

**Committee for Finance and Personnel**

# **Report on the Civil Service (Special Advisers) Bill**

**Together with the Minutes of Proceedings of the Committee relating to the Report,  
Written Submissions, Memoranda and the Minutes of Evidence**

**Ordered by the Committee for Finance and Personnel  
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# Committee Powers and Membership

## Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

## Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members. The membership of the Committee during the current mandate has been as follows:

Mr Daithí McKay (Chairperson)<sup>1</sup>  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree MBE  
 Ms Megan Fearon<sup>2</sup>  
 Mr Paul Girvan  
 Mr John McCallister<sup>3 4</sup>  
 Mr David McIlveen<sup>5</sup>  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir<sup>6</sup>

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1 Mr Daithí McKay replaced Mr Conor Murphy MP with effect from 2 July 2012.  
 2 Ms Megan Fearon was appointed to the Committee with effect from 10 September 2012.  
 3 Mr Roy Beggs replaced Mr Ross Hussey with effect from 23 April 12.  
 4 Mr John McCallister replaced Mr Roy Beggs with effect from 15 October 2012  
 5 Mr David McIlveen replaced Mr David Hilditch with effect from 1 October 2012  
 6 Mr Peter Weir replaced Mr William Humphrey with effect from 1 October 2012  
 Ms Caitríona Ruane was a member of the Committee from 23 May 2011 to 12 September 2011  
 Mr Paul Maskey was a member of the Committee from 23 May 2011 to 2 July 2012



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## List of Abbreviations and Acronyms used in the Report

CBE	Commander of the Most Excellent Order of the British Empire
CSCNI	Civil Service Commissioners for Northern Ireland
CVS	Commission for Victims and Survivors
DDR	Disarmament, Demobilization and Reintegration
DFP	Department of Finance and Personnel
ECHR	European Convention on Human Rights
GB	Great Britain
GFA	Good Friday Agreement
ICCPR	International Covenant on Civil and Political Rights
MAST	Mourne Action for Survivors of Terrorism
MBE	Member of the Most Excellent Order of the British Empire
MP	Member of Parliament
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICS	Northern Ireland Civil Service
NIHRC	Northern Ireland Human Rights Commission
OBE	Officer of the Most Excellent Order of the British Empire
OFMDFM	Office of the First Minister and deputy First Minister
OLC	Office of the Legislative Counsel
QC	Queen's Counsel
QUB	Queen's University Belfast
UK	United Kingdom
UN	United Nations
UU	University of Ulster

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# Executive Summary

This report sets out the Committee for Finance and Personnel's consideration of the Civil Service (Special Advisers) Bill, a Private Members' Bill which was introduced to the Assembly by Mr Jim Allister QC MLA (the Bill sponsor) on 2 July 2012. The Bill comprises 11 clauses and one schedule, and its overall purpose is to amend the law on special advisers in the Northern Ireland Civil Service.

Following the Second Stage debate in the Assembly on 25 September 2012, the Bill was referred to the Committee for Finance and Personnel for Committee Stage. As part of its consideration of the Bill, the Committee issued a call for evidence and received written submissions and held oral hearings with key stakeholders, including: the Department of Finance and Personnel; the Attorney General; the Northern Ireland Association for the Care and Resettlement of Offenders; the Commission for Victims and Survivors; the Equality Commission; the Northern Ireland Human Rights Commission; Ann Travers; Coiste na nIarchimí and Tar Isteach; and a number of academic witnesses. The Committee also heard from Sir Nigel Hamilton and Sir George Quigley with specific regard to the Office of the First Minister and deputy First Minister's Employers' Guidance on Recruiting People with Conflict-Related Convictions. Two oral evidence sessions were held with the Bill sponsor and the Committee also received legal advice from Assembly Legal Services.

A number of key themes and issues were identified in the evidence and these are examined further in this Report. These include, for example: consideration of the needs of victims; blanket disqualification versus individual assessment; compatibility with other human rights requirements; commitments under the Good Friday/Belfast Agreement and St Andrews Agreement; and transparency on arrangements for special advisers. In addition, the Office of the Legislative Counsel provided comments relating to drafting and technical issues, but advised that any amendments arising from these would not affect the policy of the Bill.

The Committee notes that there was no consensus in the evidence in respect of most of the themes and issues identified. Similarly, the Committee did not reach a consensus on all of the provisions of the Bill during its clause-by-clause scrutiny, with some clauses and the schedule agreed on a majority basis.<sup>1</sup> Nevertheless, the Committee considers that the substantial body of evidence gathered during the Committee Stage of the Bill offers the reader an insight into the different perspectives on the issues brought forth, and will help inform the contributions of Assembly Members to the remaining Assembly stages of the Bill.

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1 For details of divisions see the extract from the Minutes of Proceedings for the Committee for Finance and Personnel meeting on 30 January 2013 at Appendix 1

# Introduction

## Background to the Bill

1. The Civil Service (Special Advisers) Bill was introduced to the Assembly by Mr Jim Allister QC MLA (the Bill sponsor) on 2 July 2012. The Bill has eleven clauses and one schedule, and its overall purpose is to amend the law on special advisers in the Northern Ireland Civil Service (NICS). In broad terms, the Bill:
  - provides that no person shall hold the post of special adviser if they have what is termed a “serious criminal conviction,” which is defined as any custodial sentence of five years or more;
  - requires the Department of Finance and Personnel (DFP) to publish a code of appointment for special advisers, a code of conduct for special advisers and an annual report about the number and cost of special advisers; and
  - removes the Speaker of the Assembly from the list of office holders who are entitled to appoint a special adviser to the NICS.

## The Committee’s Approach

2. At its meeting on 5 September 2012 the Committee was notified that, should the Bill pass its Second Stage, it would stand referred to the Committee unless the Assembly otherwise ordered. To inform members in advance of the Second Stage debate, the Committee invited the Bill sponsor to give evidence on the provisions of the Bill at the Committee’s meeting on 19 September 2012. Evidence was also invited from DFP in view of the functions that the Bill proposes to confer on that Department, and the Attorney General, John Larkin QC, was invited to address early concerns regarding legislative competence. Following the Second Stage debate on the principles of the Bill on 25 September 2012, it was referred to the Committee for Finance and Personnel in accordance with Standing Order 33(1).
3. A public call for evidence was issued following the Bill’s referral to the Committee. In response, the Committee received over 860 responses from individuals and organisations (including almost 830 signatories to an online petition opposing the Bill<sup>2</sup>). The written submissions are provided at **Appendix 5**. The Committee invited a range of witnesses to give oral evidence on the Bill, including: the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO); the Commission for Victims and Survivors (CVS); expert academic witnesses on human rights issues; the Northern Ireland Human Rights Commission (NIHRC); Ann Travers; Coiste na nIarchimí and Tar Isteach; and the Equality Commission. In addition, Sir Nigel Hamilton and Sir George Quigley were invited to give oral evidence on the Office of the First Minister and deputy First Minister (OFMDFM) employers’ guidance, “Recruiting People with Conflict-Related Convictions,” while additional oral evidence was taken from academic witnesses on relevant issues in respect of victims and ex-prisoners (see **Appendix 2**). In line with the normal protocol for an Executive Bill, the Committee also invited the Bill sponsor to respond to any issues raised in the evidence and advice was received on legal issues from the Assembly Legal Services. The Official Reports of the evidence sessions are provided at **Appendix 2**.

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2 The online petition is available at: [http://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?response=a84820b9d168&utm\\_source=target&utm\\_medium=email&utm\\_campaign=one\\_thousand](http://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?response=a84820b9d168&utm_source=target&utm_medium=email&utm_campaign=one_thousand) (accessed 11 February 2013). The Committee received submissions directly from 826 of the 876 signatories.

3 At its meeting on 17 October 2012, the Committee noted that the Bill sponsor had issued a circular to encourage written submissions in support of the Bill and the Committee agreed to note this in the Report on the Bill.

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4. At its meeting on 24 October 2012, the Committee agreed to seek an extension to the Committee Stage of the Bill until 15 February 2013 on the grounds that this would provide sufficient time for the oral evidence to be taken and enable the Committee to consider in detail the issues arising from the evidence. In addition, it would enable the necessary legal advice to be obtained. On 12 November 2012, the Assembly agreed a motion to extend the Committee Stage to 15 February 2013.

## Provisions in the Bill

5. The Bill, as drafted, contains eleven clauses and one schedule, the provisions of which are described in the Explanatory and Financial Memorandum as follows:
6. *Clause 1: Meaning of “special adviser”.* This clause defines a special adviser as a person appointed to the NICS to advise the First and deputy First Ministers, an Executive Minister or a junior Minister.
7. *Clause 2: Special adviser not to have a serious criminal conviction.* This clause prohibits a person with a serious criminal conviction from being appointed as a special adviser. It terminates the appointment of a special adviser in post who holds a serious criminal conviction and those who incur a serious criminal conviction while in post. Ministers will also be required to inform DFP if a special adviser appointed by them holds such a conviction.
8. *Clause 3: Meaning of “serious criminal conviction”.* This defines a “serious criminal conviction” as one for which any custodial sentence of five years or more, or another specified sentence, was imposed.
9. *Clause 4: Annual Report.* This provision places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, an annual report about special advisers.
10. *Clause 5: Code of Conduct and Clause 6: Code for Appointments* place duties on DFP and the Minister in respect of a code of conduct for special advisers (which will form part of an adviser’s contract of employment) and a code for the appointment of special advisers.
11. *Clause 7: Advisers to the Presiding Officer.* This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the NICS.
12. *Clause 8: Interpretation* states that “Department” refers to DFP; defines a “Minister” as the First Minister or deputy First Minister, a Northern Ireland Minister or a junior Minister; and states that “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.
13. *Clause 9: Transitional provisions* gives effect to termination payments as provided in the Schedule; *Clause 10: Commencement* sets out when the provisions of the Bill will come into force; while *Clause 11* provides for the short title of the Bill.

## Key Issues from the Evidence

14. A number of key themes and issues were raised in the written and oral evidence received by the Committee. However, there was no consensus in the evidence received in relation to the majority of these issues. The differing viewpoints are set out below.

### Consideration of the needs of victims

15. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor, Mr Jim Allister QC MLA, advised that the catalyst for the Bill was the previous appointment of Mary McArdle as a special adviser, the hurt caused to the Travers family in that case and the public disquiet surrounding the appointment. Mr Allister stated that *“never again should that be capable of happening to a family,”* and that he thought the Bill is a *“modest, proportionate and necessary step”*.<sup>4</sup>
16. In her subsequent oral evidence to the Committee, Ann Travers held that the Bill is not about one family, but it is about protecting all victims. Ms Travers stated that *“victims have the very important human right not to be re-traumatised time and again”* and that consideration must be given to the needs of victims. In her opinion, the Bill would be *“a very strong sign that victims are being supported”*. While she considered that *“truly remorseful ex-prisoners”* should be able to move on with their lives, she questioned whether *“the rights of perpetrators of violence are more important than, or supersede, those of victims”*. Ms Travers further commented that

*“Victims have rights, too, and they have the right to move on with their lives. While someone who has been convicted of murder may find their life has improved when they are appointed to a high-profile government position, the victim’s lives will certainly not have improved. Indeed, it will have been damaged once again through no fault of their own.”*<sup>5</sup>

17. A number of those who made individual written submissions also believed it essential to consider the needs of victims.<sup>6</sup> Of those individuals indicating support for the Bill, references were made to the appointment of persons with such convictions as *“adding insult to the injury of their victim”*. Similarly, Mourne Action for Survivors of Terrorism (MAST) stated

*“We believe it is totally wrong and unacceptable that someone with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to innocent victims’ families.”*<sup>7</sup>

18. In her oral evidence, the Commissioner for Victims and Survivors, Kathryn Stone OBE, pointed out that some members of the Victims and Survivors Forum considered that the disqualification of those with serious criminal convictions from the post of special adviser would be *“an active show of support for those who have been victims or have been traumatised.”*<sup>8</sup> In subsequent correspondence to the Committee, the Commissioner added that

*“Whether or not the current Bill...becomes law...I would impress upon all Ministers and their respective political parties the imperative of exercising responsibility and display[ing] empathy to the plight of all victims and survivors who have been affected by the conflict.”*<sup>9</sup>

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4 Oral evidence from Jim Allister QC MLA, 19 September 2012, Appendix 2

5 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

6 Written submissions from individuals are provided at Appendix 5

7 Written submission from MAST, Appendix 5

8 Oral evidence from CVS, 14 November 2012, Appendix 2

9 CVS Correspondence, 6 December 2012, Appendix 6

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19. In its written submission, NIHRC noted that the Bill has implications for victims and survivors,<sup>10</sup> and in oral evidence the Chief Commissioner, Professor Michael O’Flaherty, stated that it was necessary for victims

*“to be heard in the context of your review and in the application of whatever procedures might be adopted, be they procedures based on the Bill, or otherwise.”<sup>11</sup>*

Professor O’Flaherty advised that NIHRC believed that there is scope to consider victims in the vetting procedure, and that, in the first instance, the Commission for Victims and Survivors should bring forward suggestions as to how this might be done.

20. While there was general consensus in the evidence that more needs to be done to address the needs of victims, the Committee noted that there was some divergence on how this is best achieved. For example, Dr Máire Braniff and Dr Cillian McGrattan from the University of Ulster (UU) and Swansea University respectively, contended that victims had been marginalised or rendered almost voiceless, and were supportive of the Bill as they considered it would redress a sidelining of victims which takes many forms, including, inter alia, *“the idea that everyone was in some way responsible and, therefore, no one is culpable.”<sup>12</sup>*

21. In his evidence to the Committee, Sir George Quigley considered it

*“absolutely scandalous that, at this stage, after the conclusion of the period of violence, we have still not addressed adequately the emotional or material needs of victims...I think that has to be dealt with, just as much as any other issue.”*

Sir George went on to say, however, that bringing together the issues of victims and ex-prisoners may not help the resolution of either, and that there need not be a conflict in addressing both.<sup>13</sup> In addition, it was his view that victims did not wish for their issues to be addressed in a manner detrimental to the reintegration of prisoners into society.

22. Concerns were also raised in some of the evidence from individuals and organisations that, rather than considering the needs of victims, the purpose of the Bill was as a punitive measure against one specific section of society. In her evidence to the Committee, the Commissioner for Victims and Survivors advised that a member of the Victims and Survivors Forum believed that the Bill

*“is not about victims per se but seeking to deny political prisoners the right to enjoy full citizenship (and access to employment)...This ought not to be a case of either/or – but more importantly there is no contradiction supporting the human rights and citizenship of political prisoners and advocating and supporting victims’ rights.”<sup>14</sup>*

23. In the follow up correspondence, the Commissioner for Victims and Survivors stated that a Victim and Survivors Forum member believed that consideration should be given to the impact an appointment may have on a victim, and that the family concerned should be contacted prior to an appointment *“not to ask their permission but to pre-warn them...before hearing from the media, another source or accidentally at a later date”.*<sup>15</sup>

24. In their oral evidence to the Committee, Coiste na nIarchimí and Tar Isteach agreed that sensitivity must be shown to victims, but pointed out that this should include all victims. Thomas Quigley, Tar Isteach, stated that:

10 Written submission from NIHRC, Appendix 5

11 Oral evidence from NIHRC, 21 November 2012, Appendix 2

12 Oral Evidence from Dr Máire Braniff and Dr Cillian McGrattan, 16 January 2012, Appendix 2

13 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

14 Oral evidence from CVS, 14 November 2012, Appendix 2

15 CVS correspondence, 6 December 2012, Appendix 6

*“there are people who committed crimes and were not brought to court, right from the lower levels of the state forces to the top of the state... we work for people who were victims of their actions, and there is very little sensitivity towards their views on any of those acts.”*

25. Michael Culbert of Coiste na nIarchimí noted that the needs of victims are being catered for by the Victims Service “to some degree.”<sup>16</sup> In their written submission, Tar Abhaile considered that “the Bill is based on the presumption that Ex-Prisoners cannot be victims, and promotes a ‘hierarchy of victims’.”<sup>17</sup>
26. In his oral evidence, Professor Peter Shirlow, from Queen’s University Belfast (QUB), questioned the assertion that victims are voiceless, and pointed to the funding that has been given to victims’ groups.<sup>18</sup> He emphasised, however, that there is no unified victims’ voice and that “legislation such as this will not create a uniform voice”. Referring to his research, he pointed out that “it is not just simply a case of perpetrator and victim” as one third of republican and loyalist ex-prisoners had lost a direct family member while 50% had lost a relative during the conflict, a level of loss “mirrored by only the prison officer/security force community”, and which has resulted in victimhood being embedded in those communities. Professor Shirlow contended that victims are still being used as “political footballs”, and that the issue became an “ideological battle as opposed to what we should have been doing” in terms of meeting victims’ needs, such as medical care and emotional support.
27. In considering the aforementioned views, the Committee notes that there has been general agreement that the needs of victims must be considered. However, there has been no consensus in the evidence received on who should be regarded as a victim, how their needs would be best addressed, or whether the Bill will make a positive or negative contribution in that regard.

## Blanket disqualification versus individual assessment

28. The evidence to the Committee raised a number of issues under this broad theme, as detailed below. Opinion was mixed both on the issues falling under this theme and on whether the term “blanket disqualification” is indeed applicable in relation to the Bill.

### Rehabilitation of Offenders Legislation

29. NIACRO noted in its written submission that a matrix of disclosable convictions and guidance for circumstances by which a conviction should be considered spent are set out in the Rehabilitation of Offenders legislation (1978 and 1979 Orders). Its view was that
- “the proposal within the Bill to set any such threshold for disqualification would not be in line with rehabilitation periods for custodial sentences detailed in the Rehabilitation of Offenders (NI) Order 1978, and is unlikely to be considered legislatively competent by the Attorney General”.*
30. NIACRO also contended that the Orders tend to be interpreted negatively, and are therefore a barrier to resettlement. Additionally, “very few conflict-related convictions are considered to be spent under these pieces of legislation”.<sup>19</sup>
31. In his oral evidence on 19 September 2012, however, the Bill sponsor advised that, under the Rehabilitation of Offenders Act 1974, only convictions of 30 months or less are capable of being spent; convictions of 5 years or more will never be spent.

