



ROYAL NORWEGIAN
MINISTRY OF DEFENCE

Guidelines
August 2019

Ethical guidelines for contact with business and industry in the defence sector



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Foreword

Ethical Guidelines for contact with business and industry in the defence sector were first issued by the Ministry of Defence in April 2007 and were last revised in May 2011. This revised edition of these guidelines aims to clarify and simplify the rules that apply.

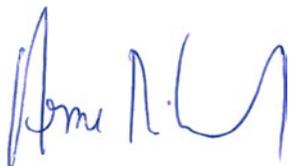
The revision has been made due to changes in the organizational framework and practices in the defence sector, as well as changes in legislation and regulations. The guidelines do not replace existing legislation and regulations but are intended to supplement these rules.

A close partnership and cooperation between the defence sector and business and industry are both important and necessary. Compliance with these guidelines is a prerequisite for this cooperation to be carried out in an ethically proper manner. The defence sector is dependent on a high ethical standard in our practices and the way we manage the human, financial and material resources on behalf of society. In the interest of the defence sector's reputation in society and the general trust of the population, compliance with these guidelines is essential.

Complying with legislation and regulations alone is not sufficient to secure a high ethical standard. Good judgement must also be exercised in line with ethical principles and assessments. The rules do not always provide a blueprint for correct behaviour. However, the set of rules that has been established will help us develop good judgment. Also, some actions are simply illegal.

The guidelines are intended to provide guidance on how the defence sector's employees should conduct themselves in an ethically proper manner in their contact with business and industry, as well as ensure compliance with existing legislation and regulations. Neither the defence sector's employees nor business and industry should be in any doubt about the ground rules that apply. Compliance with the guidelines is the responsibility of individual managers and employees.

We all have a responsibility to ensure that these guidelines are used actively. Both employees in the sector, and business and industry representatives must comply with the guidelines to ensure that a high ethical standard is maintained.

A handwritten signature in blue ink, appearing to read 'Arne Røksund'. The signature is stylized and cursive.

Arne Røksund
Secretary General
Norwegian Ministry of Defence

Ethical ground rules for the defence sector

Reputation and credibility

All employees are obliged to perform their tasks and interact with others in an ethically proper manner so as to make a positive contribution to the defence sector's reputation and credibility in society.

Openness

Everyone has a shared responsibility to create a good working environment and develop a culture characterised by openness and integrity. A working environment characterised by openness is a key precondition for proper ethical conduct.

Administration shall be open and transparent, enabling the general public to be apprised of the defence sector's activities. Employees shall provide correct information to other authorities, companies, organisations or citizens.

Freedom of expression

Like everyone else, employees have a fundamental right to participate in public discussions and critically express their views on the activities of the state and the defence sector, and on all other matters.

Individuals are responsible for their utterances not coming into conflict with obligations of loyalty and duties of confidentiality. Duties of confidentiality remain in force also after the persons in question have concluded their service or left their positions.

Loyalty

Employees are obliged to study and comply with current legal rules and ethical guidelines.

A part of an employee's obligation of loyalty is exercising proper professional discretion in performing his or her service. Employees are responsible for familiarising themselves with political and military policy decisions and guidelines and other decisions and guidelines in their professional areas and shall perform their work tasks in line with them.

Employees also have the right to speak up about improprieties without suffering negative consequences.

The duty to follow instructions and orders does not entail the duty to do anything illegal or unethical.

Impartiality

Employees shall act in a manner that does not raise doubts about their impartiality.

Employees shall not place themselves in situations liable to influence their official actions.

Employees must not take part in discussions and decisions on cases in which they themselves or people close to them have special personal or financial interests.

Leadership and responsibility

It is the individual's responsibility to comply with these ethical ground rules. Leaders have a special responsibility as culture bearers and role models. Leaders are also responsible for ensuring that individual employees are familiar with the specific ethical guidelines in the agencies and for reacting to breaches of these guidelines.

1 General

1.1 Purpose

The main purpose of these guidelines is to spell out in a practical way what conduct is acceptable and expected of all employees in the defence sector with regard to contact with business and industry. Another equally important purpose is to clarify what conduct is unacceptable and the consequences that breaching current standards of conduct may entail. The aim is not to come up with new rules but rather to clarify and raise awareness of the existing ones. The examples given are not exhaustive. They are meant as examples of situations in which it may be necessary to consider and assess the ethical aspects of an action.

This document is also intended to inform business and industry of the rules and guidelines that apply in the defence sector.

