



Northern Ireland  
Assembly

## Research and Information Service Bill Paper

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Michael Potter

# The Civil Service (Special Advisers) Bill 2012

NIAR 606-12

This Bill Paper summarises the main points of the Civil Service (Special Advisers) Bill 2012 and briefly outlines some of the related debates.

**Note: This paper constitutes research material only and should not be taken as legal advice.**



## Key Points

The Civil Service (Special Advisers) Bill was introduced on 2 July 2012 by Jim Allister MLA. The aim of the Bill is to regulate the appointment and conduct of Special Advisers, including the introduction of mandatory vetting.

The main provisions of the Bill are as follows:

- Clause 1 – Definition of ‘Special Advisers’, derived from Section 15 of the Constitutional Reform and Justice Act 2010
- Clause 2 – Exclusion of any person with a serious criminal conviction
- Clause 3 – Definition of a ‘serious criminal conviction’ as one carrying a sentence of 5 years or more
- Clause 4 – Duty to publish an annual report on Special Advisers, laid before the Assembly, derived from Section 16 of the Constitutional Reform and Justice Act 2010
- Clause 5 – Duty to publish a code of conduct for Special Advisers, laid before the Assembly, derived from Section 8 of the Constitutional Reform and Justice Act 2010
- Clause 6 – Duty to publish a code of conduct for the appointment of Special Advisers, laid before the Assembly
- Clause 7 – Removal of the advisers to the Speaker of the Northern Ireland Assembly from the list of exceptions to recruitment on the merit principle
- Schedule – Financial arrangements for individuals in post dismissed as a result of the legislation

Key points relating to the provisions of the Bill are as follows:

- The appointment of Special Advisers is determined by the appointing Minister. Vetting procedures were introduced in 2011, but they are not on a statutory basis.
- There is currently a code for appointing Special Advisers and a Code of Conduct for Special Advisers, but these are not on a statutory basis.
- Special Advisers in Great Britain are appointed by Ministers and vetting procedures are carried out in respect of access to sensitive information. Special Advisers in the Republic of Ireland are not required to undergo vetting on appointment, but details of the individual and contract of employment are to be laid before the Oireachtas.

While some concerns have been raised by the Attorney General as to whether the Bill is compliant with the European Convention on Human Rights, the Bill proposer states that the Bill is human rights compliant.





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## 1 Introduction

The Civil Service (Special Advisers) Bill<sup>1</sup> was introduced on 2 July 2012<sup>2</sup>. This Bill Paper summarises the origin, purpose and main clauses of the Bill and relates some comments on human rights compliance.

## 2 Background to the Bill

The Department of Finance and Personnel (DFP) carried out a Review of Arrangements for the Appointment of Ministers' Special Advisers in 2011 due to the "public, political and media comment and controversy surrounding the appointment of a Ministerial Special Adviser"<sup>3</sup>. The Review noted that it is ultimately for each Minister to decide how to select his or her Special Adviser and that, unlike for civil servants, there is no vetting procedure for Special Advisers<sup>4</sup>. The Review recommended the following<sup>5</sup>:

- There should be no change in the exemption of the merit principle in respect of Special Advisers
- Compliance with the existing Code of Practice on the Appointment of Special Advisers<sup>6</sup> should be mandatory for Ministers
- All generic documentation relating to the appointment and employment of Special Advisers should be routinely published on the DFP website
- A new vetting process should be introduced to apply to Special Advisers

Questions in the Northern Ireland Assembly have been raised on matters relating to salary, tenure, costs, conduct, job descriptions, contracts of employment, appointment procedures, vetting, identity, notification and selection criteria in respect of Special Advisers<sup>7</sup>.

The Civil Service (Special Advisers) Bill was introduced as a Private Member's Bill by Jim Allister MLA on 2 July 2012 and passed Second Stage on 25 September 2012.

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<sup>1</sup> The Civil Service (Special Advisers) Bill 2012: <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Civil-Service-Special-Advisers-Bill/Civil-Service-Special-Advisers-Bill/>.

<sup>2</sup> Bill page on the Northern Ireland Assembly website: <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Civil-Service-Special-Advisers-Bill/>.

<sup>3</sup> Department of Finance and Personnel (2011), *Review of Arrangements for the Appointment of Ministers' Special Advisers*, Belfast: DFP, Paragraph 1: <http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers>. See also the Bill proposer's rationale presented at the Committee for Finance and Personnel 19 September 2012: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill--Briefing-from-Mr-Jim-Allister-MLA/>.