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16 Oral evidence from Coiste na nIarchimí/Tar Isteach, 28 November 2012, Appendix 2

17 Written submission from Tar Abhaile, Appendix 5

18 Oral evidence from Professor Peter Shirlow, 16 January 2012, Appendix 2

19 Written submission from NIACRO written submission, Appendix 5

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32. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

### **Individualisation**

33. The provisions in clause 2 which place a bar on a person who has a serious criminal conviction from holding a special adviser post have been referred to in some of the oral evidence as a blanket ban, prohibition or exception, in that it does not allow for individual circumstances to be taken into consideration. The Bill sponsor, however, advised that it is not a blanket ban as it applies only to a specific post in the NICS, and not across the NICS as a whole. Furthermore, it does not prevent all persons with a criminal conviction from becoming a special adviser, but is focused on those with a serious criminal conviction as defined by clause 3 of the Bill.<sup>20</sup>
34. Nonetheless, members noted that a number of concerns were raised with regard to this issue. NIHRC advised that there have been cases where the European Court of Human Rights has made it clear that blanket prohibitions will normally be inappropriate, unless a convincing argument can be made that *"an individualised approach is impossible and that a right of appeal is inconceivable."* The Committee heard that the relationship between the nature of a post and the conviction should be taken to consideration, and that those blanket prohibitions which have survived tend to be those with obvious relationships. NIHRC cited the prohibition of someone with a criminal conviction from being able to run as a candidate for police commissioner in GB as an example in this regard, but did not believe that there was *"such [an] intimate nexus in a blanket prohibition on the function of special adviser in any Ministry on the basis of having previously had a conviction."* The Commission advised that its general conclusion was that *"the absence of individualisation in the Bill is undoubtedly problematic and might lead to trouble down the road in the ECHR context."*<sup>21</sup>
35. Members noted, however, that, while raising the above concerns, NIHRC also drew attention to the fact that the European Court does not always wish to become involved in a state's civil service recruitment issues. It is therefore not certain whether a case brought as a consequence of the Bill's enactment would be considered by the Court. A similar point was made by Dr Rory O'Connell of QUB, who advised that it is difficult to predict *"how much respect, deference or margin of appreciation [the European Court] will want to show democratically legitimated decision-makers."*<sup>22</sup>
36. In their testimony to the Committee, Dr O'Connell and Professor Brice Dickson agreed that an individualised approach would be more likely to comply with human rights requirements. In this respect, Professor Dickson argued that the inclusion of provisions to allow for an appeal mechanism or to challenge the ban would assist its compatibility with European Convention standards. Dr Anne Smith of UU also drew the Committee's attention to the fact that the European Court had very recently
- "held that the fact that there was no mechanism to individually review a person's circumstances gave rise to a violation of the European Convention of Human Rights."*
37. Dr O'Connell also suggested, however, that hard-and-fast rules are not necessarily disproportionate, but each instance would require to be considered on its own merits.<sup>23</sup>
38. The Committee heard, in evidence from DFP, that the revised arrangements for the appointment of special advisers include a mechanism for appeal where a candidate disagrees with the outcome of the vetting/character checking process (see paragraphs

20 The Explanatory and Financial Memorandum states that "Clause 3 defines 'serious criminal conviction' as one for which a sentence of imprisonment of five years or more, or another specified sentence was imposed." See Appendix 3.

21 Oral evidence from NIHRC, 21 November 2012, Appendix 2

22 Oral evidence from Professor Brice Dickson, Dr Rory O'Connell and Dr Anne Smith, 21 November 2012, Appendix 2

23 Ibid.

46-49 below for more information on the DFP code). An appeal would be undertaken by an independent panel, and criteria such as the following would be applied:

- (i) *“An expression of remorse/regret;*
- (ii) *The absence of a pattern of repeat offending;*
- (iii) *The relevance of the conviction to the post to be filled;*
- (iv) *The nature of the offence and the severity of the sentence;*
- (v) *Evidence of rehabilitation and contribution to the community; and*
- (vi) *Third party references regarding the individual’s character.”*<sup>24</sup>

39. The Equality Commission also raised concerns regarding blanket prohibitions in terms of equality legislation, and that they should not be used unless they can be objectively justified; that is, it is a proportionate means of achieving a legitimate aim. The Equality Commission considered that an individualised approach should be taken, with

*“Each person ...assessed on their own merits and employers...consider the material relevance of any conflict conviction to the post to be filled, rather than rely on a blanket exception.”*<sup>25</sup>

40. As noted above, the Bill sponsor has contended that the provisions in the Bill do not constitute a blanket ban. In addition, due to the targeted nature of the Bill, he considered that it is *“quite proportionate not to have a review [mechanism].”* That said, while not persuaded of the need for such a mechanism, the Bill sponsor advised that he would be willing to discuss this if the Committee reached the conclusion that there was such a need. In this regard, he held the view that the following concepts must be considered in a review process:

*“significant regard to the question of contrition, the views of the victims of those being sought to be appointed, and the extent to which those being sought to be appointed to such a public office have been of assistance in the solving of the crime for which they were convicted.”*<sup>26</sup>

### **Lustration**

41. NIHRC drew the Committee’s attention to the following criteria of the European Court in relation to lustration (the removal of certain individuals from public office) to ensure compliance with human rights:

- (i) *“Lustration law should be accessible to the subject and foreseeable as to effects;*
- (ii) *Lustration should not exclusively serve the purpose of retribution or revenge;*
- (iii) *If domestic law allows restrictions on ECHR rights, it must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and contain adequate procedural safeguards;*
- (iv) *National authorities must keep in mind that lustration measures are temporary, and therefore their necessity diminishes with time.”*<sup>27</sup>

42. In subsequent oral evidence to the Committee, the NIHRC’s Chief Commissioner, Professor O’Flaherty, advised that the Bill would comply with criterion (i) above, but that it would fail criterion (iii). He also advised that the decisions on whether the Bill would pass criteria (ii) and (iv) were political decisions.

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24 DFP Review of Arrangements for the Appointment of Ministers’ Special Advisers, <http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers>

25 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

26 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

27 Written submission from NIHRC, Appendix 5

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43. In his oral evidence on 12 December 2012, the Bill sponsor noted the evidence that the Committee had received in relation to lustration and “soft law”. He went on to state that
- “soft law is all very interesting, but it does not actually apply, apart from the scene-setting; it is not binding in regard to any of these matters...it does not really inform very much what a legislator can do.”*
44. Mr Allister also contended that the Bill is not a punitive measure, but creates eligibility criteria for a small number of posts. He stated that *“it is not retribution. It is justice.”*<sup>28</sup>
45. The Committee took and considered legal advice on this issue from the Assembly’s Legal Services Office.

**DFP code of practice on the appointment of special advisers**

46. The Committee heard from a senior DFP official that the Minister of Finance and Personnel issued revised arrangements for the appointment of special advisers in September 2011, and it was indicated that they were taking immediate effect. The Departmental official advised that, in proceeding to implement the arrangements, the Minister was using the authority provided for in the Civil Service (Northern Ireland) Order 1999 regarding the general management of the civil service.<sup>29</sup> It was also explained that the DFP code recommends that the vetting/character checks in place for all civil servants should apply to the appointment of special advisers, which includes, inter alia, a risk assessment matrix and an appeal mechanism.
47. On this latter point, however, NIACRO initially raised concerns regarding the DFP risk assessment matrix in its oral evidence session on 7 November 2012,<sup>30</sup> and subsequently wrote to the Committee with additional information in this regard. In its view, the matrix is discriminatory and promotes exclusion rather than inclusion. NIACRO also highlighted its concern about *“the arbitrary application of the grid used to reject suitable candidates”* and called for more transparent application of the Civil Service Commissioners’ recruitment code.<sup>31</sup> NIHRC, for its part, considered that the matrix set out guidelines as opposed to prohibitions. It also noted that, on the information available, there did not seem to be provision for an individual to appeal a decision to reject their application, but *“there appears to be potential for some consideration of the particular circumstances of the individual.”*<sup>32</sup>
48. The concerns raised by NIACRO were refuted by DFP in a further evidence session on 12 December 2012, which focused mainly on the DFP code. The Committee heard that, where a risk is identified following application of the matrix, the individual is provided with an opportunity to bring forward a statement of disclosure (regarding their conviction), which the DFP official considered to be an inclusive process. In addition, a conviction will be considered against the nature of the post applied for. The Departmental official also pointed out that the detailed recruitment policy and procedures manual are available online, and therefore refuted the lack of transparency regarding the process.
49. In his oral evidence to the Committee on both 19 September 2012 and 12 December 2012,<sup>33</sup> the Bill sponsor contended that the DFP code was not being fully implemented and that, to put the code for appointment, the code of conduct and vetting on a statutory footing and to introduce reporting would ensure that

28 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

29 Oral evidence from DFP, 19 September 2012, Appendix 2

30 Oral evidence from NIACRO, 7 November 2012, Appendix 2

31 Correspondence from NIACRO, 22 November 2012, Appendix 6

32 Correspondence from NIHRC, 11 December 2012, Appendix 6

33 Oral evidence from Jim Allister QC MLA, 19 September 2012 and 12 December 2012, Appendix 2

*“the ground rules are firmly set, they cannot be changed on a whim, and that the next Minister does not come along, tear up the existing guidance and reignite the existing controversy.”*

### **OFMDFM Employers’ Guidance**

50. The Committee noted that a number of individuals and organisations contended in their written submissions that the Bill contradicts the OFMDFM *Employers’ Guidance on Recruiting People with Conflict-Related Convictions* in both intention and spirit. Published in May 2007, this voluntary guidance aimed to fulfil UK Government commitments to ex-prisoners in the Good Friday/Belfast Agreement and the St Andrews Agreement (see paragraphs 75-82 below). It was developed by a working group chaired by Sir George Quigley and Sir Nigel Hamilton, and included representatives from Government departments, the Irish Congress of Trade Unions, the Confederation of British Industry as well as ex-prisoner representatives. The overarching principle arising from the working group was that

*“any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.”*<sup>34</sup>

51. In this regard, in his oral evidence to the Committee, Sir George Quigley pointed out that, while it aimed to assist employers in the recruitment of those with conflict-related convictions, the model did not say that *“every ex-prisoner should be appointed to every job in all circumstances”*.<sup>35</sup>
52. In its evidence, NIHRC considered that the OFMDFM guidance was broadly consistent with human rights standards, whereas it cautioned that the prohibition included in the Bill may not be consistent with UN standards (see paragraphs 71-74 below).<sup>36</sup> In its written evidence, the Equality Commission agreed with the approach in the OFMDFM guidance that the material relevance of a conviction to a post should be considered. It pointed out, however, that a review of the OFMDFM guidance found that *“a large range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement.”*<sup>37</sup> In this regard, the Equality Commission pointed to Article 2(4) of the Fair Employment and Treatment (NI) Order 1998, which does not protect a person whose political opinion supported the use of violence, and contended that *“it seems that this exemption no longer makes sense.”*<sup>38</sup> It was also noted that, in March 2012, the Review Panel on the OFMDFM Guidance, which was chaired by Professor Shirlow, recommended that the Guidance is complemented by legislative change.<sup>39</sup>
53. A senior Departmental official confirmed in his oral evidence to the Committee on 12 December 2012 that the OFMDFM Employers’ Guidance had not been applied in NICS following a decision not to do so in September 2007 by the then Finance Minister, on the basis that the existing arrangements *“were appropriate, adequate and dealt with all convictions, including conflict-related convictions.”*<sup>40</sup>

### **Assessing the risk of reoffending**

54. Concern that the Bill is predicated on political opinion rather than on whether someone represents a threat or danger to society was raised by NIACRO in its oral evidence to the

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34 OFMDFM Employers Guidance on Recruiting People with Conflict-Related Convictions, [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)

35 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

36 Written submission from NIHRC, Appendix 5

37 Written submission from the Equality Commission, Appendix 5

38 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

39 Report of the Review Panel, Employers’ Guidance on Recruiting People with Conflict-Related Convictions, March 2012, [http://www.ofmdfmi.gov.uk/final\\_review\\_panel\\_report\\_2012.pdf](http://www.ofmdfmi.gov.uk/final_review_panel_report_2012.pdf) (accessed 25 January 2013)

40 Oral evidence from DFP, 12 December 2012, Appendix 2

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Committee.<sup>41</sup> In its written submission, Tar Isteach drew attention to the judgement of Mr Justice Kerr (McComb, re an Application for Judicial Review [2003] NIQB 47) which stated that *“particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public”*.<sup>42</sup> Also, on this issue, Sir George Quigley, in his oral evidence on the OFMDFM guidance, stated:

*“on the Kerr judgement...one of the significant aspects...is that reoffending by prisoners who have been involved in the conflict is much less than for the generality of people who have been in the toils of the justice system. The figures are quite startling by comparison.”*<sup>43</sup>

55. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor responded to a reference to the Kerr judgement by pointing out that a prisoner released under the Northern Ireland (Sentences) Act 1998 is released on licence and contended that the reason for that

*“is to provide for any danger that might emerge. I do not think that you can say that they have been adjudged not to be a danger to the public if they have been released on licence”*.<sup>44</sup>

56. On a point of clarification, the Committee heard from the Attorney General that, as far as adjudication by the Sentences Review Commission is concerned, the condition that a prisoner would not be a danger to the public if released was considered only in respect of life sentence prisoners. Prisoners with fixed-term sentences would not have been subject to this criterion.<sup>45</sup>

#### **Precedent for other employers**

57. Members noted that some concerns have been raised that the Bill may set a precedent for other areas of employment. In his evidence to the Committee, for example, Sir George Quigley advised that it would worry him “very considerably” if the Bill was to set a precedent with regards to how the ex-prisoner issue is dealt with generally. A number of organisations (such as Tar Anall and Tar Isteach) and individuals believed that the Bill will:

*“Add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former prisoners have to contend.”*<sup>46</sup>

This point was echoed in the online submission opposing the Bill, which attracted over 870 signatories.

58. The Bill sponsor, on the other hand, reminded the Committee during the evidence session on 12 December that the Bill applies solely to special advisers in the NICS and that

*“the Bill does not apply to the private sector; it applies to a minute section of the public sector. It has no bearing on what the private sector does or does not do.”*

#### **Compatibility with other human rights requirements**

59. From the evidence received by the Committee other human rights-related issues were identified for consideration, including in relation to property and privacy rights, the question of

41 Oral evidence from NIACRO, 7 November 2012, Appendix 2

42 See written submission from Tar Isteach and written submissions from individuals opposing the Bill at Appendix 5

43 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

44 Oral evidence from Jim Allister QC MLA, 19 September 2012, Appendix 2

45 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

46 Written submissions, Appendix 5

retrospective penalisation, and consistency with UN standards and guidance on transitional justice and the treatment of former combatants. The Committee noted the divergence of views on these matters as detailed below.

#### **Article 6 and Article 1 of the first protocol of the ECHR**

60. A number of those who made written submissions contended that the Bill is contrary to the ECHR, with particular reference being made to Article 6 of the Convention and Article 1 of the first protocol.<sup>47,48</sup> In his testimony to the Committee, Professor O’Flaherty (NIHRC) advised that, as a consequence of the blanket prohibition, there was a “likelihood” that protections in relation to property rights of those already in post and privacy rights for those applicants not in post would be engaged, but the Commission could not say this for sure. Professor O’Flaherty also cautioned that, should the rights be engaged, it does not automatically mean there has been a violation of the Convention, and the principle of proportionality would have to be demonstrated.
61. The Bill sponsor stated that he is satisfied that the Bill is compliant with human rights obligations. The inclusion of provision for payments to individuals whose appointment may be terminated is to ensure compliance in relation to interference with the right to property. The Bill sponsor also pointed out that, unlike other jobs, there is no security of tenure with a special adviser post.<sup>49</sup>
62. In his evidence to the Committee, the Attorney General also considered that Article 1 of the first protocol would not be breached, given the compensation arrangements provided for in the Bill. It was also his opinion that Article 6 is not engaged.<sup>50</sup>

#### **Retrospective penalisation**

63. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor advised that the Bill is not retrospective, but is prospective in that it takes effect from the date that it is made. He advised that
- “a change in the law is not objectionable merely because it takes note that a past event has happened and bases new legal consequences on it. That is well established in law.”*<sup>51</sup>
64. The Bill sponsor cited the Estate Agents Act 1979, the Solicitors (Amendment) Act 1956 and the Police Reform and Social Responsibility Act 2011 as examples of previous legislation with provisions similar to that proposed in his Bill. Nevertheless, concerns were raised in written evidence from individuals and organisations, including Tar Anall, Tar Isteach and Coiste na nIarchimí, that the Bill may retrospectively penalise special advisers currently in post and, as such, would be a contravention of domestic and international human rights provisions. It was NIACRO’s opinion that the Bill *“would clearly breach the common law principle of opposing ex post facto laws.”*<sup>52</sup>
65. In his evidence to the Committee, the Attorney General noted that two of the Acts quoted by the Bill sponsor antedate the Human Rights Act 1998 and the provisions that deal with retrospectivity. Therefore, he did not consider *“that those old statutes offer...any assistance about what might happen now.”* In addition, it was noted that the Police Reform and Social

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47 Article 6 of the ECHR is the Right to a Fair Trial; Article 1 of the First Protocol is the Protection of Property (see [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf), accessed 31 January 2013)

48 Issues raised with regard to Article 7 of the ECHR (No Punishment Without Law) are considered separately at paragraphs 66–70

49 Oral evidence from Mr Jim Allister QC MLA, 19 September 2012, Appendix 2

50 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

51 Oral evidence from Mr Jim Allister QC MLA, 19 September 2012, Appendix 2

52 Written submissions are provided at Appendix 5

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Responsibility Act 2011 referred to elections to newly created posts, and the immediate read-across to what might happen with this Bill is not evident.<sup>53</sup>

66. The Attorney General discussed his concerns regarding the Bill in respect of Article 7 of the ECHR, which prohibits an increase in penalty or imposition of a penalty more severe than was available at the time of the conviction.<sup>54</sup> He advised that the severity and purpose of the penalty must be considered and that the cases which have introduced retrospective measures which have survived scrutiny by the European Court have been those with public safety or public interest purposes, rather than purely penal purposes. In this context, the Attorney General advised that, while he was not fully aware of the purpose of the Bill, he noted that the Bill sponsor had told the Committee that the catalyst for the Bill was the public reaction to people with serious criminal convictions being appointed as special advisers in the past. He highlighted the first policy objective of the Bill as set out in the Explanatory and Financial Memorandum,<sup>55</sup> and stated that

*“That is the point of the Bill and that is why, I think, there are dangers in relation to the competence of clauses 2 and 3 as they stand at present.”*

67. NIHRC also advised that, should it be determined that the Bill is punitive and constitutes a penalty, then Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights (ICCPR)<sup>56</sup> would be violated. However, it was also suggested that it would be necessary in this regard to distinguish between those applying for a post, for whom it is unlikely to be considered punitive, and those who are in post for whom it may have a punitive quality. Even so, the fact that the Bill includes compensation provisions for someone removed from post makes it

*“all the harder to argue that that is intended as punishment if you... give people a financial reward if they are removed from office.”<sup>57</sup>*

68. In his oral evidence to the Committee, Professor Brice Dickson advised that he did not consider that the Bill is inconsistent with Article 7 of the ECHR as currently interpreted by the European Court of Human Rights. Professor Dickson explained that the European Court tends towards a criminal law interpretation of a ‘penalty’, for example a fine, a confiscation of assets or custody, but a disadvantage such as ineligibility for employment is not covered. Dr Rory O’Connell also pointed out that the right to work is not included as an explicit right in the convention.<sup>58</sup>

69. In her oral evidence, Ann Travers considered the Bill to be human rights-complaint at present.<sup>59</sup> In his final evidence session on 12 December 2012, the Bill sponsor referred to the evidence provided to the Committee by Professor Dickson and Professor O’Flaherty and suggested that *“the preponderance of views from the experts is that the Bill does not violate article 7.”* He went on to say that the *“measure is characterised properly as introducing eligibility for a post rather than as a punishment.”<sup>60</sup>*

53 Oral evidence from the Attorney General, 12 September 2012, Appendix 2

54 Article 7 of the ECHR – no punishment without law (see [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf), accessed 31 January 2013)

55 The Explanatory and Financial Memorandum states that “The first objective of the Bill is 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.” See Appendix 3

56 Article 15 of ICCPR (See <http://www2.ohchr.org/english/law/ccpr.htm><http://www2.ohchr.org/english/law/ccpr.htm>, (accessed 1 February 2013).

