之十九第一項指定之都市，應以條例設置人事委員會。前項之指定都市以外之市，其人口（係指官報公告之最新國勢調查或類似之人口調查結果公布之人口，以下亦同。）為十五萬以上者及特別區，應依條例設置人事委員會或公平委員會。人口未滿十五萬之市、町、村及地方公共團體之公會，應以條例設置公平委員會。

〈人事委員會或公平委員會之權限〉

第八條：人事委員會處理左列事項：

- 一、調查有關人事行政事項，管理有關人事資料，並調製有關人事之統計報告。
- 二、經常研究俸給、工作時間及其他勤務條件、福利制度及其他有關職員事項，並將其結果向地方公共團體議會首長或任命權者提出。
- 三、就有關人事機關與職員之條例制定，修正或廢止事項，向地方公共團體議會及首長提供意見。
- 四、就人事行政之相關事務，向任命權者提出建議。
- 五、就俸給、工作時間及其他勤務條件應採取之相關措施，向地方公共團體之議會及首長提出建議。
- 六、辦理職員競爭考試、考選及相關事務。
- 七、研擬職階制之相關計畫，並實施之。
- 八、為確保職員之俸給確實依本法及根據本法訂定之條例給付，於必要範圍內，就職員之支薪進行監督。
- 九、就職員有關俸給、工作時間、其他勤務條件措施之要求，進行審查、判定，並採取必要之措施。
- 十、就職員之不服不利益處分申訴進行裁決或決定。

十一、除前二款規定外，處理職員之申訴。

十二、除各款規定外，法律或條例所定屬於其權限之事務。

（抗告訴訟之處置）

第八條之二 就人事委員會或公平委員會依行政事件訴訟法(昭和三十七年法第一百三十九號)第三條第二項而為之處分或同條第三項而為之裁決依同法第十一條第一項(含準用同法第三十八條一項之情況。)之規定，人事委員會或公平委員會，於地方公共團體為被告之訴訟，代表該地方公共團體。

（公平委員會權限之特例等）

第九條：設置公平委員會之地方公共團體，依條例之規定，除第八條第二項各款所定之事務外，其公平委員會得辦理職員之競爭考試、考選及相關事務。

為使依前項規定置掌理該項所定事務之公平委員會（以下稱為「辦理競爭考試等之公平委員會」。）之地方公共團體適用第七條第四項規定，將該項中「置公平委員會之地方公共團體」改為「置辦理競爭考試等之公平委員會之地方公共團體（係指辦理第九條第二項所定之競爭考試等之公平委員會。以下亦同。）」，「公平委員會」改為「辦理競爭考試等之公平委員會」，「置公平委員會，或委託其他地方公共團體之人事委員會辦理第八條第二項所定公平委員會之事務」改為「置辦理競爭考試等之公平委員會」。

辦理競爭考試等之公平委員會得將第一項規定事務為公平委員會規則所定者，委託予該地方公共團體之其他機構或辦理競爭考試等之公平委員會之事務局局長。

（人事委員會或公平委員會之會員）

第九條之二 人事委員會或公平委員會由委員三人組成。

委員係經議會同意，由地方公共團體首長，自人格高尚、熟諳地方自治宗旨及民主且高效率之事務處理、對人事行政有卓見者選任之。

有第十六條第二款、第三款或第五款情事之一者，或觸犯第五章規定之罪被判刑者，不得選任為委員。

委員之中，不得有二人屬同一政黨。

委員之中，若有二人以上屬同一政黨，地方公共團體首長得經議會同意，罷免其中一人以外之其他委員，但不得罷免政黨隸屬關係未有變動者。

地方公共團體首長認為委員因身心障礙無法遂行職務時，或委員有違反其職務上義務或其他有失委員身分之不當行為時，經議會同意，得罷免之。此時，議會之常任委員會或特別委員會應召開公聽會。

委員除前二項所定之情況外，不得違反其本人之意予以罷免。

委員有第十六條第二款、第四款或第五款情事之一者，喪失其職位。

委員不得兼任地方公共團體議會議員及該地方公共團體之地方公務員(如係依第七條第四項規定，接受公平委員會委託處理事務之地方公共團體之人事委員會之委員，則包括將公平委員會事務委託其他地方公共團體之地方公務員)之職務。

委員任期為四年，惟補缺委員之任期為前任委員剩餘之任期。

人事委員會之委員分為專任與非專任，但公平委員會之委員則為專任。

第三十條至第三十八條之規定，專任之人事委員會委員準用之，第三十條至第三十四條、第三十六條及第三十七條之規定，對非專任之人事委員會委員及公平委員會委員準用之。

#### 〈人事委員會或公平委員會委員長〉

第十條：人事委員會或公平委員會，應自委員中選舉委員長。

委員長應處理有關委會之會務，並代表委員會。

委員長有事故或出缺時，由委員長指定之委員代行其職務。

〈人事委員會或公平委員會之議事〉

第十一條：人事委員會或公平委員會，非有委員三人出席，不得開會。

人事委員會或公平委員會如認為未召開會議恐有礙公務運作或職員福祉或利益之保護等充分理由，雖有前項規定，僅須委員二人出席，即得開會。

人事委員會或公平委員會之議事，以出席委員之過半數議決之。

人事委員會或公平委員會之議事應製成議事錄，以為記錄。

除上列各項規定外，人事委員會或公平委員會議事之必要事項，由人事委員會或公平委員會訂定之。

〈人事委員會及公平委員會之事務局及職員〉

第十二條：人事委員會設事務局，事務局設置事務局長及其他職員。

人事委員會得不受第九條之二第九項規定之限制，委員得兼任事務局局長。

事務局長承人事委員會之指揮監督，掌理事務局局務。

依第七條第二項規定設人事委員會之地方公共團體，得不受第一項規定之限制，不設事務局而僅置事務職員。

公平委員會置事務職員。

設辦理考試業務等之公平委員會之地方公共團體，得不受前項規定之限制，設事務局，於事務局置事務局長及其他職員。

第一項及第四項或前二項之職員，由人事委員會或公平委員會各自任免之。

第一項之事務局，其組織由人事委員會定之。

第一項及第四項至第六項之職員，其員額另以條例定之。

第二項及第三項規定於第六項之事務局長準用之，第八項規定於第六項之事務局長準用之。此種狀況下，第二項及第三項中「人

事委員會」改為「辦理競爭考試等之公平委員會」，第八項中「第一項之事務局」改為「第六項之事務局」，「人事委員會」改為「辦理競爭考試等之公平委員會」。

### 第三章 適用於職員之準則

#### 第一節 通 則

##### 〈平等處理原則〉

第十三條：關於本法之適用，所有國民均應平等，不因種族、信仰、性別、社會身分或門戶、除第十六條第五款規定之情形外，亦不因政治意見或政治上之隸屬關係而予以差別。

##### 〈適應情勢之原則〉

第十四條：地方公共團體，為使本法所規定之俸給、工作時間及其他勤務條件能適應社會一般情勢，應隨時設法採取適當之措施。

人事委員會得隨時就依前項規定應採取之措施，向地方公共團體之議會及其首長提出建議。

#### 第二節 任 用

##### 〈任用之基本原則〉

第十五條：職員之任用，應依本法之規定，根據其考試成績、勤務成績及其他能力證明行之。

##### 〈資格不符者〉

第十六條：有左列情事之一者，除條例另有規定外，不得任用為職員或參加競爭考試及考選。

- 一、禁治產人及準禁治產人。
- 二、受徒刑以上之刑責處分，仍在執行期或應執行之時效尚未終止者。



- 三、於地方公共團體受免職懲戒處分，自處分之日起未滿二年者。
- 四、任人事委員會或公平委員會之職務，觸犯第五章規定之罪被處刑者。
- 五、日本國憲法施行後，組織或加入主張破壞日本國憲法或依憲法成立之政府之政黨或其他團體。

〈任命之方法〉

第十七條：職員出缺時，任命權者，得以進用、升任、降調、或平調方式之一種，任命職員遞補之。設有人事委員會（含辦理考試業務等之公平委員會。以下本條至第十九條、第二十一條及第二十二條，亦同。）之地方公共團體，人事委員會得就依前項何種方式予以任命，訂定一般標準。在設有人事委員會之地方公共團體，職員之進用與升任，應依競爭考試後，但人事委員會所訂職位中，應人事委員會之認可者，得以選考之方式為之。不設人事委員會之地方公共團體，其職員之進用及升任，得以競爭考試或選考之方式為之。人事委員會〈在不設人事委員會之地方公共團體為任命權者，以下在第十八條、第十九條及第二十二條第一向各條同〉，對已任職於正式任用職位之職員，因人事制度或員額之修正，或因預算之減少撤銷職位或因冗員而離職者，關於其復職之資格要件，任用手續及任用時之身分等，得就其必要事項予以規定。〈競爭考試及選考〉

第十八條：競爭考試或選考，應由人事委員會辦理之，但人事委員會得依協定與其他地方公共團體共同辦理，或依協定委託國家或其他地方自治之機關辦理。人事委員會得以規定之職位為限，在無第二十一條第一項規定之候用人員名冊，且人事行政運上認為必要時，將參加相當於該職位競爭考試或選考之國家或其他地方公共團體之競爭考試或選考及格人員，視同參加該職位及格者。

〈應考資格〉

第十九條：競爭考試，應對具有人事委員會所規定應考資格之國民一律平等

且公開之。考試機關之職員或其他職員，不得妨礙他人參加考試，亦不得以對應考人予以不當影響為目的，提供特別或秘密之情報。人事委員會得以執行職務上所必要之最低且適當之客觀統一條件，定為應考資格。得應升考試之人員，應限於經正式任用而任職於人事委員會指定之職位者。

〈競爭考試之目的及其方法〉

第二十條：競爭考試之目的在正確判斷有無執行職務之能力，其實施方法，或以筆試為之，或以口試、身體檢查，及制定品行、教育程度、經歷、適應性質、知能、技能、一般知識、，專門知識及適應能力之方法為之，或併用若干種方法為之。

〈任用候補人員名冊之製作及其任用方法〉

第二十一條：設有人事委員會之地方公共團體，如採取競爭考式任用職員，人事委員會應就每次考試製作任用候補人員名冊（進用候補人員名冊或昇任候補人員名冊）。

進用候補人員名冊或昇任候補人員名冊，應依考試成績記載進用考試或昇任考試之考試合格者其姓名、分數。

依進用候補人員名冊或昇任候補人員名冊錄用或調升職員時，應自人事委員會提出依該名冊記載之應進用或昇任者，分數較高之志願任職者五人中，選派之。

進用候補人員名冊或昇任候補人員名冊所載列之人數少於人事委員會應提出之志願任職者人數時，人事委員會得自進用候補人員名冊或昇任候補人員名冊所記載之人員中選出其他最適當之人員。

前四項規定外，進用候補人員名冊之製作及任用方法等相關必要事項，應以人事委員會規則（如係辦理考試業務等之公平委員會，則為公平委員會規則）定之。

〈附條件之任用及臨時任用〉

第二十二條：除臨時性任用或非全日辦公職員之任用外，職員之任用均為附帶條件之任用，經六個月之試用，成績優良者，始予正式任用。但人事委員會得將試用期間延長至一年。設有人事委員會之地方公共團體，其任命權者得經人事委員會之認可，在緊急時，派任臨時職位時，或無候用人員名冊時，依人事委員會規則，在不超過六個月之期限內，為臨時性任用。該項任用行為，得在不超過六個月之期限內，經人事委員會之認可展延之，但以一次為限。前項情形，人事委員會得為臨時性任用規定任用資格要件。人事委員會得撤銷違反前兩項規定之臨時任用。不設人事委員會地方公共團體，其任命權者，得於緊急時或派任臨時職位時，在不超過六個月期限為臨時性任用，此項任用行為，在不超過六個月期限內展延之，但以一次為限。臨時任用，在正式任用時，並不具任何優先權。前五項規定外，臨時任用之職員得適用本法。

### 第三節 職位分類

#### 〈職位分類之基本原則〉

第二十三條：設有人事委員會之地方公共團體，應採行職位分類。有關職位分類之計畫，以條例定之。實施職位分類之必要事項，應依前項條例，以人事委員會規則訂定之。人事委員會應依職務之種類、繁簡、責任程度，將職位予以整理分類。在職位分類制上，職位之整理分類，務使雇用條件相同且屬於同一職級之職位，設定同一資格條件，並對就任於各該職位之人員給付同一幅度之俸給。在實施職位分類計畫時，人事委員會應將所有職位予以歸級。人事委員會應隨時審查職位之歸級，必要時應予修正。在實施職位分類之地方公共團體，職位非依職位分類制分類不可，但其分類係因行政組織之運用或其他公務上之方便，不妨使用組織上之名稱或其他公務名稱。在訂定職位分類計畫及實施時，應適當予以考慮，使其與國家或其他地方公共團體之職位分類相當。

俸給、工作時間及其他勤務條件

〈俸給、工作時間、其他勤務條件之基本原則〉

第二十四條：職員之俸給應與其服務、責任相當。前項之規定，應從速設法達成。職員之俸給，應就生活費及國家、其他地方公共團體職員、民間企業從業員之俸給，及其他事項加以考慮。職員兼任其他職務時，不得兼俸。規定職員工作時間及其他俸給以外之勤務條件時，應予適當考慮，使其不與國家或其他地方公共團體職員之間失去平衡。職員之俸給，工作時間及其他勤務條件，以條例規定之。

〈有關俸給之條例及俸額之決定〉

第二十五條：職員之俸給，應依根據前條第六項之規定，基於有關俸給之條例給付之，非依其條例，不得支付任何金錢或有價物品。俸給條例應規定左列事項：

- 一、俸表。
- 二、晉俸標準之有關事項。
- 三、加班、夜間勤務及休假日加班津貼之有關事項。
- 四、特別地區勤務，危險工作與其他特殊工作職津貼及眷屬補助津貼之有關事項。
- 五、有非全日辦公之職位，由公家提供全部或部分生活上必要設施之職位，及勤務條件特別之職位時，其調整俸給之有關事項。
- 六、在實施職位分類之地方公共團體，初次適用職位分類制之職位之俸給事項。
- 七、前列各款規定以外，其他有關俸給之支付方法及支付條件事項。人事委員會應為必要之調查及研究，訂定符合職位分類之有關俸給計畫，同時向地方公共團體之首長及議會提報。實施職位分類之地方公共團體，其俸給表應依職位

分類制所規定之職級，分別明確規定其俸額之幅度。

實施職位分類之地方公共團體，其職員應依就任之職位，按職位分類制所規定之職級及俸表所規定之俸額給付俸給。

〈關於俸表之報告及建議〉

第二十六條：人事委員會每年至少一次應同時向地方公共團體議會及首長就俸表是否適當提出報告。因決定俸給之諸項條件變化，而認為俸表所規定之俸額應予增減時，並得提出適當建議。

（部分辦公時間進修）

第二十六條之二 任命權人於職員（臨時任用之職員、依其他法律規定任期任用之職員及非正職之職員除外。以下，本條及下一條亦同。）提出申請時，如認為無礙公務執行，且有助提升該職員辦理公務之能力，依條例之規定，准許該職員因於大學或其他條例所定之教育設施進修，於未逾二年之範圍內，條例所定之期間內，每週部分時間得不上班（以下本條，稱為「部分辦公時間進修」）。前項所定之核可，於申請部分辦公時間進修之職員如遭休職或停職處分時，失去效力。職員依第一項規定取得核可未上班時，依條例之規定，應減少薪俸。前三項規定之外，部分辦公時間進修之相關必要事項，以條例另定之。

（高齡者部分時間辦公）

第二十六條之三 任命權人於職員提出申請時，如認為無礙公務執行，依條例之規定，該職員於其屆齡退休日（第二十八條之二第一項規定之屆齡退休日。以下，本項亦同。）起未逾五年之範圍內，條例所定期間上溯日後之日，該申請所示之日起至其屆齡退休日之期間內，准許每週部分時間得不上班（以下本條，稱為「高齡者部分時間辦公」）。

前條第二項至第四項規定，於高齡者部分時間辦公準用之。

## 第五節 保障及懲誡

〈保障及懲戒之準則〉

第二十七條：所有職員之保障及懲戒，應求公平。職員非因本法規定之事由，不得違反其本意予以降調或免職。非因本法或條例所定之事由，不得違反其本意處以休職。非因條例所定之事由，不得違反其本意與以降給。職員非因本法所訂之事由，不受懲戒處分。

〈降級、免職、停職等〉

第二十八條：職員有下列情事時，得違反其意，予以降級或免職。

- 一、工作績效不佳
  - 二、因身心障礙，影響職務遂行，或無法堪任之
  - 三、前二款規定外，欠缺其職務必備之適當性
  - 四、修改或裁減職務或員額，或因預算減少而裁撤或出現冗員
- 職員有下列情事之一者，得違反其意，予以停職。

- 一、因身心障礙，須長期休養
- 二、因刑事案件被起訴

違反職員之意予以降級、免職、停職及降級之程序暨效果，法律另有規定者除外，應以條例規定之。

職員有第十六條各款（第三款除外）之情事者，條例有特別規定者除外，喪失其職。

（屆齡退休）

第二十八條之二 職員到達退休年齡時，至屆齡之日以後首次三月三十一日之期間，於條例規定之日（以下，簡稱「屆齡退休日」。）退休。

前項之退休年齡，係以就國家公務員所定之年齡為標準，以條例規定之。

雖有前項規定，但地方公共團體之該職員其職務與責任具特殊

性且出缺則礙難補充時，如認為以國家職員之退休年齡為標準規定退休年齡則不符實情，得就該職員之退休年齡，另以條例規定之。惟，為免與國家及其他地方公共團體之職員失去權衡，應審慎考量。

前三項規定，於臨時任用之職員、依其他法律規定任期任用之職員及非專職職員不適用之。

（屆齡退休之特例）

第二十八條之三 達退休年齡之職員依前項規定應退休時，任命權者認為該職員之職務特殊性或該職員遂行職務之特別因素，如退休有礙公務運作之充分理由，雖有前項規定，得訂定條例，規定該職員屆齡退休日之翌日起，未逾一年之期限內，由該職員繼續從事該職務。

前項期限或依該項規定延長之期限到期時，任命權者如有充分理由認為前項事由依然存在，得訂定條例，延長期限，但期限不得逾一年。惟，該期限不得逾該職員之屆齡退休日之翌日起三年。

（屆齡退休者等之再任用）

第二十八條之四 任命權者得任用該地方公共團體之屆齡退休者等（係自依第二十八條之二第一項規定退休者或依前條規定任職後退休者或屆齡退休日之前退休者之中，酌量其工任職期間，以條例規定與之相當者。以下亦同。），依其以前之考績，於未逾一年之期限內，充任專職之職務。惟，如其年齡未達擬充任之職務之退休年齡，則不受此限。

前項之任期或依前項規定更新之任期，得訂定條例，更新之，但不得逾一年。

前二項規定之任期，其最後一日，應為該職員達條例所定年齡之日後首次三月三十一日之間，由條例所定之日之前。

前項之年齡，以就國家公務員規定之任期之最後一日所定之年

齡為基準規定之。

第一項所定之任用，不適用第二十二條第一項規定。

第二十八條之五 任命權者得依以前之考績任用該地方公共團體之屆齡退休者等，規定任期，但不得逾一年，充任短時間工作之職務（任該職位之職員每週通常之工作時間，較充任須長期工作且其職務與該短時間工作之職務相同之職員其每週通常工作時間為短。第三項及下一條第二項亦同。）。

依前項規定任用之職員其任期，準用前條第二項至第四項之規定。

短時間工作之職務，得限任用屆齡退休者等之中，適用第二十八條之二第一項至第三項規定且達該職務規定之退休年齡者。

第二十八條之六 除第二十八條之四第一項主文之規定外，成立地方公共團體工會之地方公共團體之任命權人，得自該地方公共團體成立之地方公共團體工會之屆齡退休者，地方公共團體工會之任命權人，得自成立該地方公共團體工會之地方公共團體之屆齡退休者，以未逾一年為範圍，訂定任期，依其以往之工作績效遴選，擔任常期工作之職。此種狀況下，同項但書及同條第五項規定準用之。

除前條第一項規定外，成立地方公共團體工會之地方公共團體之任命權人，得自該地方公共團體成立之地方公共團體工會之屆齡退休者，地方公共團體工會之任命權人，得自成立該地方公共團體工會之地方公共團體之屆齡退休者，以未逾一年為範圍，訂定任期，依其以往之工作績效遴選，擔任短期工作之職。此種狀況下，同條第三項規定準用之。

依前二項規定任用之職員其任期，第二十八條之四第二項至第四項規定準用之。

〈懲 戒〉

第二十九條：職員有下列情事之一時，得予以告戒、減薪、停職或免職等懲



戒處分。

- 一、違反本法或依第五十七條另定特例之法律或依此制定之條例、地方公共團體規則或地方公共團體之機構規定之規程。
- 二、違反職務上之義務或怠忽職務
- 三、有損全體公務員形象之不當行為

職員如應任命權人之請求，擔任該地方公共團體之特別職之地方公務員、其他地方公共團體或特定地方獨立行政法人之地方公務員、國家公務員或地方公社（係指地方住宅供給公社、地方道路公社及土地開發公社。）、其他之業務與地方公共團體或國家事務或事業有密切關係之法人中，條例規定之單位之聘用者（以下，本項簡稱「特別職地方公務員等」。）離職，繼而擔任特別職地方公務員等之職務後，續又以離職為前提而被任用時（含擔任一特別職地方公務員等之後，繼而擔任一以上之特別職地方公務員等，續又以離職為前提而被進用時。），至該離職之繼續任職期間（含該離職前同樣離職【以下，本項稱為「先前之離職」】。、特別職地方公務員等之在職及擔任職員時，至該先前離職之繼續任職期間。下一項中，稱為「應請求離職前之在職期間」。），如有前項各款規定之情事，得給予同項規定之懲戒處分。

職員依第二十八條之四第一項或第二十八條之五第一項規定任用時，於屆齡退休後繼續任職期間（含受請求之退休前之任職期間。）或依上揭規定任用之職員其在職期間如有第一項各款之情事，得予以該項規定之懲戒處分。

職員之懲戒程序暨效果，除法律另有特別規定外，應以條例規定之。

（適用除外）

第二十九條之二 下揭之職員及處分，不適用第二十七條第二項、第二十八條第一項至第三項、第四十九條第一項及第二項及「行政不服

審查法」(昭和三十七年法律第一百六十號)之規定。

一、附條件任用期間之職員

二、臨時任用之職員

前項各款所定職員之法定地位，得以條例另定必要之事項。

#### 第六節 服 務

##### 〈服務之基本原則〉

第三十條：所有職員，應以全體之服務者，為公共利益而服務，在執行職務時，應專心全力以赴。

##### 〈宣 誓〉

第三十一條：職員應依條例之規定宣誓。

##### 〈服從法令及上級職務上命令之義務〉

第三十二條：職員在執行職務時，應忠實遵從法令、條例、地方公共團體之規則與地方機關所規定之規程，及上級在職務上之命令。

##### 〈禁止失信行為〉

第三十三條：職員不得有危害其職位之信用或不名譽之名為。

##### 〈守密之義務〉

第三十四條：職員不得洩露因職務上知悉之秘密，在其退職後亦同。依法充任證人、鑑定人、而需要發表屬於職務上之秘密事項時，應得任命權者(其為退職人員者，指其所退職或其相當職位之任命權者)之許可。前項之許可，除法律另有規定外，不得拒絕之。

##### 〈專心於職務之義務〉

第三十五條：職員在法律、條例另有特別規定外，應將所有工作時間及職務上之注意力用於執行職務，全力從事於各該地方公共團體負責推行之職務。

##### 〈政治活動之限制〉

第三十六條：職員不得參加政黨及其他政治團體之組成，或擔任此等團體之幹部，亦不得勸誘他人加入或不加入此等團體之成員。職員不得因支持或反對特定政黨、其他政治團體或特定內閣或地方公共團體之執行機構，亦不得於公職選舉或投票時，因支持或反對特定人物或事件，而有下列政治行為。惟，於該職員所屬之地方公共團體之地區（該職員如修任職於都道府縣之分支機構或地方辦公室或「地方自治法」第二百五十二條之十九第一項之指定都市以外者，為該分支機構或地方辦公室或行政區管轄之區域）外，得從事第一款至第三款及第五款所定之政治活動。

一、於公開選舉或投票時，勸誘他人投票或不投票。

二、以策畫或主持等方式積極參與連署活動。

三、參與募款或其他勸募款物之行為。

四、於地方公共團體或特定地方獨立行政法人之官廳（如係特定地方獨立行政法，則為辦公室。以下，本款亦同。）張貼或讓人張貼文字或圖畫，利用或讓人利用其他地方公共團體或特定地方獨立行政法人之官廳、設施、物資或資金。前揭各款規定之外，以條例規定之政治行為。任何人不得要求職員、或叫唆、或煽動職員，為前二項規定之政治活動，或給予或企圖給與所約定以任用、職務、俸給及其他有關職員地位之利益或不利益做為職員對前二項規定之政治活動之作為或不作為之代價或報復。職員不應因拒絕前項規定之違法行為而受不利之待遇。本條規定之解釋及運用，應本保障職員之政治中立，確保地方公共團體行政及特定地方獨立行政法人業務之公正，並保護職員利益之宗旨為之。

〈爭議行為等之禁止〉

第三十七條：職員不得對地方公共團體所代表處於使用者地位之住民，有同盟罷工、怠工及其他爭議行為，亦不得有降低地方公共團體效率之怠工行為。無論何人，均不得計劃似此違法行為，或共謀、

叫喚、煽動及實施。職員有違反前項規定之行爲者，自其行爲開始起，不得以法令、條例、地方公共團體規則或地方機關之規程在任命或雇用方面所規定之權利，對抗地方公共團體。

〈從事營利企業之限制〉

第三十八條：職員非經任命權者之許可，不得兼任以營利爲目的之私人企業公司或其他團體之幹部及其他人事委員會規則〈不設人事委員會之地方公共團體則爲地方公共團體之規則〉所定之職位，或以營利爲目的自行經營私人企業，或收取報酬從事任何事業或業務。人事委員會得一人事委員會規則訂定前項任命權者許可之標準。

〈進 修〉

第三十九條：爲使職員發揮並增建行政效率，應予以接受進修之機會。

前項之進修，由任命權者實施之。

人事委員會就有關進修計畫之擬案，及其他進修方法，對任命權者提出建議。

地方公共團體應訂定進修目標、進修計畫之相關事項、其他之進修基本方針。

人事委員會得就進修計畫之擬案、其他進修方法，向任命權者提出建議。

〈考 績〉

第四十條：任命權者應就職員執行職務情形予以定期考績，並依其成績採取措施。人事委員會得對任命權者就有關考績計畫之擬案，及其他有關考績之必要事項提出建議。

第八節 福利及利益之保護

〈福利及利益保護之基本原則〉

第四十一條：職員之福利及利益之保護，應爲適切且公正。

## 第一目 福利制度

### 〈厚生制度〉

第四十二條：地方公共團體應計畫併實施職員之保健，恢復疲勞，及其他有關厚生事項。

### 〈互助制度〉

第四十三條：對職員得以其傷病、生產、休職、災害、退休、殘廢、死亡或其所扶養者之傷病、生產、死亡、災害適當負擔費用為目的，應實施互助制度。前項之互助制度，應包含職員忠實服務相當年數後退職時，或因公傷病而退職，或因公死亡時，給付該職員或其遺族之退職年金制度。前項之退職年金制度，應考量退職或死亡時之條件，以謀求本人及其退職或死亡當時直接撫養者日後得以維持生活為目的。關於第一項之互助制度，應適當考慮與國家制度之間關係之平衡。

第一項之互助制度，應以健全之保險數理為基礎而制定。

第一項之互助制度，以法律規定之。

第四十四條：刪除。

## 第二目 公務災害補償

### 〈公務災害補償〉

第四十五條：職員因公死亡、受傷、患病或因公受傷或因病致死或殘廢，或船員之公務員因公行方不明時，應對該員或其遺族或被扶養者因此而受之損害，予以補償。為確保前項規定之補償公正迅速之實施，應實施必要之補償制度。關於前項之補償制度，應規定左列事項：

- 一、有關職員因公負傷或疾病對其必要之療養及療養費用之負擔事項。
- 二、有關職員因公負傷或疾病之療養期間或職員因公行方不明之期間，對該職員所得喪失之補償事項。

三、有關職員因公負傷或疾病，致永久或長期損害其所得能力時，對該職員所受損害之補償事項。

四、有關職員因公負傷或疾病致死時，對其遺族或職員死亡時，依賴其收入維持生計者，所受損害之補償事項。

第二項之補償制度，以法律規定之，惟須慎重考量，該制度不應與國家之制度有失權衡。

### 第三目 關於勤務條件措施之要求

#### 〈關於勤務條件措施之要求〉

第四十六條：職員得就其俸給、工作時間、及其他勤務條件，對人事委員會或公平委員會要求請地方公共團體當局採取更為適當之措施。

#### 〈審查及審查後應採取之措施〉

第四十七條：遇有前條規定之要求時，人事委員會或公平委員會應就該案件，以言詞審理或以其他方法予以審查，並做判定，再根據其結果逕予執行屬於其權限範圍內之事項，至其他事項，則應對各該有權之地方公共團體機關作必要之建議。

#### 〈要求及審查、判定之程序等〉

第四十八條：依前二條規定所作之要求及審查、判定之程序，及關於審查、判定結果應採取之措施所必要之事項，應以人事委員會規則或公平委員會規則規定之。

### 第四目 不利處分之申訴

#### 〈不利處分說明書之交付〉

第四十九條：任命權對於職員予以懲戒或其他違反其本人意志之不利益處分時，應將記載處分事由之說明書交付該職員。職員認為違反其本人之意受不利益處分時，得對任命權者請求交付記載處分事由之說明書。第一項或第二項之說明書應記載就該項處分得對人事委員會或公平委員會提出異議之語句，及聲明異議之期間。

〈申 訴〉

第四十九條之二：受前條第一項所規定處分之職員，僅得向人事委員會或公平委員會，依行政不服審查法提出申訴〈要求審查或聲明異議〉。除前條第一項規定之處分外，對職位之處分不得依行政不服審查法提出申訴，對職員申請事項之不作為亦然。關於第一項規定之申訴之提出，不適用行政不服審查法第二章第一節至第三節之規定。

〈提出申訴之期間〉

第四十九條之三：前條第一項規定之申訴，應於知悉處分之次日起六十日內提出，自處分之次日起經歷過一年者，不得提出。

〈審查及審查結果應採取之措施〉

第五十條：受理第四十九條之二第一項之申訴時，人事委員會或公平委員會應即審查案件，此時如經受處分之職員請求，應為言詞審理。其言詞審理，如經該職員請求應公開為之。人事委員會或公平委員會認為必要時，除對申訴之裁決或決定外，得將審查事務之一部分委請委員或事務局長辦理。人事委員會或公平委員會根據第一項規定審查之結果，或認可該處分，或修正之，或撤銷之，必要時尚應命任命權者採取恢復該職員應得之俸給及其他給付所必要之適當措施等，並做糾正該職員所受不當處分之必要指示。

〈提出申訴之程序等〉

第五十一條：關於提出申訴之程序，及審查之結果應採取措施之必要事項，應以人事委員會規則或公平委員會規則規定之。

〈申訴與訴訟之關係〉

第五十一條之二：對屬於第四十九條第一項規定之處分，並得向人事委員會或公平委員會請求審查或證明異議。其就請求撤銷之訴，非經人事委員會或公平委員會對該請求審查或聲明異議有所裁決或決定之後不得提出。

## 第九節 職員團體

### 〈職員團體〉

第五十二條：本法所稱「職員團體」係職員為維持或改善勤務條件為目的所組織之團體及其聯合體。前項所稱之「職員」係指第五項所規定職員以外之職員。職員得結成或不結成，加入或不加入團體，施行重要行政決定之職員，與重要行政決定之管理職位職員，有關職員任免具有直接權限之監督職位職員或處理職員任免、分限、懲戒或服務、給與及其他勤務條件或管理當局對職員團體關係之計畫及方針等機密事務之職員，以其職務上之義務責任，而認為其對職員團體構成員之誠意與責任有直接抵觸之具有監督地位之職員或於其他職員團體關係處於管理當局之立場遂行職務之職員（以下簡稱管理職員等），不得與其他職員組織同一職員團體。管理職員與半管理職員組織之團體，非本法所稱之職員團體。前項但書所訂管理職員之範圍，以人事委員會規則或公平委員會規則訂之。警察職員及消防職員，不得組成以維持或改善勤務條件為目的及向地方公共團體當局交涉之職員團體，並不得加入之

### 〈職員團體之登記〉

第五十三條：職員團體得依條例之規定，備具申請書，並檢同章程向人事委員會或公平委員會申請登記。其申請書應記載理事及其他有關人員之姓名暨條例規定之事項。

前項規定之職員團體之章程，至少應記載左列各事項：

- 一、名稱。
- 二、業務。
- 三、主事務所所在地。
- 四、構成員之範圍及關於其資格之取得與喪失之規定。
- 五、有關理事代表人及其他幹部之規定。



六、包括第三項規定事項在內之業務之執行，會議及投票之規定。

七、經費及會議事項。

八、與其他職員團體連合之規定。

九、變更章程之規定。

十、解散之規定。

職員團體如擬具備登記及繼續登記之要件，對於章程之訂定及變更，理監事之選舉或與此相當之重要行為，必須明定由所有權成員以平等直接、秘密投票之方式，並以全體會員之過半數〈幹部之選舉以投票者過半數〉決定之。其手續據此明定後，決定並實施各該重要之行為應據此手續辦理。但職員團體之聯合體，則應按構成團體所有構成員以平等參與之條件，直接秘密投票依過半數決之。選舉代表，再由該代表全體，以平等參與、直接、秘密之投票，而以過半數〈幹部之選舉以投票者過半數〉決定之。除前項規定外，職員團體如擬登記或繼續登記，其構成員不得有前條第五項規定之人員，但同項規定職員以外之職員違反其本意被免職或因受懲戒而被免職，自該免職處分之次日起一年以內或在此期間內對該處分依據法律提出申訴或告訴中，而未裁決或決定或裁判確定者，仍得為該團體之構成員或理監事。人事委員會或公平委員會於職員團體符合前三項之規定，並依據條例之規定備具章程及第一項規定之申請書應記載事項時，應予登記，並通知該團體。其准許非職員就任理監事之職員團體，於登記時，不得據以認為不合登記要件。經登記之職員團體變更為非職員團體時，經登記之職員團體於有未適合第二項第四項規定之事實時，或經登記之職員團體未依第九項規定提出申報時，人事委員會或公平委員會得依條例之規定，於未逾 60 日之範圍內，停止其登記效力或取消其登記。依前項規定取消登記之之口頭審理，如該職員團體提出要求，應公開進行之。第六項所定之取消登記，於得提起取消該處分

之訴之期間內，及提起取消該處分之訴時，於該訴訟在法院係屬期間內，不發生效力。完成登記之職員團體，其章程或第一項所定申請書之記載事項如有變更，應依條例之規定，向人事委員會或公平委員會提出申報。此種情況，準用第五項規定。完成登記之職員團體解散時，依條例之規定，應向人事委員會或公平委員會申報。

〈爲法人之職員團體〉

第五十四條：經登記之職員團體，向人事委員會或公平委員會申請爲法人者，得成爲法人。民法（明治二十九年法律第 89 號）及非訟事件程序法（明治三十一年法律第 14 號）中，民法第三十四條所定法人之相關規定（同法第三十五條、第三十八條第二項、第五十六條、第六十七條、第七十一條、第七十七條第三項、第八十四條、第八十四條之二及第八十四條之三第一項第四款及第二項、非訟事件程序法第一百二十二條之二除外。）準用於本條之法人。此種情況下，上揭規定中，「定款」應改爲「章程」，民法規定中之「主管官廳」應改爲「人事委員會或公平委員會」，同法第四十六條第一項第四款中之「設立許可」改爲「成爲法人之申請」，同法第六十八條第一項第四款中之「設立許可」改爲「登記」，同法第七十七條第一項中之「破產程序開始之決定及設立許可之取消」改爲「破產程序開始之決定」，非訟事件程序法中之「主管官廳」應改爲「人事委員會或公平委員會」，同法第一百二十條中之「許可書」改爲「成爲法人之申請之受理證明書」。

〈交 涉〉

第五十五條：經登記之職員團體，對於職員之俸給，服務時間及其他服務條件提出適法之交涉，或附帶對於社會或厚生之合法活動提出交涉時，當局應予處理。職員團體與當局之交涉，不包括締結團體合約之權利。與地方公共團體事務管理及營運有關之事項，不得爲交涉之對象。得與職員團體交涉之地方公共團體當局，

為對其交涉事項得為合法之管理及決定之機關。交涉，應在職員團體及地方公共團體當局事先約定之人數範圍內，由職員團體從監事中指名及由當局指派之人員行之。交涉時，其議題、時間、場所及其他必要事項，應由職員團體及當局事先決定之。前項交涉人員，如有特別標準，職員團體得指定理監事以外之人員，但該員對交涉之特定事項，須得到該職員團體之執行機關適法之書面委任書。交涉如有不合前二項之規定，或妨礙其他職員之執行任務，或阻礙地方公共團體事務之正常營運時，應即停止。本條規定之合法交涉，得在勤務時間中為之。在前項情形，職員團體在不抵觸法令、條例、地方公共團體規則及地方機關規程之範圍內，得與各該地方公共團體當局以書面締結協定。前項協定，應由各該地方自治機關當局與職員團體雙方本於誠信負責支原則履行之。

〈因職員團體之職員行為之限制〉

第五十五條之二：職員不得專門從事職員團體之業務，但經主管長官許可，而專任經登記之職員團體之理監事者，不在此限。前項但書之許可，於主管長官認為適當時為之，並規定其有效期間。第一項但書規定專任經營登記職員團體理監事之期間，於該職員任職期間中，不得超過五年〈地方公營企業勞動關係法第六條第一項但書之規定專任勞動組織之業務，其期間應自五年中扣除之〉。依第一項但書之規定，專任完成登記之職員團體之幹部之期間，於該職員任職期間中，不得超過五年（依地方公營企業勞動關係法第六條第一項但書【含同法附則第五項所定之適用狀況】之規定，如係專任工會業務之職員，其期間應自五年中扣除之）。受第一項但書許可之職員，於許可效力繼續期間，視為休職者不得支領任何俸給，其期間亦不得算為退職津貼之年資。職員除條例規定者外，不得支領俸給，而從事職員團體之服務或為活動。

〈不利益處理之禁止〉

第五十六條：職員不因參加職員團體，或擬結成或加入團體，或在職員團體為正當行為而受到不利益處分。

#### 第四章 補充規定

〈除外規定〉

第五十七條：職員中，公立學校〈學校教育法「昭和二十二年法律第二十六號」規定之公立學校〉之教職員〈指同法規定之校長、教員及職員〉，被僱用擔任單純勞務者，及其因職務與責任之特殊性認為在本法適用上有除外規定之必要者，應以法律另定之。但其規定不得違反第一條之精神。

〈其他法律適用之除外〉

第五十八條：勞動組合法〈昭和二十四年法律第七十四號〉，勞動關係調整法〈昭和二十一年法律第二十五號〉，最低工資法〈昭和三十四年法律第一百三十七號〉及據其頒訂之命令之規定，對職員不適用之。勞動安全衛生法〈昭和四十七年法律第五十七號〉第二章及有關船員災害防止協會等法律〈昭和四十二年法律第六十一號〉及據其頒訂之命令之規定、地方公共團體施行之勞動基準法〈昭和二十二年法律第四十九號〉第八條第一款至第十款、第十三款至第十五款所示事業職員以外之職員不適用之。勞動安全衛生法（昭和四十七年法律第 57 號）第二章、船員災害防止活動促進法（昭和四十二年法律第 61 號）第二章及第五章暨依該章訂定之命令，不適用於從事地方公共團體施行之勞動基準法（昭和二十二年法律第 49 號）附表第一項第一款至第十款及第十三款至第十五款揭列之業務以外之職員。勞動基準法第二條、第十四條第二項及第三項、第十八條之二、第二十四條第一項、第三十二條之三至第三十二條之五、第三十八條之二第二項及第三項、第三十八條之三、第三十八條之四、第三十九條第五項、第七十五條至第九十三條及第一〇二條之規定，勞動安全衛生法第九十二條之規定、「船員法」（昭和

二十二年法律第 100 號) 第六條中與勞動基準法第二條有關之規定、第三十條、第三十七條中與勤務條件有關之規定、第五十三條第一項、第八十九條至第一百條、第一〇二條及第一〇八條中與勤務條件有關之規定及船員災害防止活動促進法第六十二條暨依上揭規定頒訂之命令，於職員不適用之。惟，勞動基準法第一〇二條之規定、勞動安全衛生法第九十二條之規定、船員法第三十七條及一〇八條與勤務條件有關之規定、船員災害防止活動促進法第六十二條暨依上揭規定頒訂之命令，適用於從事地方公共團體施行之勞動基準法附表第一項第一款至第十款及第十三款至第十五款揭列之業務以外之職員，同法第七十五條至第八十八條及船員法第八十九條至第九十六條之規定，適用於地方公務員災害補償法(昭和四十二年法律第 121 號) 第二條第一項規定以外之職員。關於職員，勞動基準法第三十二條之二第一項中之「受雇者，該勞動場所如由過半數勞工組成工會則為該工會，如無過半數勞工組成之工會則依與過半勞工之代表人簽訂之書面協定，或」改為「受雇者」，同法第三十四條第二項但書中之「該勞動場所如由過半數勞工組成工會，則為該工會；如無過半數勞工組成之工會，則為與過半勞工之代表人簽訂之書面協定」改為「條例中有特別規定時」。勞動基準法、勞動安全衛生法、船員法及船員災害防止活動促進法暨依其頒訂之命令中，依第三項規定適用得適用於職員之規定時，與職員勤務條件有關之勞動基準監督機構之職權，除從事地方公共團體施行之勞動基準法附表第一款至第十款及第十三款至第十五款揭列之事業之職員外，由人事委員會或受委任之人事委員會之委員(未設人事委員會之地方公共團體，則為地方公共團體首長)行使之。