<sup>4</sup> Paragraphs 7-8.

<sup>5</sup> Paragraph 27.

<sup>6</sup> The Code of Conduct is at Annex B of the Review report.

<sup>7</sup> For example, AQW 13655/11-15, AQW 13640/11-15, AQW 13638/11-15, AQW 11015/11-15, 10547/11-15, AQW 10368/11-15, AQO 1743/11-15, AQW 10243/11-15, AQW 10242/11-15, AQW 10241/11-15, AQW 10240/11-15.

The Bill is intended to achieve four things<sup>8</sup>:

1. To “provide that no person shall hold the post of Special Adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more”
2. To place a statutory duty on the Department of Finance and Personnel (DFP) to publish a code of conduct and annual report on the number and cost of Special Advisers
3. To require the DFP to publish a code for the appointment of Special Advisers
4. To remove the Presiding Officer from the list of office-holders entitled to appoint a Special Adviser

### 3 The Clauses of the Bill

This section briefly examines the clauses of the Bill.

#### **Clause 1: Definition of ‘Special Adviser’**

A Special Adviser is defined as “a person appointed to the Northern Ireland Civil Service to advise the First Minister or deputy First Minister, a Northern Ireland or a junior Minister”<sup>9</sup>. This is derived from Section 15 of the Constitutional Reform and Governance Act 2010 (see Appendix 1).

This accords with the definition provided in the DFP Review, which adds that Special Advisers are employed to provide advice with a political dimension to Ministers where it would be inappropriate for a civil servant to do so. As such, their employment terminates when the Minister is no longer in post<sup>10</sup>.

#### **Clauses 2-3: Ineligibility for Appointment on the Grounds of a Serious Criminal Conviction**

The Bill provides for the exclusion of any person with a ‘serious criminal conviction’ from being a Special Adviser. A ‘serious criminal conviction’ is defined as one that carries a sentence of five years or more imprisonment. Maximum sentences are set in statute, but actual sentences are determined through a balance of mitigating and aggravating factors, with some guidance from guidelines and precedents<sup>11</sup>. ‘Serious offences’ and ‘specified offences’ are listed in Schedules 1 and 2 of the Criminal Justice (Northern Ireland) Order 2008<sup>12</sup>, which provides for extended sentences in such cases.

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<sup>8</sup> Civil Service (Special Advisers) Bill Explanatory and Financial Memorandum (NIA BILL 12/11-15 EFM), p.1.

<sup>9</sup> Explanatory Memorandum, p.3.

<sup>10</sup> Review, Paragraph 3.

<sup>11</sup> BJAC Valentine (2010), *Criminal Procedures in Northern Ireland*, Belfast: SLS Legal Publications, pp.610-11.

<sup>12</sup> Criminal Justice (Northern Ireland) Order 2008: <http://www.legislation.gov.uk/nisi/2008/1216/contents>.

The provisions include the dismissal of any Special Adviser who is in post when the legislation comes into force or who incurs a serious criminal conviction. The Schedule to the Bill provides for financial arrangements in the event of such a dismissal.

Formerly, no form of vetting was required for Special Advisers, whereas Criminal Record Checks are carried out for all applicants to the Northern Ireland Civil Service (NICS) and a level of vetting applied to individuals dependent on the nature of their employment<sup>13</sup>. New arrangements for the employment of Special Advisers, including vetting, were in place in September 2011 and are being implemented for subsequent appointments<sup>14</sup>. This Bill would place the vetting requirement on a statutory footing.

### **Clauses 4-6: Statutory Requirements**

Clause 4 places a duty on DFP to publish an annual report about Special Advisers, and for it to be laid before the Northern Ireland Assembly, to include information about costs. There is currently no requirement for the publication of information on Special Advisers. An annual report on public appointments is published by the Office of the First Minister and deputy First Minister (OFMdfM), but there is no such requirement in respect of Special Advisers<sup>15</sup>. This clause is derived from Section 16 of the 2010 Act.

Clause 5 provides for similar requirements with regard to a code of conduct for Special Advisers, to form part of the Adviser's contract of employment. Special Advisers are currently contractually bound by a Code of Conduct for Special Advisers, including the NI Civil Service Code of Ethics, as set out in the Model Contract for Employment for Special Advisers<sup>16</sup>. This clause is derived from Section 8 of the 2010 Act.