57 Oral evidence from NIHRC, 21 November 2012, Appendix 2

58 Oral evidence on Human Rights Issues – Professor Brice Dickson, Dr Rory O’Connell and Dr Anne Smith, 21 November 2012, Appendix 2

59 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

60 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

70. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

**UN guidance on standards for Disarmament, Demobilization and Reintegration**

71. In its written submission, NIHRC advised that guidance on transitional justice and treatment of former combatants had been issued by the United Nations, which includes the "Standards for Disarmament, Demobilization and Reintegration of ex-combatants", known as DDR. This states that:

*"DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilising members of armed forces and groups and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life."*<sup>61</sup>

NIHRC suggested that the prohibition in the Bill may not be consistent with UN Standards.

72. In his oral evidence, Professor Shirlow emphasised the importance of Northern Ireland society engaging in conflict transformation and contended that the Bill is "quite clearly contrary to that." He accepted that there are difficult political decisions to be made, not least because significant numbers of people feel harmed and not listened to. However, he stated that

*"DDR is successful when it is based on inclusion. Any form of demobilisation, disarmament and rehabilitation works through inclusion and not by excluding people from society."*<sup>62</sup>

73. In response to concerns raised on a range of human rights issues, the Bill sponsor stated that

*"whatever other plethora of human rights covenants and declarations there are, the statutory obligation for the Assembly relates only to compatibility with the European Convention on Human Rights."*<sup>63</sup>

74. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

**Commitments under the Good Friday/Belfast Agreement and St Andrews Agreement**

75. A large number of those who opposed the Bill stated that it is contrary to the ethos of conflict-resolution and, indeed, contravenes commitments given by the UK and Irish Governments in the Good Friday Agreement (GFA)/Belfast Agreement and the St Andrews Agreement. These commitments, referred to in the written evidence, are set out below:

*"The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or reskilling, and further education." GFA/Belfast Agreement, Annex B, Prisoners, point 5, 10 April 1998.*

*"Governments will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners." St Andrews Agreement, Annex B, October 2006.*

76. It was argued in both written and oral evidence that ex-prisoners have played a significant role in the peace process, and continue to work towards reconciliation. Concern was expressed

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61 Written submission from NIHRC, Appendix 5

62 Oral evidence from Professor Peter Shirlow, 16 January 2013, Appendix 2

63 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

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that “*putting up barriers*” would suggest that the international agreements were effectively worthless, and “*could undo at least a decade of building relationships in our society.*”<sup>64</sup>

77. In the view of the Equality Commission, it was anticipated that those prisoners with conflict-related convictions released following the GFA/Belfast Agreement would become “*good citizens*” who would make a contribution to Northern Ireland. Concern was therefore expressed that:

“*Exemptions in legislation that prevent those individuals from becoming good citizens and contributing to Northern Ireland do not seem to rest easy with the intention at the time.*”<sup>65</sup>

78. NIACRO stated that it considered that the Bill is potentially incompatible with the GFA/Belfast Agreement and section 75 of the Northern Ireland Act 1998.<sup>66</sup> Similarly, in its evidence, the Equality Commission noted that the Northern Ireland Act 1998 requires all legislation to be considered for equality ramifications, and advised that caution should be exercised with regard to specific criteria which might directly or disproportionately apply to persons with certain characteristics. For instance, a potential applicant to a special adviser post may consider that men would be more likely to have a serious criminal conviction and would therefore be disproportionately excluded by the Bill. If this was found to be the case, “*it would be for the employer to objectively justify that the criterion was a proportionate means of achieving a legitimate aim.*”<sup>67</sup> The Committee took and considered legal advice on this issue from the Assembly’s Legal Services Office.

79. In his oral evidence, Sir Nigel Hamilton, while not expressing an opinion on the Bill itself, advised the Committee that the genesis of the OFMDFM Employers’ Guidance (see paragraphs 50-53 above) was in the GFA/Belfast Agreement, with further impetus provided by the St Andrews Agreement. Sir Nigel also advised that the then Minister of State for Police and Criminal Justice, David Hanson, attended the final meeting of the working group before the OFMDFM Guidance was signed off.<sup>68</sup>

80. In response to subsequent correspondence from the Committee, Mr Mike Penning, the Minister of State for Northern Ireland, advised that the interpretation of the GFA/Belfast Agreement and the St Andrews Agreement and related guidance is a transferred matter. It is therefore for the Assembly and the Executive to consider compatibility of the Bill with these Agreements.<sup>69</sup>

81. In her testimony to the Committee, Ms Travers noted the references in the evidence received by the Committee to the commitments made in the GFA/Belfast Agreement in respect of ex-prisoners. As noted at paragraph 16 above, Ms Travers did not suggest that ex-prisoners are not entitled to work. She questioned, however, “*where...is the spirit of the Good Friday Agreement for the benefit of victims?*”<sup>70</sup> Similarly, Dr Braniff noted that the Committee had received a great deal of evidence regarding the requirements on the state to rehabilitate ex-prisoners and reintegrate them into society. She pointed out, however, that the GFA/Belfast Agreement also stated that the best way to honour the dead is to

“*dedicate ourselves to the achievement, reconciliation, tolerance, and mutual trust...of all.*”  
GFA/Belfast Agreement, Declaration of Support, paragraph 2.

It was the opinion of Dr Braniff and Dr McGrattan, that the Bill is “*a belated attempt to honour that pledge.*”<sup>71</sup>

64 Oral evidence from Coiste na nIarchimí and Tar Isteach, 28 November 2012, Appendix 2

65 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

66 Oral evidence from NIACRO, 7 November 2012, Appendix 2

67 Written submission from the Equality Commission, Appendix 5

68 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

69 Correspondence from Minister of State for Northern Ireland, 7 December 2012, Appendix 6

70 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

71 Oral evidence from Dr Braniff and Dr McGrattan, 16 January 2013, Appendix 2

82. The Bill sponsor advised that he did not consider the Bill to be contrary to the St Andrews Agreement, and pointed out that guidance (such as the OFMDFM Guidance referred to at paragraphs 50-53 above) is not a barrier to legislation. He advised that he did not see
- “any impediment in the Belfast Agreement, the St Andrews Agreement or the guidance that Sir George Quigley and others spoke to that prevents the Bill from taking its course and, if it is the will of the Assembly, becoming law.”*<sup>72</sup>

## Transparency on arrangements for special advisers

83. As a consequence of the nature of the post, special advisers are exempt from the merit principle of appointment. In the view of the Bill sponsor, however, they should be subject to the same rules and constraints as other civil servants. The Bill therefore includes provision for a code of conduct and a code for appointment of special advisers (clauses 5 and 6 respectively). The Bill sponsor also advised that, as special advisers are paid out of public funds, the public has a right to information such as costs. The Bill therefore introduces a requirement for an annual report on special advisers to be laid before the Assembly (clause 4). The Committee heard that this measure will also bring Northern Ireland into line with procedures in Great Britain.
84. Not all of those who provided written or oral evidence commented on the provisions in the Bill regarding the annual report, the code of conduct or the code for the appointment of special advisers. Those who did, however, were supportive of these measures as it was considered that they would increase transparency on this issue. In its written submission, for example, MAST indicated support for the clause 4 provisions for the production of an annual report, stating that it believed
- “that the public have a right to know how much of their money is going to Special Advisers and this requirement is already in place in the rest of the UK.”*
- MAST was also supportive of the statutory provision for a Code of Conduct and for a Code for Appointments, in clauses 5 and 6 respectively, commenting that *“this will introduce greater regulation to the issue.”*<sup>73</sup>
85. The Committee similarly noted that a number of the submissions from individuals agreed with the Bill sponsor that the publication of an annual report would enable tax payers to see the cost of special advisers and, in terms of the code for appointment, considered that special advisers should be subject to vetting procedures in the same way as other civil servants.
86. In its written submission to the Committee, the Equality Commission agreed in principle with the provisions relating to transparency regarding the conduct, recruitment, selection and remuneration of special advisers and considered that there is *“value in putting in place the most open and transparent arrangements possible.”*<sup>74</sup> In respect of the appointment of special advisers, however, the Commission noted that the exemption in respect of political opinion based on *“the essential nature of the job”*, as provided for in fair employment legislation, may be invoked, but that this should only be done after careful consideration. Even if invoked, however, the Commission contends that there is still a requirement to apply all other aspects of equality law and employment legislation.<sup>75</sup>
87. In its written submission, NIACRO also stated that it was, in general, supportive of increased transparency and accountability across the public sector. However, it also noted that it was

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72 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

73 Written submission from MAST, Appendix 5

74 Written submission from the Equality Commission, Appendix 5

75 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

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*“opposed to the automatic extension of legislation from any other jurisdiction without appropriate consideration of the local issues by the Northern Ireland Assembly, so local policy proposals would need to be developed.”<sup>76</sup>*

88. The Committee was mindful that the provisions in the Bill relating to the annual report, the code of conduct and the code for appointment will place statutory duties on DFP. In its written briefing, dated 13 September 2012, DFP advised that, while it is not currently centrally collated, much of the information regarding special advisers is included in each department’s Annual Resource Accounts.<sup>77</sup> It was also noted that both a code of conduct and the code of practice on the appointment of special advisers currently exist, although neither are on a statutory footing. In subsequent oral evidence to the Committee, a senior DFP official advised that these documents could “easily be placed on a statutory footing”. Furthermore, it is not anticipated that doing so would incur any additional costs for the Department.<sup>78</sup>
89. The Committee notes that there was general consensus in the evidence received and support for the issue of transparency on the arrangements for special advisers.

### Secretary of State consent

90. In oral evidence to the Committee on 19 September 2012, the senior DFP official noted that the Bill proposes to amend the Civil Service Commissioners (Northern Ireland) Order 1999, which is a reserved matter, and consequently the Secretary of State’s consent may be required. This matter had been raised in written submissions, including those from Tar Isteach and Tar Anall, who noted that the Bill sponsor had not provided details of any discussions with the Secretary of State on this issue.<sup>79</sup> In his oral evidence subsequent to the DFP testimony, the Attorney General advised that more consideration would need to be given to the issue but, in his opinion, the Bill did not take away from the Commissioners’ power.<sup>80</sup>
91. The Committee wrote to the Secretary of State and the Civil Service Commissioners for Northern Ireland (CSCNI) to seek clarity on this issue. In response, the Minister of State for Northern Ireland, Mr Mike Penning MP, advised that the Secretary of State had not received a request for consent with regard to the Bill. However, he advised that the question of whether its provisions deal with a reserved matter will be considered prior to Royal Assent, together with the Bill’s compatibility with the ECHR. In his response, Mr Brian Rowntree CBE, Chairperson of CSCNI, advised that, while responsibility for the Civil Service Commissioners is a reserved matter, it does not appear that the provisions of the Bill impact on the work of the Commissioners.<sup>81</sup>

The Committee took and considered legal advice on this issue from the Assembly’s Legal Services Office.

### Drafting and technical issues

92. A number of drafting and technical issues relating to the Bill were raised by the Office of the Legislative Counsel (OLC), which were forwarded to the Committee by DFP on 19 November 2012. A copy of the correspondence is provided at Appendix 4. In his subsequent response to the points made by OLC, the Bill sponsor agreed to bring forward a number of amendments at Consideration Stage, an outline of which is provided at Appendix 3. These have been taken into account by the Committee during its clause-by-clause scrutiny of the Bill.

76 Written submission from NIACRO, Appendix 5

77 Written briefing from DFP, 13 September 2012, Appendix 4

78 Oral evidence from DFP, 19 September 2012, Appendix 2

79 See written submissions at Appendix 5

80 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

81 Correspondence from the Minister of State for NI and CSCNI is provided at Appendix 6

## Clause-by-Clause Consideration of the Bill

93. Having reviewed the substantial body of written and oral evidence received on the Bill, together with the legal advice received from the Assembly's Legal Services Office, the Committee deliberated on the clauses and schedule to the Bill at its meeting on 23 January and undertook its formal clause-by-clause scrutiny of the Bill at its meetings on 30 January and 6 February 2013. The Committee carried out formal clause-by-clause consideration of the Bill as follows:<sup>82</sup>

94. Clause 1 – Meaning of “Special Adviser”

*Agreed:* that the Committee is content with clause 1, subject to the proposed technical amendment from the Bill sponsor.

95. Clause 2 – Special Adviser not to have a serious criminal conviction

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

*“That the Committee is content with clause 2 subject to the proposed technical amendments from the Bill sponsor”*

*Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).*

96. Clause 3 – Meaning of “serious criminal conviction”

*Agreed:* that the Committee is content with clause 3, subject to the proposed technical amendments from the Bill sponsor.

97. Clause 4 – Annual Report

*Agreed:* that the Committee is content with clause 4, subject to the proposed technical amendment from the Bill sponsor.

98. Clause 5 – Code of Conduct

*Agreed:* that the Committee is content with clause 5, subject to the proposed technical amendments from the Bill sponsor.

99. Clause 6 – Code for Appointments

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

*“That the Committee is content with clause 6 subject to the proposed technical amendments from the Bill sponsor”*

*Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).*

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82 An extract from the Minutes of Proceedings for the Committee for Finance and Personnel meeting on 30 January 2013 is provided at Appendix 1.

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100. Clause 7 – Advisers to the Presiding Officer

*Agreed:* that the Committee is content with clause 7 as drafted.

101. Clause 8 – Interpretation

*Agreed:* that the Committee is content with clause 8 subject to the proposed technical amendment from the Bill sponsor

102. Clause 9 – Transitional provisions

*Agreed:* that the Committee is content with clause 9 as drafted.

103. Clause 10 – Commencement

*Agreed:* that the Committee is content with clause 10 subject to the proposed technical amendment from the Bill sponsor.

104. Clause 11 – Short title

*Agreed:* that the Committee is content with clause 11 as drafted.

105. The Schedule: transitional provisions: termination payments.

Mr McLaughlin indicated that he would be tabling amendments to the Bill, which may lead to consequential amendments to the Schedule.

As consensus could not be reached on the Schedule, the Chairperson, Mr McKay, put the following question:

*“That the Committee is content with the Schedule as drafted”*

*Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).*

106. Long Title of the Bill

*Agreed:* that the Committee is content with the Long Title of the Bill as drafted.





Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings Relating to the Report



## Wednesday, 5 September 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Roy Beggs MLA  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr David Hilditch MLA  
Mr Mitchel McLaughlin MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mrs Patricia Casey (Bill Clerk) (Agenda items 4-7 only)  
Mrs Kiera McDonald (Legal Adviser) (Agenda item 4 only)  
Mr Colin Pidgeon (Assembly Research and Information Service)  
(Agenda item 6 only)

**Apologies:** Mr William Humphrey MLA

**10:06am** The meeting opened in public session.

#### **10. Correspondence**

Members noted the following items of correspondence:

**12:18pm** Mr Girvan left the meeting.

- Correspondence from Clerk Assistant: Civil Service (Special Advisers) Bill;

*Agreed:* to schedule evidence sessions from the sponsor of the Private Members' Bill, Mr Jim Allister QC MLA, DFP officials and the Attorney General at the Committee's meeting on 19 September 2012, for the purpose of informing members' contributions to the Second Stage debate on the Bill.

**[EXTRACT]**

## Wednesday, 12 September 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Roy Beggs MLA  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Miss Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David Hilditch MLA  
Mr William Humphrey MLA  
Mr Mitchel McLaughlin MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mrs Patricia Casey (Bill Clerk) (Agenda items 4 & 5 only)  
Mr Bob Harper (Assembly Research and Information Service) (Agenda item 6 only)

**Apologies:** Mr Adrian McQuillan MLA

**10:06am** The meeting opened in public session.

### 3. **Matters Arising**

**10:07am** Mr Bradley and Mr Girvan joined the meeting.

#### **Civil Service (Special Advisers) Bill**

The Committee noted correspondence from the Attorney General indicating that he is not available to give oral evidence to the Committee on the Civil Service (Special Advisers) Bill at next week's meeting and correspondence from Mr Jim Allister QC MLA advising that he will be available. Members also noted that DFP officials will be in attendance to give evidence.

*Agreed:* to seek written briefing from the Attorney General on the Bill, including on the issue of legislative competence.

**[EXTRACT]**

## Wednesday, 19 September 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Roy Beggs MLA  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David Hilditch MLA  
Mr William Humphrey MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**10:05am** The meeting opened in public session.

**5. Civil Service (Special Advisers) Bill – Evidence from Mr Jim Allister QC MLA**

The Committee took evidence from the Bill Sponsor, Mr Jim Allister QC MLA, on the provisions of the Civil Service (Special Advisers) Bill. The evidence session was recorded by Hansard.

**10:25am** Mr Humphrey joined the meeting.

**10:48am** Mr Girvan joined the meeting.

*Agreed:* Mr Allister will provide additional information on the public consultation undertaken on the proposals for the Bill, as agreed during the evidence session.

**6. Civil Service (Special Advisers) Bill – Evidence from DFP**

The Committee took evidence from Mr Derek Baker, Director, Corporate HR, DFP, on the implications of the Bill for the Department. The evidence session was recorded by Hansard.

**11:01am** Ms Fearon left the meeting.

**11:05am** Ms Fearon returned to the meeting.

*Agreed:* to copy the DFP briefing paper to Mr Allister for information and in line with normal protocol.

**7. Civil Service (Special Advisers) Bill – Evidence from the Attorney General for Northern Ireland**

The Committee took evidence from Mr John Larkin QC, Attorney General for Northern Ireland, on the Bill. The evidence session was recorded by Hansard.

**11:42am** Mr McQuillan left the meeting.

**11:43am** Mr McQuillan returned to the meeting.

**11:43am** Mr Humphrey left the meeting.

**11:44am** Mr Humphrey returned to the meeting.

**11:49am** Mr McLaughlin left the meeting.

**11:57am** Mr McLaughlin returned to the meeting.

**12:00pm** Mrs Cochrane left the meeting.

**12:05pm** Mr Humphrey left the meeting.

**12:05pm** Mr McQuillan left the meeting.

*Agreed:* the Committee will consider requesting legal advice on the Bill from Assembly Legal Services in the event of the Bill being referred for Committee Stage.

**[EXTRACT]**

# Wednesday, 26 September 2012

## Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Roy Beggs MLA  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr William Humphrey MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies** Mr David Hilditch MLA

**10:04am** The meeting opened in public session.

In the absence of the Chairperson, the Deputy Chairperson took the Chair.

### 3. **Matters Arising**

#### **Civil Service (Special Advisers) Bill**

The Committee noted correspondence from the Bill Sponsor, Mr Jim Allister QC MLA, regarding the exact dates of the consultation period for the Bill.