(人事行政營運等狀況之公布)

第五十八條之一 任命權者依條例之規定，每年須向地方公共團體首長，就職員(臨時任用之職員及非專職職員【擔任第二十八條之五第一項規定之短期勤務之職員除外】除外。)之任用、俸給、勤

務時間、其他之勤務條件、身份保障暨懲戒、服務、進修及績效考核、福利暨利益保護等人事行政之營運狀況進行報告。

人事委員會或公平委員會，依條例之規定，每年須向地方公共團體首長報告業務狀況。

地方公共團體首長收到依前二項規定提出之報告時，依條例之規定，每年應就依第一項規定提出之報告進行彙整，公布其概要及依前項規定提出之報告。

（總務省之協助暨技術性之建言）

第五十九條：總務省得協助或提供技術性建議，俾資地方公共團體之人事行政依循本法所確立之地方公務員制度原則運用。

## 第五章 罰 則

（罰則）

第六十條：有列揭各款情事之一者，處以一年以下有期徒刑或三萬日圓以下罰金：

- 一、違反第十三條規定，給予差別待遇者。
- 二、違反第三十四條第一項或第二項規定（含準用第九條之二十二項規定），洩漏秘密者。
- 三、故意拒絕遵從人事委員會或公平委員依第五十條第一項規定做出之指示。

第六十一條：有左列各款情事之一者，處以三年以下之有期徒刑或十萬圓以下之罰金：

- 一、在行使第五十條第一項規定之權限時，依第八條第五項之規定，受人事委員會或公平委員會傳喚擔任證人無正當理由而予以拒絕，或作虛偽之陳述者，依同項之規定被人事委員會或公平委員會要求提供文書，無正當理由而予以拒

絕，或提供有虛偽記載之文書或其抄本者。

二、違反第十五條之規定任用者。

三、違反第十九條第一項後段之規定，阻礙應考、或提供情報者。

四、不論何人、共謀、教唆、煽動或企圖為第三十七條第一項前段之違法行為者。

五、故意妨礙依第四十六條規定提出關於勤務條件措施之要求。

第六十二條：企圖、命令、故意放縱、教唆、或補助第六十條第二款或前條第一款至第三款、第五款列舉之行為者，各處以本條之刑。

### 附錄 3-7 韓國政府倫理法制

長久以來，公務倫理一直是民主政治制度下政府機器得以運作的基石，它並非政策方案的選項亦非政治態度光譜的一端，而是現代政府與公職人員所應秉持的最高道德標準，嚴謹地說，面對公務倫理，人們並沒有抉擇與妥協的空間。職是，如何務實公務倫理的管理機制一直是各國政府努力的目標，從實務經驗觀察，建制公務倫理的基礎工程首要內容當屬法制化建設，法制規範的重要性在維繫基本的共識，提供準則避免公務人員踰越分際而遂行私慾。回顧各國的倫理法制建設，主要關注防制貪污的法制建設，除英國十九世紀末的「公職人員反貪法」(the Anti-Corruption Act for Public Officers, 1889)與美國聯邦政府 1978 年通過的第一部「政府倫理法」(Ethics in Government Act of 1978)，亞洲各國在倫理法制建設並不落後，新加坡早於 1937 年建立反貪污法，香港於 1948 年建立「防制行賄條例」(Bribery Prevention Bylaw)，馬來西亞與菲律賓於 1960 年推行政府反貪法，韓國於 1970 年首先頒佈「公職人員服務規定」(Service Regulation for Public Official)、1981 年公佈「公職人員倫理法」(Public Service Ethics Act)並於 2001 年正式通過「韓國反貪法」(Anti-Corruption Act) (KICAC, 2007)。

相較於亞洲其他國家，韓國自 1948 年建立自由民主政體以來，經歷七位總統，已從六十年前最貧窮的國家發展成世界第十二經濟大國(K-PACT, 2007)<sup>62</sup>，但在現代化的進程中，韓國政府經歷許多重大政治貪腐與商業醜聞的事件，侵蝕民眾對政府信任基礎與民主價值，在這樣的政經背景下，敦促著韓國政府在民主的發展過程中高度重視行政倫理性質的法制工程，從而逐步建構當前堪稱完善的倫理法制建設。同時，經歷貪腐誤國的痛處之後，韓國民眾對於政府倫理價值與政治人物品格的高度重視也展現在今日的輿論訴求中，朝鮮日報即於今年(2007)元旦頭版社論以「總統的品德將決定我國命

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<sup>62</sup> K-PACT 係 Korean Pact on Anti-Corruption and Transparency 的縮寫，中文正式名稱為「韓國透明社會協約實踐協議會」，係 2004 年由韓國透明組織(TI-Korea)所推動成立的全國性反貪聯盟，透過簽署社會協約方式，整合跨公私領域的反貪運動成果顯著(金句性，2007)。



運」為標題，強調選拔國家領導人必須考核候選人的品格與資質，當這些標準出現一絲誤差將導致國家走向危機(朝鮮日報，2007.1.1)。從制度比較的角度而言，韓國與我國不論在中央政府體制、國情環境與產業結構都有著相似之處，該國在民主化進程中所經歷的陣痛過程，與我國政黨輪替後面對的政府信任危機亦有類似的劇情發展。

因此，不論從制度論(institutionalism)抑或文化論的視角，本文認為韓國政府對公務倫理法制的積極建設，以及相對完善的倫理法制體系，足以為我國當前推動行政倫理法制化提供可操作性的概念架構，本文試圖追蹤韓國倫理法制建設的特徵，探求其公務倫理所訴求的核心價值，同時，藉由組織面、制度面與政策面的分析，我們期待發現具有價值的借鑒之處。本文首先檢視韓國倫理法制的歷史沿革，觀察歷屆總統任期內的反貪措施與政策背景，以一種引介與比較的視角，審視歷屆總統在國家發展過程中所推動的政策措施與法制建設，期望將其觀察的論題置於可比較的架構中予以討論。

## 壹、韓國政府倫理法制沿革與背景

自從 1945 年光復以後，我們的國家遭受了特殊的苦難，17 年來，兩屆充斥著貪污腐化的政權製造了今日危機的基礎，我們正陷於貧困和痛苦的惡性循環之中...

朴正熙 1962 年 2 月《我們國家的道路》<sup>63</sup>

總統制的國家通常傾向於以國家領導人做為國家的識別象徵(The Economist, 2007)，如果執政者高豎「清廉政治」的改革決心則終將引領國家走向廉政道路。從各國成功的經驗，防貪制腐需要國家領導人的高度承諾與實際作為，而領導者所處的時空背景與政經情況亦為渠等政策措施的重要影響因素。作為一個新興國家，在實現國家發展的過程中，國家領導者的政策

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<sup>63</sup>該書於 1962 年出版，1970 年英文版正式問世，定名：Our Nation's Path: Ideology of Social Reconstruction，本段引自該書作者朴正熙自序。

主導角色一直是韓國政府的治理特色。自光復以來，首任總統朴正熙開啓強勢領導的政治文化，國家各項的反貪與倫理運動取決於總統個人意志，這也是韓國在公務倫理法制建設的特色。然而，在韓國軍人政府長期執政下，官僚體系便依附在強人政治的威權領導，其對政府決策沒有實質權力，決策權乃是操縱在以總統為中心的領導圈中，大企業為獲取經濟上的壟斷性利益，便必須對總統及其親信提供政治獻金(蔡增家，2005)，這是造成韓國執政者與官僚體系貪污腐化的根本原因，此點從歷屆總統均捲入政治貪污弊案得以證明。本節試圖以韓國歷屆總統任期為分界點，討論各項重大倫理反貪立法建制時間，回溯韓國倫理法制建設的歷史脈絡，藉以觀察該國制度建立的發展歷程。陳述韓國政治改革的歷史系絡，有助於了解該國公務倫理法制建設的時空背景。

自二戰以來，韓國面臨著許多問題，繼李承晚因四一九革命下台後，朴正熙<sup>64</sup>發動軍事政變並就任新一屆韓國總統，以軍人政權建立韓國現代政經體制的基礎。1972年，朴正熙就任第四共和國總統，並在維新體制下重新修訂憲法，向獨裁政權邁進(Kim Yong-ho, 1992)。在持續獨裁統治的同時，韓國經濟也得到了急速的發展，雖然他的獨裁傾向並不受歡迎，但被認為在韓國的經濟發展中扮演了積極的角色，2002年在「韓國歷屆總統評估」中被評選為歷年最為出色的總統<sup>65</sup>。1979年10月26日朴正熙遭到暗殺，國務總理崔圭夏就任總統，全斗煥將軍以維持社會穩定的名義發動軍事政變並掌握了政權，史稱「雙十二政變」(蔡增家, 2005)，開啓第五共和時期。綜觀這些時期的反貪腐措施由於領導人的軍人色彩與國內政局動盪，因而有激進而嚴厲的政策措施，一些整肅手段的反貪運動均隱含著高度政治色彩。

全斗煥時期(1979-1988)的公務倫理法制建設，主要制定第一部《公職人員倫理法》(Public Service Ethics Law)，該法於1981年12月31日正式頒佈，然而該法內容並非完備，主要規定公職人員財產登記制度，然而登記的結果

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<sup>64</sup>朴正熙(박정희, 1917年9月30日-1979年10月26日)韓國第5至第9任總統，由1961年上任至1979年，長達18年，任內積極推動重化工業，進而帶動國家整體經濟起飛。

<sup>65</sup>該項調查工作由「朝鮮日報」委託韓國高麗大學總統學研究所所長咸成得主持，該研究籌組韓國總統評估委員會，以各界專家為對象，進行為期六個月的評估，結果朴正熙總統在十項評比領域中以63.56分(滿分100分)排在首位(朝鮮日報，2002/8/25)。

並不公開，造成輿論與民眾無法獲得實質監督。1987年6月29日執政黨民主正義黨領袖盧泰愚當選總統，其推動的反貪措施採取溫和立場，自1988年9月首次提出《公職人員倫理法修正案》(馬占穩，2004)。這個時期韓國公務倫理法制並未獲得健全的發展與落實，然而各屆總統執政時期的法制建設，提供金泳三總統全面法制建設的重要基礎。

1993年2月25日，金泳三就任總統，擔任韓國首屆非軍人出身的總統。如果說反貪腐措施是歷屆總統掌控政權的政策手段，金泳三總統則是集其大成者。金泳三政府主要採取二大方向的反貪腐革新措施，分別為反貪污策略與立法改革兩部分，在反貪污策略方面，體認到韓國國內由龐大政經結構所主導的政治貪腐影響甚鉅，推動政治人物資產揭露制度及實名金融交易體制，與著名的「無禁區的貪腐整肅政策」，展開對政府高層與國會議員的全面調查(馬占穩，2004；蔡增家，2005)。尤其全斗煥、盧泰愚兩位前任總統非法政治基金貪腐案件的徹查引起國內外高度關注。1995年11月16日，全斗煥和盧泰愚兩位前總統相繼因籌集和侵吞秘密政治資金而被逮捕，同時並積極追繳相關不法所得<sup>66</sup>。除了運用行政手段打擊政治高層非法聚財的貪腐案件，金泳三政府在反貪運動的重要成就即全面性加強公務倫理法制的立法改革，則包含不正當選舉行為預防法、政治資金規範法及地方自主法(Local Autonomy Act)(Kie-Chiang Oh, 1999；引自蔡增家，2005)，以打造廉潔政府體制與健全反貪法制為核心執政目標。

時序進入1997年，金大中於當年12月被選為總統，並於1998年2月25日正式就任成立「國民政府」，所謂的國民政府是韓國50年的現代政治史上第一次通過執政黨向反對黨和平移交政權而產生的政府。金大中總統對以往歷屆政府的反貪腐措施進予以反思，認為雖然以往政府的反腐工程成就顯著，而公務倫理相關法制建設的基礎已然就緒，但事實上，這些大規模反貪腐措施似乎只聚焦於事後調查與起訴，卻實質缺乏有效的預防政策與法制規範。為此，金大中政府認真思考制定一部具有系統、全面性而跨越政府社會界線的反貪污法(Anti-Corruption Act)(KICAC, 2007)，與韓國歷任總統相

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<sup>66</sup> 「1997年，大法院判決對盧泰愚罰款2628.96億韓元之後，已回收2097.9614億韓元(79.8%)並上繳國庫。但是另一位前總統全斗煥被大法院判決罰款2205億韓元，當局至今僅回收了532.7043億韓元(朝鮮日報，2005.3.31)」

較，金大中可說是更重視通過法律來預防貪污案件的產生，期望將「公職人員倫理法」中對公務員倫理及抽象規範的條文進一步整合入反貪污法。

## 貳、韓國政府倫理法制體系

面對行政倫理的抽象概念，如何建構制度化的執行架構與法制建設是公務倫理管理的首要內容。一直以來，韓國政府積極建制反貪防腐的立法規範，同時強調建立執行相關法令的運作機制，並設定積極與國際接軌的立法目標，在各界引頸企盼下各項預防貪污的法制工程已基本建設完成。1998年韓國政府成立管制革新委員會(The Regulatory Reform Committee)持續地修正相關規範條文並將過往不合時宜的法規悉數廢除(Chul-Kyu Kang, 2002)<sup>67</sup>。根據韓國行政學院 2006 年所執行的「中國韓國行政倫理與廉政建設研究」計畫，韓國的行政倫理法制建設架構可分述如下(王偉，2006)<sup>68</sup>：

- 一、以韓國憲法為最高位階與法源基礎，確立行政倫理法制精神。「大韓民國憲法」規定，公職人員應該為全體國民服務並忠於職責，公職人員整體倫理標準係將國民利益作為行為準則的價值基礎，而非為特定集團的局部利益服務。韓國憲法確立的行政倫理精神，在韓國「國家公務員法」、「地方公務員法」、「公職人員倫理法」、「公職人員倫理法實施令」、「公職人員倫理法實施規則」、「公職人員倫理憲章」、「公共事務條例」、「公務員服務規定」以及「反貪污法」中都獲得到具體實踐。

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<sup>67</sup> Dr. Chul-Kyu Kang 以「韓國反貪獨立委員會」(Korea Independent Commission Against Corruption)主席身分於 2002 訪問美國大學(AU)發表「南韓反貪成就與反貪獨立委員會之角色定位」演說。

<sup>68</sup> 中國學者王偉於 2006 年代表中國國家行政學院與韓國行政研究院的進行研究合作，執行「中國韓國行政倫理與廉政建設研究」，計畫首先勾勒韓國現行行政倫理法制的全觀面貌，本文藉此架構重新檢視歷年各項倫理法制，並加入各項法律之官方英文名稱以供參考。

二、韓國「國家公務員法」(State Public Officials Act)首先具體確定公務人員倫理準則。適用於全國中央與地方行政機關、立法機關和司法機關全體公職人員的「國家公務員法」詳盡規定公務人員與服務主體—國家與地方自治團體之間的法律關係、公務人員應忠實履行之義務與職務責任以及公務員應該遵守的倫理準則。其基本內容包括：宣誓就職、服從義務、倫理原則、誠信原則、與工作有關的具體倫理規範。

三、韓國「公職人員倫理法」(Public Service Ethics Act)規定公務人員的基本倫理要求。該法 1981 年 12 月 31 日以總統令的形式頒佈，其後進行了 6 次修訂，內容包括 6 章 30 條。各章的標題分別為：“總則”、“財產申報與公開”、“禮品的申報”、“限制退職公職人員的就業”、“補則”、“懲戒和罰則”。根據「公職人員倫理法」，韓國設立了多領域跨層級而具有實權的公職人員倫理委員會。1993 年 7 月，韓國以總統令形式頒佈的「公職人員倫理法實施令」，又做出更具體的規定，經過十年的執行，現已由 2003 年新一代的「公職人員行為守則法」實質取代。

四、韓國「公務人員服務規定」(Service Regulation for Public Official)將公務員倫理規範系統化和具體化。1970 年 6 月，韓國以總統令形式頒佈了「公務員服務規定」，其後又進行了 12 次修訂。韓國「公務員服務規定」的顯著特色在於將行政倫理的基本要求加以系統化，並具有可操作性。其中第二條“宣誓”規定：公務員就任之時，應在所屬機關的首長面前宣誓；第四章對“營利業務與兼職”做了禁止性規定；第五章“政治運動和勞動運動”則明確規定公務員不得參與或支援任何反對政府的政治活動等。

五、「韓國反貪汙法」(Anti-Corruption Act)(以下簡稱反貪汙法)（參見附錄七之一、二、三）將行政倫理法制統合並提升法律位階，同時賦予直屬於總統「韓國反貪獨立委員會」(Korea Independent Commission Against Corruption, KICAC)設立的法源基礎。1996 年 12 月 5 日，金大

中所屬的在野黨向國會提交了「韓國反貪汙法」草案。1998年金大中執政以後，積極推動「韓國反貪汙法」的立法過程。爾後，韓國國會於2001年6月28日正式通過了「韓國反貪汙法」，並於2001年11月29日公佈了「韓國反貪汙法實施令」。該法的宗旨在於通過預防和遏制貪腐行爲，確立廉潔的公職及社會風氣。依據「韓國反貪汙法」，韓國於2002年1月25日成立了「韓國反貪獨立委員會」爲該法之全權負責之執行機關，職司全國最高防制貪污、指揮偵查與相關反貪政策研擬之責(KICAC, 2007)。

除對國內各項防貪制腐法制工程的持續建設，積極與國際接軌的反貪立法策略亦爲韓國倫理法制建設的特色，韓國政府爲爭取國際舞台的能見度及有效推展與各國間的司法互助協定，近年來以快速的立法過程呼應國際組織與政府間的各项公約與條例，其各項國內法之立法精神與價值頗受全球趨勢的影響。如爲因應經濟合作暨發展組織(OECD)於1997年修正的「國際商業交易行賄外國公務人員公約」(Convention on Combating Bribery of Foreign Public Officials in International Business Transaction)，韓國國會於1998年12月28日通過「行賄外國公務人員防制條例」(KICAC, 2007)。此外，其他相關立法亦受到來自國際間的相關立法與公約之影響，如2001年9月通過的「洗錢防制法」(Money Laundering Prevention Act)正式規範洗錢犯罪的刑責並給予裁罰標準(KICAC, 2007)。

### 參、韓國公職人員倫理法之內容探討

公務人員的行爲模式本質上難以規範，然渠等作爲常關涉公共利益，必須透過各式的倫理準則予以描繪並規範(陳敦源、蔡秀涓，2006)<sup>69</sup>。在韓國「公職人員倫理法實施令」(1993)執行十年之後，韓國政府爲建立新世代公務文化的倫理標準，提供文官體系穩定運作的條件，特別依據反貪汙法草案，重

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<sup>69</sup>該文同時指陳，規範公務人員行爲模式具有的三層重要意義，係基於民主控制(包含內控外控機制)的重要性、確保人民(委託人)的個別與集體利益不被侵損以及民主政治得以健全運作的基本要求—「清廉政治」的存在(陳敦源、蔡秀涓，2006)。

新設計一套符合現代公務倫理行為守則的法規，定名為「維繫公職人員廉政行為守則法」(The Code of Conduct for Maintaining the Integrity of Public Officials)，簡稱「公職人員行為守則法」(參見附錄七之一)，於2003年5月19日在中央、地方層級與教育單位正式實施，該守則本質為總統行政命令(degree)但視同行政法規予以施行(因此本文以「該法」稱之)<sup>70</sup>，有效整合過去的公務倫理法規，包含「公職人員倫理法」(Public Service Ethics Act)、「公務人員服務規定」(Service Regulation for Public Official)、「公務人員十項遵守準則」(Ten Subjects of Observance for Public Officials)，而新一代的倫理守則(公職人員行為守則法)，由於更強韌的法約束力與可執行性，相較於與前項諸法，提供更明確的指引規範。本節以下分別以本法各章節為依據，加以引介與說明法規主要內容與基本精神。

## 一、立法目的

從功能面的角度觀察，該法的主要旨在建立四項可操作的功能機制(KICAC, 2007)。

### (一)、保護機制(Protection Mechanism)

該守則的設計目的，係幫助公職人員避免在其的職位與權責範圍內犯下錯誤行為，例如接受上級違法指示、或運用職權介入特許案件以圖利特定廠商等貪腐行為。藉由基本的公務倫理行為準則的明確規範內容，該守則可使國家公務人員充分認識倫理法規，免於涉及可能觸法並擔負刑責的貪腐行為，具有預先防範的功能。

### (二)、協助機制(Assistance Mechanism)

公務員執行公務時，常遭遇多種違反與阻礙行政倫理的情事，如人事升遷的請託介入、上級不當行政裁示、政治干預與關說等，藉由倫理行為守則

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<sup>70</sup> 韓國透明社會協約實踐協議會常任執行委員金句性(Geo-Sung Kim)曾向筆者表示，表示該守則是統合韓國公務人員的倫理法與多年實務經驗的代表作，雖然目前處於規範性質，對違反守則的公職人員無法給予刑罰處分，但實質精神在豎立國家文官體系的倫理文化，提供應然的規範標準。

可以明確界定各種違反行政倫理的行為，並提供公務員即時而準確的指引方針。

### (三)、專業導向的倫理指導(Professional Ethics Guidance)

有效處理行政倫理的案件需要專業導向的訓練人員，該法在各機關建制「廉政倫理官」(Code of Conduct Officer)，職司「公職人員倫理守則」的執行、監督與教育訓練之責，給予公務人員專業導向的倫理指導。

### (四)、公務部門的競爭力觸媒(Competitiveness Builder of Public Sector)

國家競爭力與政府清廉度有實質的相關性，韓國政府多年積極推動政府效率試圖提升國家競爭力，然與其他發展中國家相比成果未盡滿意，究其原因，國內外企業與民眾對政府信任度仍有不足，職是，「公職人員倫理守則」旨在建立起透明而效率的文官文化，擔負提升政府競爭力的動能角色。

在法源基礎方面，依據韓國反貪污法第八條規定，政府相關單位應參考現行各項倫理行為規範，另訂定「公職人員行為守則法」就其他一般性的公務倫理行為標準予以規範，該法共分六章二十四條條文規定，分別為“總則”、“勤務公正的權責”、“禁止收受贈禮與不當利益”、“創造健康的文官文化”、“懲戒和罰則”以及“補則”(The Code of Conduct for Public Official, 2003) (參見附錄七之一)。該法開宗明義指稱本守則的主要目的在向全體公務人員揭示符合倫理行為的處理標準。綜觀全文內容，該法有兩項主要特色，第一在明確界定公務人員與其服務主體—國家或地方自治團體間的職務關係，在適用對象上亦擴及與公務機關有業務往來或契約委託關係之企業或個人；第二即相當程度地重視組織面的各種執行政程序，如諮詢程序、舉報程序及懲處程序等層級分明的制度，並在各機關建制廉政倫理官之職位予以有效執行該守則的相關措施。本節分別以公職人員行為守則法各章節加以引介與詮釋該法規主要內容與基本精神：

## 二、主要規範對象

該法規範的對象不限於具備公職任用資格的人員，亦包含所謂的「職權行使相關人員」(duty-related person)，係指與公務人員及所屬部門訂有契約或



委託行使公權力等業務往來之個人或企業組織。因為這些人員可能由於行政處分的結果直接受惠或損失利益，該法並具體要求這些人員必須遵守「公務程序採購法之執行命令」(the Enforcement Decree of the Civil Petitions Procedure Act)，再者，該法對「職權行使相關公務人員」(duty-related public official) 亦給予明確界定，這些公務人員係指經由其他單位人員權責的履行，而可能直接或間接對其利害關係產生影響的人員，至於，如何詳細界定則交由中央層級機關首長依當時情形予以權衡判斷(The Code of Conduct for Public Official, Article 3) (參見附錄七之一)。

既然定名行為守則法，該法從而清楚界定法規內容之相關名詞，其界定禮物為禮品、有價證券、債券、住宿券、會員卡、入場券等其他相關同等物品，此類物品主要以免費招待或低於市場均價出售為手段交由國家公務人員。同時界定招待為提供餐飲、高爾夫球場地或者是其他提供住宿交通運輸便利的招待行為。在總則篇的第三項條文規定該守則法之適用範圍應當涵蓋所有國家中央與地方層級之公職人員，但不包含國會、法院、憲法法院與國家選舉委員會等單位所屬的公職人員，此乃因上述單位依據不同業務性質有不同公務倫理的規範需求。標準除了列舉公職服務的一般倫理原則與基本義務，同時允許各機關自行另訂補充規定。

### 三、核心價值與處理程序

公務倫理的基本精神要求政府官員應對所服務的對象採取不偏不倚的公正立場，做任何決策與判斷時當以公眾利益為出發，而非著眼於個人或第三者的利益考量。基此，韓國「公職人員行為守則法」的性質即在明確規範任職公務體系的行為準則與遵守程序，如該法第二章第四條即以「職權行使公正性之維護與程序說明」(Handling of instructions that hinder fair performance of duties)為主軸詳實規定當公務人員面對違反行政倫理事宜之處理程序，並提供這些問題的適切處理程序與類似案件說明。大致而言，當公務人員面對「如何處理上級長官為追求私利之行政指示」之問題，該法規定三項程序，首先，當上級基於追求私利或第三者的不當得利而交入下屬任務命令，下屬公務人員在向上級機關陳報具體事由後，有權拒絕辦理或接受命令。再者，

儘管該項命令因下屬拒絕而無法執行，而當前述情事持續發生，相關人員必須立即報告職司此法規執行的廉政倫理官。最後，廉政倫理官應呈報中央層級或該機關首長，請示是否有必要取消或修正原行政指示或命令，該首長如認為有其必要性，則可以立即取消或修正原行政指示或命令。此規定我國現行公務人員法第二條「長官就其監督範圍以內所發命令，屬官有服從之義務。但屬官對於長官所發命令，如有意見，得隨時陳述。」有相似之處，兩者皆傾向採取相對服從說，主張下屬服從者僅限於長官合法之命令，如命令違法，下屬得依法拒絕服從(吳庚，2003)，但該法程序說明似乎更為明確。

#### 四、利益衝突與迴避

關於利益衝突長久以來一直為行政倫理探討的重要課題，當個人利益與與政府利益相抵觸時即容易發生價值衝突的問題。美國聯邦政府的政府倫理局(Office of Government Ethics)於1992年8月實行的政府人員倫理行為規範(standards of conduct)即以防範利益衝突為核心價值，分別從各方面角度提供政府人員行為準則用以根除具有潛在威脅性的價值衝突，要求渠等執行公務時抱持依法秉公處理的最高原則，即當知悉某項具體業務很可能對其個人或家族成員產生直接而可預見的影響，非經上級部門場觀批准不應參與該項業務。引用美國聯邦政府倫理局的準則，韓國在「公職人員行為守則法」中明確規定「公職人員應判斷其是否由於職權對個人或三等親之親屬(依據公民法第767條規定)產生利害關係而無法客觀處理職權任務，應該諮詢所屬機關之資深官員或廉政倫理官，以確認其行使職權的正當性與合法性」(The Code of Conduct for Public Official, Article 5)。上述被諮詢的資深官員或廉政倫理官應呈報所屬機關首長，審查該公務員繼續處理相關業務是否合適，或者，當資深官員有職權重新指派其他業務時，得依裁量權決定是否呈報機關首長。

#### 五、禁止不當行為

在禁止不當行為方面，該法說明不當行政處分之排除程序，國家公務員在行使職權時不應該給予任何優惠的行政處分給特定組織單位、地區、校友宗親協會或特定個人。此外，公務員不得藉由執行公務機關預算而使該所屬

機關之財產利益有所損失。在禁止關說(mediation)或請託(solicitation)條款方面，規定「公務員不應使用運用任何關係行請託關說之行爲以阻礙其他公務員執行公務之公正性或尋求個人與第三者獲取不當利益」以及「公務人員不應向其他公務同僚引介具有利害關係之第三人尋求個人與第三者獲取不當利益」等規定。

根據韓國「公職人員行爲守則法」，規定「當公務員如遇特定政治人物、政黨或其他利益團體關說行爲、強制要求及人情請託，有干預行政作業之實，應立即呈報所屬機關首長與廉政倫理官。而機關首長在接獲報告或廉政倫理官提供諮詢協助後，應採取必要行政法規以使公務員得依法行政不受政治性干預」(The Code of Conduct for Public Official, Article 8) (參見附錄七之一)。

## 六、財產上之不當利益

「禁止收受贈理與獲取不當利益」幾乎是各項倫理行爲守則規範的重點，長久以來，政府官員收取禮物一直是引人注意的問題，儘管法令禁止，但無論在東西方社會中因人情而收送禮物與餐飲宴客實難詳盡規範。通過請客送禮的私人情誼往往造成政府官員(亦涵蓋國會議員)在做政策決定與行政作爲時面臨進退兩難的困境，這種情形在國會中各政策委員會的法案角力中更是屢見不鮮。美國各州議會對此則有不同的規定，有著名的「零容忍政策(zero tolerance policy)」與「明確界限政策(bring line policy)」，零容忍政策顧名思義即對於公職人員是否可以收禮，不賦予任何法律空間，可以說是不講情面的嚴厲限制；而明確界限政策則是至今大多數州議會與各國政府所採行的規範標準(Herbert, 2002: 61)。例如美國聯邦政府商務部針對內部人員收禮行爲制定一系列的規範法規，該部明確列舉可以收受禮物的情形，如「商務部人員可以接收價值不超過 20 美元的禮物，但來自同一來源的禮物每年不得超過 50 美元」(U.S. Commerce Department, 1995; 引自馬國泉，2006)，如同美國商務部的作法，韓國行爲倫理守則沿用明確界限條款，列舉准予公務員收受金錢與禮物的情形，包含(The Code of Conduct for Public Official, Article 9) (參見附錄七之一)：

(一)、具有法定效力的履行義務而提供之金錢財貨，如第三人債務履行、

親屬財產繼承。

- (二)、符合社會約定習俗之目的而參與宴會餐聚。
- (三)、接受對政府公務活動的贊助者所提供的食宿交通費用。
- (四)、實際價值微不足道的紀念品或由不特定個人所提供的宣傳品。
- (五)、由於疾病災難原因而有急迫需求之情形
- (六)、接受金錢或商品對執行勤務所有助益並經由所屬上級批准。

同時，該法規定公務員亦不可接受來自其他公務同僚，特別是過去職責相關或已經離職退休的人員所給予的金錢或禮品，除非有上述情形發生：再者，公務員有責任防止其配偶、直系血親子女接受各項來源之金錢與禮品。觀察之，上述的規定符合務實法規的標準，給予公務員適切的依循標準，並在可容許的空間中給予明確指示。

## 七、財務交易限制與揭露

在韓國倫理行為守則中雖未對公務員資訊保密予以規定，但對公務人利用職務之便攫取機密資訊以達個人私利之情事給予規範，第十二條規定「公務員不得利用職務獲取相關資訊以處理任何個人財務交易或投資相關債券、不動產，亦不得提供提供上述資訊給予其他個人或企業進行市場交易行為」(The Code of Conduct for Public Official, Article 12)，同時，針對此條規定，中央上級行政機關必須依據各機關特殊業務性質制定詳盡的公務員商業交易行為限制之規定。最後，在個人財務借貸方面規定，「公務員不應以無償方式或低於市場平均價格向業務相關或其他利害關係人(除三等親之內的新屬關係)進行財務借貸或租賃不動產」(The Code of Conduct for Public Official, Article 16) (參見附錄七之一)。

再者，在個人財務揭露方面，該法要求公務人員財務有公開透明的義務，透過個人財務公開申報可以揭示政府公職人員潛在可以的利益衝突，因此財務公開與誠實申報是重要的倫理規範措施，此外諸如「公務員禁止利用職位權責施惠他人而獲取不當利益與非法所得」、「公務員不應准許他人利

用機關或個人職稱以獲取不當利益」等條文，目的目的在防止利益衝突而以公謀私的情事發生。

## 八、禁止人事請託

如前述，在禁止關說(mediation)或請託(solicitation)之規範條款方面，該法特別重視對行政機關人事請託行為的防範措施。長久以來，專業導向的任用與升遷制度是維繫高素質國家文官體系的必要條件，以美國為例，2005年夏天「卡崔娜颶風」(Hurricane Katrina)期間，美國聯邦緊急管理署(Federal Emergency Management Agency)署長 Michael Brown 因根本缺乏專業指揮救災能力，在風災危難之際無法擔負首長要責，造成政府救災機制無法有效運作而飽受批評，就是背離專業主義而任人唯親的後果(Los Angeles Times, 2005.9.9)<sup>71</sup>。值是，當論及公務倫理規範準則，如何避免人事行政之干預情事當屬重要議題。專業主義的文官體系與任用制度不僅對於行政倫理至關重要，對於根本落實政策執行過程亦居顯要角色。該法明令禁止公務員透過第三人、政黨團體向人事行政官員請託個人人事升遷、調職轉任或指派。公務員亦禁止介入上述相關人事請託行為」(The Code of Conduct for Public Official, Article 9)，旨在防範各種攀親引戚或政治干預的行為介入文官體系之運作。

## 九、其他活動參與之規定

韓國政府近年來積極推動「創造健康的文官文化」(Creation of Healthy Climate of Civil Service)，鼓勵公務人員參與各項社會活動，但對於「兼職對外講座課程或在研討會、公聽會、發表會、筵席活動中發表報告參與討論之公務員」(The Code of Conduct for Public Official, Article 15)亦有明確的規定，對於在外授課給予每月不超過四次或每月不超過八小時而每年總時數不超過三個月的限制規定，並且需要由邀請方報請該人員所屬機關主管同意。此外，在鐘點費與出席費上亦有限制，所得金額必須符合邀請方原定標準，不得超

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<sup>71</sup> 美國聯邦緊急管理署(Federal Emergency Management Agency)署長 Michael Brown 係為美國總統布希之好友與競選團隊成員，因而在日後獲得該政務官職位。

過市場合理範圍，任何公務員支領超過五十萬韓元的時薪必須以具體理由呈報所屬機關上級。

## 十、違反規定

當公務員面對其職權處分是否違反公務倫理行為守則有疑慮時，應主動向廉政倫理官申請諮詢，而任何公職人員當知悉同僚有違反倫理守則之行為均有責任向該人員所屬機關之廉政倫理官或首長舉報，接獲舉報案件之官員或首長必須確保舉報、調查過程的高度機密性，並有權採取必要手段以保護舉報人並保全相關證據。最後，規範「法規禁止的金錢與禮品之處理方式」公務員違反守則第十四條與第十七條規定者，應立即將違法收受金錢與禮品歸還提供方，完成歸還程序後必須出具證明文件主動向所屬主管回報。

## 肆、韓國反貪污法之內容

「國家公務人員應忠於法令，公平而良善地行使職權，並杜絕貪污、瀆職與損害職權所賦予的名譽。」

韓國「反貪污法第七條」

在各國推動公務倫理法制化的過程中，沒有一個國家會漠視制定一部具高法律位階與統合性「反貪污法」的重要性，長久以來，倫理維繫與貪污防制兩者有著密切關係。誠如前述，金大中政府時期所推動反貪污法 (Anti-Corruption Act) (參見附錄七之二)成功地擔負重任，提供許多反貪機構、職稱與政策的設立依據，具有整合性的功能，同時提供設立全國獨立反貪委員會與公務人員倫理行為守則的正式法源基礎，該法可以被視為韓國近年推動廉政建設的重要里程碑(金句性，2007)。職是，本節將以公務倫理的角度對該法重要內容加以探討，並聚焦於該法最重要的部分—組織面的執行機制，對創設全國獨立反貪委員會之相關規定與組織設計進行介紹。

## 一、立法目的

該法開宗明義地揭示該法之目的在透過有效的預防措施與管制貪污而創造一個透明廉潔的國家文官文化與社會風氣。同時，該法強調公務組織應擔負起預防貪污而豎立社會倫理意識之責任，而「假使公務組織為防制貪污而認定有必要廢除法律面、制度面、組織面的措施，應立即提出改進與修正建議」(Anti-Corruption Act, Article3(2)) (參見附錄七之二)。不限於政府部門，該法同時要求政黨團體、私人企業與公民社群擔負整體社會反貪之責。例如，要求政黨與其成員應致力開創透明廉潔的政治文化，確保選舉過程的透明並公開所有政治獻金的來源與使用項目，而私人企業與公民有責任與義務，對公務機關執行反貪政策與行動方案予以配合。

## 二、規範對象

該法首先將內容所規範的公務組織、公務人員與貪污行為明確界定，要求為官不可志深軒冕或有攀親引戚之行爲。所稱「公務組織」(public organizations) 係依據「政府組織法」(Government Organization Act)所設立各層級行政機關與根據「地方自主法」(Local Autonomy Act)所設立的地方行政機關與議會組織；公務人員則涵蓋「國家公務人員法」與「地方公務人員法」所規範的具有公職身分的人員，或由其他相關法規所認定具有同等任何資格之公務人員。在貪污行為的界定上則更為嚴謹，該法將貪污行為歸納為下列三類：(一) 公務人員濫用職權或違背相關服務法規，而為個人或第三方尋求不法利益之行爲；(二) 在預算執行、公務財產管理與處置以及訂定契約的過程中，公務人員違反相關服務法規而造成公務組織財物損失之行爲；(三) 任何強制、推薦、建議或鼓勵第三人從事上述(一)(二)項條款情事之行爲者。

該法最重要的貢獻就是建制組織面的執行機制，依據反貪污法第八條規定(參見附錄七之二)公務人員應遵守由總統命令頒布而符合全國議會、最高法院、憲法法院、中央選舉委員會規範條例的「公職人員行為守則法」，所規範的項目主要涵蓋四項領域：

(一)、禁止公務人員接受由利害關係人提供的招待、金錢或其他財物。

- (二)、禁止公務人員利用職權影響人事管理、尋求不法獲利以及利用高層關係施壓或人情請託。
- (三)、公務人員應擔負創造一個廉潔透明的官僚組織文化之責任。
- (四)、其他規範事項應以預防貪污、維持文官的廉能形象為主要目的。

### 三、設立反貪獨立委員會

一直以來 韓國政府積極建制反貪防腐的立法規範 同時強調建立執行相關法令的運作機制，該法最重要的建樹在強調組織面的反貪建制，該法第二章逐列組織條文，韓國反貪獨立委員會(Korea Independent Commission Against Corruption, KICAC)(以下簡稱委員會，參見附錄七之三成立背景說明)是根據該法而設立於直屬總統的獨立機構，該法予以詳盡規範，在組織面、執行面、法規面提供法源基礎。依據該法第二章第十條揭示：「為敦促正直廉潔的文官文化與有效防制貪污，應成立直屬總統而獨立運立的韓國反貪獨立委員會」。接著，第十一條指陳該委員會所須擔負得重要功能任務，包含規劃反貪政策並制定預防貪污的推薦方案以幫助公務機關強化相關政策措施、負責全面檢視現存公務機關反貪法規與措施的執行步驟、制定並推展國內反貪教育政策、補助非營利組織所推動的反貪活動、促進與國際接軌的反貪合作網絡、接受貪腐案件的舉報與申訴、保護舉報人之安全、持續檢驗法規面造成貪腐行為的疏漏之處與並予以補強、彙整分析相關預防貪污之公務統計資料、主管公務人員行為倫理守則的執行過程以及執行經由總統指示之防制貪污重要議題(Anti-Corruption Act, Article11)。歸納而言，該法職司政策制定、審查法規、預防教育、揭發調查以及提供解釋性的建議與指導等重要全國反貪業務。

在組織設計方面，該法亦規定該委員會應由九位成員組成，包含一位主席與兩位常任理事，渠等必須具備豐富的反貪經驗並經由總統指派任命，理事會的其他成員應分別由國會以及最高法院大法官各推薦三位。該法亦同時設計了理事會成員的免職條款，規定「一旦違背國家公務員法、成為某政黨之成員或參與政治性選舉活動則應即解職」(Anti-Corruption Act, Article14(1))(參見附錄七之二)。此外，綜觀國際各國實務經驗，如何維護反貪機關的獨



立性(independence)是能否有效治理貪污議題的核心要素，緣因於此，該法明文強調委員會必須依據所賦予的權責超然獨立地執行反貪任務，並以委員會成員任期規定、職位保障落實該委員會之職權獨立運作，相似於各國保障法官審判獨立性的精神，而強調渠等之身分獨立與職務獨立的地位，規定包含主席在內的所有成員之任期為三年並得連任一次，並規定除非成員違背前述第十四條第一項規定以及因身體心理緣故無法行使職權時，否則任何委員會成員不得在違背其意願下被免職或解除職務(Anti-Corruption Act, Article15(3)) (參見附錄七之二)。

