



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government
(Miscellaneous Provisions) Bill

23 September 2020

NORTHERN IRELAND ASSEMBLY

Committee for Finance

Functioning of Government (Miscellaneous Provisions) Bill

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Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Seán Lynch
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:

Ms Claire McCanny Northern Ireland Assembly Bill Office

The Chairperson (Dr Aiken): We now move on to the Committee's post-evidence deliberations on the Functioning of Government (Miscellaneous Provisions) Bill. The meeting will be recorded by Hansard. The Committee Clerk's briefing paper is in members' packs. It provides the Committee with a number of points to consider during its deliberations on each clause of the Bill and the amendments proposed by the Bill's sponsor. We have the opportunity to identify and consider options on which Committee members may wish to vote when it comes to formal clause-by-clause consideration of the Bill. I remind members that the updated Bill folder is available on SharePoint and inform you that there is a tabled paper on the notice of amendments tabled on 22 September for Consideration Stage. I advise members that they should refer to the notice of amendments during the deliberations on each clause and subsection.

Jim, how would you like to go through the Bill? Will you read off the clauses as we need to consider them?

The Committee Clerk: It will be less formal than that, Chair. At this stage, what I want to say first about the Committee members' briefing paper is that, from memory, for clause 1(5), it states:

"Currently, four SpADs are paid above the NICS Grade 5 maximum".

It should read:

"There are currently four special advisers above the pay band 2 maximum".

That is an error in the paper. Apologies to members for that.

Mr O'Toole: Sorry, Jim. That is paragraph 14, on clause 1(5). What should it say?

The Committee Clerk: It should state:

"four special advisers above the pay band 2 maximum".

Mr Jim Allister (Northern Ireland Assembly): But all below grade 5.

The Committee Clerk: All below grade 5.

The Chairperson (Dr Aiken): Claire, do you want to crack on while we try to get the IT working?

Ms Claire McCanny (Bill Office, Northern Ireland Assembly): Yes. Absolutely. To follow on from last week's meeting, my role as the Bill Clerk is to assist members in their deliberations. The purpose of today is to go through the Bill's individual clauses. The Chair will lead you through those deliberations and consider what the key issues are in each clause; whether the Committee has a view on those key issues; whether it requires more information to enable it to form a view; and what that information is. It is not clause-by-clause scrutiny. You are not being asked to vote on the clauses at this stage. You are simply being asked to take a view as a Committee. If there are differing views on the Committee, those will be reflected in the Committee's report, which will be produced by the Committee Clerk at the end of the Bill's Committee Stage.

Mr Wells: When will we do the clause-by-clause scrutiny?

The Committee Clerk: That is entirely a matter for the Committee. It depends on what the Committee decides today and possibly next week. Members may wish to take further evidence before they decide to look at the Bill more formally. They may wish to take advice as they consider each of the clauses and their subsections.

Mr O'Toole: I do not mean to sound facile, but, further to Jim's question, would it be helpful if you or the Committee Clerk could give us an overview of the legislative stages from here and our roles?

Ms McCanny: Absolutely.

Mr O'Toole: We have all been following this closely, and Jim has kept us abreast of developments with very useful evidence sessions. I am just wondering whether it would be helpful to get an overview of where we go from here.

Mr Allister: Did we not get that last week?

Mr O'Toole: We did, yes. We do not have to spend too much time on it.

The Chairperson (Dr Aiken): To take the approach of my honourable friend from South Belfast, it is something with which many of us are not completely familiar. We want to make sure that we do it right. Does that summarise what you were about to say?

Mr O'Toole: Given Jim's question about when we will proceed to formal clause-by-clause scrutiny, it would be helpful for some of us if that were re-summarised in the minimum number of words. I realise that I am asking to be treated like a primary-school child.

Ms McCanny: Can I answer through you, Chair?

The Chairperson (Dr Aiken): Yes, please, Claire.