1.2 Scope and boundaries

This document includes guidelines and consequences for situations involving defence sector contact with business and industry. Contact with business and industry refers to the contact an employee in the defence sector has with one or more representatives of business and industry in an official context or in a context related to the employee's role as a representative of the defence sector as a customer of an existing or potential supplier. For example, this may be in connection with the purchase of goods and services, contract negotiations, calls for tenders, use of consultants and implementation of projects. Likewise, contact with business and industry will also apply to situations in which the employee represents the defence sector as a supplier.

Relations between states (contact with other nations in official contexts) that do not involve contact with business and industry are not covered by these guidelines. In cases of bilateral agreements involving contact with business and industry, the relationship between defence sector employees and business and industry representatives must be clarified by the involved government officials.

1.3 Relationship to legislation and regulations

The guidelines must be viewed in the context of the legislation and regulations that apply at any given time. Relevant legislation in this context includes: the Public Administration Act, the Public Procurement Act and regulations, Public Employment Act section 39, and the General Civil Penal Code's provisions relating to corruption and trading in influence. The Defence Acquisition Regulations (DAR) also apply to the defence sector.¹ DAR must also be viewed in the context of the Ethical Guidelines for the Civil Service and any specific ethical guidelines that apply in particular agencies.

1.4 Leadership and responsibility

Leaders at all levels have a particular responsibility to abide by these guidelines. Emphasising ethics is a leadership responsibility. Through their words, actions and leadership style, individual leaders strongly influence the culture and standards of conduct in an organisation. This applies not least to how leaders deal with breaches of the guidelines. In difficult situations, a senior leader, or the Ministry of Defence, if necessary, should be consulted. It is a leader's responsibility to ensure that each employee has knowledge and understanding of the guidelines, both in the event of new appointments and in other respects. It is essential in this context to foster a working environment that encourages openness and reflection. Also, employees should be encouraged to bring up matters they regard as contravening laws and regulations or otherwise perceive as improper.

1.5 The individual's responsibilities

Individual employees in the defence sector are obliged to familiarise themselves with these guidelines, as well as other provisions, guidelines and instructions that pertain to their position at any given time. Each employee is personally responsible for abiding by the guidelines as

¹ See the Defence Acquisition Regulations subsection 2 and 3, the Public Procurement Act, the Public Procurement Regulation, the Defence and Security Regulation, the Utilities Regulation and the Regulation on Concessions Procurement.

carefully as possible. As an employee, each also has a shared responsibility for a working environment where collegial vigilance on ethical matters supports and assures the quality of day-to-day service. Employees are obliged to notify their employer of improprieties that may result in damage or loss. If an employee is in doubt as to whether an action or situation is within acceptable limits, he or she must take this up with his or her line manager. If this is perceived as difficult, it is possible to bring up the issue, even anonymously, through a whistleblowing channel.

1.6 The business community's responsibilities

Suppliers who lack the necessary integrity as a contracting party or are legally convicted or have received a penalty for criminal offenses may be excluded from the defence sector's procurements, according to the regulations of the Public Procurement Act with subsequent regulations.

The defence sector expects suppliers to the sector to have their own ethical guidelines, education, training and compliance mechanisms to ensure that suppliers' employees act in an ethically proper manner. It is also the responsibility of the suppliers to ensure that subcontractors and other personnel acting on their behalf comply with the supplier's ethical guidelines or ensure that they have their own ethical guidelines.

1.7 Acceptable and unacceptable conduct

A basic principle of ethics in the civil service is that public sector employees shall not allow themselves to be influenced by personal sympathies or antipathies, or by considerations of their own financial gain or that of someone close to them. All employees must be aware of their own attitudes, values and motivations, and exercise caution in all contact with business and industry. Acceptable conduct must lay within boundaries that exclude undue influence or avoid the appearance or suspicion of such influence. For that reason, an employee must, in all contact with business

and industry, keep this in mind and exercise caution. Relevant questions for self-examination are:

- Is the situation legal?
- Does it comply with the defence sector's ethical ground rules and internal guidelines?
- Would the relationship or situation "tolerate the light of day", such as being reported in the media or as open knowledge internally in the organisation?
- Is the choice or action economically justifiable?
- Is the choice or action well-justified?

Unacceptable conduct would typically be accepting gifts or services clearly intended and liable to influence recommendations or decisions in an improper manner. It is worth noting that whether one is actually influenced by a benefit or not is not decisive when assessing whether or not conduct is acceptable. See subsections 2.1 and 2.3 below.