#### 四、組織設計與職權任務

除此之外，該法對於如何設置秘書處、小組委員會、聘任外部專家等運作設計上，給予法規建議並保留日後調整的空間，本文認為該法之所以利用廣大篇幅說明「獨立反貪委員會」的組織設計，主要還是著眼於確保該委員會的有效運作與超然立場，該法可以說負責任地先為委員會的建制打下穩固的樑柱，解讀背後的立法原意，韓國政府認為有效落實反貪污法實須仰賴健全的組織設計，再好的法規制度終究取決於執行機制的良窳，方能發生果效。

另外，值得一提，該法規定為增進防制貪污之果效，該委員會有直接對機關首長提出制度改進建議方案之權責，該機關首長必須對委員會之建議立即採取相關革新措施，並有義務將政策成果呈報委員會，當機關首長認為該項建議方案有窒礙難行之處得建請委員會重新審查該方案(Anti-Corruption Act, Article 20)。依據反貪污法，該委員會有一項特別職權，即持續針對有可能造成貪污行為之法規疏漏之處予以補正(Review of Corruption-causing Factors in Laws)委員會得檢視當前相關法規、總統命令、總理命令、部長命令以及其他行政命令、規範、規則，並提供機關首長建議方案，針對有可能造成貪污行為之法規疏漏處依據總統命令予以補正或廢止。

#### 五、聽證及調查權

為執行委員會所賦予之任務，如果必要可採取兩項主要措施：(一)有權

要求公務機關對所提供之調查證據及文件提出說明；(二)有權要求調查案件所涉及之關係人與相關證人陳述意見(Anti-Corruption Act, Article 21) (參見附錄七之二)。然而，雖然委員會擁有聽證及調查權，但並非漫無限制，如同美國「聯邦政府公務人員國家安全守則」，當案件涉及國家安全性質，委員會擷取資料的權限將被限縮。然而，當案件正在進行司法調查、行政裁決、訴訟、憲法法庭的判決或申請釋憲的過程，委員會亦應暫停調閱相關證據之工作。此外，在調查過程中應避免阻礙任何公務機關與公務人員的業務運作。從各國經驗觀察，反貪機構擁有統合性的調查權力對建立實質獨立運作之地位至關重要，但當面對涉及國家高度機密的案件時(如軍購)，應賦予完全權力抑或限制部分權限，兩者之間存有本質上的衝突，其取舍常成為法律規範的難題。

在調查與偵查過程方面，該法規定現職或卸任之委員會成員及其他所屬人員或委託專家在執行調查工作時，應禁止洩漏任何機密資訊，相關報告與資訊均應視為機密文件處理(Anti-Corruption Act, Article 22) (參見附錄七之二)。可見，該法重視調查程序的資訊安全維護及對公務人員忠誠安全行為的要求。也就是說該法給予高位階而實質獨立的調查權，但同時給予規範的條件。

## 六、舉報機制與揭弊者保護措施

貪污行為的舉報與揭弊者的保護措施是近年各國反貪工作的重點，如何在貪污案件的處理過程中確保揭弊者之身分保障權，如為公職人員則應享有「非因法定原因，不受撤職、免職或其他處分之權利」。該法規定當察覺貪污行為可以直接向委員會進行舉報，而規定「每位國家公務人員當獲知貪污行為，或被其他相關公務機關人員強制、被建議從事貪污情事，應立即向相關調查機關舉報」(Anti-Corruption Act, Article 26)。任何人進行舉報應以書面方式說明個人資料、舉報目的、主旨及理由，舉報書亦須明確指出從事貪污之人員名單與提列相關證據。關於處理揭發貪污的舉報過程，委員會在接獲舉報書後應著手進行下列事項的確認工作(參見附錄七之二)：

(一)、確認舉報書中舉發人(informant)、申訴者(complainant)或揭弊者

(whistleblower)的真實姓名、聯絡地址、工作職稱以及案件主旨的詳細陳述。

(二)、確認舉發之案件內容是否違反反貪污法對貪污行為之規定。

委員會為調查舉報案件之真實性，得要求舉發人、申訴者或揭弊者提供必要事證(Anti-Corruption Act, Article 29(2))，明確地說，該法認為檢舉方必須擔負舉證責任，此點在防止人員利用舉報機制遂行私人報復之實，亦防止污告案件的氾濫。同時，因應調查舉報案件過程的需要，委員會得函請審計調查局(Board of Audit and Inspection)或調查機關之隸屬上級機關協助調查並提供證據，如調查過程涉及國家機密事務，必須依據總統命令方能繼續執行調查工作。此外，在調查過程中如果被檢舉人為高階政府官員或符合下列身分者，而其所涉及之貪污行為需要進行犯罪事實的調查或起訴，委員會必須以其公職身分予以起訴。

1. 擔任副部長或更高政務官職位者；
2. 首都市長、各市市長以及各省省長；
3. 擔任警政督察長(A police officer with the rank of superintendent general)
4. 擔任法官或公訴檢察官
5. 擔任重要軍職位列將軍者
6. 國會議員起訴機關在接獲委員會建議知起訴報告後，必須向委員會報告調查進度、其他相關涉及案件內容以及提出最終調查結果。

在調查結果之處理規範方面，規定「調查機關必須在接獲檢舉案件六十日之內完成證據檢閱、案件偵訊及所有調查程序，但如有正當性事由(justifiable grounds)得呈報委員會，申請延展調查期限」。委員會所指派的調查機關，必須在完成證據檢閱、案件偵訊及所有調查程序的十日內，將調查結果呈報委員會，委員會如認為必要，得要求調查機關對調查結果進行說明，而委員會應負責以書面摘要文件通知案件舉報人相關調查結果(Anti-Corruption Act, Article 30(1))。另一方面，當調查機關執行之調查程序不當，委員會在提出合理事由下得要求重新啟動調查程序，同時，該案件之舉發人在接獲調查結果通知後，亦得對調查結果提出異議(objections)，委員會

應檢視其異議是否合理，而決定是否要求調查機關重新展開調查工作。調查機關不得拒絕此項要求，並立即重新展開調查程序，並於第二次調查完成後七日內向委員會提出調查報告(Anti-Corruption Act, Article 30(5))，委員會同樣必須以書面摘要文件通知案件檢舉人相關調查結果。

### 七、公職身分保障權

該法規定任何舉報貪污案件者不應在其工作環境或公務職位上遭受不公平待遇與歧視，所屬單位亦不得對其舉報行為施以懲處，亦即我國公務人員服務法與公務人員保障法對公務人員身分保障權的立法精神。任何人因舉報行為而預期或正遭受不公平待遇與財務上的損失，例如撤職、強制退休、降級、調職、減俸、申誡等懲處處分，得要求委員會採取必要措施保障其公職權利，並得要求調離現職或提出原機關懲處令之無效申請。上述情事之確認程序，委員會應提供檢舉人相關諮詢服務。該法亦規定任何委員會與相關調查機關所屬人員，在未經案件之舉發人(informant)、申訴者(complainant)或揭弊者(whistleblower)個人許可前，不得洩漏或提示其身分與相關資料。如果檢舉人認為其家人親友可能遭受潛在威脅，得要求委員會提供保護措施。在這類的案件中，委員會得要求檢舉人戶籍所在地之地方警察機關或全國政策局(Korean National Policy Agency)之行政首長，行使指揮權以調派執行保護任務之機關人員。

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**附錄 3-7-1 韓國公務員行為法**  
**CODE OF CONDUCT**  
**FOR MAINTAINING, ETC. THE INTEGRITY OF**  
**PUBLIC OFFICIALS**  
**Enacted by Presidential Decree No. 17906, Feb. 18, 2003**

**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 1 Purpose**

The purpose of this Decree is to prescribe the standards of conduct to be observed by public officials in accordance with Article 8 of the Anti-Corruption Act.

**Article 2 Definitions**

The definitions of terms as used in this Decree shall be as follows:

1. The term “duty-related person” means a person whose business is related to the duties of a public official, including an individual (a public official, who acts in his/her private capacity, s/he shall be deemed an individual) or an organization that falls under the following:
  - (a) Any individual or organization that has filed or is sure to file a civil petition under Article 2 (2) 1 and 4 of the Enforcement Decree of the Civil Petitions Procedure Act;
  - (b) Any individual or organization that will experience direct advantage or disadvantage by the cancellation of authorization or permission, business suspension, imposition of surcharge or fine for negligence;

- (c) Any individual or organization that is subject to investigation, audit, supervision, inspection, control, administrative guidance, etc.;
  - (d) Any individual or organization that will experience direct advantage or disadvantage by adjudication, decision, official approval, appraisal, examination, assessment, mediation, arbitration, etc.;
  - (e) Any individual or organization that is subject to conscription, muster, mobilization, etc.;
  - (f) Any individual or organization that has concluded or is sure to conclude a contract with the State or a local government; and
  - (g) Any other individual or organization that is related to anti-corruption duties assigned by the head of a central administrative agency (including the heads of agencies under the President and the Prime Minister), the head of a local government, and the superintendent of education of a special metropolitan city, a metropolitan city, or a local province (Do) (hereinafter referred to as the “head of a central administrative agency, etc.”);
2. The term “duty-related public official” means a public official who directly experience advantage or disadvantage (in the event an agency should be the party to experience such advantage or disadvantage, it should mean the public official in charge of the business concerned at such agency) in connection with the discharge of duties by any other public official, and the detailed scope of such public officials shall be determined by the head of a central administrative agency, etc.;
3. The term “gift” means goods, securities, lodging tickets, membership cards, admission tickets, or other equivalents without soliciting any favors (including where the value of such favor is substantially low compared with the market price or the transaction practices); and



4. The term “entertainment” means providing food, drink, golf rounds or convenience such as traffic and accommodation.

### **Article 3 Scope of Application**

This Decree shall apply to state public officials (excluding any state public officials under the control of the National Assembly, the Court, the Constitutional Court, and the National Election Commission) and local public officials.

## **Chapter II**

### **Fair Performance of Duties**

#### **Article 4 Handling of instructions that hinder fair performance of duties**

(1) When a superior gives a wrongful instruction that may seriously hinder fair performance of duties in order to pursue his/her own interests or unjust interests of any third party, a public official may refuse to follow such instruction after stating the reason to such superior official.

(2) Notwithstanding the non-fulfillment of instructions in accordance with paragraph (1) above, when the same instruction should continue, a public official shall immediately report to the head of his/her agency or consult with the officer in charge of the Code of Conduct for Public Officials (hereinafter referred to as the "Code of Conduct Officer"), designated by the provisions of Article 23.

(3) The Code of Conduct Officer, when consulted under paragraph (2), shall confirm the details of such instruction. The Officer shall report to the head of the agency concerned where cancellation or modification of the original instruction is deemed necessary.

(4) The head of agency, who received a report in accordance with paragraph (2) or (3), shall take a proper measure including, but not limited to, the cancellation or modification of the original instruction, where deemed necessary.

## **Article 5 Avoiding duties of personal interests**

(1) When a public official should judge that he or she may have difficulty in fair performance of duties because the duties concerned are related to his or her own person or to the relatives (as defined by Article 767 of the Civil Law. Hereinafter the same shall apply) within the relationship of third degree, he or she shall handle the matter by consulting immediate senior official or the Code of Conduct Officer regarding the avoidance of such duties.

(2) The immediate senior official or the Code of Conduct Officer, requested for consultation in accordance with paragraph (1), shall report to the head of the agency concerned if it is deemed inappropriate that the public official concerned continue to perform the duties. Provided, however, the senior official may temporarily reassign the public official to other duties and NOT report to the head of the agency, if he or she has the authority to do so.

(3) The head of the agency who received a report under paragraph (2) above shall take necessary measures to ensure fair performance of duties, including, but not limited to, the reassignment of duties.

## **Article 6 Exclusion of preferential treatment**

A public official in performing his/her duties shall not give any preferential treatment to a specific person on the grounds of regional, blood or alumni association.

### **Article 7 Prohibition of the use of budget for unspecified purposes**

A public official shall not inflict loss of property on his/her agency by executing the budget for public offices including travel and operation expenses for other purposed than specified.

### **Article 8 Handling of unjust request from politicians, etc.**

(1) When a public official should be forced or solicited for unjust performance of duties by politicians, political and/or other parties, he or she shall report to the head of his/her agency or consult the Code of Conduct Officer and handle the matter.

(2) The head of agency, after receiving a report, or the Code of Conduct Officer, after providing consultancy, shall take necessary measures so that the public official may be able to fairly perform his/her duties.

### **Article 9 Prohibition of solicitation for personnel affairs**

(1) A public official shall not ask any third party to solicit personnel officials for to his/her personnel affairs including appointment, promotion, transfer, etc.

(2) A public official shall not take advantage of his/her position to unjustly interfere with personnel affairs of other officers such as appointment, promotion, transfer, etc.

### **Chapter III**

#### **Prohibition, etc. of Giving and Receiving Unfair Profits**

##### **Article 10 Prohibition of intervention in privileges**

(1) A public official shall not gain an unjust profit for him/herself or for other persons by taking advantage of his/her position.

(2) A public official shall not allow him/herself or any other persons to use the title of his/her agency or position for an unjust profit.

##### **Article 11 Prohibition of mediation, solicitation, etc.**

(1) A public official shall not use any good office, solicitation, etc to hinder fair performance of duties of other public officials for the purpose of seeking unjust profit of him/herself or any third party.

(2) A public official shall not introduce a duty-related person to any other duty-related officials for the purpose of seeking unjust profit of him/herself or any third party.

##### **Article 12 Restriction of transactions, etc., by using duty-related information**

(1) A public official shall not conduct any property transactions or investment related to securities, real estate, etc., by using information obtained in relation to the performance of duties; NOR shall he or she provide such information to any other persons in order to help transactions of or investment in properties.

(2) Concerning the provision of paragraph (1) above, the head of central administration, etc. shall set up detailed standards for the restriction of business transactions and other matters using duty-related information, according to the area of duty.

### **Article 13 Prohibition of the use of public property for personal use or profit**

A public official shall not use or make profit from public properties such as official vehicles, vessels and aircraft, etc. for personal use, without a justifiable reason.

### **Article 14 Restriction of receiving money and other articles**

(1) A public official shall not receive money, valuables, real estates, gifts or entertainment (hereinafter referred to as "money and other articles"). Provided, however, this provision shall not apply to the following:

1. Money and other articles provided by a lawful ground of claim such as the payment of debt;
2. Foods or convenience provided within the scope of conventional practices;
3. Transportation, accommodation or foods uniformly provided by a sponsor to all participants at an official event related to duties;
4. Souvenirs or promotional goods distributed to many and unspecified persons;
5. Money and other articles publicly provided to help a public official in need due to disease, disaster, etc.;

6. Money and other articles provided within the limit allowed by the head of the agency concerned to facilitate the performance of duties

(2) A public official shall not receive money and other articles from other officials related to the duties. Provided, however, this provision shall not apply to the following:

1. When applicable to paragraph (1)-1 above;
2. Small gifts provided within the scope of conventional practices;
3. Money and other articles publicly provided by friendly society of the employees or other parties; and
4. Money and other articles provided from senior to junior officials to promote morale, such as to give consolation, encouragement, reward, etc.

(3) A public official shall not receive money and other articles from a past duty-related person or official in connection with the past duties of such person or official. Provided, however, that this shall not apply to the money and other articles that fall under paragraphs (1) and (2) above.

(4) A public official shall prevent his/her spouse or lineal ascendants/descendants from receiving money and other articles prohibited under paragraph (1) or (3) above. Provided, however, that this shall not apply to the money and other articles that fall under paragraphs (1) and (2) above.

## **CHAPTER IV**

### **CREATION OF HEALTHY CLIMATE OF CIVIL SERVICE**

#### **Article 15 Report on Outside Lecture, etc.**

(1) A public official, who intends to give a lecture, presentation, or discussion at a seminar, public hearing, forum, presentation meeting, symposium, education program, etc. (hereinafter referred to as the “outside lecture, etc.”) for compensation more than four (4) times or eight (8) hours a month for a total period of 3 months or longer per year, shall report to the head of his/her agency on the requesting party, reason for such request, place, date and time, and amount of compensation etc. Provided, however, he or she may not report it if such is permitted by other laws and regulations or is related to his/her official duties.

(2) The compensation for the outside lecture, etc. under paragraph (1) shall not exceed ordinary standard that is conventionally applied by the requesting party for such outside lecture, etc.

(3) In the event an outside lecture, etc. not subject to report under paragraph (1), a public official, if he or she has received more than five hundred thousand (500,000) won per time in compensation, shall report it to the head of his/her agency in accordance with the reporting requirements provided in paragraph (1).

## **Article 16 Prohibition of Borrowing Money**

(1) A public official shall not borrow money or rent a real estate from a duty-related person (excluding a relative within the third (3rd) degree; hereafter the same shall apply in this Article) without compensation (including where such compensation is insignificant compared to the market value or customary transaction value; hereafter the same shall apply in this Article). Provided, however, this shall not apply when a loan should be made on ordinary terms and conditions from a financial institution under Article 2 of the Act on Real Name Financial Transactions and Guarantee of Secrecy.

(2) Notwithstanding the provisions of paragraph (1), a public official, who intends to borrow money or rent real estate from a duty-related person without any

compensation for unavoidable reasons, shall report such fact to the head of his/her agency.

**Article 17 Restriction on Notification of Matters for  
Congratulatory and Condolences and on Receipt of  
Money and Goods Thereof**

(1) A public official shall not notify matters for congratulations or condolences to a duty-related person or public official except as provided by the following:

1. Notification to relatives;
2. Notification to current or previous office colleagues; and
3. Notification made by means of newspapers or broadcasting.

(2) A public official shall not give or take money and other articles for congratulations and condolences that exceed the standards, which the head of a central administrative agency has set within the scope of general conventions, in consideration of ordinary custom after hearing the opinion of employees. Provided that the following shall be excluded:

1. Money and other articles given or taken between a public official and his/her relatives in connection with the matters for congratulations or condolences;
2. Money and other articles provided to a public official by a religious organization or a friendly society, etc. to which he or she belongs, in connection with the matters for congratulations or condolences, in accordance with its articles of association or regulations, etc.; and
3. Other articles for congratulations and condolences as determined by the head of a central administrative agency, etc.



**CHAPTER V**  
**MEASURES AGAINST VIOLATION**

**Article 18 Consultation on Legality**

When a public official deem it unclear whether his/her performance of duties violates this Decree, he or she shall handle the duties after consulting the code of conduct officer.

**Article 19 Report and Confirmation of Violation**

(1) Any one who should become aware that a public official violates this Decree may report such fact to the head of an agency to which the public official belongs or the code of conduct officer in that agency: Provided, that such public official in violation should be the head of an agency or in a position of vice minister or higher, such report may be filed at the Korea Independent Commission Against Corruption.

(2) The person who files a report in accordance with paragraph (1) shall specify in the report the personal details of him/herself as well as of the violator including name, address, etc., and the details of violation.

(3) The head of an agency to which the public official in question belongs or the code of conduct officer at the agency, should he or she receive a report of violation under paragraph (1), shall guarantee the confidentiality for the informant and the report details and shall take necessary measures so that the informant may not receive any detrimental treatment due to the report.

(4) The code of conduct officer shall confirm the violation reported under paragraph (1) and then report it to the head of the relevant agency, attaching a vindication submitted by the public official concerned.

## **Article 20 Disciplinary Action, etc.**

The head of the agency, should he or she has received a report under Article 19 (4), may take necessary measures including disciplinary actions against the public official concerned.

## **Article 21 Disposal of Money and other Articles Prohibited**

(1) A public official who has received money and other articles in violation of Article 14 or 17 (2) shall immediately return the money and other articles received in excess of or in violation of the prescribed standards to the offering party. In which case, the public official concerned may request the expenses for return thereof from the head of the agency to which he or she belongs, by attaching documentary evidence.

(2) In the event the money and other articles to be returned under paragraph (1) are subject to loss, decay, deterioration, or it is difficult to return them because the name or address of the offering party is not obvious, the public official concerned shall immediately report such fact to the head of his or her agency and then dispose them according to the decisions by the head of the agency.

**CHAPTER VI**  
**SUPPLEMENTARY PROVISIONS**

**Article 22 Education**

- (1) The head of a central administrative agency, etc. shall provide a schedule for education of public officials under his or her control to guarantee their compliance with this Decree and conduct education as set in the schedule at least once a year.
- (2) The head of a central administrative agency, etc. shall give education under this Decree to newly appointed public officials under his or her control.

**Article 23 Designation of Code of Conduct Officer**

- (1) The head of a central administrative agency, etc. shall designate a code of conduct officer at the agency and agencies under his or her control whose head is a public official of Grade four or higher or of other equivalent position: Provided, that this shall not apply when it is not appropriate to designate a code of conduct officer at the agency under his control in the light of its scale, character, and geographic position.
- (2) The code of conduct officer shall be responsible for duties related to the education and consultation of the public officials at his or her agency, and whether they should comply with the code of conduct, as stipulated in this Decree.
- (3) The code of conduct officer shall not disclose any secrets learned in the process of consultation under this Decree.
- (4) For an agency that has not designated a code of conduct officer under paragraph (1), the code of conduct officer responsible for its superior agency shall

conduct the affairs of such agency with regard to the Code of Conduct for Maintaining, etc. the Integrity of Public Officials.

## **Article 24 Operation, etc. of Code of Conduct by Agency**

(1) The head of a central administrative agency, etc. may establish a detailed code of conduct for maintaining, etc. the integrity public officials for the said agency (hereinafter referred to as the “agency specific code of conduct”) in consideration of the character of the said agency within the scope of necessity for the enforcement of this Decree.

(2) The head of a central administrative agency, etc., when establishing or amending the agency specific code of conduct under paragraph (1), shall notify the Korea Independent Commission Against Corruption thereof.

(3) Should the Korea Independent Commission Against Corruption deem that the agency specific code of conduct notified under paragraph (2) is inappropriate or partial, it may recommend remedial actions to the agency concerned.

(4) The Korea Independent Commission Against Corruption may advise matters necessary to operate the agency specific code of conduct under paragraph (1).

### **ADDENDUM**

(1) (Enforcement Date) This Decree shall enter into force three months after the date of promulgation.

(2) (Applicable Cases concerning Report on Outside Lecture, etc.) The provisions of Article 15 shall apply to the outside lecture, etc. which is conducted on and after the enforcement date of this Decree.

(3) (Applicable Cases concerning Prohibition of Borrowing Money) The provisions of Article 16 shall apply to the borrowing of money or the rent of real estate made on and after the enforcement date of this Decree.

## 附錄 3-7-2 韓國反貪法

### ANTI-CORRUPTION ACT

Amended by Act No.7612 on July 21, 2005

#### CHAPTER 1

##### General Provisions

##### Article 1: Purpose

The purpose of this Act is to contribute to creating a transparent public service and society by preventing and efficiently regulating corruption.

##### Article 2: Definitions

The terms used in this Act are defined as follows:

1. The term “public organizations” means the institutions and organizations that fall into any of the following categories:
  - (a) The administrative agencies of various levels under the Government Organization Act and the executive organs and councils of local governments under the Local Autonomy Act;
  - (b) The Superintendents of the Offices of Education, the district offices of education, and the boards of education under the Local Education Autonomy Act;
  - (c) The National Assembly under the National Assembly Act, the courts

of various levels under the Court Organization Act, the Constitutional Court under the Constitutional Court Act, the election commissions of various levels under the National Election Commission Act, and the Board of Audit and Inspection under the Board of Audit and Inspection Act; and

- (d) Organizations related to public service under Article 3 (1) 10 of the Public Service Ethics Act.
2. The term “public organization employees” means the persons that fall into any of the following categories:
    - (a) The persons under the State Public Officials Act and the Local Public Officials Act, and those who are recognized by other Acts as public officials in terms of qualifications, appointments, education and training, services, remunerations, guarantee of position and so on; and
    - (b) The heads of organizations related to public service provided for in subparagraph 1 (d) and the employees of such organizations.
  3. The term “act of corruption” means the act of wrongdoing that falls into any of the following categories:
    - (a) The act of a public organization employee to seek illegitimate gains for himself/herself or for any third party by abusing his/her position or authority, or violating Acts and subordinate statutes in connection with his/her duties;
    - (b) The act of causing financial damage to a public organization in violation of Acts and subordinate statutes, when it is in the process of executing its budget, or acquiring, managing or disposing of its property, or entering into and executing a contract to which it is a party; and
    - (c) The act of forcing, recommending, suggesting or encouraging someone to engage in or conceal the acts provided for by the above

subparagraphs (a) and (b).

### **Article 3: Duties of Public Organizations**

- (1) A public organization shall take a responsibility to prevent corruption for the purpose of raising the awareness of ethics in society.
- (2) In case a public organization deems it necessary to eliminate legal, institutional or administrative inconsistencies for the prevention of corruption or to address other related issues, then it shall promptly improve or rectify the foregoing.
- (3) By using such reasonable means as educational and promotional activities, a public organization shall make strenuous efforts to raise the awareness of its employees and citizens on the prevention of corruption.
- (4) A public organization shall make determined efforts to promote international cooperation and exchanges for the prevention of corruption.

### **Article 4: Duties of Political Parties**

- (1) A political party registered under the Political Parties Act and its members shall endeavor to create a culture of clean and transparent politics.
- (2) A political party and its members shall establish a transparent election culture and carry out its transparent operation and ensure the transparent collection and use of political funds.

### **Article 5: Duties of Private Enterprises**



A private enterprise shall establish sound trading order and business ethics and take necessary steps to prevent every case of corruption.

#### **Article 6: Duties of Citizens**

Every citizen shall fully cooperate with public organizations in implementing their anti-corruption policies and programs.

#### **Article 7: Obligation of Public Organization Employees to Maintain Integrity**

Every public organization employee shall honor Acts and subordinate statutes, perform his/her duties impartially and hospitably and refrain from engaging in corruption and damaging his/her dignity.

#### **Article 8: Code of Conduct for Public Organization Employees**

- (1) The code of conduct that public organization employees shall observe under Article 7 shall be prescribed by Presidential Decrees, National Assembly regulations, Supreme Court regulations, Constitutional Court regulations, National Election Commission regulations or public organization rules.
- (2) The Code of Conduct for Public Organization Employees referred to in paragraph (1) shall prescribe each of the following categories:
  1. Matters on the prohibition of public organization employees from and restrictions on receiving entertainment, money and other pecuniary advantages from any person related to his/her duties;
  2. Matters on the prohibition of public organization employees from and

restrictions on using his/her public position to influence personnel management, seek financial benefits, use connections in high places or solicit favors;

3. Matters on, for example, transparent personnel management that public organization employees shall observe to create a sound climate in officialdom; and
  4. Other matters that shall be addressed to prevent corruption and maintain the integrity and dignity of public office.
- (3) If a public organization employee violates the Code of Conduct for Public Organization Employees referred to in paragraph (1), disciplinary action may be taken against him/her.
- (4) The type, procedure and effectuation of disciplinary action referred to in paragraph (3) shall be governed by the related Acts, subordinate statutes or the by-laws of a public organization to which the violator belongs.

### **Article 9: Guarantee of Livelihoods of Public Organization Employees**

The State and local governments shall make efforts to guarantee the livelihoods of public organization employees so that they can devote themselves to their duties, and shall take necessary steps to improve remuneration and treatment for them.

## **CHAPTER 2**

### **Korea Independent Commission Against Corruption**

#### **Article 10: Establishment**

To foster a culture of integrity and prevent corruption, the Korea Independent

Commission Against Corruption (hereinafter, the “Commission”) shall be in operation under the President.

**Article 11: Functions**

The Commission shall perform the following functions:

1. Formulating anti-corruption policies and making corruption prevention recommendations to assist public organizations to strengthen their system and policies, and conducting fact-finding investigations on public organizations for that purpose;
2. Surveying the actual state and evaluating the progress of policy steps, which public organizations have taken to prevent corruption;
3. Making and implementing plans for anti-corruption education and promotion;
4. Helping non-profit private organizations with their anti-corruption activities;
5. Promoting international cooperation for the prevention of corruption;
6. Receiving reports and complaints of corruption;
7. Protecting and rewarding those who reported suspected corruption;
8. Examining corruption-causing factors in Acts and subordinate statutes;
9. Collecting, managing and analyzing data and materials regarding the prevention of corruption;
10. Ensuring the implementation of the Code of Conduct for Public Organization Employees and receiving and processing reports of violation whereof; and
11. Addressing matters that the President put on the agenda of the Commission to prevent corruption.

### **Article 12: Composition of Board**

- (1) The board of the Commission shall consist of 9 members, including one chairperson and two standing members.
- (2) The chairperson and the other board members shall be the persons of profound learning and experience in the issue of corruption and shall be appointed or designated according to the qualification criteria in the Presidential Decree.
- (3) The chairperson and the two standing members shall be appointed by the President and the non-standing members shall be appointed or designated by the President. In this case, three non-standing members shall be appointed or designated on the recommendation of the National Assembly and the other three members on the recommendation of the Chief Justice of the Supreme Court, respectively.
- (4) The chairperson and standing members shall respectively become public officials in political service.
- (5) If the position of any member falls vacant, a new member shall be appointed or designated without delay.

### **Article 13: Chairperson**

- (1) The chairperson shall represent the Commission.
- (2) When the chairperson is unable to perform his/her duty for unavoidable reasons, a standing member designated by the chairperson shall act on his/her behalf.

#### **Article 14: Disqualification of Members**

- (1) A person who falls under any of the following subparagraphs shall not be qualified as board member:
  1. A person who is not a citizen of the Republic of Korea;
  2. A person who falls under any subparagraph of Article 33 of the State Public Officials Act;
  3. A person who is affiliated with a political party as a member; and
  4. A person who registers himself/herself as candidate in an election held in accordance with the Act on the Election of Public Officials and the Prevention of Election Malpractices.
- (2) A board member, when s/he falls under any subparagraph of paragraph (1), shall rightly resign his/her seat.

#### **Article 15: Independence and Guarantee of Position**

- (1) The Commission shall independently perform the work that it is authorized to do so.
- (2) The term in office for the chairperson and the other board members shall be three years and they may be renewed once.
- (3) No member shall be dismissed or decommissioned against his/her will with the exception of any of the following subparagraphs:
  1. Where s/he falls under any subparagraph of Article 14 (1); and
  2. Where s/he has much difficulty in performing his/her duties for mental or

physical trouble.

- (4) In case a member falls under the subparagraph 2 of paragraph (3), the President shall dismiss or decommission him/her on the chairperson's recommendation after a resolution thereof has been passed with the consent of not less than two thirds of the total members.

#### **Article 16: Resolution of Board**

A resolution shall be passed at a board meeting which is held with the attendance of a majority of its registered members and with the concurrent vote of a majority of those present.

#### **Article 17: Subcommittees**

For the efficient performance of work, the Commission may have a subcommittee by area.

#### **Article 18: Outside Expert**

- (1) The chairperson may appoint experts in academia and social organizations and other experts on the related fields as expert members of the Commission, as reasonably deemed necessary, to efficiently support the Commission's work and conduct specialized studies.
- (2) The chairperson shall appoint or designate expert members through the resolution of the board of the Commission.

**Article 19: Establishment of Secretariat**

- (1) The Commission shall have a secretariat to deal with its administrative affairs.
- (2) The secretariat shall have its head and other necessary staff.
- (3) A standing board member designated by the chairman shall concurrently serve as the head of the secretariat who takes charge of dealing with administrative affairs of the Commission and instructing and supervising the staff under the chairperson's direction.

**Article 20: Recommendation for Institutional Improvements**

- (1) The Commission, if need be, may recommend the head of a public organization to improve institutions for the prevention of corruption.
- (2) The head of a public organization that has been recommended to improve institutions under paragraph (1) shall reflect such a recommendation in its institutional improvement measures and inform the Commission about the result of the measures taken according to the recommendation.
- (3) Where the head of a public organization that has been recommended to make institutional improvements under paragraph (1) finds it difficult to take measures as recommended by the Commission, s/he shall make a request for the Commission's review of the recommendation. On request, the Commission shall do so.

Article 20-2: Review of Corruption-causing Factors in Laws

- (1) The Commission may review corruption-causing factors in Acts, Presidential Decrees, Prime Ministerial decrees and Ordinances of Ministries and in other directives, regulations, announcements, notices, ordinances and rules in reference thereto, and may recommend that the head of the public organization concerned take actions to remove them.
- (2) Matters regarding the procedure and methods of the review undertaken under paragraph (1) shall be prescribed by the Presidential Decree.

### **Article 21: Hearing Opinions**

- (1) In performing the functions provided for in Article 11, the Commission, if necessary, may take measures which fall under any of the following subparagraphs:
  1. Requesting that a public organization give an explanation or submit materials, documents, etc. and assess the current status of affairs in the organization; and
  2. Requesting that an interested person, a reference person or a public organization employee involved attend to state their opinions.
- (2) The Commission shall be prohibited from taking measures provided for in paragraph (1) with respect to the matters which fall into any of the following categories:
  1. Matters on the confidential information of the State;
  2. Matters on the appropriateness of an investigation, trial and execution of sentence including a security measure, a security surveillance measure, a protective detention measure, a probation measure, a protective internment measure, a custodial treatment measure and a community service order, or matters of which the Board of Audit and Inspection is



- undertaking inspection;
3. Matters on an administrative adjudication or litigation, an adjudication of the Constitutional Court, a constitutional petition, an examination request filed with the Board of Audit and Inspection and other protest-and-remedy procedures that are in process under other Acts;
  4. Matters on mediation of interests among parties concerned—including reconciliation, good office, mediation, and arbitration—which is being in process under Acts and subordinate statutes; and
  5. Matters made definite by a judgment, decision, adjudication, reconciliation, mediation, arbitration, etc. or other matters on which the Audit and Inspection Commission has passed a resolution in accordance with the Board of Audit and Inspection Act.
- (3) The measures stated in each subparagraph of paragraph (1) above shall be limited to what the Commission needs to perform its functions in each subparagraph of Article 11 and attention shall be paid not to hamper the performance of duties by any public organization.
- (4) The head of a public organization shall sincerely comply with request for the submission of materials and cooperate in assessing the current status of affairs under paragraph (1), and if s/he finds it difficult to do so, s/he shall explain why.
- (5) The head of a public organization may get its employees or relevant experts to be present at the Commission to state their opinions or to submit relevant materials in connection with institutional improvements, etc.

## **Article 22: Prohibition of Divulging Confidential Information**

The incumbent or former members of the Commission (board members, expert

members and staff members of the Commission) and any other person who is or has been seconded to the Commission or designated by the Commission to perform the work of the Commission shall be prohibited from divulging any confidential information that they have acquired while performing the work of the Commission.

**Article 23: Legal Fiction as Public Officials in the Application of Penal Provisions**

The board members and expert members of the Commission who are not public officials shall be deemed public officials in the application of the Criminal Act and the penal provisions of other Acts with regard to the work of the Commission.

**Article 24: Organization and Operation**

Necessary matters with regard to the organization and operation of the Commission except for the matters established in this Act shall be prescribed by the Presidential Decree.

**CHAPTER 3**

**Reporting of Acts of Corruption and Protection of Whistleblowers, etc.**

**Article 25: Reporting Act of Corruption**

Any person who becomes aware of an act of corruption may report it to the Commission.

### **Article 26: Public Organization Employee's Obligation to Report Corruption**

In case a public organization employee learns an act of corruption committed—or is forced or proposed to commit corruption—by another public organization employee, s/he shall report it immediately to any investigative agency, the Board of Audit and Inspection or the Commission.

### **Article 27: Obligation to Report in Good Faith**

A person, who reports an act of corruption despite the fact that s/he knew or could have known that his/her report was false, shall not be protected by this Act.

### **Article 28: Method of Reporting**

Any person who intends to report an act of corruption shall do so in a written statement containing his/her personal information, intention, purport and reasons for reporting. And when making disclosures, information on who engaged in corruption and evidence attesting to the wrongdoing shall be included.

### **Article 29: Handling of Reports**

- (1) The Commission may, upon receipt of a report, confirm the following details from the informant, complainant or whistleblower:
  1. Matters necessary to specify the contents of the report such as the name,

address and occupation of the informant, complainant or whistleblower and the details and purport of his/her report; and

2. Matters concerning whether the contents of the report fall under any subparagraph of Article 21 (2).
- (2) The Commission may ask any informant, complainant or whistleblower to submit necessary materials within the scope of ascertaining the truth of the matters specified in paragraph (1).
  - (3) If need arises for investigating a corruption case reported, the Commission shall refer it to the Board of Audit and Inspection, an investigative agency or an agency in charge of supervising the relevant public organization<sup>72</sup> (hereinafter, the “investigative organization”). If the report contains a State secret, it shall be handled according to the Presidential Decree.
  - (4) If a person suspected of committing corruption on which the Commission has received a report is a senior public official who falls under each of the following subparagraphs and if details on his/her suspected act of corruption are needed for an investigation for criminal punishment and an institution of public prosecution, the Commission shall file an accusation with the prosecution against him/her in its name:
    1. A public official with the rank of Vice Minister or higher;
    2. The Mayor of Capital Metropolitan City, Mayor of Metropolitan City or Provincial Governor;
    3. A police officer with the rank of superintendent general or higher;
    4. A judge or a public prosecutor;
    5. A military officer with the rank of general; and
    6. A National Assembly member.

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<sup>72</sup> In case such a supervisory agency is nonexistent, it refers to the public organization in itself.

- (5) The prosecution, upon receipt of an accusation filed under paragraph (4), shall notify the Commission of the results of its investigation. It shall also do so when a case which the Commission has reported is already under investigation or relates to another case under investigation.

### **Article 30: Handling of Investigation Results**

- (1) The investigative organization shall complete its inspection, investigation or examination of a case within 60 days of when it receives the case; provided that if there are justifiable grounds, then the period of time may be extended and the investigative organization shall inform the Commission why and how long it will extend the deadline.
- (2) The investigative organization to which a report is referred under Article 29 shall notify the Commission of the findings of inspection, investigation, or examination thereof within 10 days of when it concludes such an inspection, investigation or examination. Upon receiving the findings, the Commission shall relay a summary of the findings to the person making the disclosure.
- (3) The Commission, if necessary, may ask the investigative organization to explain the results on which the organization has made notification under paragraph (2).
- (4) When the inspection, investigation or examination conducted by the investigative organization is deemed inadequate, the Commission may ask it to launch again the inspection, investigation or examination by presenting reasonable grounds, for example, submitting new evidence, within 14 days of when the Commission is notified of the findings thereof. Any informant, complainant or whistleblower who is informed of a summary of the findings under the latter part of the above paragraph (2) may raise objections to the findings.

- (5) The investigative organization that is requested to launch again the inspection, investigation or examination shall notify the Commission of the results of such further inspection, investigation or examination within 7 days of when it concludes the inspection, investigation and examination. In that case, the Commission, upon receiving the findings of such an inspection, investigation or examination, shall relay a summary of the findings to the person making the disclosure.

### **Article 31: Filing Adjudication**

- (1) If a person suspected of committing an act of corruption under Article 29 (4) and (5) falls under Articles 129 through 133 and 355 through 357 of the Criminal Act, including the case of aggravated punishment under other Acts, if the Commission files an accusation with the prosecution against him/her, if the same case as the one against which the accusation is filed is already under investigation or is related to another case under investigation and if a public prosecutor concerned delivers a notice to the Commission that s/he does not institute a public prosecution against either of the two cases, then the Commission may file an application for an adjudication on the right or wrong thereof with the High Court corresponding to the High Public Prosecutor's Office to which the public prosecutor belongs within 10 days of when the Commission receives such notice.
- (2) Articles 260 (2), 261, 262 and 263 through 265 of the Criminal Procedure Act shall apply *mutatis mutandis* to application for the adjudication referred to in paragraph (1).
- (3) When the District Public Prosecutor's Office or the District Public Prosecutor's Branch Office to which the public prosecutor belongs under Article 260 (2) of the Criminal Procedure Act receives an application for the adjudication of paragraph (1), the statute of limitation for prosecution thereof

shall be suspended during the period from receipt of such an application to ruling under Article 262 (1) of the Criminal Procedure Act.

- (4) With respect to the application for the adjudication referred to in paragraph (1), if the public prosecutor has not instituted a public prosecution by ten days prior to the date on which the statute of limitation for prosecution thereof expires, it shall be deemed that the public prosecutor has served a notice on the Commission that s/he does not institute such public prosecution at that time; and with respect to an accusation which the Commission filed with the prosecution under Article 29 (4), if the public prosecutor has not instituted such public prosecution by three months after the date on which the Commission filed such accusation, it shall be deemed that the public prosecutor has served such a notice on the Commission at the time that the three months lapsed, respectively.

### **Article 32: Guarantee of Public Position**

- (1) Any person shall not be subjected to disadvantage or discrimination in terms of his/her working conditions or public position, including disciplinary action taken by a group to which s/he belongs, on the ground that under this Act s/he reported, made a written statement or submitted materials on a suspected act of corruption.
- (2) Any person, who has suffered or is expected to suffer disadvantage or discrimination as a result of reporting corruption, may request the Commission to take measures to guarantee his/her public position and other necessary measures, for example, by invalidating discriminatory action against him/her, transferring him/her elsewhere or delaying disciplinary action against him/her.
- (3) Any person, who has been put at financial or administrative disadvantages

such as the cancellation of permit or license and the revocation of a contract, may request the Commission to take necessary steps, for example, to ensure the temporary implementation of the permit, license or contract, for the purpose of restoring the situation to his/her original state or correcting the disadvantages.