Ms McCanny: It is very important. Given that we are a legislative Assembly, it is very important that the Committee charged with scrutinising the Bill do it correctly. As this stage, you are just doing the deliberations and reflecting on the evidence that you have received to date. The Bill's Committee Stage has been extended until December, so you have until then. If necessary, a further extension can be sought, but that is more the exception. The important bit now is to ensure that the deliberations are fulsome and that, when it comes to the clause-by-clause consideration, you are very clear on what

it is that you are voting on. Clause-by-clause consideration, in which you go through each clause and vote on it, naturally follows the Committee deliberations. There is not as much discussion on a clause at that point, generally speaking, as you would like to have reached a view during the deliberations. Clause-by-clause consideration is simply where you record, either by consensus or vote, the Committee's view. The Committee Clerk will then draft the Committee report, and that will be considered by the Committee. Once the Committee is content with the draft report, the sponsor of the Bill can decide on a date for Consideration Stage. The Bill then goes to Consideration Stage.

The deadline for submitting amendments is the week before Consideration Stage, and MLAs may table amendments with the Bill Office until the Wednesday before the Bill's Consideration Stage. You can either agree Committee amendments here today or table individual amendments or those of your party with the Bill Office. That option is open to you. Following Consideration Stage, there is Further Consideration Stage. The process culminates in Final Stage, before the Bill is passed on to the Advocate General and the Attorney General.

The Chairperson (Dr Aiken): We will make a start and look first at clause 1. Jim, the most substantial proposed change is an amendment that you have tabled to page 1, line 14, which begins:

*"At end insert -
'(3A) In section 8 (Code for appointments)".*

Have we got that in front of us, ladies and gentlemen?

Mr McHugh: What page are we on?

The Chairperson (Dr Aiken): We are on page 1 of the Bill. Have you all got a copy of the notice of amendments?

The Committee Clerk: Chair, is this clause 1(2)?

The Chairperson (Dr Aiken): Yes.

Mr Allister: Chair, I think that it is subsection (3).

The Chairperson (Dr Aiken): It is subsection (3).

The Committee Clerk: Sorry, Chair, but do you want to start with subsection (2)?

The Chairperson (Dr Aiken): OK. I will start with subsection (2). The amendment states, in clause 1, page 1, line 7: "After '(2)' insert '(b)'".

The Committee Clerk: That is the proposed amendment. Subsection (2) of clause 1 is about the hierarchy of spads.

The Chairperson (Dr Aiken): Yes.

Mr Allister: I just want to say that the purpose of that subsection was to deal with the situation that emerged during the renewable heat incentive (RHI) inquiry, where a particular spad from the Executive Office was directing other spads in different Departments. The purpose of the clause is to allow only a hierarchy in the Executive Office so that spads who work to a particular Minister work for that Minister, not for some other spad.

Mr Wells: I agree strongly with that. There was one particular spad who was utterly dominant and had supreme power over not only the spads in the Executive Office but any other spads who were shared by that particular party. They obeyed him and did everything that he told them to do. It is absolutely right that no spad from one Department should have any authority over a spad from another Department. That amendment is very appropriate.

Mr Frew: Again, I do not disagree with the sentiment of the clause and that subsection. May I ask about the practicalities of that in legislation? What would it mean in the real world for interaction between spads? You have a Department of Finance spad who wants to liaise with an Executive Office

spad or vice versa. There is a meeting, at which and guidance and advice but not necessarily instruction is given. How would that play out?

The luxury for the Committee is that Jim, the sponsor of the Bill, is at the meeting. I would like to tease that out a bit more.

Mr Allister: It would not impact on liaising at all. It is confined to exercising power, which essentially is added direction. You would expect the spad from one Department to talk to the spad from another to discuss something, but you would not have one telling the other, "This is the line that your Minister will take". That is what it is directed at.

The Chairperson (Dr Aiken): We should be considering whether we believe that there should be a hierarchy of spads. If it is deemed that there is not a need for a hierarchy, do we outlaw it in the legislation? That is the question.

Mr Wells: No. We are not outlawing the hierarchy in the Executive Office.

The Chairperson (Dr Aiken): We cannot, because it is —.

Mr Wells: In my experience, the RHI inquiry showed that there was one spad who did not consult. He gave orders to all the other staff, who obeyed implicitly. He used the authority of them coming from the First Minister in order to do that. That was part of the problem that arose during RHI. That person should never have had that power and should never have it in the future.

Mr Lynch: Our view is that that is no longer an issue, as, in the new codes, a spad is responsible only to a Minister, and each Minister has only one spad.

Mr Wells: No. In the Office of the First Minister and deputy First Minister (OFMDFM), that is not the case.