*Agreed:* to publish a call for written evidence on Monday 1 October and that members will advise the Clerk individually of any stakeholders they wish to have notified directly of this opportunity to provide written evidence on the Bill.

*Agreed:* to commission a background research paper on the Bill, which should include an examination of the human rights issues and identify potential expert witnesses on human rights; and that, following receipt of the evidence, the Committee will consider what issues require legal advice from Assembly Legal Services.

**[EXTRACT]**

## Wednesday, 3 October 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Roy Beggs MLA  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mr Michael Potter (Assembly Researcher) (Agenda Item 10 only)

**10:05am** The meeting opened in public session.

#### **10. Civil Service (Special Advisers) Bill – Assembly Research Briefing**

The Committee received a briefing from Assembly Research on the Civil Service (Special Advisers) Bill.

The Committee noted that the call for written evidence on the Bill was published in newspapers on Monday 1 October 2012. Members were reminded that they should provide Committee staff with details of any stakeholders they wish to be notified about the opportunity to respond to the Bill or, alternatively, that they could do this directly.

*Agreed:* to commission further research to (a) examine how employers take OFMDFM guidance on conflict-related convictions into consideration, and (b) provide background information on the contributions of government and political parties to the discussions on the release and reintegration of paramilitary prisoners in the lead up to the Belfast/Good Friday Agreement.

*Agreed:* to schedule oral evidence from human rights academics identified in the research paper.

**[EXTRACT]**

## Wednesday, 17 October 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**Apologies:** Mr Adrian McQuillan MLA

**10:12am** The meeting opened in public session.

#### **8. Committee Work Programme**

Members considered a draft of the Committee work programme.

##### **Civil Service (Special Advisers) Bill**

The Committee noted written submissions received to date on the Bill and agreed that all written submissions are published on the Committee's website in line with previous calls for evidence.

*Agreed:* that, once the evidence has been received, the Bill Sponsor will be asked to respond to any issues raised.

Members also noted that the Bill Sponsor had issued a circular to encourage written submissions in support of the Bill. It was agreed that this will be noted in the Committee's report on the Bill.

*Agreed:* that the Northern Ireland Association for the Care and Resettlement of Offenders, the Northern Ireland Human Rights Commission and the Commission for Victims and Survivors be invited to give oral evidence on either 7 or 14 November 2012. It was further agreed that additional oral evidence sessions with other stakeholder organisations could be scheduled for a later date and once the Committee has considered the written submissions.

*Agreed:* that the Committee work programme is amended to reflect decisions made today, and that the revised programme is published on the Assembly website.

**[EXTRACT]**

## Wednesday, 24 October 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Dr Robert Barry (Senior Statistician) (Agenda Item 5 only)

**Apologies:** Mr Leslie Cree MBE MLA

**10:02am** The meeting opened in public session.

### 3. **Matters Arising**

#### **Civil Service (Special Advisers) Bill**

The Committee noted written submissions and correspondence and considered timetable options and a draft motion for extending Committee Stage.

*Agreed:* to consider scheduling additional oral evidence at the meeting on 7 November and in light of having received any further written submissions.

**10:05am** Mr McIlveen joined the meeting.

*Agreed:* that the motion will be laid in the Business Office seeking Assembly approval to extend the Committee Stage of the Bill until 15 February 2013, while the Committee will endeavour to conclude its report on the Bill in advance of this date.

**[EXTRACT]**

## Wednesday, 7 November 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mr Gareth Brown (Bursary Student) (Agenda Item 4 only)  
Ms Eileen Regan (Senior Research Officer) (Agenda Item 4 only)

**Apologies:** Mrs Judith Cochrane MLA

**10:06am** The meeting opened in public session.

*Agreed:* that Agenda item 5 is recorded by Hansard and the Official Report published on the Assembly website.

#### **5. Civil Service (Special Advisers) Bill – Evidence Session with the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)**

The Committee noted a submission from NIACRO and Assembly Research papers provided in follow up to previous Committee requests.

The Committee received oral evidence from the following representatives of NIACRO: Mr Pat Conway, Director of Services and Ms Anne Reid, Senior Practitioner. The evidence session was recorded by Hansard.

*Agreed:* that the representatives from NIACRO will provide further information to the Committee in relation to restrictions in the application of the Civil Service Code and vetting procedures compared to the proposed provisions within the Bill.

**11:00am** Ms Fearon left the meeting

**11:05am** Ms Fearon joined the meeting

**11:07am** Mr McQuillan left the meeting

**11:14am** Mr Weir left the meeting

**11:16am** Mr Weir joined the meeting

**11:20am** Mr McQuillan joined the meeting

**11:39am** Mr Bradley left the meeting

The Committee noted the forthcoming scheduled evidence sessions with the Commission for Victims and Survivors, the Northern Ireland Human Rights Commission and a panel of expert academic witnesses on human rights issues.

*Agreed:* to schedule briefings from Coiste na nIarchimí and Ann Travers who had previously requested/offered to give oral evidence on the Bill.

*Agreed:* to invite oral evidence from the Equality Commission on equality considerations arising from the Bill and from Sir George Quigley and Sir Nigel Hamilton who had been tasked by Government with convening a working group which led in 2007 to the OFMDFM guidance for employers on “Recruiting People with Conflict-Related Convictions”.

The Committee noted that the motion to extend the Committee Stage of the Bill would be debated on Monday 12 November 2012.

**[EXTRACT]**

## Wednesday, 14 November 2012

### Room 29, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**10:06am** The meeting opened in public session.

In the absence of the Chairperson, the Deputy Chairperson took the Chair.

*Agreed:* that Agenda item 4 is recorded by Hansard and the Official Report published on the Assembly website.

#### **4. Civil Service (Special Advisers) Bill – Evidence session with the Commission for Victims and Survivors**

The Committee received oral evidence from Kathryn Stone, Commissioner for Victims and Survivors and Adrian McNamee, Head of Policy, Commission for Victims and Survivors on the Civil Service (Special Advisers) Bill. The evidence session was recorded by Hansard.

**10:10am** Mr McQuillan joined the meeting

**10:18am** Mrs Cochrane joined the meeting

**10:32am** Mr McKay joined the meeting and took the Chair.

**10:44am** Mr McCallister joined the meeting

*Agreed:* that the Commissioner for Victims and Survivors will provide follow up information as discussed during the evidence session.

**[EXTRACT]**

## Wednesday, 21 November 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**10:02am** The meeting opened in public session.

*Agreed:* that Agenda items 4, 5 & 6 are recorded by Hansard and the Official Report published on the Assembly website.

#### 4. **Civil Service (Special Advisers) Bill – Evidence Session with Expert Academic Witnesses on Human Rights Issues**

The Committee received oral evidence from Professor Brice Dickson, School of Law, Queen's University Belfast, Dr Rory O'Connell, School of Law, Queen's University Belfast and Dr Anne Smyth, Transitional Justice Institute, University of Ulster. The evidence session was recorded by Hansard.

**10:07am** Mr Weir joined the meeting

**10:08am** Mr McIlveen joined the meeting

**10:20am** Mrs Cochrane joined the meeting

**10:41am** Mrs Cochrane left the meeting

**10:43am** Mr McCallister joined the meeting

*Agreed:* to write to the Secretary of State and the Civil Service Commissioners for their views on issues relating to the Bill, particularly given that some of the provisions may deal with reserved matters. The Committee will also obtain legal advice on issues arising from the evidence on the Bill from Assembly Legal Services as necessary.

#### 5. **Civil Service (Special Advisers) Bill – Evidence Session with Northern Ireland Human Rights Commission**

The Committee noted a submission from the Northern Ireland Human Rights Commission provided in advance of today's session.

The Committee received oral evidence from the following representatives of the Northern Ireland Human Rights Commission: Professor Michael O'Flaherty, Chief Commissioner, Dr

David Russell, Deputy Director and Colin Caughey, Policy Worker. The evidence session was recorded by Hansard.

**11:11am** Mrs Cochrane joined the meeting

**11:29am** Ms Fearon left the meeting

**11:33am** Mr Weir left the meeting

**11:34am** Ms Fearon joined the meeting

**11:40am** Mr Weir joined the meeting

**11:45am** Mr Girvan left the meeting

*Agreed:* that the Northern Ireland Human Rights Commission will provide follow up advice, including on whether it provided comment on the Bill previously.

**6. Civil Service (Special Advisers) Bill – Evidence Session with Ann Travers**

The Committee noted a written submission from Ann Travers provided in advance of today's session.

The Committee received oral evidence from Ann Travers and Catherine McCartney. The evidence session was recorded by Hansard.

**11:50am** Mr Girvan joined the meeting

**12:02pm** Ms Fearon left the meeting

**12:17pm** Ms Fearon joined the meeting

The Committee noted correspondence received from the Office of Legislative Counsel, through DFP, which would be added to the evidence base and reflected in the Committee's report on the Bill.

**[EXTRACT]**

## Wednesday, 28 November 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Robert Barry (Senior Research Officer) (Agenda item 6 only)

**Apologies:** Mrs Judith Cochrane  
Mr John McCallister

**10:05am** The meeting opened in public session.

*Agreed:* that Agenda items 4 and 5 are recorded by Hansard and the Official Report published on the Assembly website.

#### 4. **Civil Service (Special Advisers) Bill – Evidence from Sir Nigel Hamilton and Sir George Quigley**

The Committee took oral evidence from Sir Nigel Hamilton and Sir George Quigley on the Office of the First Minister and deputy First Minister's (OFMDFM) guidance for employers on "Recruiting People with Conflict-related Convictions". The evidence session was recorded by Hansard.

**10:07am** Mr Girvan joined the meeting.

**10:08am** Mr Weir joined the meeting.

**10:15am** Ms Fearon joined the meeting.

**10:30am** Mr McQuillan joined the meeting.

**10:44am** Ms Fearon left the meeting.

**10:45am** Ms Fearon returned to the meeting.

**10:56am** Mr McIlveen left the meeting.

**10:57am** Mr Weir left the meeting.

**11:00am** Mr Weir returned to the meeting.

*Agreed:* to issue the draft letters to the Secretary of State and the Civil Service Commissioners requesting their views on matters relating to the Bill.

The Committee noted correspondence from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) in follow-up to the evidence session on 14 November.

*Agreed:* to forward the correspondence to DFP and the Northern Ireland Human Rights Commission for comment.

*Agreed:* that, at its meeting on 12 December, the Committee will review the issues arising from the evidence, and will identify and define any issues on which it wishes to seek legal advice from Assembly Legal Services. In advance of that meeting, members will also give consideration as to whether they think that the Committee should propose any amendments to the Bill or if they are content with the provisions of the Bill as drafted.

## **5. Civil Service (Special Advisers) Bill – Evidence Session with Coiste na nIarchimí and Tar Isteach**

The Committee noted submissions from Coiste na nIarchimí and Tar Isteach which were provided in advance of the evidence session.

The Committee took oral evidence from the following witnesses: Michael Culbert, Director, Coiste na nIarchimí; and Thomas Quigley, Tar Isteach. The evidence session was recorded by Hansard.

**12:01pm** Mr McQuillan left the meeting.

**12:05pm** Mr McQuillan returned to the meeting.

**12:06pm** Mr Weir left the meeting.

**12:20pm** Mr Girvan left the meeting.

**12:20pm** The Chairperson left the meeting.

**12:20pm** The Deputy Chairperson took the Chair.

**12:22pm** Mr Weir returned to the meeting.

*Agreed:* that the Committee will invite representatives of loyalist ex-prisoner groups to give oral evidence on the Bill.

**[EXTRACT]**

## Wednesday, 5 December 2012

### Room 30, Parliament Buildings

- Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA
- In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Colin Pidgeon (Research Officer) (Agenda items 5 & 6 only)
- Apologies:** None

**10:10am** In the absence of the Chairperson the deputy Chairperson opened the meeting. in public session.

*Agreed:* that Agenda item 4 is recorded by Hansard and the Official Report published on the Assembly website.

#### 4. **Civil Service (Special Advisers) Bill – Evidence from the Equality Commission**

The Committee took oral evidence from Eileen Lavery, Head of Advice and Compliance and Jacqui McKee, Director of Advice and Compliance, Equality Commission. The evidence session was recorded by Hansard.

Members noted a written submission from the Equality Commission which was provided prior to the evidence session.

**10:15am** Mr McLaughlin joined the meeting.

**10:24am** Mr McCallister joined the meeting.

**10:24am** Mr McKay joined the meeting and took the Chair.

**10:24am** Mr Weir left the meeting.

**10:26am** Mr McQuillan joined the meeting.

**10:42am** Mrs Cochrane and Mr Weir joined the meeting.

**10:44am** Mr Girvan left the meeting.

*Agreed:* to confirm the request for DFP officials to provide a final oral briefing on the Bill at next week's meeting.

Members noted that, at its meeting next week, the Committee will consider the issues arising from the evidence, including any issues requiring legal advice from Assembly Legal Services. The Committee will also consider whether any draft amendments to the Bill should be prepared for consideration following Christmas recess.

**[EXTRACT]**

## Wednesday, 12 December 2012

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mrs Patricia Casey (Bill Clerk) (Agenda Items 4-6 only)

**Apologies:** Mr David McIlveen MLA  
Mr Adrian McQuillan MLA

**10:30am** The meeting opened in public session.

*Agreed:* that Agenda items 5, 6 & 7 are recorded by Hansard and the Official Report published on the Assembly website.

#### **4. Civil Service (Special Advisers) Bill – Consideration of issues arising from evidence**

The Committee noted responses from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and the Commission for Victims and Survivors in follow up to previous evidence sessions.

The Committee considered a table summarising the key themes and issues arising from the evidence received to date on the Bill.

*Agreed:* to seek advice from Assembly Legal Services on a range of issues highlighted in the table.

*Agreed:* to provide the Bill sponsor with a copy of the table of issues in advance of the forthcoming evidence session.

#### **5. Civil Service (Special Advisers) Bill – Evidence from DFP**

The Committee took oral evidence from Derek Baker, Director of Personnel for the NICS, Corporate HR, DFP. The evidence session was recorded by Hansard.

**10:40am** Mr McCallister joined the meeting.

**10:54am** Mrs Cochrane joined the meeting.

**10:55am** Mr Girvan joined the meeting.

*Agreed:* that the DFP official will provide additional information as requested during the evidence session.

**6. Civil Service (Special Advisers) Bill – Final Evidence Session with the Bill Sponsor**

The Committee took oral evidence from the Bill sponsor, Mr Jim Allister QC MLA, on the issues arising from the evidence on the Bill. The evidence session was recorded by Hansard.

**11:20am** Mr McCallister left the meeting.

**11:45am** Mrs Cochrane left the meeting.

**11:57am** Mr Weir left the meeting.

**12noon** Mrs Cochrane joined the meeting.

**12:05pm** Mr Weir joined the meeting.

**12:06pm** Mr McCallister joined the meeting.

**12:12pm** Mr McLaughlin left the meeting.

*Agreed:* that Mr Allister will provide a written response to the points raised by the Office of Legislative Counsel.

**[EXTRACT]**

## Wednesday, 09 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mr Hugh Widdis (Director of Assembly Legal Services)  
(Agenda Item 4 only)

**10:05am** The meeting opened in public session.

*Agreed:* that Agenda items 5 & 6 are recorded by Hansard and the Official Report published on the Assembly website.

**10:06am** The meeting moved into closed session.

#### 4. **Civil Service (Special Advisers) Bill – Legal Advice**

The Committee received legal advice from Hugh Widdis, Director of Assembly Legal Services on a number of issues relating to the Bill.

**10:06am** Mrs Cochrane joined the meeting.

**10:12am** Mr Girvan joined the meeting.

**10:14am** Mr Weir left the meeting.

**10:16am** Mr Weir returned to the meeting.

**10:20am** Mr Weir left the meeting.

**10:29am** Mr Weir returned to the meeting.

**10:50am** Mr McLaughlin left the meeting.

**10:51am** Mr McCallister joined the meeting.

*Agreed:* that the Assembly Legal Services will provide follow up information as requested during the briefing.

The Committee noted a written submission from Dr Máire Braniff and Dr Cillian McGrattan, entitled The Civil Service (Special Advisers) Bill: Democratic Implications and Considerations.

*Agreed:* that the Committee will invite Dr Braniff and Dr McGrattan to give oral evidence on the Bill.

*Agreed:* that the Committee will also invite Professor Bill Rolston and Professor Peter Shirlow to give oral evidence on the Bill, in view of their work in relation to employment issues affecting loyalist and republican ex-prisoner groups.

**10:55am** The meeting moved into public session.

**[EXTRACT]**

## Wednesday, 16 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**Apologies:** Mr Adrian McQuillan MLA

**10:04am** The meeting opened in public session.

*Agreed:* that Agenda items 4, 5, 6 & 7 are recorded by Hansard and the Official Report published on the Assembly website.

#### 6. **Civil Service (Special Advisers) Bill – Evidence Session**

The Committee took oral evidence from Dr Máire Braniff, University of Ulster, and Dr Cillian McGrattan, Swansea University, on issues relating to the Bill. The session was recorded by Hansard.

The Committee noted a written submission provided by Dr Braniff and Dr McGrattan in advance of today's session.

**12:05pm** Mr McKay joined the meeting and took the Chair

**12:13pm** Mr Girvan left the meeting.

**12:16pm** Mr McCallister joined the meeting.

**12:17pm** Mr McIlveen left the meeting.

**12:18pm** Mr Girvan joined the meeting.

#### 7. **Civil Service (Special Advisers) Bill – Evidence Session**

The Committee took oral evidence from Professor Peter Shirlow, Queen's University of Belfast, on issues relating to the Bill. The session was recorded by Hansard.

The Committee noted various reports provided by Professor Shirlow in advance of today's session.

**12:30pm** Mr Weir left the meeting.

**12:36pm** Mr Girvan left the meeting.

**12:49pm** Mr Bradley left the meeting.

**12:49pm** Mr Weir joined the meeting.

**12:50pm** Mrs Cochrane left the meeting.

**12:53pm** Mr McCallister left the meeting.

**[EXTRACT]**

## Wednesday, 23 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)

**Apologies:** Mr Adrian McQuillan MLA

**10:24am** The meeting opened in public session.

*Agreed:* that Agenda item 6 is recorded by Hansard and the Official Report published on the Assembly website.

#### **4. Civil Service (Special Advisers) Bill**

Members discussed potential proposals for amendments to the Civil Service (Special Advisers) Bill.

*Agreed:* that any member intending to propose amendments through the Committee will liaise with the Bill Clerk, Patricia Casey, urgently, with a view to tabling draft amendments for consideration at the next Committee meeting and before formal clause-by-clause scrutiny of the Bill.

**[EXTRACT]**

## Wednesday, 30 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mrs Patricia Casey (Bill Clerk) (Agenda Item 4 only)  
Mr Simon Kelly (Assistant Legal Adviser) (Agenda Item 4 only)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)

**10:05am** The meeting opened in public session.

*Agreed:* that Agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly website.