- (4) If there is a request under paragraph (2) or (3), the Commission shall launch an inquiry.
- (5) The Commission may launch an inquiry in accordance with paragraph (4) in a manner that falls under each of the following:
  1. A request to the requester or reference persons for presenting themselves before the Commission to state their opinions or for submitting their written statements;
  2. A request to the requester, reference persons or related agencies for submitting materials that are deemed related to the investigation; or
  3. An inquiry about facts or information, which are deemed related to the investigation of the requester, reference persons or related agencies.
- (6) Any person who is subject to the request, inquiry or measures under each subparagraph of paragraph (5) shall sincerely comply with them.
- (7) When a public official made a request for the guarantee of his/her public position and investigation found that it is reasonable, the Commission may ask the head of an agency to which the requester belongs to take proper measures. In this case, the agency head shall comply with the request from the Commission, unless there are justifiable reasons.
- (8) When a person, who is not a public official, made a request for the guarantee of his/her public position and investigation found that it is reasonable, the Commission may recommend that the head of an organization or a company to which the requester belongs or the head of the relevant agency should take proper measures.



- (9) If a public organization employee reports corrupt acts and duly asks the Commission to take proper personnel management measures such as transfer and secondment, then it may request the Chairperson of Civil Service Commission or the head of the appropriate public organization to take necessary steps. In that case, the Chairperson or the head of the relevant public organization shall give priority consideration to such request and inform the Commission about the result.
- (10) The Commission may ask a relevant disciplinary officer to take disciplinary action against a person who has violated paragraph (1).

### Article 32-2: Presumption of Disadvantages

If a public organization employee reports an act of corruption according to this Act and, pursuant to paragraph (2) or (3) of Article 32, requests the Commission to restore the situation to his/her original state or brings a lawsuit for that purpose, then s/he is presumed to have suffered disadvantages for his/her report of corruption.

### **Article 33: Personal Protection**

- (1) Any employee of the Commission or the investigative agency to which matters of corruption are referred under Article 29 (3) shall be prohibited from disclosing or suggesting the identity of the informant, complainant or whistleblower without his/her consent.
- (2) If an informant, complainant or whistleblower feels that s/he or his/her family, relatives or cohabitant should be protected from being subjected to pressure or retaliation, or the fear of such consequences, s/he may request the

Commission to take protective steps. In that case, the Commission may ask the Commissioner General of the Korean National Policy Agency, the chief of a local police agency or the chief of the competent police station to take relevant protective steps.

- (3) The Commissioner General of the Korean National Policy Agency, the chief of a local police agency or the chief of the competent police station shall, upon receipt of the request made under paragraph (2), take steps to protect them under the conditions as prescribed by the Presidential Decree.
- (4) If a person suffers disadvantages or discrimination for his/her report of corruption or there are reasonable grounds that s/he may experience such disadvantages or discrimination, Article 7 (Omission of Personal Information), Article 9 (Inspection of Identification Management Card) or Article 12 (Consultation of Legal Proceedings) of the Protecting Those Who Report Specific Crimes Act shall apply *mutatis mutandis* to investigation and criminal procedures in connection with the reported corruption.
- (5) Any person shall not disclose, report or let others know the personal information of an informant, complainant or whistleblower, or what enables others to assume that s/he reported corruption, secure in the knowledge that s/he is being protected pursuant to the above paragraphs (3) and (4).

#### **Article 34: Protection of Cooperators**

The provisions of Articles 32, 33 and 35 shall apply *mutatis mutandis* to the guarantee of public position and physical protection of any person, other than a whistleblower, who has cooperated in inspection, investigation or examination by stating his/her opinion and submitting materials with regard to corruption matters reported under this Act.

### **Article 35: Mitigation of Culpability**

- (1) If a person reports corrupt acts according to this Act, which results in the detection of a crime committed by himself/herself, punishment for the crime may be mitigated or remitted.
- (2) The provisions of paragraph (1) above shall apply *mutatis mutandis* to any disciplinary measure taken by a public organization.
- (3) If a person reports corrupt acts according to this Act, s/he shall be deemed not to violate the obligation of confidentiality in the performance of his/her duty, even though other laws, pacts, employment rules, etc. stipulate otherwise.

### **Article 35-2: Protection for Internal Reporting**

The stipulations of Articles 32 and 35 shall apply *mutatis mutandis* to a person, who reported acts of corruption to their organization to which s/he belongs to, or its supervisory organization.

### **Article 36: Financial Reward and Compensation**

- (1) If a person reports an act of corruption under this Act to bring financial benefits or prevent financial damage to a public organization, or serve the public interest, then the Commission may recommend that s/he receive an award under the Awards and Decorations Act and/or provide a financial reward prescribed by the Presidential Decree.
- (2) If a person reports an act of corruption under this Act to contribute directly to increasing or recovering revenues of a public organization or preventing it

from bearing economic costs to be otherwise incurred, or if legal relations in that matter are established, then s/he may apply to the Commission for payment of compensation therefor. In that case, the compensation shall include expenses spent to restore his/her situation to a state prior to suffering discriminatory action.

- (3) If the Commission receives an application for the payment of compensation as provided in paragraph (2), it shall pay the applicant such compensation after going through a deliberation and resolution of the Reward Deliberation Board set up in accordance with Article 37 on the conditions as prescribed by the Presidential Decree; provided, however, that a public official reports an act of corruption in connection with his/her duties, such compensation may be reduced or not be paid.
- (4) The application for the payment of compensation under paragraph (2) above shall be filed within 2 years of the date on which it is known that legal relations regarding the recovery or increase of revenues or the reduction of costs of the public organization are established.

#### **Article 37: Reward Deliberation Board**

- (1) The Commission shall establish the Reward Deliberation Board to deliberate on and resolve matters concerning the payment of financial reward or compensation pursuant to paragraphs (1) and (2) of Article 36.
- (2) The Reward Deliberation Board shall deliberate on and resolve matters falling under each of the following subparagraphs:
  1. Matters concerning requirements for the payment of financial reward and compensation;
  2. Matters concerning the amount of financial reward and compensation to be paid; and

3. Other matters concerning the payment of financial reward and compensation.
- (3) Necessary matters with regard to the composition and operation of the Reward Deliberation Board shall be prescribed by the Presidential Decree.

#### **Article 38: Determination of Compensation Payment**

- (1) The Commission shall, upon receipt of an application for compensation filed under Article 36, determine whether to pay such compensation and the amount of the compensation, if any, to be paid, within 90 days of the date of the application therefore, unless there exists any reason to the contrary.
- (2) If the Commission determines to pay the compensation under paragraph (1), it shall immediately inform the applicant thereof.

#### **Article 39: Relation to Other Acts and Subordinate Statutes**

- (1) Any person who is to be paid compensation under Article 36 shall not be prohibited from applying for compensation in accordance with other Acts and subordinate statutes.
- (2) If any person, who is to receive compensation, received reward under this Act or received compensation for the same reason according to the provisions of other Acts and subordinate statutes, and if the amount of such reward or compensation obtained is the same as or exceeds the amount of compensation to be received under this Act, any compensation under this Act shall not be given to him/her. If the amount of such reward or compensation is less than the amount of compensation to be received under this Act, the compensation under this Act shall be the difference between the two amounts.

- (3) If anyone, who received compensation pursuant to this Act, is to receive another compensation for the same reason under provisions of other Acts and subordinate statutes, the amount to be paid shall be determined with the already paid compensation deducted.

## **CHAPTER 4**

### **Citizens' Request for Inspection**

#### **Article 40: Right to Request Inspection**

- (1) In the event that a public organization seriously harms public interest while executing administrative affairs due to a violation of Acts and subordinate statutes or its involvement in an act of corruption, any citizen aged 20 or over may request an inspection from the Board of Audit and Inspection by presenting a petition signed by not less than a certain number of citizens as prescribed by the Presidential Decree; provided, however, that with respect to the administrative affairs executed by the National Assembly, courts, the Constitutional Court, Election Commissions, or the Board of Audit and Inspection, such request shall be made to the Speaker of the National Assembly, the Chief Justice of the Supreme Court, the President of the Constitutional Court, the Chairperson of the National Election Commission, or the Chairperson of the Board of Audit and Inspection (hereinafter, the "head of a relevant public organization").
- (2) Notwithstanding the provisions of paragraph (1), the matters falling under any of the following subparagraphs shall be excluded from the subject of a request for inspection:
  1. Matters pertaining to national security and confidential information;

2. Matters pertaining to the appropriateness of an investigation, trial, and execution of penalty (including any security measure, any security surveillance measure, any protective detention measure, any probation measure, any protective internment measure, any custodial treatment measure, and any community service order);
  3. Matters pertaining to private right relationship or individual privacy;
  4. Matters that have been or are under inspection by other public organizations; an exception shall be made in case there are new results or notable omissions from such inspection already conducted; and
  5. Other matters of which inspection is reasonably deemed inappropriate as prescribed by the Presidential Decree.
- (3) Notwithstanding the provisions of paragraph (1) above, any inspection request pertaining to the execution of the administrative affairs that belong to the rights of local governments and their heads shall be governed by Article 13-4 of the Local Autonomy Act.

#### **Article 41: Method of Requesting Inspection**

Any person who intends to request an inspection shall make such request in the form of a signed document stating his/her name, address, occupation, etc. and the purport of and reasons for requesting such inspection under the conditions as prescribed by the Presidential Decree.

#### **Article 42: Decision on Conducting Inspection**

- (1) With respect to an inspection request made in accordance with the main sentence of Article 40 (1), the National Audit and Inspection Request

Deliberation Commission prescribed by the Regulations of the Board of Audit and Inspection shall determine whether to conduct such inspection.

- (2) If the head of a relevant public organization receives an inspection request under the proviso of Article 40 (1), s/he shall determine, within 30 days of the receipt, whether to conduct such inspection in accordance with the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the National Election Commission Regulations, or the Regulations of the Board of Audit and Inspection.
- (3) If the Board of Audit and Inspection or the head of a relevant public organization deems that an inspection request is groundless, such board or head shall dismiss the request and inform the requester thereof within 10 days of when the decision of dismissal comes.

#### **Article 43: Inspection on Request**

- (1) The Board of Audit and Inspection or the head of a relevant public organization shall conclude an inspection within 60 days of when a determination has been made to conduct such inspection; provided, however, that the period of 60 days may be extended where there exists any justifiable reason therefor.
- (2) The Board of Audit and Inspection or the head of a relevant public organization shall notify a requester for an inspection of the results of such inspection within 10 days of the date on which such inspection is concluded.

#### **Article 44: Operation**

Matters necessary for citizens' request for inspection, except as otherwise



provided for in this Act, shall be governed by the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the National Election Commission Regulations, or the Regulations of the Board of Audit and Inspection.

## **CHAPTER 5**

### **Supplementary Provisions**

#### **Article 45: Employment Restrictions on Public Organization Employees Dismissed for Corruption**

- (1) Any public organization employee who rightly resigns, or has been dismissed or removed from office for committing an act of corruption in connection with his/her duties shall be prohibited from landing a job in any public organization, any private company of not less than a certain scale established for profits, which is related to his/her former public service area for three years in the leading up to his/her resignation (hereinafter, the “for-profit company”), or any corporation or organization (hereinafter, the “association”) which has been established for the purpose of seeking a common interest and mutual cooperation with a for-profit company, for 5 years from the date on which s/he resigns.
- (2) The provisions of Article 17 (2) of the Public Service Ethics Act shall apply mutatis mutandis to the scope of the relationship of close ties between the post to which the public official has belonged prior to his/her resignation and the for-profit company, the scale of the for-profit company, and the scope of the association under paragraph (1).

#### **Article 46: Demand for Dismissal of Employed Persons**

- (1) In the event that a person is employed in a public organization in violation of the provisions of Article 45, the Commission shall demand that the head of the public organization concerned dismiss him/her and comply with the demand unless any justifiable grounds exist.
- (2) In the event that a person is employed in a for-profit company or an association in violation of the provisions of Article 45, the Commission shall demand that the head of the public organization concerned take steps to cancel his/her employment in the company or association and the head of the public organization concerned shall, upon receipt of the demand, request the head of such for-profit company or such association to dismiss him/her. In this case, the head of the for-profit company or the association shall promptly comply with the request unless there are justifiable grounds that make it impossible for him/her to do so.

#### **Article 47: Special Case for National Assembly**

The National Assembly, courts, the Constitutional Court, the National Election Commission, or the Board of Audit and Inspection shall exert voluntary efforts to sincerely perform the work provided for in each of subparagraphs 1 through 4 of Article 11 to prevent internal corruption.

#### **Article 48: Delegation Provisions**

Matters necessary to enforce this Act, other than what is prescribed by this Act, shall be prescribed by the Presidential Decree, the National Assembly Regulations,

the Supreme Court Regulations, the Constitutional Court Regulations, the National Election Commission Regulations, or the Regulations of the Board of Audit and Inspection.

## **CHAPTER 6**

### **Penal Provisions**

#### **Article 50: Offense of Exploiting Office Secrets**

- (1) If any public organization employee has acquired any goods or property interest by exploiting secrets that s/he has learned while performing his/her duties or has gotten a third party to acquire such goods or such property interest by exploiting such secrets, s/he shall be punishable with not more than 7 years in prison or with not more than 50 million won in fines.
- (2) In the case of paragraph (1), the imprisonment and fine may be imposed cumulatively.
- (3) The goods or property interest acquired by a person committing the offense of paragraph (1) or knowingly acquired by a third party by way of such offense shall be confiscated or collected by the corresponding value to be confiscated.

#### **Article 51: Offense of Leaking Office Secrets**

Any person who has divulged confidential information that s/he learned while performing his/her duties in violation of Article 22 shall be punishable with imprisonment for not more than 5 years or with the fine not exceeding 30 million

won.

**Article 51-2: Offense of Leaking Personal Information**

Any person, who violates paragraph (5) of Article 33, shall be sentenced to not more than three years in prison or be fined not more than 10 million Korean won.

**Article 52: Offense of Violating Employment Restrictions on Public Organization Employees Dismissed for Improprieties**

If any public organization employee who has been dismissed for improprieties is employed in any public organization, any for-profit company or any association in violation of Article 45 (1), s/he shall be punishable with not more than 2 years in prison or with not more than 20 million won in fines.

**Article 52-2: Offense of Disobedience**

If a person who disadvantaged or discriminated against an informant, complainant or whistleblower in terms of public position or working conditions pursuant to Article 32 (1) fails to meet the requests prescribed in Article 32 (7), then s/he will be sentenced not more than one year in prison or be fined not more than 10 million won.

**Article 53: Fine for Negligence**

- (1) Any person who falls into one of the following categories shall be punishable with not more than 10 million won in fines for negligence.
  1. A person who disadvantages or discriminates against an informant, complainant or whistleblower in terms of his/her public position or working conditions prescribed in paragraph (1) of Article 32
  2. A person who violates paragraph (6) of Article 32 and fails to meet the requests or inquiries prescribed by paragraph (5) of the same article
  3. A person who fails to meet the Commission's demand without reasonable grounds according to Article 32 (7), except for a person who disadvantages or discriminates against an informant, complainant or whistleblower in terms of public position or working conditions under Article 32 (1)
- (2) The fine for negligence of paragraph (1) above shall be imposed by the Commission and, if a person subject to a disposition taken to impose the fine for negligence fails to pay such fine for negligence by the due date, the Commission shall entrust the head of the jurisdictional district tax office with the collection of such fine for negligence.
- (3) When the Commission imposes a fine for negligence in accordance with paragraph (1), it shall investigate and confirm the act of violation and then notify a person subject to a disposition taken to impose such fine for negligence that he should pay the fine for negligence by specifying the fact of violation, the method of raising an objection thereto, the period during which such objection is raised, the amount of the fine for negligence, etc.
- (4) Necessary matters concerning criteria for imposing a fine for negligence for violating Article 32 (1) shall be prescribed separately.

#### **ADDENDA**

(1) (Effective Date) This Act shall enter into force 6 months after the date of its promulgation.

(2) (Amendment to Other Acts) Article 23 of the Public Service Ethics Act shall be deleted.

**Anti-Corruption Act**

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### 附錄 3-7-3 Anti-Corruption Act, KICAC

[http://www.kicac.go.kr/english/E\\_Leg/E\\_LegislateActShow.jsp](http://www.kicac.go.kr/english/E_Leg/E_LegislateActShow.jsp)

#### Background

It was not until 50 years after the Republic of Korea was founded that a systematic and comprehensive law to cope with corruption was enacted. In the United Kingdom, the Anti-Corruption Act for Public Officers was enacted in 1889. In Asia, Singapore's Anti-Corruption Act was established in 1937, Hong Kong's Bribery Prevention Bylaw in 1948, India's Anti-Corruption Act 1947, the Philippines's Anti-bribery & Corruption Prevention Act 1960, and Malaysia's Anti-Corruption Act in 1960. Indeed, Korea has been lagging far behind for quite some time. Establishing an anti-corruption act, however, does not in and of itself automatically eliminate problems associated with corruption. While the United Kingdom, Singapore and Hong Kong are widely recognized as very clean countries, India, the Philippines and Malaysia are perceived as more corrupt than Korea.

Although the OECD has been drawing international attention to corruption since 1994 and ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transaction (hereinafter referred to as ※the OECD Convention§) by 1997, Korea still did not have a comprehensive anti-corruption law. Only when convening a ※Corruption Roundtable§ was discussed in the international arena, did Korea rush to join the OECD Convention and enact the ※Act on Preventing Bribery of Foreign Public Officials in International Business Transactions§ December 28, 1998. The purpose of this Act,

however, was limited to preventing bribery in international business transactions. Aside from this act, the Korean Criminal Law, State Public Officials Act, and Public Service Ethics Act made partial provisions for dealing with the illegal activities and bribery of public officials.

Circumstances have changed, though, since corruption now puts nations at risk in the international community; the President and public officials recognize ※corruption§ as the primary cause of the 1997 economic crisis; and Korean people have become disgusted and outraged by recurring scandals. A consensus has formed that corruption is no longer a problem that can be overlooked. The ※Civil Coalition for the Enactment of Corruption Prevention Laws§ was formed to voice the need for comprehensive and systematic legislation. In short, the opinions of government officials and the general population have converged to find consensus on the need for anti-corruption legislation that will eliminate the scourge of corruption in Korea.

Voices expressing the need for a corruption prevention organization responsible for implementing a well-planned, comprehensive, foreseeable and effective strategy are now being heard by a sympathetic ear. Hence the Anti-Corruption Act was established and promulgated July 24, 2001 as Statute No. 6494 and took effect January 25, 2002, six months after its promulgation. KICAC was established January 25, 2002 in accordance with this Act.

The enactment of the Anti-Corruption Act is of great historical significance in Korea. First, corruption prevention and inspection operations, previously limited to the Public Prosecutor's Office, Police Department, Board of Audit and Inspection and other inspection authorities, has now been expanded to include the general public. Second, for the first time in the constitutional history of Korea, the act provided a legal foundation for establishing KICAC, a legal entity responsible



for dealing with corruption in all social strata. Third, it is also a declaration that all citizens must be vigilant in the fight against corruption, specifically mentioning in detail the public responsibility and authority to report corrupt practices, as well as how and to whom the report should be made. And finally, corruption prevention policy has now been included as part of the national policy agenda, to be pursued as an independent national objective, rather than simple means for inspection or extending a regime's stay in power.

### **Purpose of the Anti-Corruption**

The purpose of the Anti-Corruption Act is to contribute to establishing a solid public and social climate for integrity, by preventing corruption and effectively regulating corruption-related acts.

### **Definition of Act of Corruption**

The Anti-Corruption Act of Korea stipulates that the term ※act of corruption§ means:

- (i) the act of public official's seeking gain for himself/herself or for any third party by abusing his/her position or authority or violating Acts and subordinate statutes in connection with his/her duties;
- (ii) the act of causing damage to the property of any public agency in violation of Acts and subordinate statutes, in the process of executing the budget of the relevant public agency, acquiring, managing, or disposing of the property of the relevant public agency, or entering into and executing a contract to which the relevant public agency is a party concerned.

### **Definition of Duties of Agencies and Organizations**

The Anti-Corruption Act defines responsibilities of public agencies,

responsibilities of political parties, duties of private enterprises, and duties of citizens along with the obligation of integrity and protection of livelihood for public officials.

### **Funding and function of KICAC**

KICAC was established directly under the President to improve the laws and systems necessary to prevent corruption and to formulate and implement relevant policies. The functions of KICAC are:

- (i) to formulate and recommend policies and institutional improvements to prevent corruption in public agencies;
- (ii) to research and evaluate the actual progress of anti-corruption measures at public agencies;
- (iii) to establish and implement anti-corruption education and publicity;
- (iv) to support anti-corruption activities of non-profit civic organizations;
- (v) to cooperate internationally to prevent corruption;
- (vi) to receive reports on corrupt conduct;
- (vii) to protect and reward informants or whistleblowers; and
- (viii) to address other matters presented on the agenda by the President to prevent corruption.

KICAC is composed of nine members including a chairman and two standing members. Three of the members are nominated by the President, three by the National Assembly, and three by the Supreme Court Chief Justice. The Commission functions independently and the term and tenure of the members are protected and guaranteed. KICAC can make recommendations for institutional improvements and hold confidential hearings if necessary.

**Reporting Corruption: Protection of whistleblower**

Anyone who observes acts of corruption may report them to KICAC. It is mandatory for public officials to make a report in such cases. An informant or shall be obligated to report in good faith and those who fail to fulfill this obligation shall not be protected by the Act.

A de facto ※whistleblower system§ has been established based on the following principles: the identity of the informant shall not be made public without his/her consent; the informant is entitled to request protection of personal security; and the informant shall not be subject to any disadvantage due to the report. In addition, rewards or awards can be granted in the event that the report could result in substantial gain, prevent significant loss of the property to the public agency concerned, or advance the public interest.

In the event that the performance of administrative duties by a public agency should seriously harm the public interest due to a violation of Acts and subordinate statutes or the involvement in an act of corruption, any citizen aged 20 or above may request an inspection from the Board of Audit and Inspection by presenting a petition.

Any public official who rightly resigns, is removed or dismissed from office for committing an act of corruption in connection with his/her duties while working for a public agency shall be prohibited from being hired by any public agency or private company incorporated for the purpose of making a profit, which has maintained close ties with the post which he or she has belonged for 3 years before resignation, or in any corporation or organization established for the purpose of seeking a common interest and mutual cooperation with the aforementioned company, for 5 years from the date of resignation.

The Act stipulates that if any person makes a whistleblowing report with knowledge that the contents of his/her report are false, the person shall be subject to imprisonment for not less than one year and not to exceed 10 years; and if any

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public official has acquired any goods or property by exploiting secrets he or she has learned during the performance of their duties, he or she shall be subject to imprisonment for not more than 7 years or a fine not to exceed KRW 50 million.

## **附錄 3-7-4 ENFORCEMENT DECREE**

**Enacted by Presidential Decree No.17420,**

**Nov. 29, 2001**

### **CHAPTER 1 General Provisions**

#### **Article 1**

##### **Purpose**

The purpose of this Decree is to establish matters delegated thereto by the Anti-Corruption Act (hereinafter, the “Act”) and matters necessary for the implementation of the Act.

#### **Article 2**

##### **Code of Conduct for Public Officials**

The Korea Independent Commission Against Corruption (hereinafter, the “Commission”) under Article 10 of the Act may request the National Assembly, the Supreme Court, the Constitutional Court or the National Election Commission to inform the Commission when they enact or amend their own internal codes of conduct in accordance with Article 8 of the Act.

### **CHAPTER 2**

#### **Korea Independent Commission Against Corruption**

### **Article 3**

#### **Formulation of Anti-corruption Policy**

- (1) The Commission shall establish mid- and long-term basic policies and yearly implementation plans to prevent corruption of public agencies.
- (2) The Commission may recommend public agencies to establish and implement detailed plans to prevent corruption in accordance with “mid- and long-term basic policies and yearly implementation plans” in paragraph (1).

### **Article 4**

#### **Diagnostic Surveys & Evaluation**

“Diagnostic surveys and evaluations” of anti-corruption policy establishment and implementation of such policy by public agencies as specified in Article 11 (2) of the Act may be conducted by outsourcing the analysis of data, etc. to outside experts or institutes or by forming evaluation working group composed of public officials, etc. with the Commission and/or related agencies.

### **Article 5**

#### **Anti-Corruption Education**

The Commission may consult, with a view to reflecting issues regarding anti-corruption in the curriculum as established in Article 23 of the Elementary and Secondary Education Act, with the Minister of Education and Human Resources Ministry and may recommend lifelong education institutes or organizations as defined by the Lifelong Education Act to include issues

regarding anti-corruption in their education programs.

## **Article 6**

### **Qualifications of Members**

“Qualification criteria set by the Presidential Decree” specified in Article 12 (2) of the Act refers to one of the following armed with integrity and morality.

1. Assistant professors or equivalent position with 8 years or longer experience in universities or publicly-recognized academic institutions;
2. Judges/public prosecutors or lawyers with 10 years or longer experience;
3. Public officials in the 3<sup>rd</sup> or higher ranks with 5 years or longer experience;  
and
4. Persons whose research achievements or work experience are considered equivalent to the criteria specified in paragraph (1) through (3) and who are highly respected in society or are recommended by non-profit private organization defined by Article 2 of the Assistance for Non-Profit Non-Governmental Organizations Act.

## **Article 7**

### **Responsibilities of Chairman**

- (1) The chairman shall be in charge of all the work of the Commission.
- (2) The chairman shall convene and preside over meetings of the board.

## **Article 8**

### **Meetings of the Board**

- (1) Meetings of the Board shall be held regularly and the chairman may call a meeting whenever deemed necessary.
- (2) Meetings of the Board shall be opened to the public; provided, however, meetings may not be opened to the public whenever deemed necessary to protect whistleblowers through the resolution of the board.

## **Article 9**

### **Exclusion , Recusation, or Withdrawal of Members**

- (1) The members of the Commission (hereinafter, the “Member”) shall be excluded from the deliberation and resolution of matters:
  1. with regard to his/her direct interest;
  2. with regard to the interest of his/her current or previous relative, the head of his/her current or previous family or his/her current or past family member;
  3. on which s/he has provided testimony, consultation, legal advice or damage assessment; and
  4. on which s/he has been involved in the inspection, investigation or examination before s/he became the Member.
- (2) If there are grounds for unfairness of the procedures, a party directly related to the matters under deliberation and decision of the board may file a motion for recusation with the chairman. In this case, the chairman shall decide whether to recuse the member whose recusation is requested through the resolution of the



board.

(3) The person who intends to recuse the Member pursuant to paragraph (2) shall submit a written explanation within three (3) days following his/her motion.

(4) The Member whose recusation is requested shall submit his/her written opinion concerning the motion for his/her recusation to the chairman without any delay.

(5) The Member may withdraw herself/himself from the deliberation and resolution with an approval of the chairman on the grounds falling under paragraph (1), subparagraph (1) through (4) or paragraph (2).

(5) Any Member excluded from the deliberation and resolution pursuant to paragraph (1) through (5) shall be excluded from the count of the registered members of the board pursuant to Article 16 of the Act.

## **Article 10**

### **Composition & Operation, etc. of Subcommittees**

(1) The Commission may set up necessary subcommittees through the resolution of the board pursuant to Article 17 of the Act.

(2) A Subcommittee shall be composed of three (3) members including its chair.

(3) The chair and members of a subcommittee shall be selected among the Member and appointed by the chairman through the resolution of the board.

(4) A subcommittee shall carry out the duties of previewing, adjusting agendas to be laid before the board and of conducting research & study and others delegated by the Commission.

## **Article 11**

### **Recruitment, etc. of Employees of Secretariat**

- (1) The Commission shall appoint persons with required integrity, morality and expertise for anti-corruption duties as expert members and employees and may establish and apply specific criteria for appointment.
- (2) When deemed necessary, the Commission may request public agencies, related corporations or organizations to second officials or employees to the Commission. A head of the requested agency or corporation shall second an eligible person who satisfies the requirements as referred to in Paragraph (1).
- (3) The head, who seconded officials or employees pursuant to paragraph (2), may take a favorable treatment in rearranging the positions of returning officials or employees.

## **Article 12**

### **Internal Ethics Code, etc.**

- (1) The Commission shall establish and enforce internal ethics code so that its employees and expert members can maintain high level of integrity.
- (3) The Commission shall take necessary measures so that its employees and expert members can dedicate themselves to their duties ethically and impartially.

## **Article 13**

### **Procedures, etc. for Recommendation for Institutional Improvements**

(1) When recommending institutional improvements to the head of public agencies in accordance with Article 20 (3) of the Act, the Commission shall deliver a written notice containing the details of recommendation, its opinion thereon and a deadline for taking measures.

(2) The head of a public agency, who intends to deliver a notice to the Commission in accordance with Article 20 (3) of the Act, shall do so in a written statement containing reasons.

#### **Article 14**

##### **Request, etc. for Public Agency's Explanation**

(1) When requesting a public agency to explain any reasons or submit materials and/or documents pursuant to Article 21 (1) 1 of the Act, the Commission shall deliver a written notice to the public agency concerned.

(2) When conducting a diagnostic survey of a public agency pursuant to Article 21 (1) 1 of the Act, the Commission shall notify in advance to the public agency as to why, when, where and by whom the survey will be conducted; provided, however, if there is an urgent reason or a concern that the purpose of the survey might be undermined, the foregoing shall not apply.

(3) The employee of the Commission responsible for the survey pursuant to paragraph (2) shall present the certificate of authority to the person concerned.

#### **Article 15**

##### **Request for the Attendance of Interested Persons, etc.**

(1) When requesting for the attendance or opinion statement of interested persons,

reference persons or public officials concerned in accordance with Article 21 (1) 2, the Commission shall deliver a written notice to the persons concerned until seven (7) days before the date of meeting.

(2) The person who received a notice on attendance may attend the meeting or state his/her opinion or submit a written opinion until one (1) day before the date of meeting.

### **Article 16**

#### **Advisory Body**

(1) The Commission may install an advisory body to consult on necessary matters to perform its duties.

(2) Matters concerning the organization and operation of an advisory body shall go through the resolution of the Commission and then shall be approved by the chairman.

### **Article 17**

#### **Allowances, etc.**

Necessary allowances, travel costs, etc. or expense needed in performing duties may be covered within the budget to the Member who are not public official, expert members and the members of the Advisory Body under Article 16 and interested persons, reference persons and public officials who attended the meeting of the Board; provided, however, the foregoing shall not apply if public officials attend the meeting directly concerned with their duties.

## **Article 18**

### **Detailed Rules of Operation**

Necessary matters with regards to the operation of the Commission except for the matters established in this Decree shall be prescribed by the chairman through the resolution of the board.

## **CHAPTER 3**

### **Reporting of Acts of Corruption and Protection of Whistleblowers, Etc.**

## **Article 19**

### **Selection of Representative**

In case two or more whistleblowers intend to report the same act of corruption in their joint names, the Commission may order them to select the representative among them.

## **Article 20**

### **Confirming for the Handling of Reports**

(1) For the purpose of handling reports pursuant to Article 29 of the Act, the Commission may confirm the following details:

1. The personal information of the whistleblower: name, resident registration number, address, occupation, workplace and contact number, etc.;

2. The background, purport, and reason for making the report;
  3. Whether the contents of the report fall under the definition of corrupt acts;
  4. The relationship between the whistleblower and the alleged offender;
  5. whether reference persons or evidential materials are secured;
  6. whether any report, sue, accusation or petition with regard to the report was ever filed with other authorities including investigative agencies before; and
  7. whether the whistleblower agrees to disclose or suggest his/her identity (hereinafter, the “Disclosure of Identities”) in any handling procedures of the Commission or in the inspection, investigation or examination by investigative agencies.
- (2) When asking about the Disclosure of Identity pursuant to paragraph (1), subparagraph 7, the Commission shall explain to a whistleblower how one’s identity is to be disclosed and how the case in question is to be handled by instigative agencies.
- (3) Confirming pursuant to paragraph (1) of Article 29 of the Act shall be completed within 30 days since the date of receiving the report. The deadline may be extended if deemed necessary to supplement the report as referred to in Article 21.

## **Article 21**

### **Supplement to Report**

The Commission may require a whistleblower to supplement the original report if it fails to contain sufficient information with regards to his/her personal information or necessary elements for confirmation as established in Article 29 (1) 1 of the Act.

## **Article 22**

### **Referral of Cases, etc.**

(1) When referring a case to investigative agencies pursuant to Article 29 (3) of the Act, the Commission shall do so on the basis of the following criteria:

1. When inspection under the Board of Audit and Inspection Act is deemed necessary, the case shall be referred to the Board of Audit and Inspection (BAI);
2. When a suspicion of a crime or necessity of investigation is deemed to exist, the case shall be referred to investigative agencies; or
3. When referral to the BAI or investigative agencies is inappropriate, the case shall be referred to the supervisory authority of the public agency concerned or the public agency concerned in the absence of such authority.

(2) When a case involves multiple authorities, the Commission may designate the primary authority and refer the case thereto. In this event, the primary authority shall handle the case in a coordinated way through mutual cooperation with all authorities involved.

(3) When referring a case pursuant to paragraph (1), the Commission shall furnish details as referred to in Article 20 (1) and evidence materials submitted by a whistleblower; provided, however, that personal information shall not be furnished unless the whistleblower agrees to disclose his/her identity.

(4) When the Commission took such measures as a referral pursuant to paragraph (1) through (3), it shall inform the whistleblower of such measures without delay.

### **Article 23**

#### **Cases not to be Referred**

- (1) The Commission may close a whistle-blowing case without referral when:
1. The contents of the report is obviously false;
  2. The whistleblower does not comply with supplement request as referred to in article 21 within a certain time frame and thus his/her statement thereof fails to be confirmed;
  3. The same report has been repeatedly filed concerning the same matter without justifiable reasons and the whistleblower has already been informed of the result thereof;
  4. Two or more reports have been filed concerning the same matter and the inspection, investigation or examination, initiated by the earlier report is being conducted or has been completed by appropriate authorities and there is no further evidence thereof;
  5. The compliant has been already exposed to the public by the media and the lack of further evidence led to a conclusion that no further inspection, examination, or investigation is needed; or
  6. Besides, the confirmation of the statement written in the report form and the whistleblower leads to a conclusion that no further inspection, examination, or investigation is needed.
- (2) When closing a whistle-blowing case without referral pursuant to paragraph (1), the Commission shall inform the whistleblower of such closure without delay.

### **Article 24**

#### **Handling by Investigative Agencies**



(1) When a whistleblower does not agree to disclose his/her identity, an investigative agency concerned shall take necessary measures to conceal his/her identity during its inspection, investigation or examination.

(2) When an investigative agency finds it inappropriate to handle a case referred, it may return the case to the Commission after consultation.

### **Article 25**

#### **Notification of Investigation Results, etc.**

(1) When notifying the Commission pursuant to the first sentence of Article 30 (2) of the Act of the results from inspection, investigation or examination, the investigative agency concerned shall do so in a written statement containing the following:

1. The resulting penal measure, disciplinary measure, etc.;
2. How the case is to be dealt with after the completion of inspection, investigation or examination;
3. The statement of facts, if any, that the imposition or withdrawal as referred to in paragraph (1), subparagraph 1 through 4 of Article 35 has led to or is expected to lead to recovered or increased revenue, or saved cost for the public agency concerned;
4. A summary of any institutional improvements that are deemed necessary regarding the whistleblowing report; and
5. Other matters that the Commission or the whistleblower needs to know regarding the whistle-blowing report.

(2) The provisions of paragraph (1) shall apply mutatis mutandis to the

notification of results by the Public Prosecutor's Office (PPO) in accordance with Article 29 (5) of the Act.

## **Article 26**

### **Handling of Investigation Results**

(1) Upon the receipt of the results of inspection, investigation or examination from any investigative agency concerned, the Commission shall determine whether to ask for reinvestigation or whether institutional improvements are necessary.

(2) When there are any matters that interested persons need to know or that require measures such as disciplinary measures, etc. to be taken against the persons involved with regard to the results of inspection, investigation, or examination, the Commission shall inform the interested persons or agencies of the existence of the matters.

## **Article 27**

### **Filing an Objection**

(1) When informing the whistleblower of a summary of the results of inspection, investigation or examination pursuant to the latter sentence of Article 30 (2) of the Act, the Commission shall include methods of and deadline for the filing of an objection.

(2) When filing an objection pursuant to the latter sentence of Article 30 (4) of the Act, the whistleblower shall do so within 7 days from the date of receiving a summary of the results of inspection, investigation or examination.

## **Article 28**

### **Procedures, etc. for Filing Adjudication**

(1) Where the Commission finds it necessary to decide pursuant to Article 31 of the Act whether to file adjudication, it may request a public prosecutor or public official in charge of investigation who refrains from bringing public action against the case to submit his/her opinion regarding such measure.

(2) With a view to filing adjudication, the Commission may ask interested persons, reference persons, etc. to submit evidence, etc. or hear their opinions with regard to the case subject to the filing of adjudication.

## **Article 29**

### **Request for the Guarantee of Position**

Persons, who intend to request for the guarantee of position pursuant to Article 32 (2) of the Act, shall do so in a written statement containing personal information, reasons for and contents of such request.

## **Article 30**

### **Examination of Detrimental Practice**

(1) When requesting a person to attend, give oral statement, submit written statement, related materials, etc., or inquiring about facts or information pursuant to Article 32 (4), of the Act, the Commission shall inform him/her in advance of the title of the case, the date, time

and venue for his/her attendance; provided, however, that the title of case may be excluded when considered necessary for the examination.

- (2) When an employee of the Commission hears opinions of reference persons in a place other than the Secretariat, s/he shall present certificate of authority to interested persons.

### **Article 31**

#### **Decision to Take Guarantee Measures**

(1) When there is a request for Measures for Guaranteeing Position under Article 32 (2) of the Act, the Commission shall, within 60 days from the date of receiving the request, decide whether to request or recommend the head of an agency to which the requester belongs to take such measures. In this case, the deadline may be extended, where necessary, through the resolution of the board of the Commission.

(2) In deciding “whether to request or recommend...” under paragraph (1), the Commission may require the head of an agency to which the requester belongs to attend the board and state their opinions; provided, however, that the head of such agency may, where deemed necessary, substitute a written statement for his/her attendance with an approval from the Commission.

(3) The Commission may request or recommend the head of an agency to which the requester belongs to reinstate the position, etc. of the requester.

(5) When there are specific reasons that hinder the reinstatement of position referred to in paragraph (3), the Commission may request or recommend the head of an agency to which the requester belongs to take measures equivalent to the reinstatement such as transfer.

(6) If the request or recommendation was made under paragraph (3) or (4), the

Commission shall inform the requester of the fact without delay.

### **Article 32**

#### **Notification of the Measures Taken**

(1) The head of an agency to which the requester belongs, who was requested or recommended by the Commission to take measures under paragraph (3) or (4) of Article 31, shall notify the Commission of the measures taken.

(2) When the head of an agency to which the requesting person belongs, who was requested by the Commission under Article 32 (6) of the Act to take measures to guarantee position fails to do as requested, s/he shall explain the reason for such failure to the Commission.

### **Article 33**

#### **Guarantee of Confidentiality for Whistleblowers**

(1) Where the identity of a whistleblower is disclosed without his/her consent with respect to handling a whistle-blowing case, the Commission shall examine how such disclosure occurred.

(2) Where examination under paragraph (1) confirms that Article 33 (1) of the Act is deemed to be violated, the Commission may take such measures as necessary to request person of authority to take disciplinary action against persons involved.

### **Article 34**

#### **Physical Protection**

(1) Request for the physical protection under the first sentence of Article 33 (2) of the Act shall be made in a written statement containing personal information of a whistleblower and persons subject to such protection, and the reasons for such request; provided, however, that oral or telephone, etc. request is allowed in case of emergency with a condition that the submission of written statement shall be followed without delay.

(2) The head of the competent police station requested to provide physical protection under the latter sentence of Article 33 (2) of the Act shall take steps in consultation with the Commission in accordance with Article 7 of the Enforcement Decree of the Protection of Reporters, etc. of Specific Crimes Act.

(3) When it is too urgent to wait for the decision from the board, the chairman may ask the head of the competent police station to take relevant protective steps.

(4) The head of the competent police station may discontinue the protective steps taken in consultation with the Commission in case the requested period expires or no necessity for such protection can be found.

(4) The Commission shall inform the whistleblower of the measure taken under paragraph (2) or the discontinuation of such measure under paragraph (4) without delay.

## **CHAPTER 4**

### **Reward for Whistleblower of Corrupt Acts**

#### **Article 35**

#### **Grounds for Paying Rewards**

(1) Reward may be payable pursuant to Article 36 (3) of the Act in case imposition or withdrawal, etc. as listed below led to revenue recovery or increase or cost reduction of public agencies:

1. Imposition of confiscation or additional collection;
  2. Imposition of national tax or local tax;
  3. Withdrawal by proceedings for compensation claims or for the return of unjust enrichment; or
  4. Other measures or judgments except for the imposition and notification of fines, penalties, surcharges or negligence fines.
- (3) The imposition or withdrawal, etc. falling under one of the foregoing 1 through 4 of paragraph (1) shall be directly related to the contents and evidential materials, etc. concretely stated in written report.