Mr Allister: We have been over that ground so often. What is in the codes is interesting, but it is not binding.

The Chairperson (Dr Aiken): A fundamental thing runs through the Bill. Every time that you read it is, this question arises: if we had been following normal custom and practice, would we need this Bill? The answer in my mind is no. We have never followed normal custom and practice, and that is why we need the legislation. That has been pointed out by Jim as we have gone through Committee Stage. It is not a question of whether we should be doing it but a question of how we ensure that it happens, because that is what has gone fundamentally wrong.

Mr Catney: I go back to 'Animal Farm', where all are equal but some are more equal than others. The clause closes that down, so yes.

Mr Frew: Again, Jim will keep us right, but the clause permits there to be only one:

"special adviser to exercise any power ... in relation to another special adviser"

in the Executive Office. In some cases, that may well be common sense. In any walk of life, you usually have a foreman or someone to coordinate. If you have an office with two, three, four or whatever number of spads — more than one, put it like that — the chances are that they will all have their own specialisms and expertise. In that case, you would not have a hierarchy, but there may be a case in which one or another takes the lead. In that case, there may be merit in and it may well warrant having a hierarchy.

The clause allows that to happen in the Executive Office, and that is why I have no problems with it. I am teasing out the practicalities. I am supportive of it, but —.

The Chairperson (Dr Aiken): Rather than take a vote, do we accept the view that it be included?

Mr Frew: I would support that.

Mr Wells: Same here.

The Committee Clerk: Do you want to move on to the amendments?

The Chairperson (Dr Aiken): Yes.

Mr McHugh: You ask whether we accept that view. As one who is opposed to the Bill in the first instance, I do not accept that view. That will be my position as we go through each clause. I want to make that clear from the outset.

The Chairperson (Dr Aiken): You are dissenting to the entire Bill, and therefore you are dissenting to every clause. We can take it as read, Maolíosa, or you can interject at every point.

Mr McHugh: I will make the point again that it is about whether we have legislation or a code of practice. I believe in the code of practice.

The Committee Clerk: Chair, for clarity, we are looking at pinning down what exactly the Committee will be considering when it comes to forming a view on the Bill. At that stage, members —

The Chairperson (Dr Aiken): The question is this: are we content that what we are going to consider is part of the Bill? Standing fast on what your view is, Maolíosa, which is that you do not believe in the Bill in the first place. We have got that.

Mr Frew: This is not a formal clause-by-clause session. No one should feel pressurised to say yea or nay or whatever. It is about making sure that every member of the Committee knows exactly what each clause does.

Ms McCanny: The other thing I will stress is that these deliberations are good for the Assembly as a whole. You are one Committee and a number of Members charged with looking at the Bill. When it comes to Consideration Stage, the Assembly will look at the Committee report on the Bill and use that to inform the Committee Stage. If members have differing views, that is entirely acceptable. The Clerk will take the opportunity to reflect those differing views and the rationale for those in the report, so that other Members are informed about why members have supported particular clauses or amendments or why members have differing views on them. The views can be recorded and expressed to aid and assist the Assembly as a whole.

The Chairperson (Dr Aiken): Shall we do the next one?

The Committee Clerk: There are a number of amendments to this subsection, so if members want to —

Mr Allister: There is just one.

The Committee Clerk: Sorry, there is just one.

Mr Allister: It is typographical: put in "(b)".

The Committee Clerk: Oh yes. It is basically a technical amendment. Is the Committee content to look at that amendment as part of its view? Have any members anything further they would like to say?

The Chairperson (Dr Aiken): Any comments?

Mr Frew: It is an essential amendment to tidy it up.

The Chairperson (Dr Aiken): OK. Do we want to do the next one?

The Committee Clerk: Moving on to clause 2, then, Chair?

The Chairperson (Dr Aiken): Yes.

Ms McCanny: Do you want to look at —.

The Committee Clerk: Sorry, clause 1, subsection 2.

Mr Frew: Yes. *[Laughter.]*

The Chairperson (Dr Aiken): Here we go. Right.

The Committee Clerk: Sorry, subsection 3.

Mr Allister: I do not know if it helps, Chair, but if nobody objects, I will give a two-sentence overview of what it is about.

The Chairperson (Dr Aiken): Yes, please.