Clause 6 provides for similar requirements with regard to a code of conduct for the appointment of Special Advisers. Special Advisers are currently appointed in accordance with the Code of Practice on the Appointment of Special Advisers and the Civil Service Commissioners (Northern Ireland) Order 1999<sup>17</sup>.

### **Clause 7: Removal of the Exclusion of Advisers to the Presiding Officer from the Merit Principle**

The Bill provides for the removal of advisers to the Presiding Officer of the Northern Ireland Assembly (i.e. the Speaker) from the list of offices whose appointment is

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<sup>13</sup> Pre-employment checks for the Civil Service are governed by Section 9 of the NICS Recruitment Policy and Procedures Manual: Department of Finance and Personnel (2012), *Northern Ireland Civil Service Recruitment Policy and Procedures Manual*, Belfast: DFP, pp.66-71: <https://irecruit-ext.hrconnect.nigov.net/resources/documents/r/p/rppmv12nd.pdf>.

<sup>14</sup> Evidence from the Department of Finance and Personnel to the Finance and Personnel Committee 19 September 2012: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill--DFP-Briefing/>.

<sup>15</sup> OFMdfM Public Appointments web pages: <http://www.ofmdfmi.gov.uk/index/making-government-work/public-appointments.htm>.

<sup>16</sup> Answer to AQW 11015/11-15 dated 27 April 2012; Model Contract for Employment accessible as Deposited Paper 994/2012 in the Northern Ireland Assembly Library: <http://www.niassembly.gov.uk/Assembly-Business/Research-and-Information-Service-RaISe/Deposited-Papers-2012/>.

<sup>17</sup> Answer to AQW 10547/11-15 dated 18 April 2012; the Code of Practice is at Annex B of the *Review of Arrangements for the Appointment of Ministers' Special Advisers* (see note 3 above); Civil Service Commissioners (Northern Ireland) Order 1999: <http://nicscommissioners.org/wp-content/uploads/2011/06/CSCNI-Order-1999.pdf>.

exempt from the merit principle on the basis of fair and open competition. Currently, Section 3(3)(a) of the 1999 Order exempts advisers to the “Presiding Officer of the New Northern Ireland Assembly” from being subject to the merit principle for recruitment purposes.

Currently, the Adviser to the Speaker of the Northern Ireland Assembly is appointed by open competition.

## 4 Special Advisers in Other Jurisdictions

This section briefly outlines provisions for Special Advisers in other jurisdictions.

### **Advisers to UK Ministers<sup>18</sup>**

Special Advisers in the UK Parliament are governed by the provisions of the Constitutional Reform and Governance Act 2010<sup>19</sup>. Provisions relevant to the current Bill are as follows:

- Section 15: Definition of ‘Special Adviser’ A Special Adviser is a person “appointed to assist a Minister of the Crown after being selected for that appointment by the Minister personally”. The appointment is to be approved by the Prime Minister and terms and conditions of employment approved by the Minister for the Civil Service.
- Section 16: Annual Reports about Special Advisers The Minister for the Civil Service is to lay annual reports on Special Advisers before Parliament.
- Section 8: Special Advisers Code The Minister for the Civil Service must lay before Parliament and publish a code of conduct for Special Advisers, to exclude powers to authorise the expenditure of funds, management of the civil service or exercise executive powers not contained within the Act.

Pending Commencement Orders for the 2010 Act, the following documents govern the appointment and conduct of Special Advisers<sup>20</sup>:

- Civil Service Order in Council 1995 (as amended)<sup>21</sup>, Section 3(1) of which exempts anyone appointed directly by a Minister of the Crown from appointment by merit and open and fair competition.
- Code of Conduct for Special Advisers 2010<sup>22</sup>, which governs the work of Special Advisers.

<sup>18</sup> For background to the current provisions for UK Special Advisers, see House of Commons Library Standard Note SN/PC/03813 *Special Advisers* 7 August 2012: <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-03813.pdf>.

<sup>19</sup> Constitutional Reform and Governance Act 2010: <http://www.legislation.gov.uk/ukpga/2010/25/contents>.

<sup>20</sup> See House of Commons Library Standard Note SN/PC/03813 *Special Advisers* 7 August 2012, p.4.

<sup>21</sup> Civil Service Order in Council 1995: [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Consolidated-Order-in-Council-as-at-22-Jan\\_tcm6-6864.doc](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Consolidated-Order-in-Council-as-at-22-Jan_tcm6-6864.doc).