### **Article 36**

#### **Designation of Representative**

In case two or more whistleblowers, who made a whistle-blowing allegation in their joint names, intend to file a claim for a reward, the Commission may order them to select a representative among them.

### **Article 37**

#### **Composition of Reward Deliberation Board**

(1) The Reward Deliberation Board (hereinafter, the “Reward Board”) under Article 37 (1) of the Act shall be composed of chairman, 4 mandatory members and 4 designated members.

- (2) The chairman shall appoint the chairman of the Reward Board among the members of the Commission through the resolution of the board.
- (3) Each official with the rank of director general, who belongs respectively to the Ministry of Finance and Economy (MOFE), the Ministry of Justice (MOJ), the Ministry of Planning and Budget (MPB) and the Commission shall become mandatory members of the Reward Board when nominated by the head of each Ministry or the chairman of the Commission.
- (4) The chairman shall designate persons with education or experience in corruption prevention and reward who are experts in law, accounting, appraisal or who are recommended by non-profit non-governmental organizations under Article 2 of the Assistance for Non-Profit Non-Governmental Organizations Act or who are experts in other relevant fields to the Reward Board through the resolution of the Board.
- (5) Designated members shall serve for a term of two (2) years and may be re-designated only once.

### **Article 38**

#### **Chairman of the Reward Board**

- (1) The chairman of the Reward Board shall be in charge of the business of the Reward Board and represent the Reward Board.
- (2) When the chairman of the Reward Board is unable to perform his/her functions for unavoidable reasons, his/her designee among the members of the Reward Board shall act on behalf of him/her.

### **Article 39**

#### **Meetings of the Reward Board**



- (1) Meetings of the Reward Board shall be convened and presided over by the chairman of the Reward Board.
- (2) Meetings shall begin by the attendance of a majority of registered members and resolve with the concurrent vote of a majority vote of those present.
- (3) The Reward Board may request, where necessary, the attendance of reward claimer or interested persons, public officials from the relevant agencies, officials from investigative agencies before its meeting or the submission of the necessary materials.
- (4) The provisions of Article 9 and Article 17 shall respectively apply mutatis mutandis to exclusion, recusation, or withdrawal of the members of the Reward Board, and to the payment of allowances to the members of the Reward Board.

#### **Article 40**

##### **Determination of Reward Amount**

- (1) Criteria for reward payment shall be as listed in Appendix 1.
  - (2) When determining reward amount under the criteria in Appendix 1, the Reward Board may reduce the amount considering one of the following:
    1. Accuracy of the report including reliability of evidential material;
    2. Whether the corrupt act subject to the report has been already exposed by the media; Whether the whistleblower is involved in the corrupt act exposed by the report; and
    3. The extent of the contribution made in settling the case.
- (3) The maximum amount of a reward shall be 200 million KRW and odds and

ends less than 1,000 KRW of the final amount shall not be paid.

#### **Article 41**

##### **Reduction of the Reward to Public Officials**

(1) Reward shall not be paid in case where a public official responsible for inspection, investigation or examination reports corrupt acts with respect to his/her duty.

(2) Reward amount may be reduced within 50% of the determined amount pursuant to Article 40 in case a public official other than those referred to in paragraph (1) reports corrupt acts with respect to his/her duty.

#### **Article 42**

##### **Determination of Reward Payment, etc.**

(1) The Commission shall determine, based on the consideration and resolution by the Reward Board, whether to pay a reward and how much to be paid.

(2) When reaching a determination to make a reward pursuant to paragraph (1), the Commission shall keep the original of a written determination and deliver the officially certified copy thereof and the notice of reward determination to a claimer without delay.

#### **Article 43**

##### **Determination of Reward for Competing Claims**

(1) When there are competing claims by two or more persons concerning the same corrupt act, which is not subject to Article 23 (1) 4, the case shall be deemed as one single whistle-blowing case for the calculation of the benefits incurred as listed in Appendix 1.

(2) The Commission, when calculating the reward amount concerning the case referred to in paragraph (1), shall proportionately distribute the reward to the respective claimant considering the extent of the contribution made in settling the case. When reducing the reward amount pursuant to Article 40 (2) and/or Article 41 (2), the Commission shall decide to do so considering specific reasons for each claimant.

#### **Article 44**

##### **Time of Reward Payment**

Reward shall be paid in accordance with the procedures for imposition or withdrawal prescribed in each subparagraphs of Article 35 (1) after the recovery or increase of revenue or the reduction of cost of public agencies materialized. In case the period for filing an appeal against such imposition or withdrawal does not expire or remedial procedure therefor is under way, the payment shall await the expiration of the period and the completion of the procedure.

#### **Article 45**

##### **Procedures for Reward Payment**

The necessary matters concerning procedure for reward payment shall be decided through the resolution of the Board and be determined by the chairman.

#### **Article 46**

##### **Withdrawal of Reward Money**

The Commission or any authorities that paid reward money under the provisions of other law may withdraw partial or entire amount of what was paid in one of the following cases where:

- (1) A claimant received a reward using falsified reasons or other unjust methods;
- (2) A reward was paid in the violation of Article 39, paragraph (2) and/or (3) of the Act; or
- (3) A reward was wrongly made due to any mistake, etc.

## **CHAPTER 5**

### **Citizen's Request for Inspection**

#### **Article 47**

##### **Requester of Inspection**

“Certain number of citizens as prescribed in the Presidential Decree” in Article 40 (1) of the Act means three hundred (300).

#### **Article 48**

##### **Exceptions to Inspection Request**

“Other matters....as prescribed by the Presidential Decree” in Article 40 (2) 4 means one of the following:

- (1) The matters on which administrative litigation & adjudication, constitutional petition, constitutional adjudication or a request for examination by the Board of Audit and Inspection or other remedial procedures by other laws are under way;
- (2) The matters on which, by laws and regulations, any procedures to resolve

conflict of interests between the parties concerned such as reconciliation, mediation, or arbitration are underway; or

(3) The matters confirmed by a judgment, decision, adjudication, reconciliation, mediation or arbitration.

#### **Article 49**

##### **Methods of Inspection Request**

Persons who intend to request inspections pursuant to Article 40 of the Act shall do so in written statement containing their personal information such as names, resident registration numbers, addresses, and occupations with their signatures or seals (hereinafter, the “Written Request for Inspection”) and the requesting persons shall designate five or less representatives among themselves and include their personal information.

#### **Article 50**

##### **Rejection of the Written Request for Inspection**

When two or more inspection requests of the same content are filed to the same authority or the request is filed to two or more authorities, the authority concerned may reject the latter request.

### **CHAPTER 6**

#### **Supplementary Provisions**

## **Article 51**

### **Request for Confirmation on the Possible Application of Employment Restriction and Confirmation**

- (1) When those subject to employment restrictions under Article 45 (1) of the Act seek an employment with profit-seeking private organization or corporations in less than 5 years after the termination of their previous employment as defined in the same paragraph, they may request the heads of the competent public agencies through their previous employers at the time of such termination (the heads of its successor organizations or agencies if the organizations or agencies were abolished, herein after the same shall apply) to confirm whether the private organizations or corporations in question are subject to the restrictions or not.
- (2) The previous employers who received written requests for confirmation as referred to in paragraph (1) shall examine and confirm the matters as prescribed in Article 45 of the Act and deliver the result attaching their opinions to the heads of the competent public agencies.
- (3) The heads of the competent public agencies shall review the written requests for confirmation delivered to themselves pursuant to paragraph (2) whether new employments with the foregoing profit-seeking private organizations or corporations are subject to the restrictions established in Article 45 of the Act and inform the requesters through their previous employers of the result of the reviews. When informing the requesters of the confirmed restriction, the reasons therefore shall be stated.

## **Article 52**

### **Monitoring of Re-employment of Public Officials Dismissed for Corruption**

(1) The heads of public agencies shall monitor for the five years since the termination of employments therewith whether the retirees subject to employment restrictions set forth in Article 45 (1) of the Act get new employments with other public agencies, or profit-seeking private organizations or corporations under the same paragraph by inquiring directly or indirectly related authorities and report the result to the Commission more than once a year.

(2) The heads of public agencies, with a view to monitoring the matters referred to in paragraph (1) and Article 51 (2) and (3), may request the previous employers of the retirees to submit related materials and the heads of the requested agencies shall do as requested without delay unless there are exceptional provisions governed by other laws and regulations.

### **Article 53**

#### **Imposition of Negligence Fines**

(1) When intending to impose negligence fines pursuant to Article 53 (2) of the Act, the Commission shall give persons subject thereto ten (10) or more days to have an opportunity to state their opinions in oral or written communication. Unless there come any statements of opinion until the deadline, the Commission shall deem that the persons concerned do not have any opinions.

(2) Those who have an objection to the imposition of negligence fines pursuant to Article 53 (2) of the Act may file an objection with the Commission within 30 days from the date of receiving a notice of the fine.

(3) In the event a person fine under Article 53 (2) of the Act filed an objection, the Commission shall inform the competent court of such fact without delay.

(4) The criteria for the imposition of negligence fines is as listed in Appendix 2.

(5) The procedure for collecting the fines shall be determined by the chairman

through the resolution of the board.

## ADDENDA

### Article 1

#### Effective Date

This decree shall enter into force as of January 25, 2002.

### Article 2

#### Amendment to Other Acts and Subordinate Statutes

(1) The Decree on the Appointment of Public Officials shall be amended as follows:

“The Chairman of the Civil Service Commission (CSC)” as referred to in Article 2 (4) of the Decree shall be modified to “the Chairman of the Civil Service Commission and the Korea Independent Commission Against Corruption (KICAC).”

(2) The Enforcement Decree of Public Service Ethics Act shall be amended as follows:

1. Subparagraph 4-2 shall be added to Article 3(3):
2. General civil service officials ranking 7th to 5th and excepted civil service officials with corresponding ranks belonging to the KICAC
3. The Korea Independent Commission Against Corruption



## 附錄 4-1 統合性政府倫理法制研究案相關草案座談會

### 第一場次

日期：2007 年 7 月 18 日

時間：0930-1130

地點：國立政治大學綜合院館南棟 13 樓 271338 會議室

與會人員：蔡秀涓教授、莊國榮教授、1-A、1-B、1-C、1-D、1-E、1-F、1-G、1-H、1-I、1-J、1-K、1-L、1-M、1-N

紀錄：田蘊祥

1-J：

專業的倫理規範缺乏，例如金檢局與法律之間的爭議。即使是先進國家在行政法規上，也僅側重於防治部分，但在專業倫理上仍較少著墨。

近年來少子化，政府規模變小，政府服務會減少，專業倫理因而重要。此外，行政倫理法治與第三部門之間要有密切的關係互動。

1-E：

法務部政風司那邊有北歐地區的相關資料，可供參考。

誠實、清廉、正直是新公共管理的價值。

法務部 2000 年到 2005 年的資料統計顯示，被起訴的公務人員超過 730 人，腐化嚴重，有時是因為專業知能不足。

OECD 國家行政核心價值：客觀中立、克守法紀、誠實廉潔、透明公開、行政

效率、公平公正、負責盡職、公道正義。

公務人員財產申報法、服務法、保障法中，相關配套的法律已有一些，對立法進度時效品質憂慮。

如果叫做政府倫理法，那麼民選代表或是總統副總統是否要納入？傾向總統不規範，但民代要規範，因為民代掌握了立法權、預算權。

若設專責主管機關，該設在那個單位？考試院？法務部？行政院？是否會與政風系統重疊？如何區隔？

是否可用漸進的方式處理？在法的定位上，是整合現有的立法？補足現有的法律缺漏？是要弄成基準法嗎？

公共利益、道德感、責任感很重要，政務人員如果還要設退場機制？很好玩，其實該下台就該下台的。

1-N：

該法是要定位在那裡？如果要再來一個法，如何定位？

倫理是抽象的，而不是具體的懲罰制裁，讓規範的對象知道應該做什麼。

目前非法制裁部分在其他法裡已有規範。

倫理跟專業相關，是動態的，也跟行為人的特質相關。

綜合上述，很存疑是否有必要再設一個法。

公部門各個部門人員的行為都不盡相同，所以用單一的一個法去規範所有的人是有問題的，不同的人要有不同的行為準則；如果是要管人的，該機關的層級必須比要管的人還要再高一階。

所以很存疑是否還要再設一個倫理機構？

1-B：

法的定位問題，是統整？還是區隔？相關配套措施？

核心價值是公共利益，大愛；目前很多公務員並不重視行政倫理，是否打高空？如果是的話，有必要存在嗎？

目前的法很抽象，我們的法要有我們的特色，跟他國不盡相同。

法的範圍要界定的是那些？愈簡單愈好，但要落實。

莊國榮：

有必要用基準法嗎？個人非常懷疑不相信。台灣目前的問題是法制有漏洞，需要把現行法制弄得明確補足。

像是要不要做組織調整？簡言之，應該要找出現有法制的漏洞，而非去弄基準的抽象東西。

1-C：

倫理跟法擺在一起有點矛盾，公務員當然沒有興趣感到反感，因為中立道德教條根本沒有用。需要有一個強有力的獨立肅貪機構比法條有用，比較重要。

法務部推動廉政署，目前相關推動受到相關利益關係人的阻礙。

現行組織要大幅重整，是浩大的工程，所以有相關的困難性。台灣很多獨立機關都沒有成功，例如NCC跟行政院惡鬥。

假如集中立法成爲一個機構，要由誰來監督？這是個問題。所以這個倫理基本法有困難存在，應該是彌補現有倫理法的不足。

公務人員餽贈方案爭執已久，光談倫理不夠，應成立一個獨立的肅貪機構例如倫理署。

此外，有幾點補充如下：

1. 政府倫理法若要規定公務及相關人員的倫理規範，可能只能規定一般的大原則，各領域的專業倫理規範，則可授權各專業領域訂定，再送交倫理署

審查或備查。因為專業規範十分細緻，且會有各自衝突的地方，無法全部統整在一部法規中。如法官審判應獨立，和一般公務員的服從上級，有些不同。

2. 倫理法規定的對象，是否應考慮納入授予公權的人士，如仲裁人、環評委員、民間公證人等。
3. 為達倫理法的成效，也應納入違法效果的規範，如本法為各散見子法的基準法，可仿行政罰法，訂出違法的基準規定，避免各子法各有輕重，對受罰人員不公平的情形。
4. 倫理法中如要加入肅貪反貪業務，必須認真思考其獨立機構設立的問題，避免國家傳播通訊委員會目前面臨的窘境。此獨立機關如何和現有政風、調查功能區隔或整合；若要具有司法警察功能，如何和現有檢察體制配合、與現有檢察指揮功能如何分工；且誰來監督這超級反貪機構，都要縝密規劃。
5. 即使不成立獨立機構，倫理署仍可以分析法院貪瀆案件的判決，作為監督肅貪工作的參考。最高法院判決顯示，多是層級低、犯行單純的公務員受重罰，是偵審出問題，還是法規規定失衡，都可以追蹤檢討，給公務員一個指導，也可協助整飭政風。

1-F：

重點在於：政府廉政法制的補充以及執行力的提升。

教育訓練的重要性不可忽視。

環境面：

1. 讓媒體有更專業中立的生存環境，有助提昇我國廉政指標，提供媒體更佳生存環境，政府要促進媒體又要被媒體監督。
2. 民間參與：由下而上的力量，倫理只是個蓋子，真正要談的是廉政。

公務人員協會專業性組織自律能力的展現，是很重要的，公務人員協會內部的自我認證，例如公務人員協會法的修正或補充。

與其講倫理，不如講廉政肅貪。

教育層面的努力：公務人員不知法而犯法，應在教育層面多做一點努力。

建立一個有民間參與的廉政機構是有必要的。

1-I：

美國的倫理法：解決公務人員利益衝突。

界定公務人員規範：財產申報、利益迴避等。

就實際面的部分要列具體些，各部門列舉的可能都是文字性，但實際上像是送禮物的標準應該要清楚，因為很多細節部份可能公務人員不知道，我想法條的列舉要更具體清楚。

1-D：

採購人員是穿著半件囚衣的公務人員，採購人員會配合長官與機關的要求，相關規定與長官的要求很嚴格。

採購人員倫理準則明確規定：受餽贈額度新台幣 500 元。

採購人員的核心價值：廉潔、公平、效能。

中央要有十二個以上地方要有九個以上，才能成立公務人員協會，但是目前地方只有三個，所以沒有辦法成立，所以我們成立公務人員協會促進會，成立以後才會有力量。

1-A：

法是宣誓性的，真正要討論的是反貪肅貪，以及領導者對於肅貪的決心。

如果要成立倫理署，會不會是疊床架屋？

規範對象？如果民代要納入，那麼仲裁人也是個法官的腳色，是否應該納入規範？

規範內容？如何在抽象的法條內規範事務？如果抽象，有沒有其他的替代方案？

現階段整合一個機構是有困難的，法務部如果要成立廉政署，會有來自調查局的壓力。現階段是要做分工？還是做逐步整合？

如果沒有具體的罰則，就只是流於形式。新加坡有很細的規範。

執行肅貪機關的執行力：廉與能都同樣重要，調查局反對的理由是因為調查局辦了幾十年的案子，自認為絕對有能力。

只要能夠辦到高層案件，人民就有信心，檢舉自然源源不絕，新加坡去年有百分之七十以上是具名檢舉。

1-N：

應把重點放在正面的倫理部分，而非負面的肅貪部分。

1-M：

此法制定不容易，可能流於抽象，每個職務所要求處理的都不盡相同。以法官為例，法官法內放入了懲處的機制，至於法官倫理規範的部分，則是在法官守則裡規定。

舊有的組織人員如何處理？肅貪機制與人權的保障是否有牴觸？

1-G：

從企業倫理來思考政府倫理：

1. 內部倫理責任：專業倫理、職務
2. 外部倫理責任：對人民公民的責任

不廉是因為行政程序繁瑣，以及行政裁量權的濫用。

資訊要公開透明化，透過公民監督的機制。

如果規範太多，可能導致不作爲。

應該幫公務人員解決價值衝突，應該重視價值宣導。

倫理不只是效率效能而已，要重視人民需求。

倫理署人員的條件資格要求？任期？倫理署跟法務部推動的廉政署有沒有衝突？倫理署的署長到時候跟檢察總長的角色如何區隔？

要有更具體的設計，不然宣誓性會大於實質性。

資訊公開透明很重要，透明化公開化可透過公民來監督也包含非營利組織來監督。

1-K：

人權保障要考慮，新加坡與香港的做法已超過我們對人權保障的概念。

獨立性、專業性與外部監察：現有相關機制如何整合？監察院其實可以扮演很好的角色，獨立性夠，有任期的保障，但目前相關的配套功能不足。

倫理：公務人員專業的自律，要鼓勵公務人員專業倫理的形成，協助他們解決倫理問題。

像是醫師倫理，是由醫師公會所定。醫學倫理委員會除了教育宣導之外，還有提供協助專業諮詢。

若不從機構內部的反省出發，光用外部法律去制裁的話，很多價值無法內化。

1-L：

如果再設一個專責機構，個人認爲可行性爲零。能否達成目標？

能否再研究一些國情相近國家的資料制度運作狀況？

各機關的業務性不同，例如醫院。

法令與組織結構部分都要考量，專責機構太多，包含的人員太廣，研究其實還是可以做，但如何增進公務人員倫理法治，應該就不足部分來做分析，並針對我國比較缺乏如組織或法律面來做補充。

1-H：

1. 方向要正確：不要因為意識型態，而把所有事情都推往極端。
2. 選對參考國家，例子要找對：舉新加坡、香港等威權國家並不適當，可能北歐國家會比較適合。

蔡秀涓教授：

做總結：

研究對象太大。

法的定位以及與現有機構的整合。

相關配套措施。

法的部份其實是最低層次規範。

專業倫理的自律。

傾向往正面規範，而非往肅貪的部分。

人權的部分，這也是國內法律界的共識。

他國例子只是參考，台灣系絡相當重要。



## 附錄 4-2 統合性政府倫理法制研究案相關草案座談會 第二場次

日期：2007 年 7 月 18 日

時間：1400-1600

地點：國立政治大學綜合院館南棟 13 樓 271338 會議室

與會人員：蔡秀涓教授、莊國榮教授、2-A、2-B、2-C、2-D、2-E、2-F、2-G、2-H、2-I、2-J、2-K、2-L、2-M

紀錄：蘇梅

蔡秀涓教授：

目前倫理貪瀆，清廉治理基本上就是一個全球議題，我國很多法律就是散見在各個相關法律中，但是卻沒有一個主要的框架整理這些法律，因此研考會主要就是想透過此研究案看能否找出一個較大的支架來。

2-L：

1、現況：有四項相關的法案都在立法院一直一讀中，像是公職人員財產申報法，包含司改會檢改會法務部都有參與，另外職權跟道德規範都有，或是公務人員服務法，是一項太老舊的純道德規範缺少法律拘束力，再來是廉政署組織法，調查局的一直在反對，以及最後就是監察院的職權，不知道跟這此我們要討論的倫理署是否會有重疊，也影響此草案是否會動用到修憲的可能。

2、個人的見解：

- (1) 第一個公務人員服務法最明顯的錯誤在於名稱與內容不符，以名稱來說，該法應著重在公務人員進行服務時的規範，如第五條提到公務員應誠實勤勉謹慎，要是因為在私事上也有耽誤，就不謹慎？這樣等於把公務員的私人生活腐化也規範在法中，一起被公懲會懲戒，就是名實不符，也相當程度上違反了憲法當中的明確性。研考會將此案定義為公務本身的公共價值與倫理，應該進一步去定義為在實施公務上有哪些禁止規範，放入依法行政的基本理論相關規定，至於私生活上有哪些行為規範，就是哪些私人行為會嚴重到影響人民對其公務上信賴的部份，要另立專章來說明規範，將公務人員服務法中明確性低的部份做出區別，什麼是公務人員服務範圍內的規範，跟什麼是服務外私人下班的規範，劃分清楚。
- (2) 第二個我們應該研究對於倫理署的職權，目前看來與法務部提倡中的廉政署相當，可能要去劃分清楚，因為兩者都有司法警察的身分，那是否廉政署調查貪污腐化的部份，那倫理署是在違反價值等基本原則時發動，形成一個機關是預防一個機關事後處理，如此切割或整併都可以，但因為此案提出的是一個新的名稱叫做倫理署，與現行民眾所知的廉政署不盡相同，民眾接受度可能需要宣導。
- (3) 第三點部分現在研考會的草案是把政府倫理署的權利包含在此，但很明顯是屬於監察院的職權，那麼這個組織要在哪個機關之下，是行政院嗎？還是因為與監察院牴觸，所以等到監察院廢除，再來繼承監察院的地位，成為所謂的新五權分立呢？那是否可以把倫理署放入監察院之下呢？將監察院分為兩部，一部是監察部，一部是倫理部，倫理署放入其下是否會比較好？如果要合憲也不修憲的話，隸屬監察院會比較好，不然就是不碰觸到監察院與調查局的職權部分，只作法治貪污的勸導。
- (4) 最後一個部份就是目前我們這個政府倫理法，如果倫理署人員發現違法貪污的事實了，有兩個方向，一個是行政責任，送懲戒最多走到公懲會，第二個刑事責任如果依照憲法第九七條第二項，監察委員遇到刑事責任時一樣可以移送法院，而審查權是交由檢察官，如果檢察官說不起訴處分，那倫理署對於不起訴有再議權嗎？或是說

對不起訴處分有實質的拘束力？就是說倫理署的權力有多大，可以監督司法機關嗎？

蔡秀涓教授：

- 1、第一個我們是否要規範到私生活，在台灣有討論的空間，畢竟牽涉到人權。
- 2、第二點就是草案中的倫理署跟現行的監察院廉政署等等機關之間的定位與整合，還有權力之間的劃分。以及對象的問題，到底是公職人員還是周圍人士的部份。
- 3、另外我要提到就是參考資料中，最後那幾頁像是草案，團隊認為就這樣擬定是風險很大的，所以我希望各位可以給我們一些指導與建議，讓我們可以把草案做的更好。

2-D：

- 1、現況：是否要訂立倫理法呢？目前來說勢必是個免不了的趨勢，一方面可以在附件中所看到各國都有訂立，另外一方面整個世界趨勢變化太大，為何貪汙問題突然嚴重？過去很難認為貪污會是台灣一個嚴重的問題，現在民營化與外包增加，卻未曾注意到過程中公務人員的角色，到底在簽約上的動作是故意的還是疏忽的，還是缺乏知識所造成的？關於這點我們需要的一個新的目標去規範。還有一個更大的衝擊就是資訊化，像是電子化政府的發展，透過網際網路的資訊可以無線傳送，根本無法發掘在傳送什麼內容，這種新變化出現以後，用以往對於公務員的看法來做的話恐怕是無法應付的。
- 2、倫理教育：用各種法去規定公務員哪些可為哪些不可為，但到底會不會做仍取決於公務員本身，因此這部分也不能疏忽，要讓公務員知道如果違反規則，或是遵守規則，會有怎樣的後果，因此公務員就可以自己去判斷與處理，也就減輕犯規的機會。
- 3、倫理管理：基本上訂立倫理法在目前的社會是必要的，但有關廉政貪污逮

捕的部份，就和目前調查局與監察院的角色相當，是一個比較消極的作為，因為我要抓你所以你要守規範。但是依照現在的發展來說，不只是一要從這個角度與方向來考量，西方目前有發展出所謂倫理管理，爭議點在於究竟倫理是否可以管理？那是人的道德規範，如果規範不就把人當作犯人來看？但也發現說如果我們透過一個有效的組織與制度，把每個組織變成具有倫理性，而組織裡的成員更互相尊重也更有尊嚴，組織不論在配合度以及文化都更好，使組織不只運作良好還更有發展，或許我們所想像的問題就比較不會發生。所以與其說從貪污抓弊來看，不如回歸人性的角度來處理，如果我們的組織具有人性與道德的要求，使得組織本身不會也不願意犯罪，在此狀況下每個解決問題的方式都會很公正，也就達到我們倫理法所要求的目標。

- 4、組織：會與調查局或是監察院衝突，但假設只是一個純粹經營倫理的組織，那麼就沒有調查權的爭議，如果有發現違反倫理的現象，就交給調查局等單位去處理，不過換個角度來看，這樣的倫理單位可能在制裁的行動能力上就不是很足夠，所以在這點上可能就需要一個整體的安排，因為當沒有權力去制止時，所說所做就變得沒有力量，所以調查權是否放入倫理組織是要需要考慮，但像是美國就沒有放入調查權，因為調查有其他單位負責，倫理單位只提出問題給調查單位處理。
- 5、成立倫理署：如果沒有調查權的話，除了這裡所提到有關倫理署的角色之外，我想可能還是要增加公務人員倫理的訓練，就像考訓會的公務人員行政訓練一樣，組織才會具有倫理性，這是一個研究團隊可以考量的方向。
- 6、立法：要訂立這樣一個法的話建議要集中，現在已經太過分散在各法中，每次都是請參考相關法案，要是有遺珠是沒參考到的，未來又會產生問題，可以集中處理相關所有規定會是比較好。
- 7、核心價值：不需要這麼多，主要還是以廉潔為主，核心價值三到四個就好，比較傾向於廉潔、客觀、中立、公正，其實公務人員水準頗高，只要將其明定出來，也要注意不要跟現有的行政院의公務人員核心價值重覆或是衝突，應該有倫理上不同的要求。

蔡秀涓教授：

研考會希望地位在一個比較上游的階段，屬於規範性的法律，但因為目前反貪肅貪的部分在我國相關法令當中其實已經蠻多，這也是司改會檢改會各個 N G O 很致力在討論的部份。

2-H：

- 1、現況：現況分析到底為何？我們為什麼要用一個統合性的法律？一定是有些現行狀況不是太好，所以才需要一個統合性的法律整合，公務人員服務法基本上就是一個統合性的法律，也就是說我們目前是有統合性的法條，而且還有其他相關的大小法令，沒有在相關領域或多或少會比較忽略。目前發現在立法委員行為法中就有出現所謂「立法委員倫理」這樣的名詞，或許研究團隊在收集資料時可以補上給我們做個參考，了解目前現行法律對倫理的看法。
- 2、目前的公務員體系：早期的話是屬於特別權力關係，所以與公務員有關的禁止規定或是權利義務也應該要有法律的明確依據，因此回應劉檢察官所說，公務人員服務法裡面未提到有關私德，的確以往常出現類似案例。
- 3、立法：法律設計上就是有名詞差異與法律定義問題，當初也是標榜說要統涉，不是統合，是統涉公務員相關法令在一部法律裡，立意甚佳，但依照政策形成過程來說，也是 20 年前左右的事情，使我看到此研究案就立刻聯想到在執行上會面臨這樣問題。要克服這樣的問題必須首先確立散行於各種不同的主管機關或是規範對象不同的法律裡面，有涉及所謂公職人員體系或是政府倫理規範的部份，到底有哪些是需要改成統合式的理由。
- 4、核心價值：其實應該取決於在我們的公務人員體系中是否還是很重視公務員的官階與官德，就是德治思想的傳統，官階大相對的道德就應該高，又因為層次會有所不同，比如說政務官有國會的監督還有彈劾權，那法律的規範密度就不需要這麼高，但常任文官的部份可能規範密度就要高

一點。以此角度思考，我們是否應該先在特定的某些，針對某些特定的政務官或是特殊環節上，規範對象以掌有重要政策決定權者先做。

- 5、組織：設立一個獨立性質的反貪機關，要放五權五院哪裡？若在行政院的話，如說政府倫理署長，根據中央行政組織機關基準法，我們可以使用署的單位嗎？為提升其層次又以總統提名，等於超越五權的第六權，依照的話，放在行政院之下就不能是總統提名要是行政院長提名，但主持人有提到說這研究案只是一個基本的構想。

## 2-G：

- 1、對象：統合性的草案要統合到什麼程度？看到法案第二條，從總統副總統，五院院長，所有政務人員，民選的民意大表，法官，公營機關的事業人員都包括在內，會產生一個危險性就是這些不同層級與機構的人員所受到的限制應該是不同的，像是總統副總統就受到憲法中免除刑事訴訟的一個保障，跟其他的政務官人員又不太相同，這是有關對象。
- 2、立法：設立政府倫理署，職掌又包括貪瀆、財產申報、其他相關廉政事項，那我們現在有公職人員財產申報法，也有政治獻金法，兩者受理的機關都是監察院，除此之外我們還有公務人員利益衝突迴避法，其實也是一個類似倫理行為的規範，裡面包括利益迴避關說遊說等事項，每個法受理的機關都不同。廉政公署草案也在立法院審案中，又是另外一個相關機構。我們要如何統合以上所提？像是立法委員是否要納入規範，還是給其另外獨立的規範？
- 3、職權：倫理署要掌管五院，並將所有人員納入，又會回到前面先進提到的問題，要將這個機構放在何處？假如不把民意代表納入，放在行政院之下或許行得通，在提升層級可能高過署的單位，但如果要包括民意代表，卻又要將其放在行政院之下，可能就會有問題產生，另外又牽涉到與監察院之間職權問題，前述有提到政治獻金法等等受理都是監察院，而假若發現問題之後的彈劾或是相關處理也都是監察院的職務，可能會有職權重疊問題。另外，將這機構置於行政院之下的話，總統副總統可能也不宜納入。

莊國榮教授：

- 1、對象：無法訂立一個適用所有對象的規範。當初研究計畫委託的時候，背後隱約方向就是想要找到基準法與基本法類似的法律，以及期望納入所有公職相關人員。很高興大家都對這方向有一定程度的不認同，使我們可以避開這隱約的期望去找出真正務實解決事情之道。類似倫理守則的部份，應該訂立一個大範圍之後，再不同機關會有不同的細微差異細則
- 2、其他：台灣應該是找出現行法制的漏洞去補足，那至於到底是否要仿效他國有統合的法律，國情不同應該訂立的內容也不同，比如說可以各個相關機構訂出適合各機構關於收受禮物餽贈等不同的倫理守則，最後也是由某機關授權去各自訂立，無法訂出整體的法律。

2-E：

- 1、現況：每個院都是本位主義的，所以以我們國家來說，要做統合性包山包海的法律是不可能的事情，到底何謂綜合性的政府倫理法制？統合哪些內容？是要集中立法還是分散立法？大原則來說集中立法本來就是不可行的。早期在行政院人事行政局的第三處有個第二科專門管政風督導會報的相關方案，裡面統籌之後產生肅貪中心，由任務編組的方式開始。在一次與二次政黨輪替之後又要成立肅貪局，或是把政風司改為仿效新加坡等他國的肅貪廉政機構等等，最後依舊無效，因為法務部與調查局之間沒有取得平衡，一旦設立從機構的既得利益來說，我們常說是一個行政的惰性，不願意機構本身權力被搶奪，所以產生抵制。
- 2、組織：基本上不管如何，就現有機構加強，但不要做出包山包海的期望，允許一個主管的機構的存在，但也要賦予各機構單位本身相關的彈性與細則，各自去管理，讓主管機構協調統一的問題。否則不論設立如何的機構，給予其相當部會的權力，都會受到其他機構單位的抵制，所以建議可以設立在法務部之下，釐清其職權與調查局不同，專門在肅貪或是其他功能，不要包山包海。

2-I :

- 1、現況：前以我國法令與其他各國相關法令來比較的話，本國的法令已經多如牛毛，多到我們企業界必須自我了斷，關門或是移民，我們只是希望政府的法令在制定之前可以了解清楚主旨大綱，細節是有彈性的處理方式，因為社會是不停在變動的。
- 2、核心價值：如果是公務人員的話，主要可以是為人民服務，包括所有人民，這個思想才是重要的，如果失去此核心價值，公務人員法就有問題了。現在台灣很大的問題就是有關係與背景總比較方便。再來時效性，一個案子可以放五六年，到底公務人員在為誰服務呢？
- 3、建議：不希望在用其他的公務人員去管目前現有的公務人員操守等等，還得再養一幫人。所以這個單位最好是由60%的人民，不論是民間機構或是企業機構也好，只要這機構有權力去指揮執法機構去執行的話，公務人員就去一半了，比新加坡還廉潔，比中國效率還高。
- 4、對象：包括六等親內，包括利益輸送，國內一定抓不到因為都在國外利益輸送，所以在國內六等親內自己申報，申報制度就是不主動就免職，採取美國制，不用幾個單位一起申報，那樣申報就只有僅供參考的價值。
- 5、立法：分散立法已經夠多，是否能夠集中立法比較重要，但目前各單位相關法也很多了，主要就是集中執行，由60%的民間單位參與，加以公權力的執行權來處理公職人員，才能解決台灣目前亂象。

莊國榮教授：

其他國家的各種法律是比我們詳細很多的，問題不在於詳不詳細，但是要能規定的清楚。

2-M :

- 1、現況：社會觀感到底為何？或許就是倫理道德法制的問題。從公民角度，



希望看到說有沒有一個很具體的道德規範出現，有錯誤就有對口的法律處理，其它廉潔、公平、正義、透明，都是可以作為一個母法的內容，在其之下每個不同領域的部份要如何規範才是合理？外國在這方面的法令多如牛毛，因為將其規定的十分詳細，我們能否做到？各單位能否妥協？或許可允許不同領域者去設立自己的遊戲規則？但就是要設立出來之後合理並且符合我們的社會觀感，接下來就是執行單位的問題。目前我們已有的很多規範都有具體內容，卻沒有繼續規定細則，讓大家有一些模糊猶疑的空間去答辯，這樣可能沒有辦法回應目前所出現的社會觀感，希望的是很公平與確實去處理。

- 2、公務人員角度與立場：思考我們能提供我國公務人員什麼？除了訓練之外，實質上的回饋是什麼？要禁止貪污舞弊的同時，薪水高不高？以新加坡公務人員來看待遇十分優渥，這些相關的衍生部分是否能夠一起被改變？如果只有被動的要求我想是不足夠的。

#### 2-C：

- 1、現況：目前已有相關法制的整合與區隔，不論是主管機關或是執行機關上，都會有相當的困難度。目前過多的法制上，基本上還是應該要想辦法能夠讓這些相關但不盡相同的法案儘可能的找出這些法律彼此之間的從屬關係等等，先將其釐清楚。也就是先將目前的政府倫理相關法制，不是一個草案，而是將法的體系先建構出來，比如各法所規範的對象，執行方式，主管機關等等，釐清架構之後再來做檢討，再將有缺漏的地方補足。

#### 2-B：

- 1、核心價值：比較各國資料之餘，應該要找出自己的特質，有一個很重要的核心價值觀就是政府是要可以被信任的，首先是要堅持其專業性，再來是坦誠，之後是正直，我想這些就是可能要考慮為其核心的價值。
- 2、對象：我國政府部門作重大決策時有一個很重要的單位就是委員會，像是

高鐵也是經由委員會決策，那委員會裡的委員與制度，包括個人是不是也可以思考去規範。

- 3、立法：是否訂立一個新的法，一個大的傘去涵蓋其他部分倒不一定效果比較好，因為可能花費較長時間卻不一定實用。因此我比較傾向是補充式的方式，因為根據 T I 的調查台灣的貪腐也是 20 幾或 30 名。

2-I：

以美國台商眼光看台灣是有很問題的，我們有接觸各地的商會，是以全球的台商來看台灣而非以台灣的台商來看台灣，台灣目前面臨轉型，不論是國家轉型與政府轉型，就算是政黨輪替也不能因此就把政府拿去服務政黨而非服務人民，所以廉潔排名根本沒有那麼高。

2-B：

在立法時應常向比較嚴重的部份針對處理，例如說以 T I 的部分來說，像是海關或地方政府，我覺得先集中立法在某些部份，而不需要統合性的法律，可能效果比較不好或是出現反作用力。

蔡秀涓教授：

廉政署就有組織的地位問題，因為調查局很反對，另外這個法傾向定位是宣示性質，到底是哪個架構的概念。對於是否要設立單獨機構，是採開放態度，基本上是說國內每個法就會有一個負責的單位，但不一定是會有一個機關。

2-J：

- 1、核心價值：應該分為民選首長與代表，政務官，一般常任文官，這三種類別，其中共同的部分要強調廉潔、無私、透明、效率，那常任文官的部分強調行政中立、忠誠、主動、前瞻。

- 2、對象：應該達到六等親，這部份比較可以一網打盡。
- 3、組織：設立獨立機關的部分，到底要統合到什麼範圍？或是就現有的相關法令進行整併？因為目前相關法令頗多的，應該找出不足的部分進行整修會比較好。再來決定執行機關與隸屬機構，在不修憲的狀況下隸屬於監察院應該是比較合情合理。

2-A：

- 1、現況：有不少人認為政風可以裁撤，因為他們是無權無責，那檢察單位是有權有責，調查單會是有能但無權，以企業單位來與政府平行比較，企業單位也有所謂的內部稽核，那我們公務員的內部稽核制度到底是什麼？
- 2、ethical：ethical code 是非常難訂定的，很多行業裡都有 ethical code 但是自律的走向，舉例來說新聞人員所要求的就是公正客觀平衡報導。公務人員有很多不同的工作類別，採購人員，資訊人員等等身分區別不容易界定。能否找出這些不同人員不同的 ethical code，如果可以的話也算是有理想願景。
- 3、組織：是否應有統籌單位來掌管，我覺得存疑。以新加坡來說，有調查保障權，逮捕權，以我們現在的行政訴訟法來說的話，在不修正的狀況下如此指定是否是有問題的。另外財產不名的調查，只有香港與新加坡有，那我們目前的公務人員財產申報法好像也沒有到調查程度，那是否涉及人權問題？如果到最後走向此程度，我想是強力反對。

2-F：

- 1、現況：台灣法制有個特殊的現象，就是如果法律過多等於沒有法律，因為幾乎不可能有監督的機制，再來就算有監督的機制如果執行的不徹底也等於沒有。今天有關公務人員道德規範的法律多，但是規範對象不統一，執行手段不一致，然後也沒有統一機關做進行事權統一的執行，才會期待是否有方法可以統一，並有明確機關來進行這個方面的事項，站在公

務人員的立場來看，這個想法要成功有其難度，因為每一個要規範的對象產生方式不同，權力來源不同，所面對的退場機制也完全不同，在此狀況下既然是統合性的法制，那強調的是統合的概念，贊成把這幾個不同身分的人，只要對於民眾會產生公務信賴，民眾會對政府統治基礎產生懷疑，有執行到公權力，或是能夠利用職務去取得不當利益使民眾喪失信賴的人，我認為大概都是需要被規範的對象。

2、建議：在執行的過程中，訂到其基礎規範的時候有兩點要做到，一個是找出這些不同類型的人要遵守的最大公約數，另外也強調課責的部分，要是沒有課責，只是一個類似公務人員服務法般的存在。道德性的可以用道德方式執行，但今天是一個法，期待它有其可執行性與可被落實性，而且期待訂出的法令是簡單又能明確課責，讓公務人員很清楚知道在什麼情況什麼定義下收到什麼經費可以如何處理。

(1) 薪水要高，讓公務員知道這份薪水會帶給其不同的尊榮與社會地位。

(2) 事權統一，所有的起訴權都在檢察官手上，不論是調查或檢察單位，蒐證之後做成起訴權的都是檢察官，所以一旦有問題罰也是罰檢察官。所以說薪水多，權力大，責任大，三個互相牽制，會選擇貪瀆的機率很小。