Mr Allister: It is about making special advisers subject to the civil service code discipline processes, because they are civil servants.

The Chairperson (Dr Aiken): I support that view. OK? Next.

The Committee Clerk: There is one amendment here, is there?

Mr Allister: Yes. There are two amendments, maybe.

Mr Frew: Yes, two.

The Committee Clerk: They are to new sections 3A and 3B.

Mr Allister: It is to make the flow clearer and take out words. It did say:

"there can be no ministerial involvement or interference."

It was pointed out, quite correctly, that the nature of the relationship would make it very hard to say that there could be no ministerial involvement. However, what there cannot be is ministerial interference. I have diminished it to "no ministerial interference", and that is interference in the disciplinary process.

The Chairperson (Dr Aiken): So it is leaving out "involvement" and putting in "interference".

Mr Lynch: Is that subsection 2?

Mr Allister: It is 1(3).

The Chairperson (Dr Aiken): It is clause 1, subsection 3, last sentence. OK? The next bit is again in clause 1(3), replacing the current section of the 2013 Act and moving it to "Code for appointments" after subsection 1. Have we got those words?

Ms McCanny: From a technical framing perspective, it would be a new subsection 4, in effect. For technical framing, we call it 1(3A), but it actually would be a new subsection 4. It will be 1(4). There is a subsection 4 there already, so we cannot label it as 1(4), but it will be a new subsection.

Mr Allister: So this is amendment No 4?

The Chairperson (Dr Aiken): Yes.

Mr Allister: This is introducing a new subsection. When I first drafted the Bill, I anticipated that the old code provisions about the appointment of special advisers, which said that the Minister had to consider a pool of candidates, etc, would continue, because there had been a lot of criticism from Lord Justice Coghlin that they had been ignored. Of course, when the Finance Minister and the Executive produced the new code of appointments, they dealt with that criticism by simply stripping all that out.

The Chairperson (Dr Aiken): So we are putting it back in.

Mr Allister: I am seeking to put that back in on the back of the evidence that we heard from the former Commissioner for Public Appointments, and it therefore requires the creation of a job description and a specification, the requirements for the post, a candidate pool and for the documentation to be retained. All those aspects were in the old code, so it does not seem appropriate to me that we should be retreating from that and diminishing it, through the new code, by removing things that served a useful purpose.

The Chairperson (Dr Aiken): That is much more in line with the HR process as well —

Mr Allister: Absolutely.

The Chairperson (Dr Aiken): — and also protects the special adviser.

Mr Allister: Yes. That puts a new subsection into clause 1.

The Chairperson (Dr Aiken): Claire, do you have which number that subsection will be?

Ms McCanny: That will be clause 1(4). There is a subsection 4 in there, but, if the amendment is passed, we will renumber the subsections automatically.

The Chairperson (Dr Aiken): Are we content to take a view on that?

Mr Frew: Chair, on the practicalities of that, I hear what Jim says about it being in before and that it is how spads were appointed in the past, which is probably a reassurance, but, again, I have a problem. For someone like me who wants to inject much greater co-design into our system and try to get the best minds involved up here, if you want expertise in a particular Department, you want to try to keep the job description as broad as possible in case you end up getting a very mighty mind coming in that you maybe had not accounted for before. I am sure that there is not a large pool of people out there who now aspire to be spads, given the bad press that they have had over the years.

Mr Allister: This does not prescribe what should be in the job description; it is simply saying that there must be a job description.

Mr Frew: That is probably why I am reassured and happy enough, but it is good to tease these things out. I am speaking to show my mindset as we go along and to express the view and broaden that mindset and thought process out for the rest of the Committee. I am certainly not against this.

The Chairperson (Dr Aiken): Jim, you might like to comment on it, but I am of the view that, if you were a special adviser, you were seeking employment and were selected, and things went badly wrong fairly early on, unless you had the normal HR processes behind you, you would not have any real grounds to stand on. If you were selected on even the broadest outlines of essential and desirable criteria and that information was retained, normally for between six and nine months after the event, that would again give a degree of protection for the special adviser and would bring it more in line with Civil Service HR rules and regulations and codes of conduct. It would also protect the Minister in the event that something like that happened, because there would be some form of due process that they could fall back on if challenged. I am content to take that view on that. Happy?

Members indicated assent.