#### 4. **Civil Service (Special Advisers) Bill – Clause-by-clause scrutiny of the Bill.**

**10:06am** The meeting moved into closed session to consider follow-up legal advice in line with normal protocol. Mr Simon Kelly, Assistant Legal Adviser, Assembly Legal Services addressed the meeting.

**10:06am** Mr McQuillan left the meeting.

**10:10am** The Committee moved into public session.

**10:11am** Mr McQuillan joined the meeting.

**10:15am** Mr Weir and Mr Girvan joined the meeting.

The Committee carried out formal clause-by-clause consideration of the Civil Service (Special Advisers) Bill as follows:

Clause 1 – Meaning of “Special Adviser”

*Agreed:* that the Committee is content with Clause 1, subject to the proposed technical amendment from the Bill Sponsor.

Clause 2 – Special Adviser not to have a serious criminal conviction

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

“That the Committee is content with Clause 2 subject to the proposed technical amendments from the Bill Sponsor”

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES

Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES

Ms Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS

None

Question accordingly agreed to.

Clause 3 – Meaning of “serious criminal conviction”

*Agreed:* that the Committee is content with Clause 3, subject to the proposed technical amendments from the Bill Sponsor.

Clause 4 – Annual Report

*Agreed:* that the Committee is content with Clause 4, subject to the proposed technical amendment from the Bill Sponsor.

Clause 5 – Code of Conduct

*Agreed:* that the Committee is content with Clause 5, subject to the proposed technical amendments from the Bill Sponsor.

Clause 6 – Code for Appointments

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

“That the Committee is content with Clause 6 subject to the proposed technical amendments from the Bill Sponsor”

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES

Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES

Miss Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS

None

Question accordingly agreed to.

Clause 7 – Advisers to the Presiding Officer

*Agreed:* that the Committee is content with Clause 7 as drafted.

Clause 8 – Interpretation

*Agreed:* that the Committee is content with Clause 8 subject to the proposed technical amendment from the Bill Sponsor

Clause 9 – Transitional provisions

*Agreed:* that the Committee is content with Clause 9 as drafted.

Clause 10 – Commencement

*Agreed:* that the Committee is content with Clause 10 subject to the proposed technical amendment from the Bill Sponsor.

The Schedule: transitional provisions: termination payments.

Mr McLaughlin indicated that he would be tabling amendments to the Bill, which may lead to consequential amendments to the Schedule.

As consensus could not be reached on the Schedule, the Chairperson, Mr McKay, put the following question:

“That the Committee is content with the Schedule as drafted”

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES

Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES

Miss Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS

None

Question accordingly agreed to.

Long Title of the Bill

*Agreed:* that the Committee is content with the Long Title of the Bill as drafted.

*Agreed:* that, as some of the decisions on the clauses and schedule to the Bill were reached on a majority basis, rather than by consensus, references will be included in the Report on the Bill to the Minutes of Proceedings of the clause-by-clause scrutiny for details of the divisions on the questions put.

**[EXTRACT]**

## Wednesday, 6 February 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mrs Patricia Casey (Bill Clerk) (Agenda Item 4 only)

**Apologies:** None

**10.06am** In the absence of the Chairperson the Deputy Chairperson opened the meeting in public session.

**Agreed:** that Agenda item 5 on the Review of the Efficiency Delivery Programme is recorded by Hansard and the Official Report published on the Assembly website.

#### **6. Civil Service (Special Advisers) Bill – Initial Consideration of draft report.**

The Committee considered a working draft Report on the Civil Service (Special Advisers) Bill.

**10.16am** Ms Fearon joined the meeting.

**Agreed:** Members will forward any comments they have in relation to the draft report to Committee staff by noon on Friday 8 February 2013, following which the final draft report will be issued for formal consideration and agreement on 13 February.

The Clerk informed members that agreement to clause 11 on the Short Title of the Bill had been omitted from the formal clause-by-clause consideration of the Bill at last week's meeting. The Chairperson accordingly put the question.

Clause 11 – Short Title of the Bill

**Agreed:** that the Committee is content with clause 11 on the Short Title of the Bill as drafted.

**10.20am** Mr McQuillan left the meeting.

**[EXTRACT]**

# Wednesday, 13 February 2013

## Clare House, Airport Road West, Belfast

(UNAPPROVED)

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**Apologies:** Judith Cochrane MLA  
David McIlveen MLA

**10.10am** The meeting opened in public session.

*Agreed* that Agenda item 5 on the Flexible Working Inquiry is recorded by Hansard and the Official Report published on the Assembly website.

#### **4. Civil Service (Special Advisers) Bill – Final Consideration of Draft Report**

Members considered the Committee's draft report on a paragraph-by-paragraph basis, as follows:

*Agreed:* that paragraphs 1 – 13 stand part of the Report;

*Agreed:* that paragraphs 14 – 27 stand part of the Report;

*Agreed:* that paragraphs 28 – 40 stand part of the Report;

*Agreed:* that paragraphs 41 – 62 stand part of the Report;

*Agreed:* that paragraphs 63 – 92 stand part of the Report;

**10.14am** Mr McCallister joined the meeting.

*Agreed:* that paragraphs 93 – 107 as amended stand part of the Report;

*Agreed:* that the Appendices stand part of the Report;

*Agreed:* that the Executive Summary stands part of the Report.

*Agreed:* that the Report on the Civil Service (Special Advisers) Bill be the Second Report of the Committee for Finance and Personnel to the Assembly for session 2012/13.

*Agreed:* that the Report on the Civil Service (Special Advisers) Bill be printed.

*Agreed:* that an extract of the draft minutes of today's proceedings relating to the report is titled "unapproved" and checked by the Chairperson before being included in

the Committee report, which will be sent for printing before the next Committee meeting.

**10.16am** The meeting was suspended.

**[EXTRACT]**





Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence



## 19 September 2012

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Roy Beggs  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr David Hilditch  
 Mr William Humphrey  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan

### Witnesses:

Mr Jim Allister MLA *Northern Ireland Assembly*

1. **The Chairperson:** I welcome Jim Allister to the Committee. Jim, I invite you to make an opening statement addressing the principles of the Bill.
2. **Mr Jim Allister MLA (Northern Ireland Assembly):** Good morning. I will take this opportunity to give a quick overview of the Bill. By way of introduction, I will say that the Bill came about because of the appointment of Mary McArdle as a special adviser and the disquiet that that created, and, in particular, the public hurt that it created for the Travers family in respect of the murder of young Mary Travers. Mary McArdle had been convicted of that heinous crime, and that was the catalyst for causing me to think about this issue and, ultimately, to bring forward this proposed legislation.
3. The Bill directly addresses that issue. Clause 1 defines a special adviser. Everyone in this Committee is probably familiar with who and what special advisers are and what they do, so I will not labour that. Clause 2 goes on to specify that someone shall not be eligible to be appointed as a special adviser if they have a serious criminal conviction. Therefore, the Bill is introducing ineligibility for the holding of the post and is grounding that in a

serious criminal conviction, making such a conviction a barrier either for anyone in the future or anyone in the present. Anyone who is in office and incurs such a serious criminal conviction, likewise, would have their appointment terminated.

4. In clause 2(3), where on the date of coming into operation of this section a person holds an appointment as special adviser and has before that date incurred a serious criminal conviction, that person's appointment would terminate immediately by virtue of this Act. That subsection would come into effect two months after Royal Assent. Therefore, in the normal process, after Royal Assent, there would be two months before that clause would come into effect, which is, de facto, two months' notice to the person.
5. I will skip to the schedule to the Bill. If there is a person in such a position, they may then be entitled to compensation or a termination payment akin to that which they would achieve under the contract, or at least three months' salary. The purpose of that is to make sure that the Bill is human rights-compliant in respect of interference with right to property, etc. Therefore, there is a generous provision made in the schedule for some termination payment, with a backstop of six months; there would be nothing beyond that. That is how it is measured.
6. It hinges on a serious criminal conviction. In essence, a serious criminal conviction is then defined as any sentence of five years or more. There is nothing magical about five years; I am not hung up on that. In criminal law, five years is a benchmark, which often distinguishes the more serious from the less serious. However, there is nothing magical about it. Indeed, various views were given in the consultation, although five years seemed to be a medium that met with

- considerable approval. Therefore, that is the figure that was chosen.
7. The Bill then takes the opportunity to tidy up a number of other matters pertaining to special advisers and, in places, to bring us into line with what exists in the rest of the United Kingdom. For example, clause 4 indicates that there should be an annual report laid in the Assembly. That is almost a direct lift from section 16 of the Constitutional Reform and Governance Act 2010, which has some sections dealing with special advisers in the rest of the United Kingdom. It seems to me that, since special advisers are a matter of public interest, the public are entitled to know something of the cost of them. They are paid by public funds, so the public need to know something of the number of them. Therefore, a modest report is requested each year to be laid in accordance with the procedures elsewhere.
8. Clause 5 comes to the code of conduct. Clauses 5 and 6 come into effect immediately upon Royal Assent in order to give time for matters to be set up so that the issue flows properly. It requires the issuing of a code of conduct for special advisers. That, again, is modelled on section 8 of the 2010 Act in the UK. I do not think that it deals with anything terribly controversial; it simply sets out some modest limits as to what they can and cannot do, but requires that code to be laid again before the Assembly, giving it statutory authority and putting it on a statutory footing rather than on a guidance footing. I believe that there is a departmental code of conduct. I am not faulting it or saying that it is wrong or inadequate; I am simply saying that it is better to have that on a statutory footing, as it is elsewhere. I think that opportunity should be taken if we are legislating on special advisers.
9. In clause 6, the code for appointments is also put on a statutory footing, whereby the Minister for Finance and Personnel would lay a code before the Assembly. It does not specify what must be in it, but includes the phrase:
- “Without prejudice to the generality of subsection (1)”*
10. to ensure that anything over and above that can be included. It does specify that vetting for special advisers should be akin to that for other senior civil servants. This issue has given rise to some controversy. As I understand it, the Minister purported to amend the code for appointments to introduce vetting, but that has not been implemented or accepted by all parties and, therefore, is in a form of limbo. I want to end that limbo by putting the code on a statutory basis. Again, I am not saying that the code as presently drafted is inadequate; I am simply saying that it would be better if it were on a statutory footing so that everyone knows where they stand and so that the particular requirement for vetting in clause 6(2) can only be subsequently changed by the Assembly. That is the proposition there.
11. A special adviser is a special person in that they have the status not just of a civil servant but a senior civil servant. They have access to all government papers and advise at the highest level. Indeed, some might say that, on some occasions, they effectively are the Government, because they almost make governmental decisions. They advise the Ministers, and many of the arrangements made are probably the product of agreements between special advisers. Therefore, if they are as significant as that and are right at the heart and the top of the Government, it seems unconscionable to me that they should exercise all the privileges of a senior civil servant, including a salary of up to £90,000, the pension rights, the access and the privileges of that, and yet not meet the basic requirements that any other senior civil servant would meet, including vetting. They already have that special exemption of not being appointed on merit, unlike every other senior civil servant, and I would say that that is a big enough concession to the uniqueness of their position. Therefore, they should, in all other circumstances, be subject to the rules and constraints that apply to senior civil servants. That is why the code governing their

- appointment and conduct should be placed on a statutory basis and should include the requirement that their vetting be the same as applies to other senior civil servants.
12. The last thing the Bill does is to tidy up what I think is an anomaly relating to the Speaker. Historically, under the Civil Service Commissioners (Northern Ireland) Order 1999 whereby special advisers are appointed, the Speaker also has the right to appoint a special adviser. That has been overtaken by events, in that, for some years now, the Assembly Commission has appointed an adviser to the Speaker who fulfils that role. He fulfils that role independent of who is Speaker; he does not come and go with a change of personnel in the Speakership, unlike special advisers. He is a fixture and he is fulfilling the role of providing advice to the Speaker. If that is so, it seems superfluous to have the additional, unexercised power of the Speaker to appoint someone else, in addition to a special adviser. The time has come to end that. It should be changed for two reasons. First, it is no longer necessary: the Speaker has a fully paid special adviser who is employed by the Assembly Commission. Secondly, it is inappropriate, given the Speaker's independent role, that he should have powers of appointment on the basis of political patronage. Therefore, it is right and proper that that function be removed because, in any event, it is derelict and is not being used.
13. That is the essence of the Bill. Of course, before it got to this stage, it was subjected to the various forms of advice and assistance that is provided to a private Member. I am certainly satisfied, as I declare, that it is within the competency of the Assembly. I say that from my own belief and on the basis of advice that has been tendered by Legal Services, which was provided to me by the Assembly for the drafting of the Bill. I also note that the Speaker has permitted the Bill to proceed. Therefore, he, too, must be satisfied about its competency. Undoubtedly, he will have taken Legal Services' advice on the Bill's competence, which would include its compliance with human rights obligations.
14. That is a quick overview of the Bill. I am very happy to deal with any issues that arise.
15. **The Chairperson:** Thank you very much, Mr Allister. I note that there were 818 responses to the consultation process, of which 808 were for the Bill and 10 were against. Can you give us an overview of issues that were raised, both for and against?
16. **Mr Allister:** Yes. The consultation process was publicly announced. Various newspapers carried information on how you could access it. It was on my website, and so on. I was pleasantly surprised by the interest in it. The figures are as you have said. There was minimal opposition. I suppose that, in a way, I paid more attention, perhaps, to the people who raised opposition, lest there was any substance to their objections.
17. I have to tell you that only one organisation raised any significant points. That was the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), which took the view that it was wrong to put any barriers in place of anyone. However, in its reply, it was quite muddled in its understanding of the Rehabilitation of Offenders Act 1974 and how it applies to spent convictions. The Act makes only a conviction of 30 months or less capable of being spent. Therefore, a five-year conviction is never spent under the Rehabilitation of Offenders Act 1974. To some extent, NIACRO got the wrong end of the stick. However, I was grateful to receive and consider its representations. As I said, that was the only objection of any significance.
18. All parties and MLAs were afforded a copy of the consultation. Very few took the opportunity to object; in fact, I do not think that any did. Therefore, I draw some conclusions from that as well.

19. **The Chairperson:** Did the Human Rights Commission and the Equality Commission pass any comment?
20. **Mr Allister:** I invited both to do so, of course. They said that they would comment at the stage when the proposed Bill became a Bill and went out in the normal processes. Therefore, they declined to give me the benefit of their opinion at the consultation stage.
21. **The Chairperson:** I have one final question before I open the floor to other members. Clause 3 refers, as you did, to how the Bill would apply to sentences of five years or more and life sentences. My understanding of the Bill is that it would apply, essentially, to convictions that have been received anywhere in the world. Should any flexibility be included in it, given that some countries might not have a high standard of human rights, for example?
22. **Mr Allister:** The Bill does say:  
*“This section applies whether the person —*  
*(a) was convicted in Northern Ireland or elsewhere”.*
23. I suppose I am thinking primarily that within the Northern Ireland situation, there could be a conviction that could equally arise in the Republic of Ireland or GB. I am primarily interested in those. I would certainly be open to discussion with the Committee, if the Bill progresses, as to whether that needs any fine-tuning. It would not be an easy operation to pick and choose as to which convictions you would accept and which you would not, but I am certainly open to discussion on that.
24. **Mr D Bradley:** Morning.
25. **Mr Allister:** Morning.
26. **Mr D Bradley:** During your preamble, you gave the impression that the review undertaken by the Minister of Finance into the appointment of special advisers had not been agreed by his Executive colleagues. Yet, the information that we had from the Department implies — well, states clearly — that the new arrangements for appointing special advisers were effective from September 2011. If those new arrangements are effective, why is there a need for your Bill?
27. **Mr Allister:** There may be a difference in the language of being effective and being in effect. I think the Finance Minister would say they are in effect from the day you quoted, but whether they are being implemented is a different matter. Certainly, my knowledge comes from the public media, where there has been indication of dissent. I certainly read of Sinn Féin saying that it did not accept the changes and that, party-wise, it was paying a special adviser appointed after those changes came into effect. So, it does seem to me that there is a question about whether they are being implemented. I am simply saying that, rather than play around with this issue, let us put it beyond doubt by putting it on a statutory basis. Let the Assembly see the code of appointment and let the Assembly accept or reject it, if that is necessary.
28. Let us simply put it beyond doubt so that everyone knows where they stand and it is on a statutory footing and not at the whim of a Minister simply to change with the wind. That is the essential reasoning behind that.
29. **Mr D Bradley:** At the same time, your belief that the changes implemented by the Minister are not in effect seems to be based on hearsay. Surely, hearsay is not good grounds for bringing forward legislation.
30. **Mr Allister:** I am sure the Committee will interrogate about that and ask is everyone who purports to be a special adviser being paid from public funds, or are there some or have there been some who are being paid from party funds because the Department of Finance has not accepted that their appointment has been regular? That is my belief. If I am wrong about that, I am wrong about it, but certainly that is my belief based on what is in the public domain. However, there is no one better placed than this Committee to establish what, precisely, is the position.