(3) 公務人員的人數縮減，待遇提高，之後也才有所升遷，目前文官已經到瓶頸，我們還可以在公務機關有 20 年的時間，也就代表之下的文官有 20 年是沒有升遷的。所以說一個制度要有效除了簡單易執行之外，也要真正觸及公務人員心態。

2-K：

1、問題：我們政府目前有很多法令在規範公務人員的行爲，不懂的爲什麼今天還要去談所謂統合性政府倫理法草案？是已有法律不夠完備還是法律有所缺失？或是執行過程中有出現問題？我們定一個統合的政府倫理法的目的到底在哪裡？如果目的是誠如座談會緣起中所寫的爲了達到透明治理與廉能政治，那我們絕對是舉雙手贊成。講到廉能政治政府有責任，

所以也很期待政府有個部門可以將貪污腐弊的狀況杜絕，只是是否透過一個統合性的政府倫理法就可以達到目標，我們不知道，但當然期待目標可以達成。

- 2、立法：法令也散佈在各個相關法律中，希望可以訂立一個特別條例，可是學者方面認為如果要以此方式規定，可能會是一本很厚重龐雜的法律，而且與原本的法令之間要如何處理？到底統合性立法好，還是單獨立法好，這點我無法評論，要請各位專家來研究，但不論立法方式為何，只要能夠達到人民期待，政府的公務人員每個都不貪污不腐弊就好。
- 3、現況：政府該管的要管，不該管的就不要管，像是很多法律都寫到「本法主管機關」，令人混淆不輕到底是否是在管制人民，說到公務人員服務法，又說公務人員要服務人民，讓人不清楚到底政府是要管制管理人民還是服務人民。所以當政府制定倫理法時就應該去規劃哪些該管哪些不需要管，將管制範圍縮小，公務人員可以去運用或是外來特權產生的情形也會減少，如果不解決此根本而只有條紋禁止是不足夠的。台灣相關的條文多是禁止與否定，也顯示出我們立法的精神是人性本善或是本惡，所以我們是否再制定過程當中，除了用否定與禁止的態度之外，可以用好的方式去鼓勵公務員，使他們願意勇於並且積極認識。
- 4 建議：要設立制度讓公務員不能夠貪污舞弊，就要再多一個鼓勵的制度，讓公務員勇於認識，起碼做出的政策是為人民服務，不是用更嚴苛的制度讓公務員都不敢行事，才會是比較好的方式。

2-L：

1、立法：要制定新法就應該找出要統合的四項議題：

- (1) 價值：公務價值其實不難統合，因為公務倫理只有三個價值，首先就是廉潔，來自於公務無酬理論，公務不可以有報酬，不能因為利益出賣自己身份，所以主管機關、非主管機關、監督機關及無職權有身份也包括在內。
- (2) 公正執法：依法行政之外，態度要公正。

- (3) 效率與忠誠：沒有忠誠的態度就不會有效率，因為要有同理心才能達到效率。
- 2、組織：可以先做的是將組織獨立化，給該有獨立全力的組織獨立的權力。職權行使本身的獨立性也非常重要。如何整併也就是為何提出倫理署可以隸屬於監察院之下，因為如此一來不論身份為何，總統副總統也好，可以全部包括在內，價值打出來之後只剩下整併法令的問題，將各法歸類規定，就可以解決問題。
- 3、建議：公務員一個大集合不應該去想人，應該要將重心放在行為價值規範，如此一來核心也不會產生偏差與混淆。之所以會認為公務人員服務法等違憲，就是因為他們誤將重點放在人，而現在從公權力下手，第一個統合的基本價值概念，不要只限於犯罪行為的實施。所以說應該整併，而將調查權整併到目前法院上，想這樣才能比較符合現狀。

## 附錄 4-3 統合性政府倫理法制研究案相關草案座談會 第三場次

日期：2007 年 7 月 20 日

時間：0930-1130

地點：國立政治大學綜合院館南棟 13 樓 271338 會議室

與會人員：陳敦源教授、莊國榮教授、3-A、3-B、3-C、3-D、3-E、3-F、3-G、3-H、3-I、3-J、3-K

紀錄：蘇梅

陳敦源教授：

- 1、使用統合性的概念是希望有一個統合的架構，不一定是一個單一的法，因為現在已有公務人員服務法裡面有相關規定，當然公務人員服務法需要大修，以執行面來看裡面有不少空洞的說法，不過各位手上有的資料基本上是我們比較各國之後，莊老師做的統合是一個全包的法也是一個最高指導性的法。

莊國榮教授：

- 1、但統合的結果是如果作用法有個基本法或基準法，其實跟一般法律的位階是一樣的，國內目前有的基本法內容幾乎比較空洞都沒有可執行的規範。
- 2、傾向台灣應該是在作用法上去補充，但德國與美國都將金額都詳細訂出限制，有些是授權訂法規命令，或者是向行政規則解釋，可以是定一個法重新規定，或是把相關法令的缺漏補充起來。

3—G：

- 1、定位：公務員法裡面到底需要什麼樣的法律？那這個立法是要彌補我們公務員法體系哪個漏洞與不足的地方？以及我們所規範的對象到底是誰？研究計畫中這個草案基本上所涵蓋的範圍非常的廣。以公務人員倫理法來說，要思考的一個前提就是需要怎麼樣的公務員？對公務員的圖像是什麼？需要注意到的就是我們不能把公務員當賊，其實公務員在我國來說是人力素質相當高的一環。要先將我們需要怎樣的公務人員做一個確認釐清。
- 2、組織：為何是會以”署”的形式來設計，不明白定位是獨立機關還是什麼？既然要有倫理的話，各個部會各個組織是否要設置相類似的機構？那如果有倫理監督官的話，是否會跟現有的政風人員職務相衝突之處？
- 3、建議：現在應該先檢討現有法律，再去看如果要有一個新的法律，要去彌補哪部份會是比較好的，避免組織上疊床架屋的問題。

莊國榮教授：

- 1、組織：台灣有組織法與作用法，所以要做一個決定就是是否要有一個組織去統合這些東西還要包括肅貪的部份。在台灣若使用委員會的形式，本身就會有不少鬥爭或是洩露肅貪方向的問題，在台灣如果要肅貪可能就會是一個獨立機關並且是首長制的，風險也很大，因為此機關會擁有很大的權力。

3—G：

- 1、組織：獨立機關要有委員制，或是合議決策，因為獨立機關有行使職權的能力，相對的所受到的限制或控制比較少，如果讓一個組織有這樣的權力去獨立行使職權，在權力的分配上是否妥當，會是令人比較擔心的部份。



3-I :

- 1、核心價值的部份：各國核心價值主要都是利益迴避的部份，是否應該針對台灣本土文化的部份比較缺乏或是需要被改進的價值放入考慮？像是組合主義的一些理念、資訊公開、誠實協商、統獨問題、政黨公正的部分，另外民營化與委外案也不斷的增加，那相關廉潔與不圖利的台灣價值是否也該被考慮？
- 2、對象：目前似乎鎖定公職人員、政務官與民意代表，以及民選首長這些是否也納入規範考量？如果以上都包含納入的話，只需要一些相關配套的施行細則，問題似乎就比較容易解決。但如果限制在公務員與政務官的部份，民意代表另外特殊立法的話，可能未來在修法上的爭議性會降低。
- 3、違反揭露程序：需不需要依照不同的層級去規劃？因為究責性畢竟不同，在比較低階的公務員目前都是內部公開的處理，那在比較高階的公務人員是否需要對社會公開？
- 4、機關設置：各部會是否也要設置倫理監察單位與事務人員？關於這部份會是目前政風室所取代呢？還是額外設置新的人員？監察院與司法院有公懲會，以及政風室原有的相關運作與功能，與草案中所提到的倫理署，要如何去進行職務與權力的架構與分配？
- 5、其他：與原來刑法中的公務人員懲戒規範以及公務人員服務法要如何競合？政府目前有相當多類似這種專家學者委員會的常態編制，這些委員會是否也要納入此草案所規範的對象？另外地方政府的倫理法制與中央有何不同，與中央的關係又如何釐清？

3-K :

- 1、組織：傾向合議制度會優過於立署，其實在單位裡時長會感受到如果是集中首長的命令，通常會連帶有很多不同的壓力存在。
- 2、首長與副首長的選定：是要讓首長能全心一意沒有顧慮去工作，當然也不

是說可以一上任就是幾十年讓權力無限制擴大，也不會心有旁騖去思考自己的升遷問題。

3-A：

- 1、第六頁七條的範文基本上沒有實體的規範，其他相關詳細規定應該也是散見於其他法規，這七條似乎只是增加組織，成立一個倫理署，會做提出倫理報告與內部檢討的工作，那這樣的組織如何設立應該也不是很重要。
- 2、包裹立法：也就是此法能夠同時修改或是容納現行的幾十種法律。如果我們要走的是統合性法律的話，就應該很具體的有規範內容，如果是走基準法，那很多原則要訂立清楚，那麼依照第四條該機構要訂定績效報告時才會有內容可做。
- 3、組織：政府倫理署如果是獨立的單位的話這裡設計可能不足，因為只有總統提命經立法院同意任命，要獨立單位就需要某些配備，比如說一定的任期等，因為獨立單位就需要給其足夠的獨立性，任期是一個重要象徵。反之如果不需要獨立單位，因為獨立也有不負責任的問題，也就無須立法院同意，行政院長任命就行，所以端視我們對政府倫理署的定位，才能判對其組織。那如果具有調查性質，又要跟現行的相關單位如何分工？

莊國榮教授：

- 1、台灣問題：台灣沒有包裹性立法的狀況，多是基本法加上原則，但原則在實務上根本不實際，留下很大空間。比如說收受禮物餽贈可以定義更明確，或是在肅貪機構的權力上做些調整，找出一些其他相關公職人員法律的重大漏洞去補足，如果要透過一個包裹立法的方式去改變，在實務上要克服的實在太多。

3-C：

- 1、台灣問題：官員募款的問題，以及政府使用公務資源去謀政黨利益的問題。

台灣並非沒有法制，而是台灣人民不信任執行機制，不論是政風系統或是調查局系統，公務人員不信任政風，一般人民不信任檢調機構，重點是執行機制的問題。因此需要的是一個執行機構去處理這類的問題，這個機關有重大的宣示意義，衍生出這執行機關如何設計的問題，重要的在於要給這機構多少獨立的配備去行使權力。

- 2、核心價值：各國倫理法名詞不同，但內涵是共同的，我認為是一個無法翻譯中文的字 integrity，可以包涵納入對於公職人員廣大的期待，就是擁有 integrity。

3-H：

- 1、問題：包含多廣的範圍？處理那個部份的問題？
- 2、廉潔性與公正性：如果涉及公職人員的廉潔性，就是是否有貪污收賄的問題，是屬於刑法與檢察官在處理。公正性就是確保廉潔性會有行為倫理規範與揭露義務，揭露義務就包括財產申報財產來源交代接受餽贈的說明，行為上要利益迴避等等。但草案的第一條就包圍太廣泛了第四條又說要提出績效報告，這個部份也是個漏洞。
- 3、台灣問題：我國現行的貪污治罪條例長久以來就把公務員當賊，就是說其實只應該規範廉潔性的部份，卻把對公正性的要求也放在刑法裡，這點就是圖利罪，也就是說沒有任何收賄的行為，也沒找到任何動機，就因為行為失當就用圖利罪來辦，所以到底是判斷失當還是絕對圖利。
- 4、組織：監察院是個大單位，是現在應該負責公職人員財產申報跟政治獻金申報的單位。另外就是說既有的政風人員與倫理署，那原有的政風人員是挪去倫理署還是裁減，那現在又是要把政風人員改去成立廉政署，以及與調查局職權的重複要如何處理
- 5、程序的發動：對公職人員違反倫理或對公務人員倫理的要求，一般來說就是政務官的彈劾與一般文官的懲戒，司法院現在有公懲會，依照正當法律程序的要求是要透過法院去做審查，那這個機構是一個全部要透過該機關才可以發動，如果這樣又與監察院職權更正面衝突。

3-F：

- 1、法律位階：基本法有位階問題，沒有辦法發揮實質作用，重點是擺在既有法律的透明化，還有參照哪些國家。
- 2、組織：此次的倫理署，或是之前設立廉政署要把政風人員放入，這種原本單位不同又調入新單位，政風與倫理署的概念不同，屬性與個性也不同，職權劃分上也有問題。
- 3、條文：宣示性的條文不需多言，但重點是組織法上倫理署的功能要詳細制訂，是否有調查權，接受檢舉否等等。有些現行法令對於所謂廉潔性的規範大致完備，但公平性是否可以收就，另外是否加以規範公務人員的家屬親人，到幾等親是受到規範的部分，也是要考慮。

3-D：

- 1、現況：如果不只強調貪污，又把政府倫理的範圍放入，這個法案會非常的龐大，因此是否可以分為兩部份，一部分還是在反貪上，另外是政府倫理相關法令規範上，近期先將反貪解決，另外在政府倫理這部分爭議較小，困難在技術上的統合其他相關法令。
- 2、I C A C 三個重點：第一個是目前法務部有做的清廉與貪污指數的調查，可以納入法規規定說一定要執行。人員部分，目前法務部是規劃政風處的組織直接提昇為廉政署，應該與社會期待的意義不太相同，因為如果廉政署還是在法務部之下的一個組織，那將來要調查的高官可能遠高於這樣的職等。另外員額部分的話，I C A C 規範中是1 3 3 6人，不論是內部或是對外調查人員會比較充足。

3-H：

- 1、現況：圖利罪的存在才是政府效能低落的原因，錯將行政上的勇於判斷，事後解釋判斷是否正確，判斷錯誤又以圖利罪來辦，導致公務員不願意

去勇於判斷。

- 2、組織：獨立機關也是一個沒有任何人可以管束的機構，也沒道理在哪个機構下會運行較好，問題在於國家對於公務員的要求是清楚的，而非用不確定的概念去解釋公務員的行為，講的清楚說的明白，做的就可以免於一切追究。

3-E：

- 1、問題：是否可定出放諸四海皆準的倫理規範出來？現在修定的刑法第四條所規範的對象與我們草案中的對象也有不同，是否可以用來簡化我們刑法中所規定的對象？可不可能找出一個一統的核心價值會是有問題。另外與其他相關法令的衝突競合也是需要注意的。
- 2、組織：以署來說，首長產生方式與中選會，N C C，公平交易委員會一樣，卻以一個比較低的署來設計有些不適當。而此草案設計中的職權與監察院目前職權有些重複，如果廢掉監察院，是否要成立其他相關機構去執行本來監察院除了倫理方面之外其他的職權？應該要討論政府倫理署而不是廉政公署，如果倫理署裡面又有個廉政公署性質的組織設置是有點不太適當。政府倫理署要建置的話，人權一定要至上，不能因為要貪汙就抵觸人權，建議之後人權諮詢委員會若還可繼續運作則署可架設於之下，免人權侵害的問題。

3-B：

- 1、意見：視為一種宣示性的意義連結到政府效能的排名上，有一種競爭上的效果，但對於實際內部政府運作能否有積極效果？貪腐是不是政府效能低落的核心，我想兩者層面不同，或許是公務員消極心態，或是法規嚇阻性使公務員在倫理上未能達到民眾期待。執政者藉由這樣倫理法制推動來產生部分效果，但沒有周全配套，只單純針對反貪汙的部分雖然有助國際形象改善，整體來說還需要完善思考。
- 2、圖利罪的釐清：經建會作了初步研究，陽光法案比較跟民代有較多連結，

不管是行為規範或選罷方面，公務人員部分透過倫理法制健全來處理是有一定效果，因此統合性立法認為可以嘗試。建議以現在相關法律作一個配套性包裹性的修法，只要包括倫理有幫助的法條我認為是可思考的方向，至於能否把所有相關對象統合在此一法律，我比較不贊同此一方向。

- 3、核心價值：是一個不明確的概念，有些是法律可以釐清，但有些不是行為上可以明顯評估，連戰曾提出行政改革的三個面向，廉潔，效率，便民，廉潔的就是反貪污，處理公務員不道德的行為，效率就是積極有道德勇氣處理事務，以暨大蓋體育館為例，不斷在重複招標修改追加預算，主要就是承辦人員不願意承擔責任，於是每拖一年就要再加上更多錢去完成，當然錯誤的決策與消極的認識是政府很大的問題，第三個就是便民，電子化與行政程序上都比較是有改善的部份。核心價值的部分目前來看就是消極性的減少貪污，但是否就是倫理法治的部份，值得存疑。
- 4、規範對象：以及各級民代，透過財產申報與利益迴避，有相關法令但效果有限，法律事達到部分效果，但無法更加落實，或許也是整體政治轉型的過程，不要期待單一機關或新設機關就可以解決問題，民主轉型過程越分化應該會是越好的選擇，所以必要性的多管道防治貪污，以及鼓勵正向積極的作為值得嘗試。
- 5、問題：嘗試說設置政府倫理署將相關業務統合嗎？可能可行性不高，政府倫理署所處裡的事項可能還是與政風單位的業務較為相關，是否可以單一窗口解決，我個人存疑的，是否設置政府倫理署我也是認為持保留意見，除了倫理的事項是否要設置倫理署，可能必要性不高。
- 6、建議：基本上對倫理的課題我們應該對相關主管機構有推動的責任，像是考試院的人事行政局管理所有的行政人員。監察院與政風室或民間部門也應該定期評鑑，針對自己所感受與了解的政府倫理的相關情況作一個監督與判斷的工作。

3—J：

- 1、問題：首先政府倫理法究竟目的應該是規範公務人員行為，那到底什麼是

倫理要界定清楚，所謂倫理的簡單說法就是什麼是應該的什麼是不應該的，在草案第一條朝這個方向來處理可能會比較好。

- 2、規範內容：一部分是倫理，一部分是肅貪，但就我了解一般公務員的心態是不敢貪，民意代表與政務人員的貪腐更是重點，但也是一般比較不願意去處理的部份，如果可以加強這個部份才能顯示我們國家社會的決心。
- 3、立法部份：可以朝向一個法來做，考試院與監察院都有相關的法律，立法院也有審查中的很多草案，像是公務人員收受餽贈辦法，但至今還是沒有下落。事實上政府在這方面研究都有，只是立法環境導致沒有結果。
- 4、組織：另外說到是否要成爲一個署來辦，集中與分散各有好處，中央機關組織基本法當中有對獨立機關的定義，獨立機關中強調委員會是重要定義。

陳敦源教授（總結）：

- 1、概念上的釐清，統合的意義是什麼
- 2、倫理與反貪。我想政治上動能最大的反貪，但倫理也在台灣社會中漸漸在政治文化中被改變，在國外例子來說，我想倫理有防範貪污的作用，就是事先先將哪些事項是被禁止的條列出來。
- 3、人權與防貪之間的拉扯與平衡，可能要詳加設計。
- 4、是否需要獨立機關，到底是誰給其獨立權力，還是在制衡機制下的獨立機構。
- 5、法律如何實踐的問題，有宣示效果卻在實際行動無力，我們應該要去想應該是說是該法是否有價值。以及就是組織上要怎麼做？有時候是測量問題，在概念上與實踐上我們可能要多加琢磨，謝謝大家。

莊國榮教授（總結）：

公職人員的問題不在於缺乏空洞抽象的倫理，公職人員相關法律與重要的倫

理價值法律都有了，但問題在於並不明確，因此有類似圖利罪這種不明確的東西，所以我認為是要訂定一個合理可行又明確的規範，基本法是沒有很有用的。避免造成公務員消極，兼顧不同平衡，組織上設計也有很多問題，因為要去因應統合的觀點，所以我設計這樣使各方各界發現不可行，可以說服研考會。很謝謝大家提供的意見。



## 附錄 4-4 統合性政府倫理法制研究案相關草案座談會 第四場次

日期：2007 年 7 月 20 日

時間：1400-1600

地點：國立政治大學行政大樓七樓第二會議室

主持人：余致力教授、蔡秀涓教授

與會人員：行政機關政風人員，共計 47 名

紀錄：田蘊祥

4-CC：

政府倫理法個人認為不需要有特別的核心價值，目前草案的第一點的內容已經足夠。

至於倫理草案要包含的對象要有那些呢？個人覺得把民意代表放進去，這是比較重要而且恰當的。

要包括那些範圍呢？參考資料上提到各國倫理法規的面向都可以納入，不怕多。對於法條爭議的解決程序，無論是否有專責機構，這個單位必須要訂原則性的法典，要求各主管機關在一定期限內完成修法並整合意見，很多相關法令都要跟著修。

各機關在訂定相關倫理法令在送立法院之前，都必須送給此專責機關審查；此專責機關要要求各政府機關依照各自的業務特性訂定單行法規。

至於未來負責執行的機關，查署機關不需要再增加，但是還是需要一個負責此項工作的機關，負責法體系的建立整合、政策宣導、對政府各部門的建議

統合性政府倫理法制之研究

諮詢、要求各部門提出報告、監督與懲處、向立法院負責。

紐西蘭、日本、美國的例子可以參考。

政府倫理署此機關的獨立性條件：首長的任命是首要條件、沒有法定理由、該首長與其直屬上官的任期要有交錯。

外包廠商與外審部門人員是否也該有行為準則規定？醫師教師在適用上呢？

4-A：

法案牽涉層面廣，監察院了解後，會再將意見送到研考會。

4-E：

欣見國家對於廉政的重視，現行法令像是公務人員服務法，如有不合時宜或重複的地方要再修正。在權責劃分上，應由那個機關主政？監察院？法務部？此法是特別法還是基本法？若把所有的廉政議題納進一個法是很困難的，另外作用法與組織法應該要有所區隔。

至於公務人員的界定部分，涵蓋的面向要再確定。

4-B：

公務人員的界定？約聘雇人員應該包含進去嗎？另外這個組織是設在那個機關底下呢？行政院？總統府？

4-C：

建議廉政局設在法務部底下較好，這是從實務運作的觀點來看的，最能發揮效能。

4-D：

有關公務人員的定義還要再嚴謹一點，建議假如要包括軍人，要考量其身份任務的特殊性，例如軍事體系內沒有所謂的科長。

4-F：

受餽贈的對象為何限定在科長級以上？有些公務員在業務執行部分，職位在非科長級的人也有大量的裁量權。對於餽贈的類型與相關資料能否再做更細的統計整理？並對民眾做宣導。

4-G：

在贈與部分，外交部有其自己的規定，駐外人員接受限度是 200 美金，草案中訂的 1000 元新台幣略低了些。駐外人員也要納入，受餽贈人員改從職等以及其從事的業務去判定。外館的雇員也應考慮納入。

按照草案中提的股票申請標準的話，政風人員業務會大增。

4-H：

此草案是不是應該與目前財產申報法規做結合？

4-I：

此座談的定位是屬於學術研究？法制研討？在法制面的部分，例如在贈與與行政中立等規範面向上，如何納入而不與現行法令衝突？

余致力教授：

學術研究與法制研討兩者很難做區隔。

4-J :

對於法的名稱感到質疑，提到政府，規範的是公務員。在落實執行的部分，執行主管機關是？廉政局有實現成立的可能性嗎？

4-M :

廉政局無論在那個組織架構下，都跟現有政風單位相關，所以應該了解政風單位的意見，由政風司做統合性的意見表示。

余致力教授：

結案後會再由研考會邀集相關部會再做意見調查。

4-N :

此草案的立法理由何在？沒有見到。

公務人員的定義為何？納入範圍？

組織法還是作用法？規範範圍定位？執行機關的權限為何？成為獨立機關嗎？要向國會負責嗎？

有些條款太抽象不確定；身份的定義部分，約聘雇人員要納入嗎？教師醫師要納入嗎？

財產申報如何與現有的法令調和？在資訊公開的部分，例外要怎麼去定？會不會成為不公開的死角？此外，倫理審議委員會與廉政局的關係為何？

4-Q :

此法案定位涉及到政風設計，各機關的定位與職務分工要先弄清楚。

有些約聘雇人員其從事業務屬於公權力的部分，也應受規範。

4-R :

有關贈與報告書的部分，科長級以上才需要填贈與報告書？為什麼科長級以下及有權力的約聘人員就不用呢？

4-A :

草案中的參考國家為何沒有美國與瑞士？兩三點的內容就要成立一個法，成立一個審議會廉政局來辦？是不是大了一點？是否可考慮將此草案內容納入現有的法令內？來加強公務人員的倫理要求。

此草案只規範到科長級以上的公務人員嗎？地方民意代表為何沒納入？

余致力教授：

美國的資料已經有了。

4-X :

到底是設廉政局？還是政府倫理署呢？如果是後者，那跟法務部目前規劃設置的廉政局是否會有衝突？

4-Y :

此草案規範的面向相當廣，目前現行已有相關法規在做了，所以如果採用集中式立法是不容易的，除非是原則性的宣誓。另外要考量到推動立法所需要等待的時間。

4-Z :

政風人員設置條例是要與此法案統合在一起？還是分開？

規範對象不該只限於科長級以上，另外贈與規範中的 1000 元新台幣會不會太少？要不要規範一年累積多少需要記載？股票記載與現行法令有差異存在。

4-AA：

無論是設倫理署？還是廉政署？都不應該用本分主義去考量，能發揮功能最重要。

4-CC：

美國和日本都有完整的公務倫理法體制，台灣的很混亂，導致有跟沒有一樣。不管是誰立的法，任何立法都要不矛盾、不衝突、有體系。是否要向立法院負責？該專責機構要拒絕個案的交換，其財務預算立法機關很難去動到它，還有人事任用權的保障，無論是在那個組織下成立，其獨立性都要被法律保障。

4-DD：

事實上有可能會跟法務部現行的規劃衝突，另外，此法案一旦通過，現有各機構政風單位的存廢，該何去何從？

4-FF：

政風人員的核心價值是公正、專業、熱忱、負責、關懷，那麼此方案所要強調的核心價值是什麼呢？

4-HH：

政府倫理法跟公務人員倫理法的關係？會不會疊床架屋？效力是什麼？母法子法寬鬆嚴謹問題，涉及懲戒，到時候審議委員會是依照那個？

贈與者要主動提報嗎?這需要高超的道德，有人要負責去查嗎?

在請求閱覽的部分，該法條末所舉的例外太多了。

跟公務人員懲戒委員會的權責是否會有衝突? 此外，草案中所引的法條有不少錯誤。

廉政局人員在執行職務時視為司法警察?那麼受到檢察官的指揮? 又屬於審議委員會底下的單位，會不會產生角色上的混淆?

4-II :

人民能否感受得到嗎?

如何提升政府透明度? 如何切斷官商勾結? 如何建立政黨公開的競爭機制? 如何有效規範利益團體? 如果建立政治人物公務人員的倫理? 如何建立有效的反貪肅貪機制? 執政者不能再觀望，不然會全民買單。

現有政風單位仍然會存在，不會被影響，問題在各單位準備好了沒有?

4-NN :

署長或委員會委員的產生方式? 要有別於 NCC，要再設想周延。是否該設立廉政專業法庭? 如此可以讓案子順利執行。

4-00 :

草案包含的對象應該要從寬，處罰部分可以再做詳細的分級。

4-PP :

贊成用分散立法的方式，或是去修正公務人員服務法會比較有效率。

4-E:

在核心價值的部分，廉潔正直大部分的國家都有提到，另外數量不宜多，不應該超過三項，必須要是最關鍵的部分。規範對象應該是廣，跟公務有關的，還有委辦的相關業務，如果不受規範的話很可能會出問題。

在執行機關的方面，獨立性很重要，雖然位階愈高受到的干預也就愈少，但是層級高低跟獨立性沒有絕對關係；也必須要做一些監督，避免濫權，所以是相對的獨立而不是絕對的獨立。

至於是分散立法還是集中立法？建議先設一個基本法規，再做個別的相關規定立法，這樣或許會比較周延一些。

余致力教授：

這案子具有實務性的目的，弄成基準法確實十分困難，在研究完他國的做法後，發現其實有一個統整性的法令也未嘗不好，只是要周延。至於可行性的問題，弄個倫理法會不會過？沒有把握，但也或許說不定就過了。

台灣目前政經結構也是問題，是五權？還是三權？還有很多不確定的因素。

不要說政府，現在連不少企業都有設倫理長，倫理辦公室，推全面倫理管理，這也是聯合國全球的趨勢。

台灣廉政工作的推動還有很多可以努力的空間，要贏得人民對政府的信心，廉政工作很重要。



## 附錄 5-1 5-B 訪談摘要

日期：2007 年 8 月 7 日

時間：1400-1600

地點：立法院法制局

主持人：謝立功教授、蔡秀涓教授

紀錄：闕建丞

### 前言

眾人意見多元但我們仍希望能整理出來，本想擬作用法跟組織法但現在認為組織法沒有絕對必要性，只要作用法出來就好，以後組織怎麼運作看要新設組織或從現有機構去承擔都可以，所以現在是要擬一個倫理法的概念。

### 包含對象

1. 國外公職人員概念不包含民代，通常包含政務官跟常任文官，但在某些特別的項目會分別立法做區別及不同的規範，所以基本上沒有包含民代。
2. 由於各國憲政制度不同所以造成公務人員跟政務人員上的差異，在公務人員跟政務人員部分我國已經有公務人員服務法所以應該有一些相關規範。國外法條內未見規範民選人員並不代表沒有規定只是可能隱藏在一些內規裡頭如國會裡頭的會議規則，美國規定是只要收入不超過一定比例就可兼職。
3. 我國相關倫理法制散見在各個法律中，現在目的是要將這些法統合，類似一個母法的概念，當然要有一個通通包括的法律是不可能的，所以是一個宣示的概念，再去規範下面的法律。

4. 公務員的部分三權架構沒有問題，但民代部分涉及權力分立問題，因為民意機關是自律的所以不適合包括，所以中央建議分割出來但可納入地方民代，司法人員本身是公務員所以納入是允許的。

#### 機關設置

1. 統合性法律的提案要交由行政院跟其他機關會銜，因為其提案權不能幫助立法院提案，只能靠考試或監察來提案。這是以權力分立架構來看。
2. 相關法律包括公職人員財產申報法、公職人員利益衝突迴避法、公務人員任用法、公務員服務法、遊說法。
3. 民代排除的理由是因為我國是民主憲政國家在權力平衡底下立法人員應該要自律。國會部分不能納到行政部門提案但國會仍可由黨團提案或遊說立法委員提這個案子。立法委員已經有行為法只要在其中抓幾條放入倫理法中就好，可符合上位法概念又能讓其自律。地方議會會有議事規則但沒有立法功能不會自己定。
4. 定出公務人員這樣做但公職人員應該比照以此為標準再另訂一個等於是自己訂一個本法不要去規範公職人員而是去靠立法委員自己去訂規範但通常需要靠外界力量如輿論可在立法委員行為法中加入幾條法條
5. 名稱雖為行為法但本質為道德法，違反用懲戒，公務人員有行政跟法律上的責任，除了懲戒之外還有刑法上的問題，但立法委員只有懲戒。
6. 執行機關公務員部分仍交由監察院跟公懲會是沒問題的，立法委員一定要劃開只能交由立法院內部懲戒屬於憲法保障除非違反刑法規定。立委只有停權跟減薪（有提案），公職人員利益衝突迴避中有提案。
7. 之後成為三權的話機關應擺在哪？北歐監察使都放在國會，三權的話都放在立法部份，但像加拿大是放在行政院，美國倫理局也不是放在國會，但其比較像我國保訓會。擺在行政部門也沒有不對，是一種內控，但若涉及更大的事件則可能要放在司法部門，只要有適當聯結即可，如果監察權不見了放行政部門也可以，立法院設外控也可以甚至可以並行。擺在司法院公懲會比較重視個案處罰，而非統合性的規範。

8. 各機關業務不同，可以自行規範，之後再送立法院，立法院可以自我管理。
9. 宣示性的法條比較不會有爭議，因為是回到個別的法去規範。但若規範有罰則就不是宣示性的。一定要先訂出罰則，因為機關沒有辦法自己決定，讓機關在決定要做什麼處罰的時候才有依據。
10. 教師是聘所以違法的話頂多最嚴重只是解聘，但若涉及其他刑責的部分我們可以不用寫，因為已經有法規範。軍職也沒有保訓會這個途徑。要在倫理法中將行為與處罰做連結，因為沒有連結的話就只是宣示性而沒有處罰。

#### 配套

1. 弊端揭發人 (whistleblower) 在台灣並沒有相關法律，應該要訂定相關揭發程序。可能由第三者揭露，政風並不負責調查，外部民眾應該叫檢舉，內部才是揭露。所以國外都有弊端揭發人保護法，讓揭發人不受報復保護當事人工作等。揭露要統一有一個簡易的程序，國外有的是機關自行訂定，有的是有一統一的揭露規定。政風人員只能被動了解，因為並非業務承辦人。
2. 國外倫理官的條件是資深常任文官且職位高，但在台灣不適合由政風人員擔任，或許日後可以將政風人員改成倫理人員，政風人員為內控其實可以將倫理結合又不會增加員額。
3. 應該對 Whistleblower 要有獎勵，否則只會承擔風險，內部揭弊不能獎勵因為要保密，只能獎勵外部揭發。

## 附錄 5-2 2-F 訪談摘要

日期：2007 年 8 月 8 日

時間：1430-1630

地點：故宮博物院

主持人：謝立功教授、蔡秀涓教授

紀錄：闕建丞

目前已經到了最後具體法案的階段，也就是法案文字要出來。四次焦點團體量化的結果之中以前三場的為主，但草案並非以此為依據，只是可以作為證據。

核心價值

1、明列公務人員應如何如何

2、用一至兩句話將核心價值定義

核心價值的部分應該包含了課責、定義及呈現，其中課責與定義的部分應該要相互連結。在對象的定義上相當困難，以清廉來說就相當難界定對象，如果核心價值中課責與定義的部份無法連結則很難取代現有的法律條文與規定。

如果是上位法的定位則應該是宣示與原則的意義，但不一定是 All in one 的統合，否則只是程序上的規範，之後也很難像憲法一樣再派申。

若由各機關主管自主管理，但法案要先送至倫理局審核。但此種情況可能會碰到法律授權與行政規則相衝突的情況。定成基準法，再依照機關的性質或職業的類別請各機關自行訂定法律，而不同性質或機關別就各有子法。贊成將作用法與組織法兩者分開，或訂成一個條文再配合配套措施。

現有三個目的：

- 1、找出各國相關法律可供參考學習之處。
- 2、研擬草案
- 3、完善的配套措施

因為台灣從來沒有過這樣統合性的法律，因此政風人員會相當不安。

### 包含對象

公務員的定義可以參考公務員倫理法草案，定義上研考會偏向以公權力行使為基準，或是採刑法的規定。目前財產申報法也包含總統副總統，此法應該採最小公倍數或聯集的形式，否則之後配套會容納不進來，公務人員服務法對公務人員的定義也可納入，之後再將這些定義擴大，例如加上「準用」，但也應該要有原則與例外的情況。

### 規範部份

應該採正面表列，如果採用負面表列會引起很大的反彈，應該先將核心價值的定義弄清楚之後再進行正面表列。核心價值應該要定義化也可將座談會中常出現的前幾名列進去。所以本法至少要呈現正面表列的核心價值之外，各機關可以自訂符合其機關性質的倫理法。本法是一種最低道德標準，各機關或職業別的不同再依照性質另外訂定。例如可以學習檔案管理局另以法律定之來強迫各機關訂定準則。

### 機關設置

目前民眾對政府信任度不高，如果要設立機關應該是上位機關，具有發動權之後再由其他機關去執行。但機關部分建議不要訂立的太詳細，否則政風單位會反彈，機關位階也會受到討論，且之後應該如何和現行制度與人員結合都是個問題。

如果是法律主管機關，那要看規範對象、位階來定，如果規範對象位階也涵蓋到正副總統則可能要設在監察院比較妥當。但也有可能是執行機關，不過之後都還要在解釋，也有可能以委員會方式呈現。設在行政院下跟部會同級可以用委員會的方式來操作，再加上配套措施，名稱可以叫公務員倫理管理委員會。

但要考慮到兩點，一為就現況而言另一則要考慮到之後可能會從五權變成三權，可能引發如銓敘部與人事局或考試院與行政院職權互相對立的情形，但若放再行政院則不受到三權或五權的影響。

#### 其他

- 1、中央民代因為有權力所以就義務，因此不能切開中央民代的部份，更何況其為 law maker 是公權力之源頭。中央民代部分或許可以分別立法，尤其是立委部分最需要規範，但公職人員不等於公務人員。研考會偏向採用公職人員這個名詞，但也說到如果接觸到民代那部份會很麻煩。中央民代不份可以符合法最低要求為主其他的再行立法，但此研究案為行政院研考會，並不適合幫立法院立法。
- 2、現行公職並沒有明確的範圍，公職和公務是兩個部份，國外多採用 public employee 或 public servant 這兩個詞。

#### 配套

- 1、在配套中納入中央民代的話，則機關要放在行政院或監察院？公務員倫理法草案應該要全部都包含，但民選（議會）部份可另外立法，立法權的問題不適合用行政權去涉入，機關只處理行政管理權。
- 2、地方政府可要求向行政院會報，中央機關則由其自律管理，不要接觸到立委部分會比較好，因為行政權不干預立法權為佳。
- 3、有無需法律明定之部分，機關只要解釋權就好不需要檢查權，否則會遭到反彈，只要接受檢舉與陳情即可。

- 4、是否應該要有課責則交由其他法律去定，使其被動的符合倫理法，也就是交由其他個別法處理罰則。
- 5、對象上可用列舉方式，例如可用公職人員財產申報的對象，其他由主管機關自訂。
- 6、先由機關自訂之後送到倫理局審核後才送至國會，但機關自訂、訂幾個或不訂都可以，只要能保證不出問題就好。例如一條鞭的可由上位機關，如主計處規定會計部份等等，自訂之後再送到委員會核備，一來也可以使委員會具有準駁權。
- 7、倫理案件的保障部份則交由現行政風人員或法規會即可，最好的辦法是交由政風人員主辦，但如此政風人員條例則要修改。例如名稱可以改成較倫理官等等，倫理的概念大於反貪腐，但台灣多只重在反貪部份。

#### 結論

- 1、執行主要機構設在行政院之下。
- 2、爭議的條文部分：先定義核心價值，才能避免出錯。
- 3、倫理法庭不必要，只要送公懲會就好。
- 4、五權成爲三權之後，委員會留在司法權，三個不同位階，其順序應該事先從機關再到準司法最後才到司法階段，因此不需要特別規範，盡量不要牽動現有法條，另外新定會引起反彈。
- 5、本法目的在於象徵性質與宣示性，是倫理道德最低標準與基礎，並爲上位法。各機關立法過程不論，只看結果，並要訂定落日條款，上位法的概念如同收納箱，因爲未來可能將其他現行法律通通收納進來或成爲授權的依據。
- 6、主要衝突可能在規範對象上，應採最小公倍數並排除中央民代，將法條訂的窄比較好，因爲如果訂的太寬之後還要再修改。

## 附錄 5-3 6-A 訪談摘要

日期：2007 年 8 月 13 日

時間：1000-1200

地點：警察大學

主持人：謝立功教授、蔡秀涓教授

紀錄：羅光智

### 一、規範對象：

原則雖然不宜把中央民代納入，但是依照刑法第十條的定義，立法委員應被納入，首先要看這倫理法怎麼定位，如果只是抽象的規範(上位性總則性規範)，那不宜規定的太廣，十幾二十條就好了，重點在於如何執行與落實。如果是抽象的規範，那立法委員也應該要納入，如同每個人都要守法一樣，難道立委就不用遵守倫理嗎？這應該是放諸四海皆準的，所以重點還是要擺在執行與與落實。

### 二、對法律架構的建議

宜分為三部份：

- 1、要具有目標性、核心價值：例如公務員應怎樣怎樣。道德的內容是一種普世的價值，沒有人會反對的也不會因為國家不同而有差異。
- 2、要透明、利益迴避、程序內容……等。
- 3、因為是宣示性的法，所以在後段規定，如何與他法律相銜接(什麼行為適用什麼法令，類似索引，例如公職人員遇到問題要如何適用法律，遇到民意代表關說就可以找到規範知道這樣是行不通的，給公職人員一個



後盾。)，怎麼處罰的話則不宜在這邊規定。最好是可以用外國的立法例當作雛形，再導入台灣特色去增刪加減，第一「師出有名」可以解決規範對象的問題，否則立法院定會反彈—行政為何干涉立法，這是顯而易見的；第二就具體的規範可以另以法律定之。不過從強度來看，將立委擺進來的話，有三種作法及強度：

有三個強度：(1)、強度最強：直接訂在法條裡。

(2)、中強度：另以法律定之。

(3)、低強度：由行政院、立法院兩院去協調。

三、由何機關處理：

1、監察院本來就是核心機構，可突顯其功能，可與政風單位結合。

2、獨立設委員會不宜，現在要政府多增加組織及人員，一切免談。

組織法是否要納入，宜採否定的看法，較好的作法是-本法由誰來負責統籌，其組織與職責另以法律定之。

四、揭露問題

1、我國目前有證人保護法、窩裡反條款(貪污治罪條例)、認罪協商(刑事訴訟法)都有，都是鼓勵內部的人來檢舉的法。

2、台灣人比較會覺得這是一種抓耙仔，在日本有一種制度叫做「犯罪通報當番」，就是一種抓耙仔法制化，人民就覺得是一種德行。

3、有必要規定在倫理法中或是由其他法律來規定可以再思考一下，從外國的立法例去看，再來決定之。

五、其他(補充)建議：

1、開宗明義、總則的規定，公職人員應該要遵守哪些倫理原則先規定出來。

2、法規競合的部份，本法有規定者遵守其規定，若他法另有嚴格規定者，從

其 規定。 可以從警察法的法條去參考，對象、目的、組織皆有規定出來。

- 3、倫理法規定處罰是很怪的東西，違反的話都應該有指定的途徑去適用相關的法，倫理法是一種行爲的準則，所以無法針對個別的行爲去處罰，比方一個公職人員不誠實，那只是違反公職人員倫理法，但是只要不涉及其他人或機關的損害或不法情事，就不用適用其他法來罰他，或許可在法條中規定「到會說明義務」讓其有到委員會說明事件本末的義務，若不來的話就推定你有違反本法及相關法律的規定或是給予罰緩的處罰，此部分涉及到專責機關的權限在那，但若公職人員已經符合本法的規定，即經過委員會認定也有符合倫理法的要求，就不可以再用其他的法來處罰，因此本法對公職人員而言既是一種警惕，也是一種保護的作用。