The Chairperson (Dr Aiken): Next is clause 1, page 2, line 9. You are taking out the word "adviser" and inserting:

"by reason of the holding of that post".

The Committee Clerk: There is clause 1(5) before that, Chair. There are no amendments to it.

Mr Allister: Yes, the existing clause 1(4) is maybe a bit tautologous. Maybe you do not really need to say it, but it puts it beyond doubt that, if you make an appointment that fails to adhere to the code, the

appointment is of no effect. It is really to underscore the fact that you must apply the code. You must live by the code.

The Chairperson (Dr Aiken): OK.

Mr Allister: Clause 1(5) is the salary one.

Mr Frew: On the salary one, this is where I worry about the whole business of brightest and best minds. If this place was working and functioning properly, a spad should really only be in post for a very limited time. It is not like the Civil Service in that sense, where you are looking for career progression and promotion. I worry about pricing people out of the pool and out of the market. Let us say that the Education Minister wants an educationalist, a principal, a vice principal or whatever; there is probably no way that someone will leave a secure job, unless they were going to get a secondment, to come to work for a Minister who may well be in post for a term at the most. I struggle with this part with regard to setting in legislation a pay grade not exceeding something. Out in the public sector, it is demand-led; there is a market, and you pay the best minds. We talk about co-design in this place, and about bringing in the brightest minds. We may well be pricing ourselves out of good calibre.

The Chairperson (Dr Aiken): Sorry, Jim, I will bring you in in a second. When we are looking specifically at the recruitment and role of a special adviser, surely the question is about the political aspect of it? If you were bringing in someone who was, say, an expert civil engineer, you would not bring them in as a special adviser. You would bring them in for outside consultancy or the normal recruitment process. The Minister has the capacity to do that. That is not a political role. You need external evidence to do that. The question here is about a political adviser who is being employed, and where they sit within the hierarchy of the structure.

It is interesting, because we recently had the spat about MLAs' staff's salaries. The most interesting thing to me was not that MLAs' staff's salaries had gone up, but the fact that it was linked to roles within this Building and the skill levels that are attributable to them. Saying that a political special adviser is led to a particular level within the Civil Service — I hear what you say, Paul, but a special adviser is a political special adviser, not somebody I am bringing in to change hospitals or something else. That is not really the role. My view is that you have to tie it to somewhere. What is the salary of an assistant secretary grade 5?

The Committee Clerk: Grade 5 is somewhere in the region of £80,000, or just over it, Chair.

Mr Frew: Yes.

Mr Allister: Chair, let me just explain. I wanted to put that in because there was considerable scandal in the past where, overnight — I am talking about 2012 or 2013 — the special adviser salary was hiked from £70,000 to £90,000, through the First Minister and the then Finance Minister, Sammy Wilson, agreeing it between themselves — some would say, on the demand of spads. Then, when the Assembly went out of existence in 2016, all but one of the spads were at the top end of their bands. The thing had the appearance of not being right, which is why I thought it would be sensible to link it to a Senior Civil Service grade.

Paul's point is, "What if you need an expert?". If you need a particular expert, there are two ways of doing it. You make a business case, through making an appointment within the Department, or the Civil Service Commissioners (Northern Ireland) Order 1999 allows the First Minister and deputy First Minister to make a particular appointment, as they did with David Gordon. Of course, when we come to clause 3, I will want to change that not to deny them the right to do that but, if they do it, to subject it to the approval of the Assembly. If you needed a particular engineering whizz-kid or whatever, you could make the appointment under that, subject to the Assembly's approval, and that would be capable of setting the salary at whatever level it thought appropriate.

Mr Wells: Paul said that, in an ideal world, spads would be there for a particular period. We had two spads who were here for 17 years. When one Minister fell, resigned or retired, they were simply passed on to the next Minister.

Mr Allister: The king is dead. Long live the spad.

Mr Wells: They were simply passed on. Remember: we have a different structure from any other democracy in the United Kingdom. It is quite normal in Westminster that, if a spad is appointed to, say, the Minister for Work and Pensions, when that Minister resigns or retires, the spad goes with them and he or she becomes unemployed. That does not happen in our system: spads are recycled. They have very high salaries. We were paying our spads extraordinarily high salaries, which was meant to reflect a volatility that did not exist. It is very unusual in any western democracy for a spad to last 17 years in any post.