31. Even if it is now accepted and being implemented, I am simply saying there was controversy about it. So, let us remove the controversy by putting it on a statutory footing and making it something that this Minister or a future Minister cannot just change on a whim. It has this statutory basis. For example, vetting is a statutory requirement. That is the only statutory requirement that I want to put into the code. I am not saying the rest of the code is inadequate. I am simply saying that it is a controversial issue, let the Assembly decide on it, and let the Assembly, if it takes my advice, put that into the legislation. Then, whoever the Minister is, he can work around that with the code of appointment but that is laid down in law that that should be a statutory requirement of vetting, just as vetting is a requirement for every other senior civil servant. I am back to the point: why should special advisers be different? They have all the privileges and position of a senior civil servant; why should they be exempt from that basic fundamental requirement, which probably applies to senior civil servants across most of the world?
32. **Mr D Bradley:** The Minister will probably argue that he has introduced vetting. In any case, what you are proposing goes beyond the current Civil Service vetting procedures by automatically placing a bar on anyone who has been appointed or is to be appointed as a result of a serious criminal conviction that has received a five-year sentence. Your proposals do not allow for the usual mitigating factors to be taken into consideration. Why are you proposing to single out the special advisers in this way beyond the policy on convictions that is current Northern Ireland Civil Service recruitment policy and procedure?
33. **Mr Allister:** I suppose because of the controversy brought upon the issue by the insensitive appointment of Mary McArdle, which stirred such public disquiet and brought such hurt to the Travers family. I am simply saying that never again should that be capable of happening to a family. Someone who is convicted of murder or serious offences relating to a family should never be put in such a high-profile position and paid from the public purse to exercise the high-level powers of a special adviser. Therefore, to make sure that that, in no circumstances, can happen again, I propose that we make it a qualification for the job that you do not have a serious criminal conviction. That is across the board. It could be a serious criminal conviction, terrorist or a non-terrorist. It could be from any source whatsoever. However, I think that the level of public unease was such that we need to address it.
34. It is not the first time that there has been legislation that has a qualification that says that people with criminal convictions cannot hold office. I take you back, for example, to the Estate Agents Act 1979, which provides that a person with certain criminal convictions cannot be an estate agent. I take you to the Solicitors (Amendment) Act 1956, which had a similar provision. A clerk who was in post had a conviction before the Act was made, and yet was disqualified from acting under the Act. That case went to the Court of Appeal, and the Court of Appeal upheld the law.
35. To bring it right up to date, just last year in 2011, we had the Police Reform and Social Responsibility Act 2011 in GB, which provides for the election of police commissioners; it provides that anyone with a conviction for a criminal offence — what it calls an imprisonable offence, so it virtually embraces every criminal offence — is disqualified from being a police or crime commissioner.
36. There is nothing novel about interposing as a qualification for a job a prohibition on having a criminal conviction. My proposed legislation is not novel at all in that regard. In fact, it is falling in a line of statutes that have done exactly that. They have all done it on the basis of saying “Here are the qualifications for the job, and one of them is that you cannot have a criminal conviction”. That seems to me right and proper for a position of the nature of special adviser. It is not that — as indeed turned out in

- the Mary McArdle case — such people cannot be accommodated elsewhere within their party's structures and processes, but the Bill simply says that it is a step too far to put such a person in such a high-profile, publicly paid position, bearing in mind the adverse impact that that can, and did, have, in that case, on the grieving family who had been her victim.
37. So I think that this is a modest, proportionate and necessary step.
38. **Mr D Bradley:** Your opponents on this issue might take a different view. In any case, we all recall the reaction that there was to the appointment of Miss McArdle to that position and the type of emotion that was expressed and on display in the aftermath of it. Many of us had great sympathy with the plight of Miss Travers. However, as I say, your opponents might argue that a wave of emotion is not a solid basis for bringing forward legislative change.
39. **Mr Allister:** No, but it highlighted a gap in the law in a very dramatic fashion. Therefore, as legislators, our challenge is whether we will face up to that or ignore it. It is a matter for each and every Assembly Member to weigh and decide whether it is right that someone with a serious criminal conviction, which can include murder, should hold a position, not only to which they are not appointed on merit, but to which they are appointed in spite of the pain and anguish that that brings, and they are appointed to a post that is one of the most seminal posts that can be held in public administration in respect of power and influence, and paid for out of the public purse. It is a matter for each Assembly Member to weigh. Are they comfortable with an arrangement that allows that to happen, or are they sufficiently exercised about it to want to do something about it? This is a way of doing something about it, so that it will never happen again.
40. **Mr Cree:** Good morning. I have a couple of points. I have read the raft of questions that you addressed to Ministers about this whole issue. How important was it in your decision-making that the code was not adequate in itself and would not be adequate in the future? There is quite a lot about the GB equivalent, the Constitutional Reform and Governance Act 2010. Are there any other parts of the main GB Act that, perhaps, should be included in this? I have not had time to study the whole thing yet.
41. **Mr Allister:** In the 2010 Act, the three sections that are relevant are sections 8, 15 and 16. Section 8 deals with the definition of a special adviser. What I have in clause 1 is pretty akin to that; it is modelled in part on that. Section 15 deals with the — sorry, section 15 is the definition of a special adviser. Section 8 is the one about the code of conduct, and my clause 5 is modelled on that. Section 16 is the one that deals with the annual report, and my clause 4 is modelled on that. I do not think that there are other provisions in that Act that struck me as relevant or necessary. The 2010 Act deals with a vast range of issues, not just special advisers.
42. You referred to the questions I have asked. I have had an ongoing interest in this matter. I have had a bit of a struggle to try to unearth some of the detail and found a reticence to provide answers on certain points, all of which has contributed to my belief that it is time to reform the law on special advisers, though the primary driver has always been the McArdle episode. It is opportune to take the opportunity, through the legislation, to put the code of conduct, the code for appointments and an annual report on a statutory basis so that there can be a bit more transparency and people can see exactly where things stand on all those issues. Yes, my involvement in the past and all the questions that I have asked has not raised my level of confidence in the present arrangements — let us put it like that — and, therefore, has strengthened my view that the Bill is an opportunity to improve the situation.
43. **Mr McQuillan:** Is the difference between the current code and the Bill mainly making it statutory?

44. **Mr Allister:** It will make it statutory and put vetting on a statutory footing so that it must be done and that nobody can change it without the Assembly's approval.
45. **Mr McQuillan:** Can I touch on the retrospective dimension? You mentioned, when you were talking about that, that there would be some sort of payment if somebody was made redundant from a position now. Can you explain that a bit more?
46. **Mr Allister:** There are 19 or 20 special advisers. We are talking about a small number, and, therefore, the potential negative impact, if you want to talk about that, is very small in that it is a very select group of people. However, there may be someone in position at the moment who falls foul of the Bill because they have a relevant conviction. They would have two months' notice that their job is coming to an end. Let us remember that we are talking about people who have no security of tenure in their job. They are attached to a Minister and are only in office as long as he is in office and as long as he wants them in office. So, if he or she leaves office, they leave office, or if he or she sacks them, they are sacked. Unlike with most jobs, there is no security of tenure.
47. **Mr McQuillan:** If one was to be sacked now, what sorts of arrangements are there for them, compared with those in the Bill?
48. **Mr Allister:** Before the Bill?
49. **Mr McQuillan:** Yes.
50. **Mr Allister:** They are subject to the Finance Minister's code of appointment. However, it seems to me, from what I understand, that it is not being implemented by a certain party, which has boasted of that. Unless that has changed, the Minister is saying, "This is how it should be done and, if it is not done this way, I do not pay." I understand that he has already said that it has not been done that way, and, therefore, he is not paying in the case of a recent appointment. If that has changed, I do not know about it.
51. If the Bill is passed, the code would be statutory and would have to be followed. It would be a breach of the ministerial code for a Minister not to follow the law and not implement the code. It would be foolproof in that regard. If the Assembly decided to introduce a clause that required a statutory code and required, within that, vetting equivalent to senior civil servant vetting, no Minister or special adviser could avoid that. We should be at that position so as to remove the doubt, the wriggle room, all of that. We should get to a point where it is black and white and it is in the law. If you want to be a Minister, that is the law and you have to operate it, and if you want a special adviser who is paid out of public funds, that is how it will be done. It is far better to put it on a statutory basis and beyond dispute and doubt.
52. You raised the point earlier about compensation. Under some of the protocols in the European Convention on Human Rights, there are reservations about interfering with people's property rights etc, which can be extended to the fact that someone has a job that they are going to lose. Certainly, there would be an expectation that someone should be compensated for that in some way. That is why, as a belt-and-braces exercise, I have gone to the termination arrangements in the schedule and said, "OK, if you are put out of your job because of the Bill, not only will you get two months' notice but you will get a package that will accord with whatever package you are entitled to in your contract or a basic three months' salary if there is no such provision in your contract." I think that that is not unreasonable, particularly for a job that never had any security of tenure in the first place.
53. **Ms Fearon:** My question is about the consultation period. Are you able to clarify the dates and how long it lasted for?
54. **Mr Allister:** It lasted for six weeks. I simply followed the advice that the Bill Office gave me. I believe that the consultation happened about this time last year. I think that it ended in October, if I recall correctly, so I think it straddled

- September and October. I am depending on my memory in that regard, but it certainly was for the recommended and required six-week period. If that detail is important, I can get it to the Committee.
55. **Mr Cree:** The deadline was 30 November.
56. **Mr Allister:** Thank you very much. Then I am out; it straddled October and November. I am obliged, Mr Cree. I can get the actual date of publication and supply that to the Committee.
57. **Mr Beggs:** Thank you for your presentation, Jim. This is certainly an important area, and you have looked it at very carefully. That is very evident.
58. In respect of the role and responsibility of a special adviser who is paid by public funds, I think it is important that there are high standards for people who take up that position, particularly given the access to information and influence they have.
59. My question is about the cut-off period. You picked five years. Someone who commits the most heinous crime of murder would get much more for that. I am trying to get a feeling for why you picked the figure of five years. Perhaps you can give some examples of the sentences given for certain types of crimes, if you have that information. I am just trying to judge whether five years is right.
60. **Mr Allister:** I have already indicated that there is nothing magical about five years. In my experience, it tends to be a significant threshold between what is thought of as really serious crime and other crime. Obviously, there are certain crimes for which there are statutory life sentences, and that is all included in the Bill. You would certainly expect more than five years for rape, robbery, serious assault and offences of serious financial irregularity, such as serious fraud. The range of sentences below that, as you go down the scale, is for lesser offences, in the public eye. Five years represents a relatively tough sentence for a relatively bad crime. Therefore, it struck me that rather than simply saying, as the current police commissioners
- Act does, “any imprisonable offence”, which could be for assault, we should draw some measure of seriousness into it and say that five years might be a marker. As I indicated, however, I am not wedded to that. If the Assembly thinks that five years is too high, I do not have a problem with that.
61. **Mr Beggs:** That is a reasonably good answer. Thank you.
62. **Mr Hilditch:** Thank you for your detailed presentation, Jim. You mentioned legislation elsewhere; I take it that you meant Parliament. Does the Bill draw any parallels with any legislation in the other devolved Administrations?
63. **Mr Allister:** Interestingly enough, the 2010 Act, which is a Westminster Act, makes provision, for example, for the Scottish First Minister and the Welsh First Minister, if that is his correct title, to make annual reports on their special advisers. When you look at it, it is quite noticeable that Northern Ireland is the one absentee. So, the provisions of the 2010 Act straddle, in that particular regard, the entirety of GB. It is a good idea to bring us into line on issues such as reports, etc.
64. **Mr Mitchel McLaughlin:** Good morning. In your evidence on the Bill, it was clear that the catalyst for drafting it was the appointment of Mary McArdle. I have a number of questions about that. Do you accept that any person who was released under the terms of the Northern Ireland (Sentences) Act 1998 — all of this, of course, flows from and gives purpose to the Good Friday Agreement — has been adjudged not to be a danger to the public?
65. **Mr Allister:** Any person released under that Act is released on licence. That is to provide for any danger that might emerge. I do not think that you can say that they have been adjudged not to be a danger to the public if they have been released on licence.
66. **Mr Mitchel McLaughlin:** Well, in fact, they would not have been released if there had been any concerns that they were a danger to the public.

67. **Mr Allister:** If there then were any present concerns, they might not have been released, although I think one is mindful of the political expediency driving the release at that particular time. That, for me, is not the point. The point is whether someone, if you want to personalise it, like Mary McArdle should be in a position such as this, with all the hurt and anxiety that that brought to the Travers family. My conclusion is that she should never have been capable of being appointed to that position and, therefore, I want the law to provide that such a thing could never happen again.
68. **Mr Mitchel McLaughlin:** OK. That is not really news to me. Although I do not agree with you at all, I understand exactly your perspective on the matter, but my question, which I think you have avoided answering, is this: do you accept that any person who was released was, in fact, adjudged under the relevant legislation not to be a danger to the public?
69. **Mr Allister:** I accept that, for the purposes of release, that was the box that was ticked, but they were released on licence with the capacity for recall, and I can make my own judgement, as can the public, as to whether I think that such persons are suitable to hold such a prestigious office. My judgement on that is that they are not suitable persons and that we should have a qualification in that regard.
70. **Mr Mitchel McLaughlin:** OK. I do not need you to rehearse your opinions, because we have all listened to you time and time again banging on about that particular issue. We are dealing with the Bill that you are presenting today. I am asking questions and I am entitled to responses.
71. You indicated what the catalyst for the Bill was and the purpose of introducing it. You did not indicate that any act or behaviour by Mary McArdle, in your view, would have been a catalyst for producing it. You are not making any accusation that she has, in any sense, contravened the conditions of her release from prison.
72. **Mr Allister:** That is not for me to do, although I do note the absence of remorse in the various interviews with her in regard to the heinous crime of which she was convicted.
73. **Mr Mitchel McLaughlin:** You have noted and commented on a range of issues in respect of the Travers case. I am dealing with the special advisers Bill, and I really would appreciate it if you would address that, since it is for that purpose that you are here today.
74. In respect of this additional punitive measure, which is being introduced retrospectively, do you see a danger of —
75. **Mr Allister:** Sorry, it is not being introduced retrospectively. My Bill is prospective; it is not retrospective. The Bill is prospective as it applies from the date it is made. If it were retrospective, it would take effect before it was made and would be deemed to have always had effect. That is what retrospective means. My Bill is prospective: it is effective only from the date it is made. It does not change the legal nature of a past event, it simply makes a past event a condition of current eligibility for a job.
76. **Mr Mitchel McLaughlin:** I am quite certain that that is something that will be tested legally, given the explanation that you have offered this morning, which is on record, and the fact that your Bill, if accepted, will permit immediate dismissal of someone who is already in post. It will be a very interesting discussion as to whether that is an additional penalty being applied on the basis of retrospective —
77. **Mr Allister:** I have to say that a change in the law is not objectionable merely because it takes note that a past event has happened and bases new legal consequences on it. That is well established in law.
78. **Mr Mitchel McLaughlin:** OK. Given the significance of this, I can predict that the legal opinion will be very thoroughly tested. I put my question directly to you: if this is tested against all the provisions of the European Convention on Human Rights —





































































- those groups. A contributory factor of that might be the 15 years to 22 years that people wait before they seek help. It might be that they feel that those services are not available for them.
431. Committee members will be aware of the creation of the victims and survivors' service, which is a new opportunity for people to be assessed and directed towards services that are most relevant to them. The commission has a close watching brief on the development of that service. We are tasked to provide a quarterly monitoring report on the development and progress of the service. We have just delivered our first quarterly monitoring report to the Department. We will be watching with interest not only the development of the service, but the impact on individual victims and survivors, and, looking further than that, the impact on groups that are already established.
432. **The Chairperson:** We have had a considerable response so far to the Committee's consultation from ex-prisoners and ex-prisoners' groups. What work have you been doing with that section of society? It is a section that is cross-community, with many republican and loyalist ex-prisoners' groups. Have you had much consultation with them?
433. **Ms Stone:** In arranging our visits and consultation meetings with groups and services, we have been clear that we want to meet representatives from all communities in the programme of visits that we have up until the end of December and, again, in the new year. We have done that in the programme of visits that we have completed to date. I can only reiterate that I believe that the role of the Commissioner for Victims and Survivors is to support all victims and survivors, from whatever community they come.
434. **The Chairperson:** Kathryn and Adrian, thank you very much.























the time and is very discourteous towards people who are here to give evidence.

528. **Mr Weir:** I am happy to come back to it, if Mitchel is. I am content to wait until we have completed all three evidence sessions.
529. **Mr Mitchel McLaughlin:** I will explain why I did move to that, Leslie, because it was not intended to be discourteous in any way. Dominic was getting a bit agitated as to why I was setting out my case. I think I have given you an explanation. My intention was, in fact, to be courteous, by explaining why I was taking such time.
530. **The Chairperson:** Members, can we park this now? Rory, you wanted to make a comment.
531. **Dr O'Connell:** It is OK.
532. **The Chairperson:** No other members have questions. Brice, Anne, Rory, thank you very much.
533. **Mr D Bradley:** For the record, Chair, I was not getting agitated, and I was not bored during Mitchel's long diatribe. I was pointing out that there are procedures that the Committee should follow. I think that Mr Weir reflected my views.

534.





546. I will turn to the issue of the blanket prohibition and the application of the International Covenant on Civil and Political Rights, which also binds the United Kingdom. It ratified the treaty in 1976. The approach of the monitoring body for that treaty, the Human Rights Committee, would be more or less the same as that of the European Court of Human Rights.
547. Staying with the International Covenant on Civil and Political Rights, there is a separate provision — it may have been addressed; we came in late this morning, so forgive me if you have heard reference to it — that raises different issues to the blanket prohibition in the covenant. It is contained in article 25 and is a guarantee of non-discriminatory access to public service. You do not find a provision like that in the European Convention; you find it in the international covenant, which remains binding under international law for this jurisdiction. I have heard it suggested that article 25 might apply here. There is no jurisprudence on the matter, and I have to say that any reflections of that type are speculative. Although the monitoring body, the UN Human Rights Committee, does not apply the European margin of appreciation approach, it does approach public service recruitment matters with great discretion and has identified that not every distinction is a discrimination. I would venture to suggest — I, too, am being speculative — that, in this case, the distinction that the Bill is seeking to impose would be considered by the Human Rights Committee to be a non-discriminatory distinction. As I say, we all have to speculate on that.
548. I will turn to an issue that you are very familiar with, which is whether we have a retroactive penalty here that would trigger violations of article 7 of the European Convention on Human Rights and article 15 of the International Covenant on Civil and Political Rights. As you know, the key question is this: is the prohibition a penalty? If it is a penalty, we have a problem; there is a clear violation. Is the primary purpose or a prominent purpose of the prohibition punitive? If the answer is yes, articles 7 and 15 are engaged. If the answer is no, they are not. You have to make that determination based on all the circumstances and all the facts before you, including the origins of the Bill, its stated purpose, its application, and so forth. Again, I would suggest that that is not for us to call on.
549. The only thing I would say is that in making the determination on whether the Bill is punitive and constitutes a penalty, it would be helpful to distinguish between people already in post and candidates for special adviser positions. Let us take the second group first: the candidates. I find it hard to see that the Bill would constitute a penalty in the context of candidates; they are not in post and there is no immediate victimisation of them to the extent that it is punitive. For them, it has a rather abstract quality. However, with regard to those in post, there is arguably a closer fit, but the provision in the Bill for compensation somehow diminishes the punitive quality. It is all the harder to argue that that is intended as punishment if you will give people a financial reward if they are removed from office. So, again, we cannot give you an answer on that; we can simply point out some of the elements.
550. The final point that the commission wishes to put to you has to do with what is accepted as a matter of international law, be it ECHR or UN treaty law. There is a generally accepted responsibility on the state to support the rehabilitation of prisoners. The United Nations standards, which are distilled from the treaties, particularly the International Covenant on Civil and Political Rights, are found in a UN document called 'Standard Minimum Rules for the Treatment of Prisoners'. I will quote one brief paragraph:
- "The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of*











