## 附錄 5-4 4-CC 訪談摘要

日期：2007 年 8 月 14 日

時間：140-1630

地點：世新大學

主持人：謝立功教授、蔡秀涓教授

紀錄：闕建丞

### 前言

現為法案草擬階段，又擬法條的面向有哪些要注意的部份？執行機關該如何設置以及是否會和現行法律重覆的問題，預先將本法的地位拉高。現以基準法為主，但如何讓子法之間無衝突又能全部包含？個別子法規範對象不同又該如何立法？目前希望法條不要太多，至多十至二十條就好。但哪些對象應該被納入？一般公務人員是沒有問題，但民選公務人員如市議員或立委又該如何規範？尤其立委部分是否違反權力分立原則？又或可以採準用的方式，或採配套措施將立委以他法令外規範，但一般來說都認為立委應該被規範，這部份該如何處理？

### 美日可供參考部份

日本國家公務員倫理法接近本案的要求，美國政府倫理法也很接近，其中美國政府倫理法對象也包含正副總統及眾多機關，顧為一統合性的立法。其倫理改革法後倫理局被獨立出來，各部門要自訂倫理方案，且各機關設有倫理官。日本內閣及人事院可自訂相關法律規定且有監督官，但法案仍須送至倫理署審核。日本抄襲美國制度，同樣的我國也可參考日本的制度。

## 我國現況

我國目前有九種相關法律是在規範倫理道德部份，但除了立法目的相近之外，其他內涵通通都沒有標準，例如採購法和公職人員利益衝突迴避法就有相矛盾之處。公務人員服務法並不適用，例如其中規範不得接受餽贈，但其定義卻不明確。另外如旋轉門條款中的規範對象有些也不適用，例如在對象的類別、層級、親等上都規範不明確。

## 建議

以基準法規定一年之內各機關要完成相關倫理規範，之後送到委員會研商後再進入立法院，如此只是將時間延後，但不至於受到反彈。至於基準法會有一些法規範不到的親等或層級部份，國外是採用影響力來做基準，也就是用層級來判斷而非用關係。另外委員會可以檢討現行法律，訂定出一個基準法之後，由委員會來做主管機關，之後各機關自行訂定相關法律，最後再送回委員會作法律的審查。另外建議各機關應該要設置一個專責人員負責推動與諮詢。台北市政府倫理規範則是由機關首長決定核可之後再送到政風單位報備，另外專責機構一定要有諮詢功能，或報備的功能，可以設立在組織法的執掌之中。

## 保障

只要遵守此法是否就受到保障？現行政府許多人事政策看似規範實則為保護，例如政治中立法。

## 機關設置

成立委員會可以避免職權相衝。日本的審查委員會有調查權但美國無，這和憲政制度有關，但同時台灣的憲政制度並不明確。必須有查辦的動作才可以確保法條能被執行，但以美國為例是只負責推動與宣導。

倫理委員會應該是常設組織，並要有一聯絡人，因假如是任務編組的委員會形式通常因為責任太鬆散會容易失敗，例如許多廉能委員會皆是如此。在運

作上委員會只負責宣傳跟諮詢，並整合法律以及向立法機關做年度報告，或許可以定位為一個分案機關。也可以平時為分案機關，但碰到重大事件時則成立特別調查小組，可在法條或配套中加入，不負責調查但有命令權。

### 規範部份

本法為宣示性質，委員會不接觸實質部份但要管理程序，譬如說申調相關資料或要當事人到案說明等權力，但因顧及到分案權限過大交由科員等層級較低者並不適合。

### 包含對象

- 1、 立委部分因為權力分立所以採尊重其自律的方式。但立委部分一定要納入，且現行行政規範立法的法律條文也很多，例如財產申報法、利益衝突迴避法、遊說法都是。
- 2、 各機關（構）應設專責行政倫理規則，這部份則在法律上用「應」的字眼，亦即強迫各機關作，以避免日後發生爭議
- 3、 受託行使公權力者是否應該納入？法案內的對象應該要包含委外執行公權力者，但這部份採可設可不設的規定，亦即法律上用「得」的字眼，但若不設相關規定而違法的話則由機關負責。在機關競合的情況下最後都會設立相關規定。
- 4、 應依照專業倫理準則上去自律，例如重大公共工程案件的評審委員。

### 其他

- 1、 應確保機關之獨立性。
- 2、 若規範對象包含正副總統則可將委員會設在監察院之下，若日後修憲成為三權，則再行調整，畢竟百分之九十五的公務人員都在行政院，所以機關設立以監察院為第一優先考慮。

- 3、 Whistleblower 的部分應該也要考慮，應訂有揭密的程序，此部份可以法律另訂。
- 4、 離職後的公職人員應該也要納入規範。

## 附錄 5-5 6-C 有關公職人員倫理法草案書面意見

- 1、依草案第二條之原則規定，可能會產生一個問題，即本法屬普通法或特別法之地位，及其界定標準何在。依法條中規定，除其他法有較「嚴格」之規定外用語，所採取之立法方式，傾向本法為普通法。如本法與公務員懲戒法之間，即有高度相關與須區別之處。因此，建議可採取下列之規定：有關「公務倫理之事項」適用本法，本法本規定者，適用其他法律之規定。
- 2、草案第三條規定公職人員之範圍，共區分為九款。其目的應在於各款之公職人員所須遵守之倫理程度，有所不同。詳細之區分，在於對應不同程度之義務與責任。如相對應之義務規範，屬二種不同程度之義務分類(參照本草案規定)，可進一步整合所規定公職人員之範圍，不必過度予以細分。另，本條文第九款規定公營事業服務人員，亦包括在規範之內。理論上，在公營事業服務之人員，並不具有公務員身分，因此建議修正本條規定可為：公營事業中依法派任之負有決策之總經理、董事、監察人等人員。
- 3、草案第四條第一項所規定之「信賴」，在法制用語上，未盡明確；建議可修正為：不得因此而濫用行政資源，且決策不得因此而偏頗。依同條第二項規定，第三條第七至九款之人，在其職務範圍內，不得參與政治活動。此與本條第一項規定相比較，第一項之規定中，並未特別限制該人員是否為「職務範圍」；因此，二者規定是否相符，亦可再斟酌。
- 4、草案第九條第三項規定「合於節度」、「不當之聯想」；此在法制用語上，或有再予斟酌之可能。於此建議，可考慮修正為：不得超過「禮節限度」，且於收取之後，應依規定向長官報備或為登記。
- 5、草案第十二條為有關迴避的規定，其中「二親等內之親屬」，並未明文規定是二親等內之血親或姻親。另，「共同生活之家屬」，亦予限制為須迴避之範圍，在認定上恐產生不明確的問題。於此，對照行政程序法第三十二條有關迴避之親屬規定，亦未及於「共同生活之家屬」，因此，對此之規定，亦可再為斟酌。

## 附錄 5-6 6-D 有關公職人員倫理法草案書面意見

以下意見，請卓參：

- 1、名稱：究竟是「公職人員倫理法」或是「公務員倫理法」，應予探討說明。感覺似乎「公職人員倫理法」較恰當，因為範圍較廣。
- 2、定位：「公職人員倫理法」與「公務員服務法」之關係，因為有些法條與「公務員服務法」重疊。
- 3、適用範圍：似乎以「受有俸給」之「有給職」為範圍。何以「無給職」未規範適用？領「薪給」的司機工友、訂「契約」的約聘僱人員是否規範適用？
- 4、約束力：對於違反「倫理法」者如何處罰？
- 5、公職人員倫理委員會與機關辦理獎懲之「考績委員會」之關係？

6-D 09/19



## 附錄 5-7 6-B 有關公職人員倫理法草案書面意見

公職人員倫理法草案

6-B 提 2007.09.23

條文	說明	提供之意見
第一條(立法目的) 為建立公共服務之價值與倫理，以指引和協助公職人員維持職務倫理，促進廉能政治、確保公正中立，有效遏阻貪污腐化，維持與提升人民對政府之信賴，特制定本法。	明訂本條之立法目的，乃基於我國現行政治經濟環境所需，人民對政府公職人員的期待，並參考各國對政府倫理價值的共識，應包括廉潔透明、公正中立，以及公共利益等部分，以作為本法核心價值。	由於「倫理」之界定不易，其公職執行之核心似宜強調「專業」、「公平」、「公正」、「中立」、「盡力」、「比例原則」、「誠信」、「明確」、「有利與不利兼顧」等執法原則，進而將之轉化為法律規範或教示公務執行。
第二條 公職人員執行職務應遵守之原則，除法律另有嚴格規定者外，適用本法之規定。	本法所列之公職人員倫理規範，乃公職人員應確實遵守之基本準則，惟基於公共事務的多樣性與複雜性，若有更為嚴格(具體)之規定者，適用該嚴格(具體)之規定。	一、「嚴格」二字之定義與適用不易，建議刪除。 二、本法多有與現行相關法規競合，宜確立「特別法」或「普通法」地位。 三、本法各條文內容在相關法令多有規範，宜配合立法目的，釐清本法性質，並使內容既「周延」且「互斥」。
第三條(定義) 本法所稱之公職人員，其範圍如下：	本條明定適用人員之範圍。	一、「倫理」之主要內涵範圍似有定義之必要。 二、「公職人員」之定義含

條文	說明	提供之意見
<p>一、總統、副總統。</p> <p>二、行政、立法、司法、考試、監察各院院長、副院長。</p> <p>三、政務人員。</p> <p>四、有給職之政府資政、國策顧問及戰略顧問。</p> <p>五、依公職人員選舉罷免法產生之鄉(鎮、市)級以上政府機關首長。</p> <p>六、各級民意機關民意代表。</p> <p>七、法官、檢察官、行政執行官、軍法官。</p> <p>八、其他受有俸給之文武職公務員。</p> <p>九、其他公營事業機構服務人員。</p>		<p>括「民意代表」，應可分開規範之。</p>
<p>第四條(公職人員應遵守之倫理原則一) 政治活動</p> <p>前條第一至六款人員，參與政治活動或其他活動，不得影響人民對其執行職能或職責之信賴。(第一項)</p> <p>前條第七至九款人員在其</p>	<p>一、第一項規定，基於一至六款之人員有其特殊之政治色彩，惟對於公共服務時，仍應以全民福祉為首要之務，不得影響人民對其應有之信賴。</p> <p>二、第二項之規定，有關七至九款之人員，為確保執行</p>	<p>一、「政治中立」或「行政中立」均為公職人員之主要倫理內涵，如何在政治活動上規範及行政資源運用上保持中立，應是主要考量重點。</p> <p>二、本條第二項規定：「前條第七至九款人員在其職</p>

條文	說明	提供之意見
職務範圍內應保持中立，不得參與以特定政黨或特定政治目的有關之活動。(第二項)	職務不受政治力之干涉，而能使人民信賴其執行職務不以特定政黨利益、政策為取向，故明定不得參與特定政黨或特定政治目的有關之活動。	務範圍內應保持中立，、、」，基於「明示其一、排除其他」法則，似乎第一至六款之人員即可不保持中立。反之，第一項亦然。
<p>第五條(公職人員遵守之倫理原則二) 財產申報</p> <p>第三條第一至七款之公職人員，應定期申報財產；第八、九款之公職人員因職務性質特殊，經主管府、院核定有申報財產必要者，亦同。(第一項)</p> <p>前項公職人員之配偶及其未成年子女之財產，應一併申報。(第二項)</p>	<p>一、公職人員之財產申報，參考各國例法例及我國公職人員財產申報法以特定職位以上之人員，始有申報之義務，惟因職務特殊，例如擔任政府採購人員、單位主管、會計、出納等人員等，亦應有申報財產之義務。</p> <p>二、公職人員配偶與未成年子女之財產因與公職人員財產有密切關係，不易區別，為求達到財產透明之申報效果，宜一併申報之。</p>	一、「主管府」係何所指？
<p>第六條(公職人員遵守之倫理原則三) 保密</p> <p>公職人員對於其職務上所知悉之秘密，負有保密之義務，退職者亦同。(第一項)</p>	國家機密因涉及利益甚巨，公職人員應負有保密之義務，以免洩漏造成國家社會之損害；部分離職公職人員常藉所謂的回憶錄，有意或無意於其中揭發密辛，故參考外國立法例明定退休與離職公職人員仍負保密義務。	

條文	說明	提供之意見
<p>第七條(公職人員遵守之倫理原則四) 公正無私</p> <p>公職人員為公共利益服務，應以全國國民福祉為依歸，其執行職務應全力以赴，並不得為差別待遇。(第一項)</p> <p>公職人員應公私分明，不得利用其職務和地位為自己或他人謀取私利。(第二項)</p>	<p>一、公職人員本於為公共利益服務，應全力以赴為全國國民之利益而努力，並不得以特定身分或其他因素而在執行職務時發生偏頗。</p> <p>二、公職人員不得利用職務之便，中飽私囊或為他人牟取不當利益，確保公職人員執行職務之公正性。</p>	<p>一、第一項之「並不得為差別待遇」與行政程序法第六條之「平等原則」有間，是否宜修正為「非有正當理由，不得為差別待遇」。</p>
<p>第八條(公職人員遵守之倫理原則五) 利益迴避</p> <p>公職人員執行職務時，如發現其本人、配偶、共同生活之家屬或二親等以內之親屬與當事人或其他利害關係人有利益衝突時，應即時迴避。</p>	<p>為預防公職人員執行職務產生個人利益與公共利益產生衝突，應使公職人員有迴避之義務，維持人民對政府公共之信任，遏止貪污腐化及不當利益之輸送。</p>	<p>一、若無法即時迴避，是否可有例外規定。</p>
<p>第九條(公職人員遵守之倫理原則六) 資訊濫用</p> <p>公職人員除依法應予公開之資訊外，不得以任何方式揭露官方資訊或因職務所得之資訊。(第一項)</p> <p>公職人員使用官方資訊或職務所得之資訊，應於法令職掌範圍內為之，並與使用</p>	<p>參考英國立法例，政府以立法、民眾申報義務或其他行政管制手段所取得有關人民或其他資訊不得加以濫用，除依相關法令（例：政府資訊公開法）應公開外，公職人員不得任意洩漏資訊。</p> <p>公職人員使用資訊，應與使用目的相符，不得為自己或</p>	<p>一、本條規範「資訊公開」，對於基於行政之特定目的始得進行個人之「資料蒐集」，是否亦有涉及職務倫理規範之必要？</p>

條文	說明	提供之意見
之目的相符。(第二項)	他人利益或其他不當之濫用。	
<p>第十條(公職人員遵守之倫理原則七) 競業禁止</p> <p>公職人員不得經營商業或投機事業。(第一項)</p> <p>公職人員非依法律不得兼任他項公職或公營事業機關、公司代表官股之董事或監察人。(第二項)</p> <p>公職人員兼任教學、研究工作或非以營利為目的之事業或團體之職務，應經服務機關許可。(第三項)</p> <p>公職人員為前二項之兼任時，仍應注意是否與其本職有所衝突或影響本職之業務。(第四項)</p>	<p>公職人員不得兼職為各國倫理法制利益迴避規範下之一環，除要求公職人員應全心於公共職務上，並不得利用其職務或身分之便利經營商業或投機事業以獲取利益。</p>	
<p>第十一條(公職人員遵守之倫理原則八) 旋轉門</p> <p>公職人員於離開公職三年內，具有下列情形之一，除經公職人員審查委員會審查許可者外，不得擔任營利事業董事、監察人、經理、執行業務之股東或顧問:</p>	<p>一、離職後三年內之限制期間乃鑑於我國部分政府機關之一般人事輪調為三年，並參考公務員服務法之規定，以配合我國國情。</p> <p>二、各國對於離職前年限之規定不一，參考我國公務員服務法之規定以五年為基準</p>	<p>一、何謂「公職人員審查委員會」？是否與第十四條之「公職人員倫理委員會」相同？其組成、目的、及執行程序為何？</p>

條文	說明	提供之意見
<p>一、離職前五年以內，與將任職之雇主間具有正式商業往來情形者。</p> <p>二、服務公職期間，與將任職之雇主間具有持續或反覆正式商業往來情形者。</p> <p>三、職務上曾接觸未來雇主競爭對手之商業機密情報者。</p> <p>四、因離職前五年以內的職務之故，曾參與對將任職之雇主有利之建議或決策制定，而其聘任可能被視為具有對價關係；或曾參與政策之規劃，其專業知識將有利於將任職之雇主者。</p> <p>五、離職前五年以內，與公務外之團體或組織具有商業交易行為，而將以諮詢顧問聘任者。</p>	<p>故加以援用。</p> <p>三、參考英國立法例，對於欲擔任營利事業董事、監察人、經理、執行業務股東或顧問等職位，公職人員得提出申請審查是否屬於本條一至五款條件限制之內，可免公職人員於退職後工作權受限且經審查許可後，亦是對公職人員提供保障。</p>	
<p>第十二條(公職人員遵守之倫理原則九) 收受餽贈或其他利益</p> <p>公職人員對於所辦理之事務，不得收受任何餽贈。(第一項)</p> <p>公職人員與有隸屬關係</p>	<p>一、我國由於深受中華文化影響，人與人之間對於收受禮物等行為，往往被解讀成是正常社交禮俗，而未就其潛藏的利益衝突與影響加以深思或考量，導致公職人員往往難以判斷是否涉及利益</p>	

條文	說明	提供之意見
<p>者、所辦理事務之當事人或其他利害關係人間，無論涉及職務與否，均不得贈受財物。(第二項)</p> <p>公職人員基於禮節而贈受財物須合於節度，不應使他人產生不當之聯想。(第三項)</p>	<p>衝突。因此，凡涉及公職人員職務上之事務，不得接受任何餽贈。</p> <p>二、公職人員於有隸屬關係、事務辦理之相對人及利害關係人，因其身分間之特殊關連性，不論與職務有關與否，皆不宜收贈財物，以建立公職人員清廉之形象。</p> <p>三、本條之設立，一方面可以引導公職人員利益衝突避免之倫理價值與行為的建立，一方面也使公職人員可以依法拒絕贈受財物。</p>	
<p>第十三條(公職人員遵守之倫理原則十) 內部揭露</p> <p>公職人員獲知所屬機關內部有貪污或其他違反公職倫理之行為時，應向其主管長官及公職人員倫理委員會揭露之。公職人員被其他公務機關人員強制、建議從事貪污或其他不當情事時，亦同。(第一項)</p> <p>公職人員為前項揭露之行為，應保障其依法應有之權利。(第二項)</p>	<p>一、有鑑於各國政府倫理法制均將弊端揭發納入，以更加落實倫理價值，以及增強肅貪成效。且由機關內部揭露弊端更能深入瞭解內情有效打擊貪腐，故列為倫理守則之一。</p> <p>二、鑑於內部揭露者可能因為揭露行為而使其身分或權利受到侵害，法律上應給予適當之保護。</p>	<p>一、第二項之「應保障其依法應有之權利」是否可修正為「應保障其法定權利」。</p>

條文	說明	提供之意見
<p>第十四條(主管機關)</p> <p>為有效辦理公職人員職務倫理之管理事項，政府應設置公職人員倫理委員會。(第一項)</p> <p>公職人員倫理委員會依法獨立行使職權，其組織與職掌另以法律定之。(第二項)</p>	<p>為辦理公職人員倫理相關事務，宜設立一獨立專責機關負責並依法獨立行使職權。</p>	<p>一、本條是否置於第十三條之前，因第十三條已規定有「公職人員倫理委員會」。</p> <p>二、第一項之「政府」範圍不明，宜明定之。</p>
<p>第十五條</p> <p>公職人員倫理委員會每年應就遏阻貪污腐化、公職人員財產申報、政治獻金申報，促進公職人員維持職務倫理等事項，提出績效報告及改進建議。(第一項)</p> <p>前項績效報告、改進建議，應以適當方法主動公告之並送立法院備查。(第二項)</p>	<p>明定主管機關之報告義務、改進建議及其他相關主管事務。</p>	
<p>第十六條</p> <p>政府各機關於倫理委員會設置後一年內，應依本法所揭示原則及各特殊職務所需之專業倫理，修正、廢止或制定相關倫理法規。(第一項)</p> <p>前項法規修正施行前，其與</p>	<p>一、設日出條款，政府各機關應以本法所揭示之原則，作為修正、廢止或制定相關倫理法規。</p> <p>二、明定公職人員倫理委員會在相關法制未健全時，有依本法之精神與原則為法律之解釋與適用。</p>	



條文	說明	提供之意見
<p>本法規定相牴觸者，公職人員倫理委員會得依本法原則為法律之解釋及適用，有競合者亦同。(第二項)</p>		
<p>第十七條(罰則) 公職人員之行爲，經公職人員倫理委員會審查後，認為有違反本法之規定者，移送相關主管機關依法處罰之；認為有犯罪嫌疑者，應移送該管法院檢察機關或軍法機關。</p>	<p>明確律定公職人員倫理委員會經初步調查後，可依案件係違反行政或刑事規定之性質，移送相關主管機關或司法機關論處。</p>	<p>一、本條並非「罰則」規定，僅係違反本法應依據其他法令移送處理之規定。 二、因此，「認為有違反本法之規定者，移送相關主管機關依法處罰之」，必須其他法令有處罰規定。然若其已有處罰要件規定，則此規範似非必要。</p>
<p>第十八條(救濟) 公職人員之權利遭受主管機關不當或違法之侵害時，政府應依法令提供當事人有效及公平救濟的管道。</p>	<p>公職人員之權利依法應受到保障，若遭到主管機關不當或違法之侵害，應給予救濟管道，使公職人員執行職務實無後顧之憂。</p>	<p>一、本條內容在公務人員保障法或其他相關救濟法規或已有規定。</p>
<p>第十九條(施行日期) 本法自公布日施行。</p>	<p>明定本法之施行日期。</p>	

## 附錄 5-8 6-E 有關公職人員倫理法草案書面意見

公職人員倫理法草案

6-E 提 2007.09.23

條文	說明	提供之意見
<p>第一條(立法目的)</p> <p>為建立公共服務之價值與倫理，以指引和協助公職人員維持職務倫理，促進廉能政治、確保公正中立，有效遏阻貪污腐化，維持與提升人民對政府之信賴，特制定本法。</p>	<p>明訂本條之立法目的，乃基於我國現行政治經濟環境所需，人民對政府公職人員的期待，並參考各國對政府倫理價值的共識，應包括廉潔透明、公正中立，以及公共利益等部分，以作為本法核心價值。</p>	<p>洪文玲意見:</p> <p>立法目的，宜簡潔有力列出本法之倫理核心價值，避免與他法重疊。</p> <p>建議條文:「為建立公職人員職務倫理，調和價值衝突，維護公平正義，符合公共利益，特制定本法。」</p>
<p>第二條</p> <p>公職人員執行職務應遵守之原則，除法律另有嚴格規定者外，適用本法之規定。</p>	<p>本法所列之公職人員倫理規範，乃公職人員應確實遵守之基本準則，惟基於公共事務的多樣性與複雜性，若有更為嚴格(具體)之規定者，適用該嚴格(具體)之規定。</p>	
<p>第三條(定義)</p> <p>本法所稱之公職人員，其範圍如下:</p> <p>一、總統、副總統。</p> <p>二、行政、立法、司法、考試、監察各院院長、副院</p>	<p>本條明定適用人員之範圍。</p>	<p>洪文玲意見:</p> <p>第四款修改為有給職之總統府資政、國策顧問及戰略顧問。(是否漏列監察委員、獨立機關委員、各級公立學校校長、副校長)</p>

條文	說明	提供之意見
<p>長。</p> <p>三、政務人員。</p> <p>四、有給職之政府資政、國策顧問及戰略顧問。</p> <p>五、依公職人員選舉罷免法產生之鄉(鎮、市)級以上政府機關首長。</p> <p>六、各級民意機關民意代表。</p> <p>七、法官、檢察官、行政執行官、軍法官。</p> <p>八、其他受有俸給之文武職公務員。</p> <p>九、其他公營事業機構服務人員。</p>		
<p>第四條(公職人員應遵守之倫理原則一) 政治活動</p> <p>前條第一至六款人員，參與政治活動或其他活動，不得影響人民對其執行職能或職責之信賴。(第一項)</p> <p>前條第七至九款人員在其職務範圍內應保持中立，不得參與以特定政黨或特定政治目的有關之活動。(第二</p>	<p>一、第一項規定，基於一至六款之人員有其特殊之政治色彩，惟對於公共服務時，仍應以全民福祉為首要之務，不得影響人民對其應有之信賴。</p> <p>二、第二項之規定，有關七至九款之人員，為確保執行職務不受政治力之干涉，而能使人民信賴其執行職務不以特定政黨利益、政策為取</p>	

條文	說明	提供之意見
項)	向，故明定不得參與特定政黨或特定政治目的有關之活動。	
<p>第五條(公職人員遵守之倫理原則二) 財產申報</p> <p>第三條第一至七款之公職人員，應定期申報財產；第八、九款之公職人員因職務性質特殊，經主管府、院核定有申報財產必要者，亦同。(第一項)</p> <p>前項公職人員之配偶及其未成年子女之財產，應一併申報。(第二項)</p>	<p>一、公職人員之財產申報，參考各國例法例及我國公職人員財產申報法以特定職位以上之人員，始有申報之義務，惟因職務特殊，例如擔任政府採購人員、單位主管、會計、出納等人員等，亦應有申報財產之義務。</p> <p>二、公職人員配偶與未成年子女之財產因與公職人員財產有密切關係，不易區別，為求達到財產透明之申報效果，宜一併申報之。</p>	<p>洪文玲意見:</p> <p>建議條文:</p> <p>「公職人員及其配偶、未成年子女有依法定期申報財產之義務。」</p>
<p>第六條(公職人員遵守之倫理原則三) 保密</p> <p>公職人員對於其職務上所知悉之秘密，負有保密之義務，退職者亦同。(第一項)</p>	<p>國家機密因涉及利益甚巨，公職人員應負有保密之義務，以免洩漏造成國家社會之損害；部分離職公職人員常藉所謂的回憶錄，有意或無意於其中揭發密辛，故參考外國立法例明定退休與離職公職人員仍負保密義務。</p>	
<p>第七條(公職人員遵守之倫理原則四) 公正無私</p> <p>公職人員為公共利益服</p>	<p>一、公職人員本於為公共利益服務，應全力以赴為全國國民之利益而努力，並不得以特定身分或其他因素而在</p>	<p>洪文玲意見:</p> <p>建議條文「公職人員為公共利益服務，應以全民福祉為</p>

條文	說明	提供之意見
<p>務，應以全國國民福祉為依歸，其執行職務應全力以赴，並不得為差別待遇。(第一項)</p> <p>公職人員應公私分明，不得利用其職務和地位為自己或他人謀取私利。(第二項)</p>	<p>執行職務時發生偏頗。</p> <p>二、公職人員不得利用職務之便，中飽私囊或為他人牟取不當利益，確保公職人員執行職務之公正性。</p>	<p>依歸，其執行職務應全力以赴，非有正當理由不得為差別待遇。」(第一項)</p> <p>公職人員應公私分明，不得利用其職務和地位為自己或他人謀取不當利益。(第二項)</p>
<p>第八條(公職人員遵守之倫理原則五) 利益迴避</p> <p>公職人員執行職務時，如發現其本人、配偶、共同生活之家屬或二親等以內之親屬與當事人或其他利害關係人有利益衝突時，應即時迴避。</p>	<p>為預防公職人員執行職務產生個人利益與公共利益產生衝突，應使公職人員有迴避之義務，維持人民對政府公共之信任，遏止貪污腐化及不當利益之輸送。</p>	<p>洪文玲意見:</p> <p>(是否漏列信託受託人等，適用利益衝突迴避法即可)</p>
<p>第九條(公職人員遵守之倫理原則六) 資訊濫用</p> <p>公職人員除依法應予公開之資訊外，不得以任何方式揭露官方資訊或因職務所得之資訊。(第一項)</p> <p>公職人員使用官方資訊或職務所得之資訊，應於法令職掌範圍內為之，並與使用之目的相符。(第二項)</p>	<p>參考英國立法例，政府以立法、民眾申報義務或其他行政管制手段所取得有關人民或其他資訊不得加以濫用，除依相關法令(例：政府資訊公開法)應公開外，公職人員不得任意洩漏資訊。</p> <p>公職人員使用資訊，應與使用目的相符，不得為自己或他人利益或其他不當之濫用。</p>	<p>洪文玲意見:</p> <p>公職人員除依法應予公開之資訊外，不得以任何方式揭露政府資訊或因職務所取得之資訊。(第一項)</p> <p>公職人員使用政府資訊或職務所取得之資訊，應於法令職掌範圍內為之，並與使用之目的相符。(第二項)</p> <p>與政府資訊公開法之法律用語一致。</p>

條文	說明	提供之意見
<p>第十條 (公職人員遵守之倫理原則七) 競業禁止</p> <p>公職人員不得經營商業或投機事業。(第一項)</p> <p>公職人員非依法律不得兼任他項公職或公營事業機關、公司代表官股之董事或監察人。(第二項)</p> <p>公職人員兼任教學、研究工作或非以營利為目的之事業或團體之職務，應經服務機關許可。(第三項)</p> <p>公職人員為前二項之兼任時，仍應注意是否與其本職有所衝突或影響本職之業務。(第四項)</p>	<p>公職人員不得兼職為各國倫理法制利益迴避規範下之一環，除要求公職人員應全心於公共職務上，並不得利用其職務或身分之便利經營商業或投機事業以獲取利益。</p>	<p>洪文玲意見:</p> <p>(是否及於民意代表?)</p>
<p>第十一條(公職人員遵守之倫理原則八) 旋轉門</p> <p>公職人員於離開公職三年內，具有下列情形之一，除經公職人員審查委員會審查許可者外，不得擔任營利事業董事、監察人、經理、執行業務之股東或顧問:</p> <p>一、離職前五年以內，與將任職之雇主間具有正式商</p>	<p>一、離職後三年內之限制期間乃鑑於我國部分政府機關之一般人事輪調為三年，並參考公務員服務法之規定，以配合我國國情。</p> <p>二、各國對於離職前年限之規定不一，參考我國公務員服務法之規定以五年為基準故加以援用。</p> <p>三、參考英國立法例，對於欲擔任營利事業董事、監察</p>	<p>(與前條禁止經營商業規定矛盾)</p>

條文	說明	提供之意見
<p>業往來情形者。</p> <p>二、服務公職期間，與將任職之雇主間具有持續或反覆正式商業往來情形者。</p> <p>三、職務上曾接觸未來雇主競爭對手之商業機密情報者。</p> <p>四、因離職前五年以內的職務之故，曾參與對將任職之雇主有利之建議或決策制定，而其聘任可能被視為具有對價關係；或曾參與政策之規劃，其專業知識將有利於將任職之雇主者。</p> <p>五、離職前五年以內，與公務外之團體或組織具有商業交易行為，而將以諮詢顧問聘任者。</p>	<p>人、經理、執行業務股東或顧問等職位，公職人員得提出申請審查是否屬於本條一至五款條件限制之內，可免公職人員於退職後工作權受限且經審查許可後，亦是對公職人員提供保障。</p>	
<p>第十二條(公職人員遵守之倫理原則九) 收受餽贈或其他利益</p> <p>公職人員對於所辦理之事務，不得收受任何餽贈。(第一項)</p> <p>公職人員與有隸屬關係者、所辦理事務之當事人或其他利害關係人間，無論涉</p>	<p>一、我國由於深受中華文化影響，人與人之間對於收受禮物等行為，往往被解讀成是正常社交禮俗，而未就其潛藏的利益衝突與影響加以深思或考量，導致公職人員往往難以判斷是否涉及利益衝突。因此，凡涉及公職人員職務上之事務，不得接受</p>	<p>洪文玲意見:</p> <p>建議條文「公職人員對於所辦理之事務，除法令另有規定外，不得收受任何不當之餽贈。(第一項)」</p> <p>「公職人員基於禮節而贈受財物須合於節度，不應使他人產生聯想。(第三項)」</p>

條文	說明	提供之意見
<p>及職務與否，均不得贈受財物。(第二項)</p> <p>公職人員基於禮節而贈受財物須合於節度，不應使他人產生不當之聯想。(第三項)</p>	<p>任何餽贈。</p> <p>二、公職人員於有隸屬關係、事務辦理之相對人及利害關係人，因其身分間之特殊關連性，不論與職務有關與否，皆不宜收贈財物，以建立公職人員清廉之形象。</p> <p>三、本條之設立，一方面可以引導公職人員利益衝突避免之倫理價值與行為的建立，一方面也使公職人員可以依法拒絕贈受財物。</p>	
<p>第十三條(公職人員遵守之倫理原則十) 內部揭露</p> <p>公職人員獲知所屬機關內部有貪污或其他違反公職倫理之行為時，應向其主管長官及公職人員倫理委員會揭露之。公職人員被其他公務機關人員強制、建議從事貪污或其他不當情事時，亦同。(第一項)</p> <p>公職人員為前項揭露之行為，應保障其依法應有之權利。(第二項)</p>	<p>一、有鑑於各國政府倫理法制均將弊端揭發納入，以更加落實倫理價值，以及增強肅貪成效。且由機關內部揭露弊端更能深入瞭解內情有效打擊貪腐，故列為倫理守則之一。</p> <p>二、鑑於內部揭露者可能因為揭露行為而使其身分或權利受到侵害，法律上應給予適當之保護。</p>	<p>洪文玲意見:</p> <p>公職人員獲知所屬機關內部有貪污或其他違反公職倫理之行為時，應向其主管長官或公職人員倫理委員會揭露之。公職人員被其他公務機關人員強制、建議從事貪污或其他不當情事時，亦同。(第一項)</p> <p>(若貪污者為長官時揭漏之對象宜考慮迴避)</p>
<p>第十四條(主管機關)</p> <p>為有效辦理公職人員職務</p>	<p>為辦理公職人員倫理相關事務，宜設立一獨立專責機關</p>	<p>洪文玲意見:</p>



條文	說明	提供之意見
<p>倫理之管理事項，政府應設置公職人員倫理委員會。(第一項)</p> <p>公職人員倫理委員會依法獨立行使職權，其組織與職掌另以法律定之。(第二項)</p>	<p>負責並依法獨立行使職權。</p>	<p>何種層級?中央?行政院?</p>
<p>第十五條</p> <p>公職人員倫理委員會每年應就遏阻貪污腐化、公職人員財產申報、政治獻金申報，促進公職人員維持職務倫理等事項，提出績效報告及改進建議。(第一項)</p> <p>前項績效報告、改進建議，應以適當方法主動公告之並送立法院備查。(第二項)</p>	<p>明定主管機關之報告義務、改進建議及其他相關主管事務。</p>	<p>洪文玲意見:</p> <p>漏列公職人員倫理委員會調查權。</p>
<p>第十六條</p> <p>政府各機關於倫理委員會設置後一年內，應依本法所揭示原則及各特殊職務所需之專業倫理，修正、廢止或制定相關倫理法規。(第一項)</p> <p>前項法規修正施行前，其與本法規定相牴觸者，公職人員倫理委員會得依本法原則為法律之解釋及適用，有</p>	<p>一、設日出條款，政府各機關應以本法所揭示之原則，作為修正、廢止或制定相關倫理法規。</p> <p>二、明定公職人員倫理委員會在相關法制未健全時，有依本法之精神與原則為法律之解釋與適用。</p>	

條文	說明	提供之意見
競合者亦同。(第二項)		
<p>第十七條(罰則)</p> <p>公職人員之行爲，經公職人員倫理委員會審查後，認爲有違反本法之規定者，移送相關主管機關依法處罰之；認爲有犯罪嫌疑者，應移送該管法院檢察機關或軍法機關。</p>	<p>明確律定公職人員倫理委員會經初步調查後，可依案件係違反行政或刑事規定之性質，移送相關主管機關或司法機關論處。</p>	<p>洪文玲意見</p> <p>標題罰則部份改爲移送</p>
<p>第十八條(救濟)</p> <p>公職人員之權利遭受主管機關不當或違法之侵害時，政府應依法令提供當事人有效及公平救濟的管道。</p>	<p>公職人員之權利依法應受到保障，若遭到主管機關不當或違法之侵害，應給予救濟管道，使公職人員執行職務實無後顧之憂。</p>	<p>洪文玲意見:</p> <p>建議條文「公職人員之權利遭受各該主管機關不當或違法之侵害時，政府應依法令提供當事人有效及公平的救濟管道」</p>
<p>第十九條(施行日期)</p> <p>本法自公布日施行。</p>	<p>明定本法之施行日期。</p>	

## 附錄 5-9 6-A 有關公職人員倫理法草案書面意見

公職人員倫理法草案

6-A 提

條文	說明	提供之意見
<p>第一條(立法目的)</p> <p>為建立公共服務之價值與倫理，以指引和協助公職人員維持職務倫理，促進廉能政治、確保公正中立，有效遏阻貪污腐化，維持與提升人民對政府之信賴，特制定本法。</p>	<p>明訂本條之立法目的，乃基於我國現行政治經濟環境所需，人民對政府公職人員的期待，並參考各國對政府倫理價值的共識，應包括廉潔透明、公正中立，以及公共利益等部分，以作為本法核心價值。</p>	<p>6-A 老師意見:</p> <p>建議條文:「為確保公職人員維護職務倫理，促進廉能政治、確保公正執行職務，有效遏阻貪污腐化，以及提升人民對政府之信賴，特制定本法。」</p>
<p>第二條</p> <p>公職人員執行職務應遵守之原則，除法律另有嚴格規定者外，適用本法之規定。</p>	<p>本法所列之公職人員倫理規範，乃公職人員應確實遵守之基本準則，惟基於公共事務的多樣性與複雜性，若有更為嚴格(具體)之規定者，適用該嚴格(具體)之規定。</p>	<p>6-A 老師:</p> <p>第十七條已有規定為免重複建議本條刪除</p>
<p>第三條(定義)</p> <p>本法所稱之公職人員，其範圍如下:</p> <p>一、總統、副總統。</p> <p>二、行政、立法、司法、考試、監察各院院長、副院長。</p>	<p>本條明定適用人員之範圍。</p>	

條文	說明	提供之意見
<p>三、政務人員。</p> <p>四、有給職之政府資政、國策顧問及戰略顧問。</p> <p>五、依公職人員選舉罷免法產生之鄉(鎮、市)級以上政府機關首長。</p> <p>六、各級民意機關民意代表。</p> <p>七、法官、檢察官、行政執行官、軍法官。</p> <p>八、其他受有俸給之文武職公務員。</p> <p>九、其他公營事業機構服務人員。</p>		
<p>第四條(公職人員應遵守之倫理原則一) 政治活動</p> <p>前條第一至六款人員，參與政治活動或其他活動，不得影響人民對其執行職能或職責之信賴。(第一項)</p> <p>前條第七至九款人員在其職務範圍內應保持中立，不得參與以特定政黨或特定政治目的有關之活動。(第二項)</p>	<p>一、第一項規定，基於一至六款之人員有其特殊之政治色彩，惟對於公共服務時，仍應以全民福祉為首要之務，不得影響人民對其應有之信賴。</p> <p>二、第二項之規定，有關七至九款之人員，為確保執行職務不受政治力之干涉，而能使人民信賴其執行職務不以特定政黨利益、政策為取向，故明定不得參與特定政</p>	<p>6-A 老師:</p> <p>第一項適用對象:第八款以外人員</p> <p>第二項適用對象:第八款人員</p>

條文	說明	提供之意見
	黨或特定政治目的有關之活動。	
<p>第五條(公職人員遵守之倫理原則二) 財產申報</p> <p>第三條第一至七款之公職人員，應定期申報財產；第八、九款之公職人員因職務性質特殊，經主管府、院核定有申報財產必要者，亦同。(第一項)</p> <p>前項公職人員之配偶及其未成年子女之財產，應一併申報。(第二項)</p>	<p>一、公職人員之財產申報，參考各國例法例及我國公職人員財產申報法以特定職位以上之人員，始有申報之義務，惟因職務特殊，例如擔任政府採購人員、單位主管、會計、出納等人員等，亦應有申報財產之義務。</p> <p>二、公職人員配偶與未成年子女之財產因與公職人員財產有密切關係，不易區別，為求達到財產透明之申報效果，宜一併申報之。</p>	
<p>第六條(公職人員遵守之倫理原則三) 保密</p> <p>公職人員對於其職務上所知悉之秘密，負有保密之義務，退職者亦同。(第一項)</p>	<p>國家機密因涉及利益甚巨，公職人員應負有保密之義務，以免洩漏造成國家社會之損害；部分離職公職人員常藉所謂的回憶錄，有意或無意於其中揭發密辛，故參考外國立法例明定退休與離職公職人員仍負保密義務。</p>	
<p>第七條(公職人員遵守之倫理原則四) 公正無私</p> <p>公職人員為公共利益服務，應以全國國民福祉為依</p>	<p>一、公職人員本於為公共利益服務，應全力以赴為全國國民之利益而努力，並不得以特定身分或其他因素而在</p>	