- Model Contract for Special Advisers 2010<sup>23</sup>, which sets out principal terms and conditions of employment for Special Advisers.
- Civil Service Code<sup>24</sup>, except regarding the principles of objectivity and impartiality.
- Ministerial Code<sup>25</sup>, Section 3 of which includes guidelines on the appointment and conduct of Special Advisers.

The Public Administration Select Committee announced an inquiry into Political Special Advisers in April 2012. Evidence collection is complete and a report is in preparation<sup>26</sup>.

Vetting procedures do not specify whether Special Advisers are always to be subject to vetting procedures, but security vetting is carried out as required<sup>27</sup>.

### **Special Advisers in the Scottish and Welsh Governments**

Special Advisers in Scotland and Wales are governed by similar requirements as those in Westminster, with some regional differences, for example, the Scottish Government has a model contract of employment for Special Advisers<sup>28</sup>.

Scottish and Welsh Government Special Advisers are subject to the same code of conduct as their Westminster counterparts and Scotland and Wales come under the provisions of the Constitutional Reform and Governance Act 2010<sup>29</sup>.

### **Special Advisers in the Government of Ireland**

Special Advisers in the Republic of Ireland have a similar role and function to those in the UK, and are appointed similarly. There are areas of employment where vetting is mandatory, but this does not apply to civil servants generally, where vetting is on a non-statutory basis, and Special Advisers are exempt from the legislation governing civil service employment requirements<sup>30</sup>. However, the appointing office holder is required to lay before the Oireachtas a statement of qualifications, a statement of

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<sup>22</sup> Code of Conduct for Special Advisers 2010: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-code-of-conduct.pdf>.

<sup>23</sup> Model Contract of Employment for Special Advisers 2010: [http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-model-contract\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-model-contract_0.pdf).

<sup>24</sup> See Note 4 of the Civil Service Code: <http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>.

<sup>25</sup> Ministerial Code: <http://webarchive.nationalarchives.gov.uk/http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf>.

<sup>26</sup> Public Administration Select Committee Inquiry into Political Special Advisers: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/inquiries/parliament-2010/political-special-advisers1/>.

<sup>27</sup> Communication from House of Commons Library, 25 September 2012 ("012/9/92-PCC).

<sup>28</sup> Model contract of employment for Special Advisers in the Scottish Government: <http://www.scotland.gov.uk/Resource/Doc/254435/0089279.pdf>.

<sup>29</sup> Scottish Ministerial Code 2011, Paragraphs 4.14-4.18: <http://www.scotland.gov.uk/Publications/2011/12/01141452/0>; Welsh Ministerial Code 2011, Paragraph 2.8: <http://wales.gov.uk/docs/dfm/publications/110708ministerialcodeen.doc>.

<sup>30</sup> Oireachtas Library and Research Service On-Demand Research Paper 2012/16339 21 September 2012.

interests, a copy of the contract of employment and a statement as to whether the appointee is a relative of the office holder<sup>31</sup>.

The appointment and conduct of Special Advisers are governed by the following legislation:

- Ethics in Public Office Act 1995<sup>32</sup>
- Public Service Management Act 1997<sup>33</sup>
- Standards in Public Life Act 2001<sup>34</sup>

## 5 Legislation and Policy

Some relevant legislation with regard to the employment of persons with a criminal record is as follows<sup>35</sup>:

- The Rehabilitation of Offenders (Northern Ireland) Order 1978<sup>36</sup>, working on the principle that individuals with criminal convictions should be rehabilitated into society through access to employment, outlines periods after which convictions are spent and indicates sentences that are excluded from rehabilitation.
- The Northern Ireland Sentences Act 1998<sup>37</sup> brings into effect arrangements for the release of prisoners for conflict-related offences as a consequence of the Belfast Agreement<sup>38</sup>. In the application for judicial review by Damien McComb in 2003 on the issue of application for a taxi licence, Justice Kerr ruled that prisoners released under the terms of this Act are deemed by the Sentencing Commissioners not to be a danger to the public<sup>39</sup>.
- The Fair Employment and Treatment Order 1998<sup>40</sup> makes it unlawful to discriminate on the grounds of religious belief or political opinion. In an appeal to the House of Lords by John McConkey and Jervis Marks in 2009<sup>41</sup> against decisions by the Simon Community not to employ them on the basis of having been convicted of conflict-related offences, the appeal was dismissed on the grounds that the refusal to employ was not based on political opinion, but exercising that opinion through the use of violence.