- should be decisively tackled. I was invited to chair a group that was representative of the ex-prisoner interest. Again, I had that whole range of ex-prisoner interest around the table. We took the earlier work as our starting point. We revised it, updated it and sent it off to the NIO, given that the Executive had collapsed in the meantime. This time, I am bound to say, I was delighted by the response that we received. A lot of that was attributable to the way in which Sir Nigel Hamilton handled the situation from inside the machine. A working group that was exactly along the lines that we suggested was set up. Its importance was recognised by the fact that it was chaired by the head of the Northern Ireland Civil Service, and I gather that I was supposed to be co-chair. I was very glad to be involved in the committee's work.
739. I got involved, and until I stepped aside about a year ago, I stayed with the issue for at least two reasons. The first reason was that, having come to it fresh, I was astonished by the scale of the issue. The figure that I was given was that there had been some 30,000 of these ex-prisoners, that is, people who had been imprisoned for conflict-related offences. More recent estimates have suggested that that figure could be even higher. If you gross that up to include immediate family members, you probably have well over 100,000 people, and the figure is several times more than that when the extended family is taken into account. So, I felt that if we wished to achieve anything like a normal society, that was not something that could simply be swept under the carpet; it had to be a very important component of the peace process.
740. The second reason why I stayed with it and was immensely interested in it was that I was enormously impressed by the ability of those erstwhile adversaries to sit around the same table and interact totally civilly with each other and with others who were totally outside the ex-prisoner groups. I was very impressed by the calibre of those people and by their obvious desire to move on and to contribute to shaping a new future for Northern Ireland. So, I asked myself whether it was sensible to deny them the opportunity to contribute and whether it was reasonable for society to expect them to espouse peaceful democratic means to shape the future but, at the same time, refuse them any place in that future, assigning to them the role of permanently idle onlookers and outsiders with all that that would mean later for opportunities for their families and the next generation.
741. As Sir Nigel said, such thinking was, of course, fully consistent with the Good Friday Agreement and the St Andrews Agreement, which talked about facilitating and enhancing the reintegration of ex-prisoners into the community. It was also, of course, fully consistent with thinking on an international level — that is, at United Nations and World Bank level — which pinpoints the importance of what is being called demobilisation, decommissioning and reintegration as a strategy in conflict recovery and societal healing. Employment and economic well-being are seen as a key framework within which to deliver peace and stability.
742. All that was very fully debated in the working group that was set up. It resulted in the development of a model, or a principle, that could be applied right across the board not only for employment but where access to goods and services is concerned. Indeed, after issuing its employment guidance, the working group went on to deal with issues such as insurance and the other matters to which Sir Nigel referred. That principle was directed very simply at ensuring that an ex-prisoner with a conflict-related offence would be able to compete with other applicants for employment on a totally level basis, with the employer making his or her decision solely on the basis of the applicant's skill and experience. The guidance is very clear. It states:
- “the fact that an applicant has a conflict-related criminal record should”*
- the following words are underlined —

*“not play a part until the individual has successfully gone through a selection process. In accordance with best practice, application forms should normally not require a criminal record declaration except where”*

— for example, it involves working with the vulnerable. The guidance continues:

*“Only after an individual has been recommended for appointment and only where relevant to the specific post should a record check be undertaken.”*

743. The guidance then goes on to discuss what should happen if there were a conviction and the employer considered that it were or could be materially relevant and manifestly incompatible with the post in question. The guidance is very clear that the onus of proving material relevance lies with the employer. It also makes clear that the seriousness of the offence is not, in and of itself, enough to make a conviction materially relevant. It also underlines that it will be only in very exceptional circumstances that a conviction will be relevant. I think that those are all critical points about the principle that was enunciated.
744. All the arrangements that I just described were instituted on a purely voluntary basis, although they were, of course, fully endorsed by the main employers’ organisations and the central trade union body. The guidance said, however, that the arrangements should be reviewed over time to assess their impact and effectiveness and that, if necessary, the voluntary arrangements should be put on a statutory basis.
745. The guidance also made provision for the setting up of a tripartite review panel to, inter alia, monitor the working of the arrangements. That review panel has now reported and has recommended that, given the range of impediments and barriers that prevent it from working totally satisfactorily as a voluntary arrangement, the guidance should be complemented by legislative change in line with the possibility that is mooted in the employers’ guide itself. In other words, the employers’ guide said that, if necessary, the guidance should be

translated into legislative form. I have no doubt that a good principled start has been made on what I believe is a very important and necessary journey. The review panel has made a careful and convincing case for starting on the next leg of that journey, and I hope that urgent action will be taken.

746. I hope, Chairman, that those introductory reflections have been helpful. Thank you very much.
747. **The Chairperson:** Thank you very much, gentlemen. You touched on this already, but will you outline why, in your opinion, it is important to us as a society that ex-prisoners reintegrate, particularly with the employment market?
748. **Sir Nigel Hamilton:** I think that Sir George just did that. To set it in a wider context, the peace process and all the various parts of both the Good Friday Agreement and the St Andrews Agreement are meant to take us back to a situation where the world is peaceful and where we leave the past behind. That requires the reintegration of ex-prisoners into society and their being enabled to take up employment and have those blockages removed. I think that it is inequitable and something that, from a personal point of view, although I have now been retired for five years, is extremely important as we move back towards a normal society.
749. **Sir George Quigley:** It was very much a learning process for me. I had met representatives of all the groups involved in the conflict in the 1990s, but I had never actually sat around a table interacting with people who had been involved in the conflict at the front line, as it were. You could not talk to those people for any length of time and not be impressed by the fact that they wanted to move into an era when they would be making a normal contribution to society. Not only that but they clearly had the capacity to do that in a significant way. I think that it is a rather reckless society that thinks that it can get along without drawing in all its talents. After all, that is one of the main arguments for the full participation of women in society,

- and I think that one cannot leave out any significant group, particularly, as I said, a group with numbers of this order. That is because, when you talk about extended family, you are talking about quite a significant proportion of the population of a small place such as Northern Ireland. In some areas where the conflict was particularly focused, you are talking about a very significant proportion of the population indeed. So, I do not think that one can simply park all that and go on with life as though it did not count. One really has to take it into account when building that normal society for the future.
750. **The Chairperson:** You mentioned the involvement of trade unions and businesses in this process. Would it have been their view that, for purely selfish reasons, employers should have the freedom to choose employees solely on the basis of merit and that that choice should not be removed from them because of a conviction 14, 20, 30 or 40 years ago that is in no way relevant to the job? What was the view of the businesses and trade unions?
751. **Sir George Quigley:** Both the social partners were very supportive from the very beginning. As I said, it was quite significant that the people who drew me into the process at the very start were William Poole and Terry Carlin. I pay tribute to William Poole for the role that he played in all this, because he drew me in. If he had not made that call, who knows whether I would have been involved. He was also very keen to get involved in the work of the review panel, which was set up following the work of the working group. He retired from that only because of ill health and, sadly, he died last week. He was an example of an individual who was convinced that this was the right way to go. He stuck with it and made an immense contribution, as did Terry Carlin. So, it was vital that the social partners were involved so that when employers wanted to go down this route, they did not find themselves encountering a whole series of individual difficulties.
752. **Sir Nigel Hamilton:** The working party unanimously approved the guidelines that were issued. At that time, that included Peter Bunting or his representatives, as well Nigel Smyth or his representatives, on behalf of those two partners.
753. **Sir George Quigley:** We had a number of public meetings at which we presented the results of the working party's work. Employers, trade unions, representatives of the public sector and the various health agencies all attended, and I cannot recall a single example of anyone raising any objection about the course that was being taken.
754. **The Chairperson:** You referred to Departments' involvement. What was the Department of Finance and Personnel's contribution?
755. **Sir George Quigley:** I must pay tremendous tribute to the response from inside the Civil Service machine. I have said to Sir Nigel on many occasions, and I said in the group itself, that we were served by an incredibly able and dedicated group of people in that working party. The response from the wider machine was very positive, but the great benefit of the working party was that the system as a whole could address the issue holistically. Before that, it was a matter of individual groups going to individual parts of the machine, whether their issues were about criminal injuries compensation or getting licences for taxis or heavy vehicles. Naturally enough, the system was simply looking at it in a narrow context. It had to be looked at in the round, and once the whole issue was opened up to that kind of discussion and with very strong leadership from the individual on my right, the situation was transformed.
756. **Sir Nigel Hamilton:** As head of the Civil Service, I had the opportunity to bind my permanent secretary colleagues into this work as well.
757. **The Chairperson:** The Justice Kerr case is referenced at paragraph 2.9 of the guidance. Obviously, that is an example of a case where the Good

Friday Agreement was referenced as one of the reasons for supporting it. Are you aware of any similar cases that have been brought forward? What is your opinion on the potential for further cases like that to be brought forward where the ex-prisoner concerned would be of the opinion that his rights were being breached and that the Good Friday Agreement were being breached as a result of what was happening?

758. **Sir Nigel Hamilton:** Chairman, you will have heard from our opening submissions that my involvement was over a period until I retired. Sir George's involvement has been over a much longer period. I would be misleading the Committee if I were to say that, since I left this place in early 2008, I have been closely aware of what might have happened in other pieces of case law.
759. **Sir George Quigley:** On the Kerr judgement, it is very interesting that one of the significant aspects of all of this is that reoffending by prisoners who have been involved in the conflict is much less than for the generality of people who have been in the toils of the justice system. The figures are quite startling in comparison. That is one point that is very much in favour of adopting the kind of principle that we adopted.
760. The second point is that there was another very significant case of two people who were refused employment, and the case went right up to the House of Lords. I am now searching into the depths of my memory, but I think that I am right in saying that the House of Lords confirmed that the Fair Employment and Treatment (Northern Ireland) Order 1998 would enable, although not compel, an employer to take the view that although he could not take account of religious or political opinion in making appointments to his workforce, he could take account of a political opinion where it condoned violence as a means to the achievement of that political opinion. Therefore, that is one of the reasons why the review panel has recommended that legislation is needed to give effect to the employer's guidance, because

there are barriers of that kind that lie in the way of the full implementation of the employer's guidance. Not only that but, since we did our work, quite an elaborate arrangement has been made for access to records for a whole variety of purposes, to some extent triggered by child abuse issues, and so on.

761. The Security Industry Authority is now also taking a very active interest in matters so that, in a sense, one could soldier on with the guidance and try to overcome the hurdles as one meets them. In light of experience, the feeling is now that the cleaner solution is simply to give the thing legislative teeth so that everyone knows that that is the position, and to the extent that barriers exist, the legislation should enable those barriers to be struck down. I think that it was right to do what we did, because it really got a principle established. It got the issue into the public domain, and it began to get people thinking within that kind of model. However, you reach the point at which you have a platform from which you can move on to the next stage, and I suspect that moving on to the legislative stage is the right next step. You are right to say that the thing has been tested, and, as I said, that hurdle undoubtedly exists.
762. **Sir Nigel Hamilton:** It is worth pointing out to the Committee that when we started in the working party, there was a very strong demand and view from the ex-prisoners groups that all their convictions should be completely expunged at that time. That was the starting point. I do not think that any of us thought at that time that that was a realistic expectation, because that would have required legislation, and so on. That is why we thought that it was much better and more practical and realistic to move down through this particular model of voluntary guidelines built around processes, and so on, to see how effective they were. The ex-prisoners groups did not start with that model; rather, they started with demanding that everything be expunged at that time.

763. **Sir George Quigley:** It was a good example of a debate out of which there arose a practical means of moving forward in the here and now. I must say that it seemed to me personally — I think that this view was fully shared by Sir Nigel and, ultimately, all the members of the group — that practical steps needed to be taken in the here and now to show people that, in point of fact, there were very significant interests in society that did want to see ex-prisoners reintegrated. That was a very important message to put out to start the process, rather than start on a long haul, which might last for 15 or 20 years, to get to a destination, the achievement of which was very uncertain.
764. **The Chairperson:** I have one final question before I open it up to members. What is your opinion on the Bill and how it relates to the aspirations of the guidance in which you were involved?
765. **Sir Nigel Hamilton:** It would be very inappropriate for me to comment on the existing Bill. We drew up guidelines at that time. The Bill is an entirely different model. It is legislative, as I understand it. The guidelines were drawn up for a purpose. We think that they are particularly relevant to employment, but I certainly have no intention of offering any comment on the Bill.
766. **Sir George Quigley:** It is implicit in the Bill that there are certain appointments — to wit, special advisers — to which the fact that there has been a conflict-related conviction is materially relevant and that people in that situation should be automatically excluded. That is obviously a totally different model from the one that was emerging from the working group, where each case would be considered by the relevant employer on its own merits, and the onus would be on the employer in each individual case to demonstrate that materiality and that incompatibility with the post in question.
767. **Mr Weir:** I will comment briefly on the Chair's previous question. I find it a little bit strange that we are taking evidence on the Bill, yet the one thing that you do not want to comment on is the Bill. That seems to be slightly defeating the purpose of the evidence session.
768. **Sir Nigel Hamilton:** Sorry, with great respect, I was invited, through the Committee Clerk, to offer comments on the guidelines, not on the Bill.
769. **Mr Weir:** With respect, this is part of the evidence session on the Bill, but we will leave that. I apologise for missing the first couple of minutes. Will you clarify your position on rehabilitation of conflict-related prisoners, as you call them, when it comes to employment rights? Do you believe that there should be any distinction in treatment or rights between anybody who is conflict-related, as it might be described, and anybody who has been convicted of any other crimes?
770. **Sir George Quigley:** This was a particular exercise related to the conflict-generated situation. That is what we were concerned with, and that alone.
771. **Mr Weir:** I understand that, Sir George. We are obviously considering it from the point of view of employers in a very specific category, but, in the broader sense, do you believe that, when it comes to employment rights, rehabilitation or any other form of rights, conflict-related prisoners should be in exactly the same position as anybody else? For example, if someone were convicted of a murder or robbery, should the position be identical, irrespective of whether it is conflict-related, or do you believe that there should be extra efforts at rehabilitation or extra rights? What is your position on that?
772. **Sir George Quigley:** The model that emerged was really saying that the conflict-related offence should not be taken into account at all in the decision regarding appointment, unless it was materially relevant to the job.
773. **Mr Weir:** How would that distinguish, or not distinguish, someone who has a similar conviction that is not conflict-related?





























































































1205. **The Committee Clerk:** The next meeting is on 9 January 2013.

1206. **Mr Allister:** You will have it before that date.











- on the situation than the application of political science. We have to deal with the reality.
1243. **Mr Girvan:** Thank you for your paper; it is very helpful. It is about the perception of what one community or one group deems to be ethically correct or not ethically correct. How does that weigh up with social justice? I appreciate that that might not always mean the same thing to every group, and I appreciate that your paper gives a very clear view of what is and is not socially and ethically acceptable in any society. I am not talking about Northern Ireland but any society.
1244. **Dr Braniff:** We will come at that from a political perspective as opposed to a legal perspective. We have sought to highlight the political implications of this debate and these types of debates. As Cillian pointed out, the political implications of the debate on social justice and what is acceptable and what is not with the balance of rights defer deeper consideration of the issues of what is enshrined in the state, what role the state plays and what responsibilities politicians see themselves having towards wider society. There is a second point related to that, which speaks to the central conceit surrounding acknowledgement and understanding; that is, that everyone's opinion is valid. That leads to the idea that everyone is a victim and everyone is a perpetrator and, therefore, that no one is responsible. We need to confront that idea, and that is the challenge for you.
1245. **Mr Girvan:** It is interesting that you say that because, yesterday, we had a debate in the Chamber, and Mitchel made a comment about heroes and said that somebody's hero is, to another person, a murderer. In fact, the same term was used on both sides of the Chamber: one called them heroes and others called them murderers.
1246. **Mr Mitchel McLaughlin:** Nelson Mandela said it before I did.
1247. **Mr Girvan:** I appreciate that, from a social point of view, we have to say that each society sees those things totally differently. It is about the overview, as seen from the outside, when you put people who have perpetrated heinous crimes in the past in power or in key positions. Is that exonerating them and saying that it was perfectly OK to do it? Nobody is saying that it was ever perfectly OK to do it. We are looking at it from an ethical point of view. I think that ethics have to be looked at and measured on the same scale by both sides. Until there is recognition of that by both sides, salt will continually be rubbed into wounds. I think that that has to be met.
1248. **Dr McGrattan:** I will come back on that. You talked a lot about ethics. What we are concerned about is the political effect of this. The political effect is to give advantage to one ethical perspective over another. You mentioned the question of political power. I think that that has been addressed before by other people, in that there are free and fair elections here, and if you do not like who is elected, fair enough. However, we are not essentially talking about elections but political appointments. It is about political patronage and what the Assembly is to society and to the international sphere.
1249. **Dr Braniff:** We are conscious that a lot of our research has been conducted internationally. Regardless of where we go, people ask, "How did you do this in Northern Ireland?" You are asking me for our perspectives on South Africa and Latin America, but we need to be conscious that people look to us for guidance as well. So, we should be outward-looking too.
1250. **Mr Girvan:** I appreciate that. Thank you very much indeed.
1251. **The Chairperson:** Apologies for being late. I had another event with 30 schoolchildren from Dunloy, and I could not keep them waiting.
1252. This is an interesting piece that I read through last night. The question that comes to my mind is, given the Northern Ireland context and what is









level, we know that DDR is successful when it is based on inclusion. Any form of demobilisation, disarmament and rehabilitation works through inclusion and not by excluding people from society. For you as politicians, that is a difficult situation because significant sections of society feel harmed and not listened to, but, at the same time, we have to make decisions. I point to that body of successful transformation work in the former prisoner constituency as an example of how the vehicle of conflict transformation is moving forward. I think that the flags protest would be much worse if it was not for some of the leadership and activities within loyalism. I feel that quite strongly.

1283. Conflict transformation is the reason why I am here. I believe in that. The Bill is quite clearly contrary to that. I also chaired the review panel on employers' guidance on recruiting people with conflict-related convictions, and we found very few people in industry who wanted to perpetuate fair employment legislation that could disbar former prisoners. If the Bill were to come into law, it would be another bar on those people, irrespective of many of the moral issues that are thrown up. If a constituency is prepared to engage, move forward and challenge itself, it should be included in society.
1284. **The Chairperson:** Thanks very much for the documentation that you provided. It is very useful, especially the report of the review panel. The report refers to dissident groups that use exclusion of ex-prisoners as a means for negative and hostile propaganda. Can you elaborate on how that could undermine the peace building that is under way?
1285. **Professor Shirlow:** Within loyalism and republicanism, I have had conversations, through research, with many people who, in many ways, lick their wounds, and they are concerned because they feel either betrayed, forgotten or marginalised. In many ways, those people would not necessarily be sympathetic to dissidents in either section but would state uncertainties about their commitments and

allegiances. Most people do not feel that for ideological reasons, but they say to me that they feel excluded from society. We are talking about a community in which 50% or 60% have told us in survey after survey that they have been turned down for jobs and have not had interviews when they have been the best person for the job. That sense of fatalism or frustration comes in.