1.8 Ethical judgement and grey areas

Grey areas exist in which what is right and what is wrong is not self-evident. The purpose of a gift, or its actual value, is not always easy to ascertain. Increased awareness, trust and openness regarding grey areas will help to make choices easier and provide a firmer foundation for ethical judgements.

2 Guidelines

2.1 The basic principle²

Public sector employees shall not accept gifts or other benefits liable to influence their official actions.

Public sector employees must not use their positions to obtain improper benefits for themselves or others. This also applies in cases where such benefits will not influence their official actions.

2.2 Defining and clarifying conduct

A number of situations are described in the table below, illustrated by traffic lights. The examples are considered relevant within the area of contact with business and industry, but in no way do they cover all situations. It is neither desirable nor possible to micromanage individual conduct in every context. The guidelines are thus intended to provide guidance regarding the desired assessments and conduct in relation to ethical issues defence sector employees might face in the performance of their official duties. If a situation arises in which an employee is unsure of how to proceed, a colleague or manager should be consulted. In many cases, openness is the most important means of avoiding suspicion of improper mingling of private and professional interests.

2.3 Gifts

Employees in the defence sector shall not, either for themselves or for others, accept or facilitate the acceptance of gifts, travel, hotel accommodation, hospitality, discounts, loans or other benefits or favours that are liable to, or that are intended by the giver to, influence their official actions, cf. Ethical Guidelines for the Civil Service subsection 4.5 and Public Employment Act section 39, or may result in any conflict of interests when in contact with business and industry.

² See Ethical Guidelines for the Civil Service, June 2017

Employees of the defence sector must not use their positions to obtain improper benefits for themselves or others. This also applies in cases where such benefits will not influence their official actions.³

Exceptions may be gifts of negligible value such as simple souvenirs and gifts with a purely symbolic function.

Correspondingly, due care must be exercised when giving gifts.⁴ To accept or offer gifts or benefits by virtue of one's position may be regarded as corruption.⁵

³ See Ethical Guidelines for the Civil Service, subsection 4.5, second paragraph

⁴ See Ethical Guidelines for the Civil Service, subsection 4.6

⁵ A violation of the anti-corruption regulations may lead to prosecution and punishment, cf. the General Civil Penal Code, article 387-389



Unacceptable

Personal gifts not prompted by a special occasion

Private discounts on goods/services from suppliers (exception for negotiated personal benefits)

Accepting gifts in your role as a decision maker

Accepting loans

Accepting gifts in your role as a supplier of terms



Concrete assessment

Personal gifts of negligible value from a supplier prompted by a festival/event

Gifts whose value is difficult to ascertain

Using suppliers' discounts for the benefit of the organisation



Acceptable

Merchandising articles of negligible value (souvenirs, etc.)

Gifts to the organisation upon major occasions (not personal gifts)

Gifts of negligible value when you have, for example, held a lecture/given a presentation

Remember:

- In general, such gifts are not to be accepted.
- Might the purpose of the gift be to influence you?
- Is the gift liable to influence you?
- How would accepting the gift be perceived by third parties (the general public)?
- If in doubt, discuss the matter with your manager.

2.4 Hospitality, travel and entertainment

In the relationship between public administration and business and industry, a certain amount of contact with business and industry is natural. Caution must be exercised in these dealings to avoid placing oneself in a situation that casts doubt on one's integrity. Here integrity refers to one's ability to be honest, incorruptible and impartial.

The basic principle is that employers shall cover the costs of their employees' participation in travel, courses, events, etc. Nonetheless, it may be acceptable for others to cover costs up to a reasonable amount in some situations.

Remember:

- The basic principle is that organisations shall cover the costs of their employees' participation in events, travel, and accommodation.
- Whatever you are treated to must tolerate the light of day.
- If in doubt, discuss the matter with your manager.



Unacceptable

Professional/nonprofessional trips/events paid for by individuals/ organisations other than your employer

Hospitality or similar liable to wield influence in connection with a procurement or a potential procurement

Meals in excess of what is considered moderate working lunch/dinner or general hospitality

Free alcohol in excess of what is served during a moderate meal

Participating in private events on the firm's premises

Tickets for concerts, sports events or their equivalent

Socialising at events without professional content

Sexual services⁶

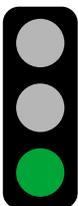


Concrete assessment

Participation of companion

Multiple invitations to working meals in connection with the same project

Private fraternising with suppliers and customers



Acceptable

Moderate working lunch or equivalent dinner, when this is related to a professional event or when this is considered part of general hospitality⁷

Professional event where your employer pays for your travel/accommodation⁸

⁶ See SPH (2018) subsection 1.8.2

⁷ The government rates cited in the Personnel Handbook for State Employees (SPH) subsection 9.2 and 9.3., give guidance for what are deemed moderate rates.