Secondly, we did not seem to have any problems recruiting and retaining spads on the salary that we were paying them. Indeed, from memory, certainly in my former party, I can think of only one spad who left voluntarily. He left to become a judge, which is a very well-paid position, and he was a good spad. The market is telling us, quite clearly, that we have no problems whatsoever in attracting and retaining spads. Starting at the bottom of a scale at £70,000 is not a small salary in the Northern Ireland context. As Jim said, we had the obscenity that the salary was increased to £92,000 at the stroke of a pen. Many of us believe that that was at the instigation of one particular spad who felt that he was not being paid well enough. He was a "super spad", a complete control freak who ran everything and demanded £92,000.

The other factor is that, should the Assembly fall, spads get 50% of that salary as a compensation payment, the first £30,000 of it tax free. There is a safety net for those who fall in those circumstances. It was an extraordinarily attractive package, and it brought a lot of derision from the public. I think that Jim is being very generous here.

The Chairperson (Dr Aiken): May I get a bit of guidance? How could somebody get 50% of their salary?

Mr Wells: They got it as compensation if they lost their job as a spad due to the dissolution of the Assembly.

The Chairperson (Dr Aiken): Surely, they would be entitled to the normal remuneration of one month's salary.

Mr Wells: Oh, yes, they got that in addition to the lump sum. Those payments were published. I have them.

Mr Allister: Yes, it was in their terms and conditions.

Mr Wells: The two senior spads whom I am aware of got £45,000-plus each when the Assembly collapsed in 2016. Those figures are in the public domain. Therefore, there is a very good safety net for them.

The Chairperson (Dr Aiken): I should have been a spad.

Mr Wells: Yes, we all took up the wrong profession.

Mr Allister: One spad got the handshake and became an MLA a couple of weeks later.

The Chairperson (Dr Aiken): And then an MP. Yes, I know.

Mr Wells: Of course, some of the spads returned to their position when the Assembly returned. The public will not wear anything more generous than this. Our special circumstances mean that we should never go above £70,000 a year.

Mr O'Toole: I —

Mr Wells: Do you have an interest to declare?

Mr O'Toole: I have no interest to declare. I was a civil servant; I have never been a special adviser in Northern Ireland or at Westminster.

I have some sympathy with Paul's point. I do not want to misquote the specific clauses of the Bill or the amendments. It would be helpful to get from the Bill sponsor a sense of whether the general desire that more appointments be made on merit is in tension with his acknowledged view — if it is your acknowledged view, tell us, and others can jump in — that these are inherently political roles and, therefore, exist in a separate sphere. If you are recruiting a special adviser to serve the Ulster Unionist Party, for the sake of argument, it is difficult to draft terms and conditions that include a specificity around sympathy with the political aims of the Ulster Unionist Party. Do you see what I mean? Is there a tension there?

Mr Allister: If there is, it never stood in the way of anyone heretofore. When you had terms that required someone to meet certain basic requirements, it was more — I am sure that it was not just coincidence — that, in all parties, the people appointed were acolytes of that party. I do not think that that is a problem, but the question about the salary is.

I am not opposed to spads. I think that spads are necessary and do a good job, but I think that there were excesses, which, from a public perception, we need to be seen to address. When you got to a situation in which a spad could be earning more than a Minister, something needed to be addressed. I pitched it at grade 5 as I thought that that was the sort of level of civil servant that a spad would be rubbing shoulders with and working with, very often, and that that would be a generous apportionment.

Mr O'Toole: I know that it is not how we are considering it exactly, but is it your view that, in relation to the specific clauses on terms and conditions and job descriptions, a foreseeable or desirable outcome, if it became law, would be a material change in the number of party sympathisers getting those jobs? Is that an end that you would like to see, or, to be more accurate, is that the intention of the Bill?

Mr Allister: No, I do not think that that is the intention. I think that there would be an uplift in quality if that were so, but the reality is that you will not have a Sinn Féin-appointed DUP supporter or a DUP-appointed Sinn Féin supporter. That is the reality of life. Given the particular relationship between Minister and spad, and the political nature of that, it would be unrealistic to expect that. I am not trying to drive out politicians from spad positions. I am just trying to rein it in to what is a defensible level of salary and create a process of appointment so that it is not seen as someone picking their mate or picking this one or that one just because of who they are. They have to have some qualities.