<sup>31</sup> Appendix 5 of the Guidelines on Compliance with the Provisions of the Ethics in Public Life Acts for Office Holders: <http://www.sipo.gov.ie/en/Guidelines/EthicsActs/OfficeHolders/Text/Name.2203.en.htm>.

<sup>32</sup> Ethics in Public Life Act 1995 (Section 19): <http://www.irishstatutebook.ie/1995/en/act/pub/0022/index.html>.

<sup>33</sup> Public Service Management Act 1997 (Section 11): <http://www.irishstatutebook.ie/1997/en/act/pub/0027/index.html>.

<sup>34</sup> Standards in Public Life Act 2001: <http://acts.oireachtas.ie/en.act.2001.0031.1.html#sec1>.

<sup>35</sup> See also Research and Library Services Briefing Note 68/09 *Employing Ex-Offenders with Conflict-Related Convictions in Northern Ireland*: <http://archive.niassembly.gov.uk/researchandlibrary/2009/6809.pdf>.

<sup>36</sup> Rehabilitation of Offenders (Northern Ireland) Order 1978: <http://www.legislation.gov.uk/nisi/1978/1908/contents>.

<sup>37</sup> Northern Ireland Sentences Act 1998: <http://www.legislation.gov.uk/ukpga/1998/35/contents>.

<sup>38</sup> The Agreement 1998, 'Prisoners' Paragraph 1: <http://www.nio.gov.uk/agreement.pdf>.

<sup>39</sup> [2003] NIQB 47 7 July 2003: [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2047/j\\_i\\_KERF3984.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2047/j_i_KERF3984.htm).

<sup>40</sup> Fair Employment and Treatment Order 1998: <http://www.legislation.gov.uk/nisi/1998/3162/contents/made>.

<sup>41</sup> [2009] UKHL 24 20 May 2009: <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/id090520/conkey-1.htm>.

The Office of the First Minister and deputy First Minister issued guidance for the recruitment of persons with conflict-related convictions. The key principle, taken from the working group set up to look at the matter, is as follows<sup>42</sup>:

*...that conflict-related convictions of 'politically motivated' ex-prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply.*

The guidance is not obligatory or set in legislation.

## 6 Human Rights

The Explanatory and Financial Memorandum states that the Bill is compliant with the European Convention on Human Rights (ECHR)<sup>43</sup>.

In evidence to the Committee for Finance and Personnel, the Attorney General raised concerns with regard to Article 7 of the European Convention on Human Rights<sup>44</sup>. He stated as follows<sup>45</sup>:

My concerns stem from article 7 of the convention. That does two things, one of which is relevant, potentially, to this Bill. First, article 7 of the convention prohibits retrospective penalisation, so one cannot retrospectively render criminal that which was not criminal at the time. Secondly, and, perhaps, more relevantly for this discussion, it prohibits an increase in penalty or the imposition of a heavier penalty than was available at the time. If the question is asked whether the disqualification that is introduced by clauses 2 and 3 of the Bill constitutes a penalty in domestic law terms, the answer is quite clearly that no, it does not, because our criminal law would not recognise that as a penalty. For the consideration of this issue, it is vital to recall that "penalty", as used in article 7, has an autonomous convention meaning, and that has been clarified in a number of Strasbourg cases.

It strikes me that in taking guidance as best one can from the Strasbourg authorities, one starts with the dominant question in seeing whether article 7

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<sup>42</sup> Office of the First Minister and deputy First Minister (2007), *Recruiting People with Conflict-Related Convictions: Employers' Guidance*, Belfast: OFMdfM, p.4: [http://www.ofmdfmi.gov.uk/1.05.07\\_ex\\_prisoners\\_final\\_guidance.pdf](http://www.ofmdfmi.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf).

<sup>43</sup> Explanatory and Financial Memorandum, p.5.

<sup>44</sup> European Convention on Human Rights:

<http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>.

<sup>45</sup> Evidence from the Attorney General to the Finance and Personnel Committee 19 September 2012:

<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill--Briefing-from-the-Attorney-General/>.

applies. Does the measure, to use a neutral term, follow on as a consequence from a criminal conviction? I think the answer here is that what happens in clauses 2 and 3 does follow on as a consequence of a criminal conviction.