⁸ See the Defence Acquisition Regulations, subsection 2-11

2.5 Conflict of interest

It is important to be aware of situations in which our own interests conflict with those of our employer, and to act accordingly. There are legal competency rules in the Public Administration Act, the purpose of which are to ensure trust in public administration.⁹ Legal competency refers to the ability, authority and skills to consider or make decisions in a case.

Due care shall be exercised in relation to suppliers who have employed personnel formerly employed in the defence sector. This shall satisfy the considerations and requirements relating to legal competency, duty of confidentiality, equal treatment and genuine competition. Personnel previously employed in the defence sector in the last two years shall, as a basic principle, not be used for direct contact with the Norwegian Armed Forces in a procurement process.¹⁰

Defence sector employees may not take extra jobs, second jobs, board jobs, or other paid work that is incompatible with the employer's legitimate interests or liable to weaken trust in public administration.¹¹

Ethical Guidelines for the Civil Service state that a civil servant cannot own or trade with financial instruments, if this is incompatible with the legitimate interests of the state employer, or is liable to weaken confidence in the administration. Conflict of interest may take place, for example, when the employee owns securities in companies that are suppliers to the defence sector, that are under supervision, or for which rights are granted or imposed. Employees with this type of assignment must be consciously aware of the information they have access to through their work. They must acquire a thorough understanding of the rules regarding conflict of interest and handling of insider information.

⁹ See the regulations of the Public Procurement Act, subsection 7-5. Assessments regarding conflict of interest and impartiality are strictly applied.

¹⁰ See the Defence Acquisition Regulations, subsection 2-4 and 2-5

¹¹ See the Defence Act, section 61, the Defence Acquisition Regulations, subsection 2-17 and Ethical Guidelines for the Civil Service, subsection 4.2



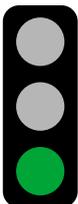
Unacceptable

- Considering matters concerning yourself, family or close friends
- Carry out undocumented or untraceable administrative procedures
- Considering matters, including assessing offers from suppliers, when you are a board member or have ownership interests
- Participating in competitions or signing procurement contracts with the defence sector. Also includes firms that are wholly or predominantly owned by staff¹²
- Use of defence sector employees in marketing of suppliers without assignment from the MOD



Concrete assessment

- Using the employer's suppliers for private purposes
- Fraternising with suppliers
- Employing former staff/recruiting customers
- Contact with and use of former defence sector employees in connection with a procurement process
- Private acquisitions of real estate and property from own employer
- Board/second jobs¹³ and private commercial activities
- Use of external advisers when drawing up specifications¹⁴



Acceptable

- Public office
- Exercising freedom of expression
- Use of defence sector employees in marketing by suppliers on assignment from the MOD

¹² See the Defence Acquisition Regulations

¹³ See Personnel Handbook for State Employees (SPH) subsection 10.13

¹⁴ See Regulations relating to Public Procurements, subsection 8-1, Defence and Security Regulation, subsection 3-5 and 8-2 and the Defence Acquisition Regulations (DAR), subsection 38-3

Remember:

- Do I have private contacts/relationships that could lead to questions being asked about my legal competence?
- How would the situation be perceived by a third party and the general public?
- Legal competency/conflicts of interest must always be assessed in a procurement situation.
- If in doubt, discuss the matter with your manager.

3 Consequences of breaches

3.1 Introduction

In case of rule breaches, the employer will judge whether there is reason for sanctions towards the employee. The sanctions vary widely, from an official reprimand or disciplinary penalty to criminal prosecution, with a possible prison sentence and dismissal as the outcome. Naturally, the seriousness of the breach of trust will determine the reaction. This chapter will outline the consequences various breaches can have. The aim is to increase predictability and more equal treatment in the type of reaction for rules breaches in cases of contact with business and industry.

3.2 Career consequences

Breaches of the standards of conduct pertaining to contact with business and industry could have career consequences. It should be noted that a violation of the law is not a necessary condition for such consequences. It may be sufficient for such a reaction that there is a breach of the standards of acceptable conduct set by these guidelines. In higher-ranking positions a high ethical standard is expected, because as role models, leaders will have substantial influence on the organisational culture and behavioural norms in their organisations. This means more than simply staying within the confines of the law. If by his or her conduct a person shows an inability or unwillingness to live up to the ethical standards required, he or she does not have the qualifications or personal

characteristics needed to fill a high-ranking position. In certain cases a civil servant could also be temporarily or permanently demoted.