The Chairperson (Dr Aiken): I have just —.

Mr O'Toole: Chair, may I respond to that?

The Chairperson (Dr Aiken): I have just been informed that we are time-compressed. It is very important that we take the time to go through this in detail. The significant issue, Jim, is that clauses 8 and 11 will take a lot of time to discuss and tease out. Those clauses require us to look specifically at tariffs, likelihood and the rest of it. Having had a review of it, we might want to get independent legal opinion from here, particularly on the issue of the tariff.

The Committee Clerk: Chair, if you want to finish with clause 1 first, you could maybe move on to clauses 9 and 11.

The Chairperson (Dr Aiken): Next week?

The Committee Clerk: No, sorry, when you have finished with clause 1. I think that we are looking at clause 1(5).

Mr Allister: Yes.

The Committee Clerk: Perhaps you could consider clause 1(5) and clause 1(6) before considering the other clauses.

The Chairperson (Dr Aiken): Right. OK. We have a statutory rule (SR) to do as well.

Mr Allister: I understand Matthew's point, and I think that it has merit. However, at the end of the day, you have to decide whether the Assembly wants to have any cap on spad pay and, if so, what is the right cap. There are two different issues: who should be appointed and what they should be paid.

Mr O'Toole: There is a much broader debate, and we may have it in this Committee or on the Floor of the Assembly. In general, since we have raised the point, some of what Jim W has been talking about is structural issues around the way that our spads work, and I think that the Bill clearly makes some welcome moves towards improving the structure of how the special advisers work. Strangely, although my party has had numerically many fewer spads and politically a much less influential group of spads over the past decade —.

Mr Wells: Better behaved as well.

Mr O'Toole: You might say that. I could not possibly comment, Jim, as I was not here to know. To be perfectly honest, having worked with a lot of spads, both Labour and Conservative, in my previous life, I do not necessarily assume that the quality of spads in Northern Ireland is that much lower than the special advisers who have floated around Whitehall from all parties, including the Liberal Democrats. The quality of our MLAs is a different debate that we could have somewhere else.

The Chairperson (Dr Aiken): Pat, do you want to come in?

Mr Catney: On the point that you were making, I believed that we were coming back to this and going through it clause by clause. My reading of it was that, if there were a clause or something else that we wanted to change, we could do that. Maybe this is the time to bring it directly to the Bill's sponsor. I read through it last night, and I wrote down "5A", but now I cannot find it. I believe that that is a new clause that Jim has introduced. I was looking for guidance on that. If we are going to go through all of this now —.

The Committee Clerk: Next week.

Mr Catney: That is right. We should not be going through it all now. That is the point that I was going to make, Chair.

Mr Frew: If the Committee is going to do a report —

The Chairperson (Dr Aiken): We need to take a view on the Bill.

Mr Frew: — we have to go through this like this.

Mr Catney: Is the time allocated for us to do this now?

The Chairperson (Dr Aiken): No.

Mr Catney: Am I going to sit down now? If you tell me that, that is great. I am going to go for it now, but I do not want to start all of this and then find that we are rushed out in 20 minutes.

Mr Wells: What is our time constraint?

The Chairperson (Dr Aiken): Apparently, we are being booted out of here by the Committee for the Executive Office at 3:00 pm.

Mr Wells: Can we meet somewhere next week where we do not have that problem?

The Committee Clerk: There are not the same time constraints next week as there are this week. I suggested to the Chair to finish up on clause 1. We had issues to bring up on clause 9 and clause 11 that needed further investigation.

Mr Allister: Let us try to finish clause 1.

The Chairperson (Dr Aiken): What more do we have left to do on clause 1, Clerk?

The Committee Clerk: It is currently at clause 1(5). That is what members have been discussing.

Mr Frew: That is on the pay.

Mr Allister: I should make one point. The specifics of the pay are set out in the codes. I do not have a problem with that. I am not trying to specify in the Bill, "Here are the bands". I am simply saying, "Here is the ceiling". That is code for, "Work it out as you like".

The Chairperson (Dr Aiken): Let us take a view on that one. Does that take us to the end of that clause?

Mr Frew: No, there is another subsection to clause 1.