In the Second Stage debate, the Bill proposer refutes these concerns and points to exclusions for criminal convictions in Paragraph 9 (3) of Schedule 1 of the Justice Act (Northern Ireland) 2011<sup>46</sup>, which was deemed ECHR compliant<sup>47</sup>.

Standing Order 85 (4) of the Northern Ireland Assembly states of Private Member's Bills:

The Speaker shall, as soon as is reasonably practicable after the introduction of the Bill, send a copy of it to the Northern Ireland Human Rights Commission.

Standing Order 97 also states that the Human Rights Commission can be asked to advise whether a Bill is compatible with human rights at any stage.

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<sup>46</sup> Justice Act (Northern Ireland) 2011: <http://www.legislation.gov.uk/ni/2011/24/contents>.

<sup>47</sup> Northern Ireland Assembly Official Report 25 September 2012: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/25-September-2012/>.



## Appendix 1: Relevant Sections of the Constitutional Reform and Governance Act 2010

### **8 Special advisers' code.**

(1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15). .

(2) For this purpose, the Minister may publish separate codes of conduct covering special advisers who serve the Scottish Executive or the Welsh Assembly Government.

(3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).

(4) In this Chapter “special advisers code” means a code of conduct published under this section as it is in force for the time being. .

(5) Subject to subsection (6), a special advisers code must provide that a special adviser may not—

(a) authorise the expenditure of public funds;

(b) exercise any power in relation to the management of any part of the civil service of the State;

(c) otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty's prerogative.

(6) A special advisers code may permit a special adviser to exercise any power within subsection (5)(b) in relation to another special adviser. .

(7) In subsection (5)(c) “Act” includes—

(a) an Act of the Scottish Parliament;

(b) an Act or Measure of the National Assembly for Wales;

(c) Northern Ireland legislation.

(8) The Minister for the Civil Service must lay any special advisers code before Parliament.

(9) The First Minister for Scotland must lay before the Scottish Parliament any special advisers code under subsection (2) that covers special advisers who serve the Scottish Executive.

(10) The First Minister for Wales must lay before the National Assembly for Wales any special advisers code under subsection (2) that covers special advisers who serve the Welsh Assembly Government.

(11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.

## **15 Definition of “special adviser”.**

(1) In this Chapter “special adviser” means a person (“P”) who holds a position in the civil service serving an administration mentioned below and whose appointment to that position meets the applicable requirements set out below.

### *Her Majesty’s Government in the United Kingdom*

The requirements are —

- (a) P is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally;
- (b) the appointment is approved by the Prime Minister; .
- (c) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service;
- (d) those terms and conditions provide for the appointment to end not later than —
  - (i) when the person who selected P ceases to hold the ministerial office in relation to which P was appointed to assist that person, or
  - (ii) if earlier, the end of the day after the day of the poll at the first parliamentary general election following the appointment.

### *Scottish Executive*

The requirements are—

- (a) P is appointed to assist the Scottish Ministers (or one or more of the ministers mentioned in section 44(1)(a) and (b) of the Scotland Act 1998) after being selected for the appointment by the First Minister for Scotland personally;
- (b) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service;
- (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

The reference above to the Scottish Ministers excludes the Lord Advocate and the Solicitor General for Scotland.

*Welsh Assembly Government*

The requirements are—

- (a) P is appointed to assist the Welsh Ministers (or one or more of the ministers mentioned in section 45(1)(a) and (b) of the Government of Wales Act 2006) after being selected for the appointment by the First Minister for Wales personally;
- (b) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service;
- (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

(2) In subsection (1), in relation to an appointment for which the selection is made personally by a person designated under section 45(4) of the Scotland Act 1998 or section 46(5) of the Government of Wales Act 2006, the reference to the person who selected P ceasing to hold office as First Minister for Scotland or Wales (as the case may be) is to be read as a reference to the designated person ceasing to be able to exercise the functions of the First Minister by virtue of the designation.

**16 Annual reports about special advisers.**

(1) The Minister for the Civil Service must—

- (a) prepare an annual report about special advisers serving Her Majesty's Government in the United Kingdom, and
- (b) lay the report before Parliament.

(2) The First Minister for Scotland must—

- (a) prepare an annual report about special advisers serving the Scottish Executive, and
- (b) lay the report before the Scottish Parliament.

(3) The First Minister for Wales must—

- (a) prepare an annual report about special advisers serving the Welsh Assembly Government, and
- (b) lay the report before the National Assembly for Wales.

(4) A report under this section must contain information about the number and cost of the special advisers.