條文	說明	提供之意見
<p>歸，其執行職務應全力以赴，並不得為差別待遇。(第一項)</p> <p>公職人員應公私分明，不得利用其職務和地位為自己或他人謀取私利。(第二項)</p>	<p>執行職務時發生偏頗。</p> <p>二、公職人員不得利用職務之便，中飽私囊或為他人牟取不當利益，確保公職人員執行職務之公正性。</p>	
<p>第八條(公職人員遵守之倫理原則五) 利益迴避</p> <p>公職人員執行職務時，如發現其本人、配偶、共同生活之家屬或二親等以內之親屬與當事人或其他利害關係人有利益衝突時，應即時迴避。</p>	<p>為預防公職人員執行職務產生個人利益與公共利益產生衝突，應使公職人員有迴避之義務，維持人民對政府公共之信任，遏止貪污腐化及不當利益之輸送。</p>	
<p>第九條(公職人員遵守之倫理原則六) 資訊濫用</p> <p>公職人員除依法應予公開之資訊外，不得以任何方式揭露官方資訊或因職務所得之資訊。(第一項)</p> <p>公職人員使用官方資訊或職務所得之資訊，應於法令職掌範圍內為之，並與使用之目的相符。(第二項)</p>	<p>參考英國立法例，政府以立法、民眾申報義務或其他行政管制手段所取得有關人民或其他資訊不得加以濫用，除依相關法令(例：政府資訊公開法)應公開外，公職人員不得任意洩漏資訊。</p> <p>公職人員使用資訊，應與使用目的相符，不得為自己或他人利益或其他不當之濫用。</p>	
<p>第十條 (公職人員遵守之倫理原則七) 競業禁止</p>	<p>公職人員不得兼職為各國倫理法制利益迴避規範下之一</p>	

條文	說明	提供之意見
<p>公職人員不得經營商業或投機事業。(第一項)</p> <p>公職人員非依法律不得兼任他項公職或公營事業機關、公司代表官股之董事或監察人。(第二項)</p> <p>公職人員兼任教學、研究工作或非以營利為目的之事業或團體之職務，應經服務機關許可。(第三項)</p> <p>公職人員為前二項之兼任時，仍應注意是否與其本職有所衝突或影響本職之業務。(第四項)</p>	<p>環，除要求公職人員應全心於公共職務上，並不得利用其職務或身分之便利經營商業或投機事業以獲取利益。</p>	
<p>第十一條(公職人員遵守之倫理原則八) 旋轉門</p> <p>公職人員於離開公職三年內，具有下列情形之一，除經公職人員審查委員會審查許可者外，不得擔任營利事業董事、監察人、經理、執行業務之股東或顧問：</p> <p>一、離職前五年以內，與將任職之雇主間具有正式商業往來情形者。</p> <p>二、服務公職期間，與將任職之雇主間具有持續或反</p>	<p>一、離職後三年內之限制期間乃鑑於我國部分政府機關之一般人事輪調為三年，並參考公務員服務法之規定，以配合我國國情。</p> <p>二、各國對於離職前年限之規定不一，參考我國公務員服務法之規定以五年為基準故加以援用。</p> <p>三、參考英國立法例，對於欲擔任營利事業董事、監察人、經理、執行業務股東或顧問等職位，公職人員得提</p>	<p>6-A 老師意見</p> <p>不得擔任對象加上「或其他受有報酬之職務者」：</p> <p>第五款部分：(為何本款特別限定諮詢顧問)</p>

條文	說明	提供之意見
<p>覆正式商業往來情形者。</p> <p>三、職務上曾接觸未來雇主競爭對手之商業機密情報者。</p> <p>四、因離職前五年以內的職務之故，曾參與對將任職之雇主有利之建議或決策制定，而其聘任可能被視為具有對價關係；或曾參與政策之規劃，其專業知識將有利於將任職之雇主者。</p> <p>五、離職前五年以內，與公務外之團體或組織具有商業交易行為，而將以諮詢顧問聘任者。</p>	<p>出申請審查是否屬於本條一至五款條件限制之內，可免公職人員於退職後工作權受限且經審查許可後，亦是對公職人員提供保障。</p>	
<p>第十二條(公職人員遵守之倫理原則九) 收受餽贈或其他利益</p> <p>公職人員對於所辦理之事務，不得收受任何餽贈。(第一項)</p> <p>公職人員與有隸屬關係者、所辦理事務之當事人或其他利害關係人間，無論涉及職務與否，均不得贈受財物。(第二項)</p> <p>公職人員基於禮節而贈受</p>	<p>一、我國由於深受中華文化影響，人與人之間對於收受禮物等行為，往往被解讀成是正常社交禮俗，而未就其潛藏的利益衝突與影響加以深思或考量，導致公職人員往往難以判斷是否涉及利益衝突。因此，凡涉及公職人員職務上之事務，不得接受任何餽贈。</p> <p>二、公職人員於有隸屬關係、事務辦理之相對人及利</p>	<p>6-A 老師意見</p> <p>本條應規定接受贈與之報告義務以及贈與價值之額度限制(如日本規定不得超過五千日圓)</p>



條文	說明	提供之意見
財物須合於節度，不應使他人產生不當之聯想。(第三項)	<p>害關係人，因其身分間之特殊關連性，不論與職務有關與否，皆不宜收贈財物，以建立公職人員清廉之形象。</p> <p>三、本條之設立，一方面可以引導公職人員利益衝突避免之倫理價值與行為的建立，一方面也使公職人員可以依法拒絕贈受財物。</p>	
<p>第十三條(公職人員遵守之倫理原則十) 內部揭露</p> <p>公職人員獲知所屬機關內部有貪污或其他違反公職倫理之行為時，應向其主管長官及公職人員倫理委員會揭露之。公職人員被其他公務機關人員強制、建議從事貪污或其他不當情事時，亦同。(第一項)</p> <p>公職人員為前項揭露之行為，應保障其依法應有之權利。(第二項)</p>	<p>一、有鑑於各國政府倫理法制均將弊端揭發納入，以更加落實倫理價值，以及增強肅貪成效。且由機關內部揭露弊端更能深入瞭解內情有效打擊貪腐，故列為倫理守則之一。</p> <p>二、鑑於內部揭露者可能因為揭露行為而使其身分或權利受到侵害，法律上應給予適當之保護。</p>	
<p>第十四條(主管機關)</p> <p>為有效辦理公職人員職務倫理之管理事項，政府應設置公職人員倫理委員會。(第一項)</p>	<p>為辦理公職人員倫理相關事務，宜設立一獨立專責機關負責並依法獨立行使職權。</p>	<p>6-A 老師意見:</p> <p>公職人員倫理委員會是本法之重要執行機關，參考日本之立法例是直接規定於本法，而非另外授權立法</p>

條文	說明	提供之意見
公職人員倫理委員會依法獨立行使職權，其組織與職掌另以法律定之。(第二項)		
<p>第十五條</p> <p>公職人員倫理委員會每年應就遏阻貪污腐化、公職人員財產申報、政治獻金申報，促進公職人員維持職務倫理等事項，提出績效報告及改進建議。(第一項)</p> <p>前項績效報告、改進建議，應以適當方法主動公告之並送立法院備查。(第二項)</p>	<p>明定主管機關之報告義務、改進建議及其他相關主管事務。</p>	
<p>第十六條</p> <p>政府各機關於倫理委員會設置後一年內，應依本法所揭示原則及各特殊職務所需之專業倫理，修正、廢止或制定相關倫理法規。(第一項)</p> <p>前項法規修正施行前，其與本法規定相牴觸者，公職人員倫理委員會得依本法原則為法律之解釋及適用，有競合者亦同。(第二項)</p>	<p>一、設日出條款，政府各機關應以本法所揭示之原則，作為修正、廢止或制定相關倫理法規。</p> <p>二、明定公職人員倫理委員會在相關法制未健全時，有依本法之精神與原則為法律之解釋與適用。</p>	
第十七條(罰則)	明確律定公職人員倫理委員會經初步調查後，可依案件	

條文	說明	提供之意見
公職人員之行爲，經公職人員倫理委員會審查後，認爲有違反本法之規定者，移送相關主管機關依法處罰之；認爲有犯罪嫌疑者，應移送該管法院檢察機關或軍法機關。	係違反行政或刑事規定之性質，移送相關主管機關或司法機關論處。	
第十八條(救濟) 公職人員之權利遭受主管機關不當或違法之侵害時，政府應依法令提供當事人有效及公平救濟的管道。	公職人員之權利依法應受到保障，若遭到主管機關不當或違法之侵害，應給予救濟管道，使公職人員執行職務實無後顧之憂。	
第十九條(施行日期) 本法自公布日施行。	明定本法之施行日期。	

## 6-A 老師意見

其他：日本國家公務員倫理法規定公務員有申報各項所得之義務，我國亦有類似之申報規定，但欠缺財產明顯超出所得之說明義務，為強化廉能政治建議規範。

## 附錄 5-10 法學界焦點團體座談摘要

日期：2007 年 9 月 26 日

時間：0930-1200

地點：警察大學台北辦公室

與會人員：5-A、5-C、5-B

主持人：謝立功教授

紀錄：闕建丞

引言：

各位老師好，這個案子是研考會的研究案，前半段收集各國的一些法制，研考會希望我們就台灣情況寫出一個倫理法，名稱還未定，這個法希望能把各種容易產生貪腐的人員收錄進來，由於很多民意首長、代表因為也有貪腐的情形，故也應該納進來，雖然貪腐並不是本法唯一本意，應該比反貪廉能概念更大，包括中立等，也就是作為一個公職人員所需的道德操守，至於現行法中也有類似規範，但有些地方或許不全，希望透過這個草案，由各位老師就此草案提供意見以作為修改的參考，內容有很多需調整的空間，藉由各位老師的專業，希望可以讓此草案更完善。

蔡秀涓老師補充說明：在座各位老師大家好，首先先向各位老師報告這案子的緣起，前半部就介紹各國法制，後半部由謝老師主導，也就是研考會想看到的東西，目前國內的法大都是行為法，著重在反貪腐，研考會希望我們這個團隊作的倫理法原因，由於亞洲國家著重在反貪腐，OECD 國家比較進步的概念是倫理，包含防貪、肅貪跟反貪，我們國家過去則著重在肅貪，但是倫理這東西應包含前面所說的三塊，因此在此背景之下，與我國目前規定有差別，因此要有上位法跟基準法，且立法應有前瞻性，研考會希望直接將每一個已有的法規將來要修法的方向跟原則放在這草案中，這是很困擾的地方，上面所述的就是希望各位老師給我們指導的地方。

補充：16 條第一項中規範說倫理委員會成立一年後，就現行法未規範或規範不合時宜的，設日出條款，我們團隊在討論中都覺得這個法比較奇怪的是好像小孩已經出來了只是想找個媽媽，我們目前有很多法可以適用（例如：公職人員財產申報、公職人員利益衝突迴避法、公務員服務法等），因次這個法希望可以將路給指引出來，6-A 更希望可以比照日本模式，把組織法弄進條文，就倫理委員會的組織跟設立能有更詳細的規範，只是根據之前在入出國移民法中第二條設移民署，作用法中有組織法，就受到批評了，但是國外有立法例也是這樣，由於我們這幾年國內不希望這樣做，因此我們團隊面臨許多困境，不知如何解決。

一、5-A：

（一）、這個立法方法是個跟一般作法不一樣的，是已經有了其他子法再回溯去作一個基準法，這種立法是一種綜合式不是一種演繹式的，因此目前要作的是一個整合法、歸納法：

可分兩個目的：第一先將所有子法合起來，不一樣的概念加以統合，整理修補，做結合性立法、第二是指示性立法，將目前不夠的作指示立法，研考會希望就目前法規作一些修正，應該是一種包裹立法，因此立法上應該要求附上相關具體法規條文跟本法第幾條抵觸的部分，提出建議修改方向。

（二）、舉目前我所做的另一個案子，研考會也希望我們就條文有哪些缺失要修，負責主管單位是哪裡，還被要求就哪幾個法條要修，具體建議內容為何？負責單位哪裡，再分為長期或中期目標，因此你們在寫的時候可以參考列進去。

（三）、另外在整理法規的時候，在條文建議在立法時要講清楚，直接將哪些條文應該要修列出來，最不好是利用解釋的辦法，例如你們草案中的 16 條第二項，這個條文讓人覺得是模仿通訊基準法（ncc）的規定，這種利用解釋來突破立法的規定，其實是違憲的，這種授權行政解釋來推翻實證法律是一種錯誤的，因此不要這麼做，通訊基準法中到目前為止未被說是違憲，我也覺得蠻奇怪的。

（四）、就本法所稱倫理，倫理是一種道德約束，多半是訓示規定，因此用倫理在前面，會讓人是一種訓示規定，比公務員服務法更偏向訓示，或可將貪污關、說或職務上影響力列入，以區別本法跟他法間的關係，另外許可參考立法委員行為法的方式，至少不可比該法來得空泛，參考其內容再將其擴大，一層一層歸類出來，這個草案會比較有骨有肉，關說遊說可列為一章，分章節，收受禮物也是、金額為

多少、範圍、甚至結婚喜帖、喪禮發放如何、不僅就刑責跟紀律方面皆有規定（參考新加坡），這是倫理法應有的。

（五）、倫理委員會也是一個問題，應該與申訴委員會合併，否則倫理完了，申訴怎麼辦，例如對公務員有懲處權的，要如何給予救濟，尤其是舉發（內部揭露）制度，另外政治行為方面應該要多下點功夫，可參考公務人員政治中立法草案，將其一些精神弄進來，迴避的話，也要弄清楚一點，之前劉孔中就是一個標準的迴避案子。

（六）、另外就日出條款部分，設一年要各機關立出來是不是有點不食人間煙火，應可分為近期、中期、遠期的部分，（研考會是傾向學者理想，而且有點創新性），我建議或許可以切開成幾章，基準法原則不宜膨脹，但此法又像綜合法，因此不要比子法弱 就目前有些重要的子法放進去此草案裡，就本法未規定者適用其他相關法之規定。

（七）關說部分，一個縣長那麼大親戚那麼多，他的一個親戚作個小工，難道不行嗎？如何規範是需要探討的一塊。（蔡老師補充：國外的立法原則，可分為三：一、適用對象是誰，包含幾親等內的親戚？二、依據職等不同規泛的強度不一樣？三、罰則部分，目前國內缺乏的部分就是政治這一塊）

## 二、5-B：

（一）、就基本法部分，其實已經有幾個實例，有很多子法已經出來，現在很多（教育基本法、原住民基本法、農業基本法草案），也是這樣子，最後都有有類似的跟本法抵觸的就必須去修。另外本草案第二條的規定，似乎把位階給搞錯了，倫理法是一個基本法，學者通說認為位階跟其他法律應該是一樣的，第 16 條的部分 2 相部份跟此條邏輯有問題。

（謝老師補充：當初用第二條因為很怕太像訓示規定，由於其他法可能比本法嚴格，規定的太空泛有人質疑本法可定可不定。）

（5-A 補充：認為既然是基本法，不要完全是指示性的立法，公務員權利要用法律來保障，所以一定要專門的法律，不宜用空泛的基準法來作為懲戒的依據。）

（二）、第三條規範立法委員部分有些不妥，涉及自律，這是憲法權力分立的問題，

應該是立法院自行來訂，至於地方民意機關是否要那進來是可以討論的，比方就草案第十條競業的禁止的適用，納進來會有問題，實務上會有困難，因為地方的代表是在法律下行使職權，一年的會期可能只有幾十天而已（各級的代表都有不同日數），若要他不去經營商業可能很難，他可能本來是在做生意，然後有空來開會而已，這是一個問題，規範進來是可以但是要放寬，地方民代主要可能涉及關說部分就好了，不過因為關說的話絕對是有的，大家都可以關說，國內外皆有，關說主要應該是規範公務員而已，公務員要挺的住才行，另外就第九款的公營事業機構服務人員是不是要納進來，因為他們多半從事私經濟行為，不宜納進來。

另外，第三條第五款有關公職人員選罷法，應該修改成直接規定直轄市長、縣市長、鄉鎮市長就可以了。

（三）、第四條部分，政治活動的話，司法院長、副院長本來就不可以參加，所以要修改一下範圍，第七款的部分也可以加進大法官，因為目前大法定義是不是法官還是有爭論，不如直接加進來。

（四）、倫理中法條文字可否有「為提升……；為避免……」的用法？立法目的上都是可以的，很多法都是從國外引進的，但是 5-A 剛剛有提到翻譯新加坡的立法，可能會比較具體，參考國外的用語是可以的，法律本身是沒有智慧財產的問題。

（五）、思維上在有限的時間內能做到的地步為何。倫理法是一個普通法或特別法？我認為是一個普通法，因此以後的新法例出來依從新從優的時後，不可任為後法是抵觸前面的基本法的，第二條這邊有一點問題，要不要這樣明定呢？其實不定的話，本來跟其他法律的位階是一樣的，因為我們的基本法不像是德國基本法那種有那麼高的位階，而是跟一般法律一樣的位階。

（六）、就第十六條倫理委員會的設立，是創設一個機關，時間可能要很長，如果就法條上所述設置一年內，那個機關設置完成可能已經好幾年後了，除非是並行，否則是不是應該規範本法「公布後一年內」，就可以要各機關依照本法精神去做(5-C 補充：該是放在倒數第二條較好。)，目前倫理委員會要當作是一獨立機關，這是學者的理想，所以不用去考慮會受到什麼樣的批評。

（七）、有關贈受財物部分，金額的話可參考經管會的，因為經管會的金額都是非常大的，可以參考一下，也可以從外國的立法去考量一下，要從公務員的薪水或是其他部分來看。

(八)有關第五條的財產申報，有規定經府、院核定者……亦同，理論上應該是他們指定的，這邊雖給政府機關有裁量的空間，但是不是可以把人員上再明定出來，像出納人員、採購人員這種職務的人，或許可採列舉的方式。

### 三、5-C：

(一)倫理跟法律是有一點距離的，倫理應回歸其本質，難的是倫理事項要用法律規定，法律要有法律的味道，必須要有法律的威力（可以說違反時的效果），我們在這地方若要討論哪一個倫理位階高或低，是一種空談，如果用法律來規定，要有法律樣子，有一些基本的法律原則還是要遵守，我從中提供幾點建議。

(二)首先，就草案的名稱究竟是-公職人員倫理或是公職人員職務倫理（人的事情或是行爲的事情）？要先把定義定出來，從這個草案有提到人跟事的問題，建議可訂為-公職人員職務倫理法，另外就第一條的立法目的上，可將倫理的定義定出來，就我所知不外乎就是-什麼該作什麼不該做，例如貪污是什麼呢？這個名詞就是一個好例子，遇到問題的時候要怎麼去解釋，因此名詞的部分可能要跟其他法律作配合，當然也可專為本法作名詞解釋，只是立法上一定會有難度。

(三)第二條部分為建立最高性，要拉出來，建議用但書規定不可用除外規定，不置於使本法有點陪襯的，可將最高性顛倒過來，因為本法是在眾多法律中作一個基準。

(四)倫理若是一種訓示性、綱領性的法律，看起來雖沒有明確罰則，但從草案中有指出違反時的處罰規定，至少有指出方法（方向），所以沒那麼糟，由於是倫理法，只是告訴什麼可以作什麼不可以，不是刑法，目前看來應該是可以的。作另外提到第十六條，「倫理委員會」用法上在法律用語上要一致，另外就「廢止」相關倫理法規中「廢止」的有沒有必要呢？因為廢止是指已經有，然後將過去的全部不要，否則就不會有第二項的情況，就本法相抵觸部分，再由公職人員倫理委員會解釋依新法解釋，這樣很怪，合不乾脆依第一項廢止，故用法上會不會有一點衝突？競合部分，就是新舊法有規定而在第2條已經解決了，希望可以精確一下。（謝老師補充，部分舊法若不可以用修正解決的話，保留廢止是不是會比較有彈性一點？）

(5-B 補充：可以保留廢止，但就是在第一項中應加入「……所揭示原則及各特殊職務所需之專業倫理，檢討修正、廢止或制定相關倫理法規。」讓各個主管機關去



處理，在這裡預留空間。)

檢討兩字

(五)有關草案第十五條績效報告、改進建議，這裡要送立法院備查，為何只送立法院？(5-B認為是可以的因為把公職人員倫理委員會當作是獨立機關的話是可以的，ncc法中亦有規定。)但我認為本法跟ncc的立法有點不一樣，ncc法是立法跟行政的角力下所產生的，要拉過來偏立法一點，但是本法比較偏行政，所以是不是要參考，是可以思考的，主要是跟立法院有什麼關係，如果政策的選擇，或許可當作是功能最適論。

(六)本法的作法如果要無所不包，那憲法已經規定的話要不要再規定？(5-B意見是可以具體化的話也是可以的。)

(七)有關第三條的八、九款，皆有用語「其他」，這裡應該要修改一下，主要這邊的定義包含了很多種類的人員包含政務官是事務官，由於本法是關於倫理，對標準本來就不一樣，因此要如何分類的部分是很重要的，這樣子會有助於立法的掌握，最好從要規範的內容有幾種，再來規劃人員的分類比較妥當，最好是在第三條的文字上範圍如下改成-----公職人員包含如下或種類如下，這樣在分類上比較方便。

(八)有關第八條利益衝突，那到底是什麼利益衝突？在法條上看不出來，是公對公、公對私或私對私並未講明，文字上應可以更精確，第十二條部分接受餽贈，有關贈受財物，是不是法律上的用語，可再查一下，至於第三項產生不當之聯想的用語，在操作執行上要如何去處理阿？這樣操作的彈性會太大，可能會使公職人員受到不正當之干擾，是否要訂有金額比較好，比較好判斷。

## 附錄 6 「統合性政府倫理法制之研究」期末審查委員 意見與研究團隊修改及回應一覽表

委員及單位代表姓名及意見	研究團隊修改與回應
<p>(一) 廖助理教授元豪：</p> <p>1. 本研究既欲將政府倫理法制相關組織、程序及實體進行整合，惟所提草案條文統合程度偏低，宜說明統合立法之困難；另我國目前在立法技術上較缺乏「包裹立法」的案例，但建議本研究可跨大步嘗試就組織、程序及實體提出配套草案。</p> <p>2. 本研究建議訂定之「公職人員倫理法」草案第 3 條可否加列「考試委員」及「監察委員」；第 9 條條文內涵以「資訊不公開」為原則，似未符「政府資訊公開法」的立法精神，可否採負面表列方式，例如，經依法核定為國家機密或其他法律、法規命令規定應秘密事項、或涉及個人隱私部分才有不得揭露之規定。</p> <p>3. 「公職人員倫理委員會組織法」草案內容可否訂定明確具體的條文；委員的組成及任命方式可否提出適當的選項供參考。</p>	<p>1. 有關我國「統合性政府公職人員倫理法草案」，「統合立法」困難之說明，請參見本報告第五章第一節第一部分說明。</p> <p>2. 有關本草案組織、程序及實體配套措施，請見第六章。</p> <p>3. 有關草案第 3 條建議修改部分，請見第五章第二節第二部分。</p> <p>4. 有關草案第 9 條，有關保密事項採負面表列以符「政府資訊公開法」精神之建議。本研究團隊認為，若採負面表列方式，則由於所需列示的禁止事項過多，難以周全。再加以本條已明訂「...公務人員除依法應予公開之資訊外，...」，此處所謂「依法」，即已包括「政府資訊公開法」在內。因此，基於以上兩項理由，草案第九條內容不做變更。</p> <p>5. 有關「公職人員倫理委員會組織法」內容應具體訂出之建議。由於委託機關指出，依據「中央行政機關組織基準法」第五條規定：「除</p>

委員及單位代表姓名及意見	研究團隊修改與回應
	<p>本法及各機關組織法規外，不得以作用法或其他法規規定機關之組織。」，因此於本研究案中，不宜對此委員會之內容做過多具體規範（請見本研究案註 24）。不過，有關此倫理委員會應有之建制原則，已補充說明於第六章第一節第一部份之（三）。</p>
<p><b>（二）王副教授鼎銘：</b></p> <ol style="list-style-type: none"> <li>1. 請補充專家學者焦點團體的選擇過程（如代表性問題）及發言意見參採情形的說明，俾使本文內容更具說服力。</li> <li>2. 建議審酌「腦力激盪法」是否適合列為研究方法之一；另請補充「國家政策網路智庫」系統平台線上民意調查相關的分析或討論內容。</li> <li>3. 本研究立法草案要旨均出於良善的規範層面，若能適度補充說明未來法案推動過程可能面臨的阻礙與預期解決之道，且提供各國立法過程供參考，應能使本研究研議的草案更具可行性。另本研究建議相關法案應於 2 年內完成立法，應再重新評估可行性。</li> <li>4. 「公職人員倫理委員會」之機關性質為何？建議予以補充說明。</li> </ol>	<ol style="list-style-type: none"> <li>1.有關專家學者焦點團體的選擇過程，請參見第一章第三節第二部分。</li> <li>2.有關專家學者焦點團體之發言意見應加以引述之建議，請參見第四章第二節。</li> <li>3.有關「腦力激盪法」是否適合列為研究方法之一之建議，本研究團隊感謝審查人之提醒，已加以刪除，請參見第一章第三節。</li> <li>4.有關補充「國家政策網路智庫」系統平台線上民意調查之建議，由於本系統係委託單位所建制，本研究僅能將研究問題、初稿與成果被動呈現，靜待公民回應。然直至本研究結案時，仍未見有公民上線進行討論。因此，於期末報告時，本研究已將之刪除，請見第一章第三節。</li> </ol>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>5. 本研究許多內容轉引台灣文獻對於國外文獻的討論(如第 12 頁對於 Boling 與 Dempsey (1981)、Kathryn G.Denhardt (1988) 文章的討論...等)，建議研究小組引用原著。</p>	<p>5.有關補充各國倫理法立法過程部分之建議，本研究於初提研究計畫時曾提出，並指出由於此一部份無法於從各國官方網站之文獻與文件瞭解，因此希望能出國進行各國相關人士進行訪談，但由於委託單位與多數審查委員均認為此一部份非本研究重點，因此未予同意。是以，於本研究案結案階段，欲對这部分再加以補充已是極其困難。</p> <p>6.有關本草案未來推動時，係以兩年作為各主管機關修訂相關法規之日出條款，是否時程過於急促之提醒。本研究團隊係基於此一統合性政府公職人員倫理法草案與相關配套法制，攸關台灣目前與未來發展甚鉅，因此其時程上之急迫需要，是以兩年作為期限。</p> <p>7.有關「公職人員倫理委員會」之機關性質為何？請參見第五章第二節草案法條第 14 至 16 條，以及第六章第一節第一部份之（三）。</p> <p>8.有關部分引用文獻建議引用原著之建議，本研究團隊已依照審查人建議重新對照原典並引用之，但對於極少部分文獻，本研究確實是轉引者，基於研究倫理仍明列轉引之出處。</p>

委員及單位代表姓名及意見	研究團隊修改與回應
<p><b>(三) 陳教授金貴：</b></p> <ol style="list-style-type: none"> <li>1. 本研究之研究目的陳述稍嫌簡略，建議補充台灣公務人員倫理現況，作為我國需有完整倫理法制的立論基礎之一。</li> <li>2. 本研究採用「國家政策網路智庫」系統平台線上民意調查及腦力激盪法等研究方法，惟後續報告內容並無相關論述或分析，宜予刪去或補充說明。另專家學者焦點團體及訪談意見宜加強質化分析並納入研究結論。</li> <li>3. 「公職人員倫理法」草案吸納現行各項公務人員人事法規，未來要如何整併或切割宜有更多的討論。此外，應釐清考試院與行政院在訂定倫理法制規範上的權責與分工。</li> <li>4. 建議將美國倫理法制現況納入本研究內容予以簡要說明（如比較列表方式），以利歸納與推論。</li> </ol>	<ol style="list-style-type: none"> <li>1.有關補充台灣公務人員倫理現況之建議，請參見第一章第一節之一、二部分。</li> <li>2. 有關「國家政策網路智庫」系統平台線上民意調查與「腦力激盪法」是否適合列為研究方法之一之建議，本研究團隊感謝審查之提醒，已加以刪除，請參見第一章第三節。</li> <li>3.有關專家學者焦點團體訪談意見質化資料分析之建議，已補充於第四章第二節。</li> <li>4.有關「統合性政府公職人員倫理法」草案與各公務人員人事法規之關係，請參見第六章第一節之一第一段，以及第六章第一節之一之（三）與（四）。</li> <li>5.有關美國部分，請參見第三章。</li> </ol>
<p><b>(四) 柴董事長松林：</b></p> <ol style="list-style-type: none"> <li>1. 建議將美國倫理法制特殊規範納入本研究，尤其是各國制度上欠缺的部分。</li> <li>2. 宜深入探討我國現行法律規定、實施情形及所獲致效果。同時廣蒐我國公職人員違背倫理法制之</li> </ol>	<ol style="list-style-type: none"> <li>1.有關美國部分，請參見第三章。</li> <li>2. 有關補充台灣現行相關法制規定與獲致成果，請分別參見第四章第一節與第一章第一節第二部分。</li> <li>3.有關廣蒐我國公職人員違背倫理法制之情事，分析其原因及影響之建</li> </ol>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>情事，分析其原因及影響，俾作為制定新法之參考。</p> <p>3. 針對「公職人員倫理委員會」之位階、組成、權責或成員資格宜提出具體內容。</p> <p>4. 請列出基本法之下各主管機關相配合之子法名稱及主要內容。</p>	<p>議，由於此一部份非為委託單位原初意欲探究之項目，因此不在本研究範圍中，目前結案階段若欲再新增，時效上顯然有困難。不過審查人意見的確有其意義，未來委託單位或可考量就此議題進行研究。</p> <p>4. 有關「公職人員倫理委員會」之機關定位、組成、權責與成員性質，請參見第五章第二節草案法條第 14 至 16 條，以及第六章第一節第一部份之（三）。</p> <p>5. 有關本草案與各主管機關配合之子法關係，請參見第六章第一節第一部份之（四）。</p>
<p><b>（五）張司長清雲：</b></p> <p>1. 本研究大陸法系國家如德、日等均有納入，但在英美法系主要國家除英國、加拿大外，獨漏最具民主法治代表性的美國，美國在此方面之作法不但具有指標性意義，其相關研究更可作為本研究之參考，建議將其納入。</p> <p>2. 「公職人員倫理法」草案第 4 條第 1 項規定宜比照第 2 項修正為「...參與政治活動或其他活動，在其職務內應保持中立，不得影響人民對其執行職務之信賴。」並增列第 3 項，將前條第 7 款、</p>	<p>1. 有關美國部分，請參見第三章。</p> <p>2. 法條建議修正部分，已修正於本研究草案法條第 4 條內容。</p> <p>3. 有關本草案似乎對於倫理之規範過少，與草案名稱不符之意見，本研究認為本法第一條立法宗旨已明確揭諸幾項倫理價值之提昇為本法立法宗旨，因此，草案名稱與內容，應該仍符合統合性政府公職人員倫理法之倫理精神。</p> <p>4. 有關專家學者焦點團體之選擇過程，請參見第一章第三節第二部分。</p>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>第 8 款比照本條第 1 項規定納入規範，以將西方國家高度重視之政治中立與政治活動規範適用於全部相關公職人員。</p> <p>3. 「公職人員倫理法」草案核心價值在強調公職人員之廉潔透明、公正中立與公共利益，然其條文內容第 4 至第 13 條主要偏重在貪污、利益迴避與內部揭露等相關議題，故以「公職人員倫理法」為名，似乎不切題，反觀英國以「英國文官行為準則」為名，較切實際，如何讓法律名稱更貼近立法目的，有待進一步思考。</p> <p>4. 專家學者焦點團體的選擇方式建議完整說明，相關發言意見應提出附註及分析。另請補充我國為何需要政府倫理法制的背景及理由，以強化研究目的。</p> <p>5. 「公職人員倫理法」與其他法令的關係應予釐清（如係基本法或特別法）；另立法宗旨宜更明確。</p> <p>6. 「公職人員倫理委員會」與「公務人員懲戒委員會」的關係為何？其做出的決議效力為何？均應予以釐清。</p>	<p>5.有關專家學者焦點團體之發言意見應加以引述之建議，請參見第四章第二節。</p> <p>6.補充研究背景之建議，請參見第一章第一節之一、二部分。</p> <p>7.有關「公職人員倫理法」與其他法令的關係應予釐清之建議，請參見第五章第一節第一部份。</p> <p>6. 有關「公職人員倫理法委員會」與公務員懲戒委員會之關係，由於本研究建議中，將該倫理委員會應置於何處，抱持不預先設限與做具體建議之處理（請參見第六章第一節之一第一段，以及第六章第一節之一之（三）），因此該委員會與相關單位之權限爭議的討論，並非本研究關切的重點。</p>
<p><b>（六）周司長秋玲：</b></p> <p>1. 「公職人員倫理法」草案第 10</p>	<p>1.有關增列「各國公職人員經營商業</p>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>條將公職人員經營商業及兼職禁止事項納入規範，建議增列「各國公職人員經營商業與兼職主要規範內容與原則」之比較分析。</p> <p>2. 本研究分別從倫理法制制定背景、核心價值、總體特色、主要規範面向以及負責與執行架構等，列表比較分析各國倫理法制，資料至為寶貴。建議於前述要項或子項之末，針對我國倫理法特性加以探討，歸結宜參採何國家之制度、參採之理由等作類似「小結」之評述，俾使結論建議與各國制度之比較發現，更能相互扣合。</p> <p>3. 請就專責統籌機構之設置、組成及如何排除政治干預等，提出更具體建議。</p> <p>4. 研究建議「公職人員倫理委員會」隸屬監察院為常設組織，統攝公職人員倫理相關政策與法規執行，惟現行公職人員倫理政策之制訂與執行等事項，目前係分散於不同法律，主管機關包括院、部層級皆有之，如以隸屬於監察院之機關統攝全盤法制與執行事務，將直接面臨機關權限爭議，甚至涉及五權分立之憲法架構問</p>	<p>與兼職主要規範內容與原則」之比較分析之建議，由於非委託單位意欲瞭解者，因此不宜納入本研究中。</p> <p>2.有關各國倫理法制比較後，針對我國情形加以歸結之建議，請參見第三章。</p> <p>3.有關「公職人員倫理委員會」之機關定位、組成、權責與成員性質，請參見第五章第二節草案法條第14至16條，以及第六章第一節第一部份之（三）。</p> <p>4. 有關「公職人員倫理法委員會」之定位，由於本研究研究建議中，將該倫理委員會應置於何處，抱持不預先設限與做具體建議之處理（請參見第六章第一節之一第一段，以及第六章第一節之一之（三）），因此有關此委員會與相關單位之權限爭議的討論，並非本研究關切之焦點。</p> <p>5.第3條建議修正部分，已加以修正。</p> <p>6.審查人指出本草案對規範對象之政治活動規範過於嚴苛，建議參照考試院94年7月28日、94年9月29日函請立法院審議之「政務人員法草案」第20條第1項較為寬鬆之條文規定。本研究認為，本研究所提草案之規範對象與規範範圍，係基於過外</p>



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<p>題，因此，如何從憲法、法律層面解決可能衍生之問題，建請研究小組進一步探討分析。</p> <p>5. 建議「公職人員倫理法」草案，作以下修正：</p> <p>(1) 第 3 條公職人員之範圍，其中第 2 款五院正、副院長與第 3 款「政務人員」似有競合，建議將第 3 款修正為「其他政務人員」。</p> <p>(2) 第 4 條第 2 項規定司法、考試、監察院院長、副院長；大法官、法官、檢察官；受有俸給之文武職公務員，不得參與以特定政黨或特定政治目的有關之活動 1 節，似失之過嚴，建議參照考試院 94 年 7 月 28 日、94 年 9 月 29 日函請立法院審議之「政務人員法草案」第 20 條第 1 項條文、「公務人員行政中立法草案」第 7 條條文，修正為不得於上班或勤務時間參與以特定政黨或特定政治目的有關之活動。</p> <p>(3) 第 10 條第 2 項建議依公務人員服務法第 14 條修正</p>	<p>政府一般趨勢與台灣總體公民之期待兩項論據而成，因此，基於此項立法國際接軌之前瞻性與社會期待性，不亦叫規範對象之政治活動，改採較為寬鬆之規範。</p> <p>7. 審查人第 5 項建議之第(3)至第(5)項，本研究認為，由於本草案係定位在統合性、基準性、倫理性與社會期待性四項基礎，因此，其相關規範需符合此四項原則且前瞻性與創新性，不宜以現行既有可能未盡周延之法條作為直接參考之依據。</p> <p>8. 審查人第 5 項建議之第(6)部分，已修正於第四章第一節。</p>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>條文意旨，將本項修正為：「公職人員除依法令兼任他項公職或業務外，非依法不得兼任公營事業機關、公司代表官股之董事或監察人或民營營利事業之董事、監察人或其他職務。」</p> <p>(4) 第 11 條有關「旋轉門」條款之規定，建議參照考試院 94 年 10 月 3 日函請立法院審議之公務人員服務法第 14 條之一修正條文意旨「公務員於離職後 3 年內，不得就與離職前 5 年內原掌理之業務有直接利益關係之事項，為自己或他人利益，直接或間接與原任職機關或其所屬機關接洽或處理相關業務。」將「特定職務禁止」修正為「特定行為禁止」。</p> <p>(5) 第 19 條擬規定該法自公布日施行 1 節，以該法係新增法律，所規範事項與現行其他法律規範或有未盡相容之處，爰建議將第 19 條修正為：「本法施行日</p>	

委員及單位代表姓名及意見	研究團隊修改與回應
<p>期，由行政院會同考試院、監察院定之。」</p> <p>(6) 研究報告第 49 頁—表 4-2 台灣現行公共服務倫理相關法規規範對象與法制化程度摘要表中，公務人員任用法第 28 條、公務人員考績法第 6 條、第 12 條之規範對象為「未予界定」部分，按公務人員任用法施行細則第 2 條，業就該法所稱「公務人員」加以明確界定；公務人員考績法第 4 條，則明定參加考績人員，為「經銓敘審定合格實授者」，故均非「未予界定」，爰建請酌予修正。</p>	
<p><b>(七) 本會意見：</b></p> <p>1. 有關「公職人員倫理法」草案第 14 條擬設置「公職人員倫理委員會」1 節，依據「中央行政機關組織基準法」第 5 條規定，不得以作用法或其他法規規定機關組織。是以，第 14 條條文內容應如何調整及委員會的設置方式等可再洽本會瞭解。</p> <p>2. 與本研究主題相關尚在立法院審</p>	<p>1. 有關「公職人員倫理委員會」之組織，應遵照「中央行政機關組織基準法」第 5 條規定，不得以作用法或其他法規規定機關組織之意見，請參見本研究案第五章第二節註 24。另外，有關此倫理委員會應有之建制原則，已補充說明於第六章第一節第一部份之（三）。</p> <p>2. 有關審議中法案應一併納入分</p>

委員及單位代表姓名及意見	研究團隊修改與回應
<p>議中的「公務人員行政中立法草案」、「法務部廉政局組織法」、「政務人員法草案」、「政治獻金法修正草案」等宜一併納入分析，以對台灣近年對防治貪腐的努力過程、現行法規執行瓶頸及我國倫理法制之立法趨勢能予全面瞭解。</p> <p>3. 第 4 章第 2 節之壹「草案研擬第 1 階段之焦點團體意見分析」，係以人數及發言次數進行類似問卷調查方式之量化分析，內容過於簡略，建議可彙整焦點座談重要共識，並就座談會中未有共識之議題，分析各方立場與爭論。另「法案草擬第 2 階段法學界專家學者代表訪談與座談會意見分析」，未就法學界專家學者之意見深入分析與探討，無法解焦點團體對於我國制定統合性倫理法制的實務意見，請補充質化分析。</p> <p>4. 本研究所提「公職人員倫理法」草案（第 4 條至第 13 條）財產申報等公職人員應遵守之倫理規範在現行「公務人員服務法」等法規皆有規範，如何將現行法規精神納入「公職人員倫理法」草案，作為一統合性上位基準法，宜再</p>	<p>析，以對台灣近年對防治貪腐的努力過程、現行法規執行瓶頸及我國倫理法制之立法趨勢能予全面瞭解之意見，請參見第一章第一節之二。</p> <p>3. 有關「草案研擬第 1 階段之焦點團體意見分析」之意見，請參見第四章第二節。</p> <p>4. 有關「公職人員倫理法」與其他法令的關係與精神如何整合之意見，請參見第五章第一節第一部份，以及第六章第一節第一部份之（4）。</p> <p>5. 有關本研究之政策說帖與依委託單位會專案研究作業要點進行內容格式之修訂，已補充及修正完竣。</p>

委員及單位代表姓名及意見	研究團隊修改與回應
深入分析。 5. 請提出本研究之政策說帖。另請依本會專案研究作業要點進行內容格式之修訂。	