3.3 Reactions pursuant to the Civil Service Act

Pursuant to section 25 of the Public Employment Act, an employee may be subject to a disciplinary penalty for, inter alia, infringements of official obligations or failure to fulfil official duties. An infringement of the prohibition of gifts will be affected by this provision. As a disciplinary penalty, the employee may be given a written reprimand or lose one month's to two years' seniority. The disciplinary penalty will be entered into the permanent record or personnel file. An ordinary reprimand is not a disciplinary penalty.

If the employee has exhibited gross negligence in his or her service or is in gross breach of official duties, or despite a written warning or reprimand has repeatedly breached official duties, he or she may be summarily discharged pursuant to section 25 of the Public Employment Act.

From a legal disciplinary perspective the following means can be used as sanctions: arrest, fines, restrictions of liberty and reprimands. An ordinary reprimand is not a disciplinary action.

3.4 Criminal sanctions

Pursuant to the provisions of subsections 387 and section 388 of the Penal Code, claiming, receiving or accepting an undue advantage offer, or giving or offering someone an undue advantage, in the performance of the post, duties, or performance of a mission, such as a free trip, may be regarded as corruption or even gross corruption. The penalty is fines or a prison term of up to three years, or up to ten years if the situation involved gross corruption.

Likewise, a benefit that is solicited, received or accepted, given or offered, with the intention of influencing the performance of a job, may be regarded as an improper advantage and may therefore be classified as trading in influence pursuant to subsection 389 of the Penal Code.

The penalty for trading in influence is also fines and up to three years' imprisonment.

Case law in this area establishes a relatively strict standard of conduct. Therefore, it does not take very much for corruption, even gross corruption, to be deemed to exist.

Reactions pursuant to the Civil Service Act do not preclude criminal sanctions being applied in the same case. Furthermore, a demand for discharge may be included in a criminal case.

3.5 Criteria for considering forms of reaction

Accepting gifts or other benefits is usually called a "transfer of advantage". There are factors that apply in judging such transfers and thus the degree of seriousness if one has "crossed the line". Such factors may include:

- the nature and monetary value of the advantage
- the time of the transfer
- the purpose of the transfer for the giver and recipient
- the context and occasion
- the recipient's place in the decision-making hierarchy or in the contractual relationship (greater responsibility in a position of a high level of trust)
- relationship between the giver and recipient
- the scope of the transfer of advantage
- absence of openness about the transfer of advantage
- financial harm to the Norwegian Armed Forces
- harm to the reputation of the Norwegian Armed Forces.

These factors will count in considerations of form of reaction to rule breaches. The Ministry of Defence and the leadership of the individual agency are committed to these guidelines, and to accepting adequate reactions to unacceptable conduct.

3.6 Responsibility for following up breaches of rules and standards of conduct

The individual manager and employer are responsible for initiating and/or undertaking reactions vis-à-vis an employee in breach of rules or standards of conduct. The case procedure and person who issues the decision will vary, depending on seriousness, form of reaction, level of position and place in the organisation. In cases pertaining to violations of the Public Employment Act, for example, the appointment body (i.e. appointment committee) will make the decision. If the person in question is a Ministry employee, the minister makes the decision, normally after obtaining a statement from the appointment committee. Prior to punitive action against a civil servant, statements must be obtained from persons specified in the Regulations for personnel administration in the ministries, section 10. In instances where a violation of the General Civil Penal Code is suspected, e.g. gross corruption or insider trading, the employer shall consider on a case-by case basis whether the matter should be reported to the police.¹⁵ Employees performing an assessment of violations must not themselves carry a conflict of interest, c.f. the Public Administration Act.

In the judgement of whether a breach of rules and standards of conduct has taken place, the rights of the employee shall be ensured.¹⁶

4 Entry into force

These guidelines are effective in the defence sector as of the date they have been made public. They replace the guidelines dated May 2011, but are otherwise not intended to replace existing rules and thus do not supersede other rules or documents. However, agencies need to ensure that their own ethical guidelines are harmonised with the revised guidelines, in order to ensure correspondence with the clarification provided in this document in relevant areas.

¹⁵ See the Defence Acquisition Regulations (DAR) subsections 2-12 and 2-13

¹⁶ See i.a. Public Employment Act § 32

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