The Chairperson (Dr Aiken): There is clause 1(6).

Mr Allister: Clause 1(6) is on the vexed matter that arose in the RHI inquiry where some persons were disqualified by virtue of the Special Advisers Act 2013 because of criminal convictions etc and, nonetheless, the Civil Service accommodated them as, effectively, super-spads overseeing others in Stormont Castle. The purpose of clause 1(6) is to make it unlawful for that to happen, and I think that the most critical point is that:

"a permanent secretary must ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser."

by reason of them holding that post. That, I think, is something that is very necessary. That is what it is about.

Mr Frew: I have no problems with this aspect, because it is all about the role, transparency and accountability.

Mr Lynch: There was no such thing as super-spads. There are only official spads. This was, I think, a creation for somebody to sell a book.

Mr Wells: It is in the RHI report.

Mr Allister: It was in the report.

Mr Frew: If there were no unofficial spads and if there were no shadowy figures, this clause in this Bill will not have an effect.

Mr Allister: That is right. It does nobody any harm.

Mr Wells: We should welcome it.

Mr Allister: If you go to page 158 of volume 3 of the RHI report, you will find two paragraphs dealing with this subject. However, as Paul rightly said, if there are no shadowy figures, there will be no work for that clause to do.

The Chairperson (Dr Aiken): Are we content to take that view?

Members indicated assent.

The Committee Clerk: Were there two amendments?

Mr Allister: Yes. Somebody who gave evidence — I cannot remember who — thought that there was a lack of clarity and that it could apply to a civil servant as well. Where clause 1 refers to:

"facilitation due to a special adviser",

I added:

"by reason of the holding of that post"

to make it clear that it is special adviser-specific. I think that that was the only amendment there.

The Chairperson (Dr Aiken): Yes. Are members content?

Ms McCanny: I think that there is possibly one other amendment at clause 1(2).

Mr Allister: Yes, it had to be de-genderised because it talked about "him". That is right.

The Chairperson (Dr Aiken): Just right.

Mr Wells: We might have female spads.

The Chairperson (Dr Aiken): OK. I will ensure that we have time that is more than sufficient next week to go through the rest of the Bill. Being compressed in this way is not conducive to good scrutiny.

The Committee Clerk: It can be the first substantive item on the agenda for next week. There may not be any oral evidence sessions next week.

The Chairperson (Dr Aiken): Will we make that so? Are we content?

Members indicated assent.

The Chairperson (Dr Aiken): OK, team. It is time for the Executive Office Committee to chuck us out. Thanks very much indeed.

Mr Frew: Are we not doing the two tariff-related clauses, in case you need to give guidance to the Clerk?

The Committee Clerk: Clause 9 and clause 11.

The Chairperson (Dr Aiken): We might want to take independent legal opinion on the issue with clause 9 and clause 11, not on whether we take a view on whether there should be a criminal offence, but on the level of the tariff of the criminal offence.

Mr Allister: Why are we thinking like that?

The Chairperson (Dr Aiken): We had a response from the Department of Justice and —.

The Committee Clerk: If members want to commission that today, it would maybe speed things up, but the issue was that the view of the Northern Ireland Human Rights Commission suggested —.

The Chairperson (Dr Aiken): Did the Department of Justice have something to say about that?

The Committee Clerk: Also the Department of Justice. It is to get independent legal advice that, basically, the provisions are commensurate with the relevant articles in the European Convention on Human Rights.

Mr Allister: I remind the Clerk that I have amended the tariff in clause 11. The issue was taken with it being five years by the Department of Justice. I have amended that down to two years.

The Chairperson (Dr Aiken): That was based on what the Department of Justice's issue was.

Mr Allister: It was based on what it and the human rights people said. I am just wondering —.

The Chairperson (Dr Aiken): We will consider it in more detail.

Mr Allister: The point is that you have either a solely summary offence or a summary plus a Crown Court offence. The advantage for the accused of having what is called a hybrid offence — it can go to either court — is that it gives them the right to have a jury trial. If you simply have it as a summary trial, you do not have a right to a jury trial. It seems that it would be more beneficial for the accused to have

the option of a jury trial, but you could not have less than two years in a Crown Court penalty. That was the issue.

The Chairperson (Dr Aiken): Right. We will consider that again next week.

Claire, thank you very much indeed.