1286. I was speaking one day to a guy from a loyalist background who was in prison for five or six years. He would be affected by this legislation, and I do not think that he would ever end up being appointed. That man was in prison and joined the Christian Fellowship. When he came out of prison, he got a job with a gentleman who was involved in the Christian Fellowship and worked for 25 years in that man's place of work. He was promoted on multiple occasions, was a good citizen, ran a youth club and intervened in all sorts of youth activities in his community. The company went bust, and he could not find work. I understand the emotions of the McArdle issue, but a broad brush whereby everybody is the same is not conflict transformation. Are we seriously talking about excluding people such as that? Are we seriously talking about excluding a middle-aged person? That man cannot get a job. He has been a good citizen, but society tells him that he is not. A political maturity has to kick in, in many ways. To answer your question: prisoner groups go into schools and youth clubs, and they tell people that the allure of violence is wrong. The argument that loyalism makes is that you go to prison, you lose your wife, you lose your income, you come out, and you are put on the scrapheap. That work is crucial in diverting people away from conflict. It challenges the voice of those who are irredentist and want to take this society back to where it was. It is crucial, as are the voices in this room and elsewhere that condemn the dissidents and those who engage in that type of violence.
1287. **The Chairperson:** We have not had any representation from loyalism or loyalist ex-prisoner groups on the Bill. Is that a

sign that they are resigned to the fact that they will never be in a position such as this? Is it because, as you say, they feel excluded from the process, and so they think, why should they even participate? Is that —

1288. **Professor Shirlow:** I can only guess. I assume that it is perhaps because it seems like a Sinn Féin issue; that might have been a disincentive. It could also be a sense that, for example, the Progressive Unionist Party may never get into government and, therefore, will not appoint a special adviser. People could think, what is the point in engaging with that? I do not know the answer; I can only imagine what the answer would be. I could not say definitively.
1289. **Mr Mitchel McLaughlin:** You are very welcome. I found the information to be very constructive and helpful. What gets lost in this is the process that we are involved in. You talked about the resolution of the conflict and the issues that perhaps caused the conflict in the first instance. Of course, even the agreement, substantial though it was, could not deal with those issues. There is formula, and commitments are given by participants. There is a recognition that, over a period of time, attitudes may change and very substantial change will flow as a result.
1290. If I fast forward to the circumstances around the flags issue, you see some of the consequences when society has not prepared itself to accommodate or manage that change. Even the political leaderships had difficulty in coming up with an appropriate and timely response to all that. Clearly, it is a work in progress. It has to be accepted that there is a very uncomfortable relationship among those who were non-combatants and were unwilling spectators or victims of some of the consequences of the conflict. Sometimes, when the opportunity provides, you attempt to understand that this is a conflict that none of us who is alive today and may be involved in political leadership or government, for that matter, had any responsibility in starting. It began before we were

born; we were born into conflict, in other words. It is going to take a long time to work that out of our DNA.

1291. In those circumstances, the principle of inclusion has proved to be very valuable. It has proved its worth by giving us a better form of politics than we had previously because there used to be issues of domination, subjugation and resentment. Perhaps there was also complacency: the view that that was the way that it was always going to be rather than a malign intention to victimise people. The consequence was the conflict that engulfed us.
1292. To that extent — this might be seen as controversial, but it is not intended to be — we were all victims. People will deny that we were all victims because they are still in the process of pointing the finger and allocating blame. However, that will not give a solution to the people who are in jeopardy of being re-traumatised because this or that happens, or a face reappears from the past. If we operate on the basis that people are entitled to change, we will have to pay the price. For people from my community, that might mean accepting that there will be no judicial or legal accountability. The British Government are in a position to make sure that that does not happen, and they appear to be exercising that power.
1293. If we were to look at individual circumstances around issues such as the Finucane case, you can see how difficult it is. That should not stop us, which leads me into my question. We might have to rely on international experience, and although I have never heard anyone argue that there are perfect examples that fit perfectly to our circumstances, there are lessons from all of those. There are lessons from the failures as well as from the successes, if only to remind us that we are not the only society that is riven and divided in our aspirations or on how we can manage this process. From your studies of other peace processes and conflict resolution processes, are there particular case studies that would be helpful to us in these circumstances?

- There are clear party political positions on the issue of special advisers and perhaps on the fact that this issue affects one party on the Executive only. It is fundamental to addressing the many other issues that we have to solve as we go along.
1294. **Professor Shirlow:** Although it may be strange to people in this room, we are now held up as the exemplar of conflict transformation. People in this room may laugh or giggle at that, and they may be right to laugh and giggle.
1295. **Mr Mitchel McLaughlin:** I do not think so.
1296. **Professor Shirlow:** Our way is now the direction. There is a sore in this society, which is that the unionist community thinks that the issue of victims is one way, and that needs to be attended to. In the case of the Saville inquiry, someone will say, “What about Kingsmills?”, or whatever else, not that these things should not happen.
1297. **Mr Mitchel McLaughlin:** I hear that.
1298. **Professor Shirlow:** If we aspire to the notion of equality, whatever model we adopt must recognise that. It cannot simply be that we ask one section of society to expose its perpetuation against another side. Although the Bill may be reflective of that to some extent, that is still a major lifting process in this society. It is where unionists feel —
1299. **Mr Mitchel McLaughlin:** It is the response to that sore and that itch rather than the solution.
1300. **Professor Shirlow:** Whether those comments by unionists are right or wrong, when they look at Saville and other issues, they feel that this is a one-way process. We do not need a model from outside for that to change. We need to have the right framework to engage in a proper debate, and that framework has to work only if we do not go down the route of prosecuting people. That is the model from other societies that works. Many people here will decry the funding of prisoner groups and say that that was a great assault against the victims of the conflict. Other countries are now looking at that model. One of the problems in other DDR processes is that you fight the war, say to people that it is over and give them €50 for their Kalashnikov and say, “away you go”. Those people go away and sit at home, and, a year later, say that they are still on the dole and not included so they are going back to war.
1301. One reason why our process was successful is that it did things that were counter to what public opinion probably wanted. One of those was to fund the former prisoner model. We have a good model of transformation. At times, we do not realise that, but whatever we do on victims — of course we can point fingers — it cannot be based on a process of putting people back in prison. We will not get the generosity that is required to move this society forward if we are simply going to imprison people for the past through, for example, the HET. I do not think that that works. The problem that is thrown in then is that victims say that that is not fair and that they want these questions to be answered.
1302. I am not answering your question very well. The argument is that we have not arrived at a place where we have the right structure and process, and some people are still using victims as a political football. The victims of the conflict whom I know need medical care, emotional support and someone to come and hold their hand. We have missed out on the emotive terrain of victims in this society because we turned it into an ideological battle as opposed to what we should have been doing. Why in Northern Ireland do we have more people on antidepressants than in other societies? It is because we went through a conflict. When I do my research, the stories that I hear are that x is unwell and cannot see a psychiatrist for six months and that y is unwell and all the doctor does is give him or her tranquillisers. I do not think that we did that nurturing capacity of victims as well as we could have done. That might have taken a lot of heat out of the debate in this society. So of course it will be political. That is the nature of our

- society. We really should have focused our concerns there. I do not think that it is too late to do that. That is very important.
1303. **Mr Mitchel McLaughlin:** You kind of addressed my point. I wonder whether our process of truth recovery, victims' issues of retribution, justice, truth, or whatever would actually help them to heal. The South African process had many faults and also many lessons. One was the issue of getting or accepting corporate responsibility, whereby someone, on behalf of an organisation or Administration, would step forward and say: that was our responsibility.
1304. **Professor Shirlow:** On the day that the Saville report was launched, one of the biggest cheers was when the Prime Minister, in some way, evoked those ideas that you mention. There was a generosity on both sides; on one side, that it was said and, on the other, that it was accepted. In any society that you study that has gone through a truth recovery process, of course it will have been difficult because we are talking about people who were killed. It cannot be anything other than difficult. However, that is not a reason not to do it.
1305. **Mr Mitchel McLaughlin:** What was interesting and, perhaps, sad, given how long and how resiliently the families had worked together in solidarity, was that they were divided immediately between the clear majority who said that they had got the truth; that was enough and was what they needed: to clear their relatives' names. A minority wanted to pursue the idea of legal retribution or justice. The result is that they still march on Bloody Sunday. The issue has not gone away.
1306. **Professor Shirlow:** Does that not illustrate the point? I have found it from conducting research. Everyone in this room will have spoken to victims. Say, for example, there is a family of five or six siblings, there will be five or six opinions, so it reflects wider societal problems. In a family, one member will say, "I just want to leave that. I want it to go away. I want to get on with my life."
- Others will want retribution, retribution, retribution. Even at the scale of a family, there will sometimes be a diversity of opinion about the best way to move forward.
1307. **Mr Mitchel McLaughlin:** With regard to the family and wider society — this is my final point — the uproar and media coverage on Mary McArdle's appointment deals with an absolutely microscopic example in terms of the scale of suffering. That is not to diminish it in any way at all. I have engaged with Ann Travers, so I know exactly what that poor woman has experienced. However, the Bill will not deal with the issues that we discuss. It might, if the Assembly goes along with it, result in adding another layer of resentment when there is enough already. It will not resolve the kind of pain that victims experience.
1308. **Professor Shirlow:** That goes back to my original point, which is that there is no uniform victims' voice. That is the point. Legislation such as this will not create a uniform voice. That is the reality.
1309. **Mr Mitchel McLaughlin:** Thanks very much.
1310. **The Chairperson:** Peter, the report reflects on the key findings on the impact of the employers' guidance. Why was there not greater buy-in to that? You referred to a number of councils, a major public sector employer and a major retailer, which is of interest. However, why was there not further buy-in?
1311. **Professor Shirlow:** I cannot say this definitively, but I think that the councils fell between, as I referred to in shorthand, orange and green. That might have been the case. However, Belfast City Council, which, of course, in our view, is mixed — perhaps becoming more fragmented as we speak — and shared — or unshared; whatever day it is today — was one of the groups to ratify it.
1312. One of the fundamental problems of being the chair of the review panel on those guidance principles was that there was no real investment in the principles themselves. As I recall, if

we had made it more evident that the guidance principles were there, we might have had much greater uptake, the point being that, obviously, all the uptake was positive. Anybody who thinks that there is not exclusion and that that legislation excludes is wrong. It is as simple as that. They are just wrong. Of course, there are multiple exclusions.

1313. **The Chairperson:** Obviously, a number of organisations endorsed the principles: the Irish Congress of Trade Unions, the Confederation of British Industry, the chambers of commerce and other organisations. Did they do anything to follow through or did they simply endorse the principles?
1314. **Professor Shirlow:** They endorsed the principles, promoted them and encouraged others to accept them. They have done that very publicly. The guidance was important to them. It was not simply tokenistic. It was not as though they were forced to do that, and it was certainly voluntary. They supported it very strongly. Again, it is another complexity of our society that industrialists can support the inclusion of former prisoners. I am sure that some of those businesspeople were probably victims of the conflict in many ways. So there is also a generosity in that constituency.
1315. However, one thing about the guidance is that it is now sitting on a shelf. Our recommendations are sitting on a shelf. I will say no more. They are sitting on a shelf, as much of my research is.  
[Laughter.]
1316. **The Chairperson:** Do you agree that, from your perspective, the mistake was that the principles should have been put on a legislative footing?
1317. **Professor Shirlow:** That is our argument: maintain article 2(4), but the onus would be on how the conviction related to the job, which would be no different from legislation throughout Europe — for example, you would not have paedophiles working with children. I know that that has been brought up in some of your discussions. I mentioned
- the example of the person who was in the Christian Fellowship, who said that he could not even get a job putting bolts in a piece of wood. Some employers recognise that those people have skills and abilities. Sometimes, they make very good employees, as do many people who are in long-term unemployment. They make good employees because, when they get jobs, they are enthusiastic to get them.
1318. I should point out that the issue also affects families. I have spoken to former prisoners who have told me that even their nieces and nephews have been unable to gain work. In some cases, they did not even know their nieces or nephews. Say, for example, I go to prison and my brother shuns me. He has nothing to do with me. He does not speak to me. I do not even know my nephews and nieces. However, they are also being impacted on by that type of legislation, so it runs into generations. It does not simply affect prisoners themselves. In some cases, it also affects their families.
1319. Society has a choice. It can either say that it is good or, as business leaders are saying, it is not helpful. There are more positive ways to include people.
1320. **The Chairperson:** Peter, thank you very much.



## 30 January 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

1321. **The Chairperson:** I refer members to the secretariat paper on the Committee's clause-by-clause consideration of the Bill. We will start at page 2. Point 4 refers to the Committee's previous meeting, at which members gave initial consideration to the Bill's clauses. A number of members advised that they may propose amendments to the Bill through the Committee. Members should go through the Committee or liaise directly with the Clerk of Bills to table any amendments. However, to date, no amendments have been received from members. It will be necessary to establish a clear Committee position at the meeting today on any proposals for amendments from the Committee, irrespective of how fully formulated they are. Do members want to make any comment?

1322. **Mr Mitchel McLaughlin:** I wish to introduce amendments to a couple of clauses, but not today, because work is ongoing. I want to establish that any decision taken by the Committee today will record the fact that — there may be other members for all I know — the Committee decisions were, I presume, by majority. I am not in a position today to process the arguments, but I would be concerned if the impression was given that the clause-by-clause consideration resulted in unanimous positions in all circumstances, as I am signalling very clearly that I intend to introduce amendments to some clauses. If the record of the discussion reflects that, I will be content.

1323. **The Committee Clerk:** For clarity, when there is no consensus in the Committee, the report on the Bill will, as with any Bill, reflect a majority position. There is precedent that the Committee can agree to make a reference in the report to divisions being detailed in the minutes of proceedings that is attached to the report.

1324. **Mr Mitchel McLaughlin:** OK; thank you.

### Clause 1 (Meaning of “special adviser”)

1325. **The Chairperson:** Clause 1 refers to the meaning of “special adviser”, which is defined as a person appointed to the NI Civil Service (NICS) to advise a Minister or junior Minister. In written evidence, the Office of the Legislative Counsel (OLC) advised that the Civil Service Commissioners (NI) Order 1999 did not make provision for a junior Minister to appoint a special adviser. The sponsor of the Bill subsequently advised that the order had been amended by the 2007 Order and that junior Ministers are among those who can make such appointments. The Bill sponsor has also advised that he will move an amendment to address a technical issue raised by OLC about the clause. Details of the issue raised and the Bill sponsor's response are in members' papers. Is the Committee content with clause 1, subject to the proposed technical amendment from the Bill sponsor?

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

*Clause 1 agreed to.*

### Clause 2 (Special adviser not to have serious criminal conviction)

1326. **The Chairperson:** This clause prohibits a person with a serious conviction from being appointed as a special adviser. Those in post with such an offence or

who incur such a conviction while in post will have their appointment terminated. A duty is placed on Ministers to inform the Department whether a special adviser appointed by them has a serious conviction.

1327. Members will wish to refer to the evidence received regarding clause 2 in the table of themes and issues provided in their Bill folder. Theme 1 is consideration of the needs of victims; theme 2 is blanket disqualification versus individual assessment; theme 3 is compatibility with other human rights requirements; and theme 4 is commitments under the Good Friday/Belfast Agreement and the St Andrews Agreement.
1328. The Bill sponsor has advised that he will move amendments to address technical issues raised by OLC in relation to clause 2. Again, information on that is in your Bill folder. So, I will put the question: is the Committee content with clause 2, subject to the proposed technical amendments from the Bill sponsor?
1329. **Mr Mitchel McLaughlin:** May I record my intention to introduce an amendment to this clause, as well? In recording my intention, I would like to take the view of the Committee.
1330. **The Chairperson:** We will take a vote on clause 2.

*Question put, That the Committee is content with the clause, subject to the proposed amendments.*

*The Committee divided:*

*Ayes 5; Noes 3.*

**AYES**

*Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.*

**NOES**

*Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.*

*Question accordingly agreed to.*

*Clause 2 agreed to.*

1331. **The Clerk of Bills:** May I just clarify that agreement has been made that clause 2 is subject to proposed technical amendments by the Bill sponsor?

1332. **The Chairperson:** Yes.

**Clause 3 (Meaning of “serious criminal conviction”)**

1333. **The Chairperson:** This clause defines a “serious criminal conviction” as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed. Members may wish to refer to the evidence received regarding clause 3 in the table of themes and issues provided in their Bill folder, and those are listed. The sponsor has advised that he will move amendments to address technical issues raised by OLC in relation to this clause. Again, that information is provided in the Bill folder.

1334. Is the Committee content with clause 3, subject to the proposed technical amendments from the Bill sponsor?

1335. **Mr Mitchel McLaughlin:** Sorry — before you put the question — an issue about conflict-related sentences came up in the evidence and that particularly interested me. It is not so much a subject for an amendment to clause 3, but it may be an issue that requires an additional clause. How would you propose to deal with that eventuality? For example, would acceptance of clause 3, subject to the sponsor’s amendment, preclude the possibility of introducing a clause that addresses the issue of conflict-related sentences?

1336. **The Clerk of Bills:** No. You have kind of clarified now that you have an issue there. The Committee is indicating its position —

1337. **Mr Mitchel McLaughlin:** So, you could support clause 3, as presented today —

1338. **The Clerk of Bills:** In an ideal situation, you would have amendments beforehand, but any Member may introduce a new clause or amendment any time up to 9.30 am on the Thursday before Consideration Stage. You would

probably address that in the House as to the fact that things developed or whatever —

1339. **Mr Mitchel McLaughlin:** Yes.
1340. **The Clerk of Bills:** — but the member has put his view on the record now.
1341. **Mr Mitchel McLaughlin:** What you are advising is that it is possible to support clause 3, as presented today, without prejudice to the ability to introduce a new clause or amendment at Consideration Stage.
1342. **The Clerk of Bills:** It does not prevent an individual Member from doing that.
1343. **Mr Mitchel McLaughlin:** OK; I understand.
1344. **The Clerk of Bills:** The Committee Clerk may want to reflect that position in the report.

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 3 agreed to.*

1345. **Mr Mitchel McLaughlin:** I want to record the fact that that was unanimous.

#### **Clause 4 (Annual report)**

1346. **The Chairperson:** Clause 4 places a duty on the Department to prepare, and on the Minister to lay before the Assembly, an annual report about special advisers. There was general support for this clause in evidence received. Members should see theme 5 in the table of themes and issues in their Bill folder. The Bill sponsor has advised that he will move an amendment to address a technical issue, again raised by OLC, in relation to clause 4. That information is provided. Is the Committee content with clause 4, subject to the proposed technical amendment from the Bill sponsor?

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

*Clause 4 agreed to.*

#### **Clause 5 (Code of conduct)**

1347. **The Chairperson:** This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code of conduct for special advisers. This code forms part of the adviser's contract of employment. No issues were raised in the evidence in respect of this clause. Members should see theme 5 in the table of themes and issues. The Bill sponsor, again, will move amendments to address technical issues raised by OLC. Is the Committee content with clause 5, subject to the proposed technical amendments from the Bill sponsor?

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 5 agreed to.*

#### **Clause 6 (Code for appointments)**

1348. **The Chairperson:** This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code governing the appointment of special advisers. It must provide that an appointment must be subject to the same vetting procedures as those that apply when appointing senior civil servants to the NICS. Members may wish to refer to the evidence on clause 6 in the table of themes and issues. The Bill sponsor has again advised that he will move an amendment to address the concerns of OLC. Is the Committee content with clause 6, subject to the proposed technical amendment from the Bill sponsor?

1349. **Mr Mitchel McLaughlin:** I intend to table an amendment to this clause. I wish to record that in the proceedings.

1350. **The Chairperson:** Shall we take a vote on this clause?

1351. **Mr Mitchel McLaughlin:** Yes, please.

*Question put, That the Committee is content with the clause, subject to the proposed amendment.*

*The Committee divided:*

Ayes 5; Noes 3.

**AYES**

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

**NOES**

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Clause 6 agreed to.

**Clause 7 (Advisers to the Presiding Officer)**

1352. **The Chairperson:** This clause amends the Civil Service Commissioners (NI) Order 1999 to remove the Speaker of the Assembly from the list of those entitled to appoint a special adviser to the NICS without adhering to the merit principle of appointment on the basis of fair and open competition. For the evidence received relating to clause 7, members may wish to refer to theme 6 on Secretary of State consent in the table of themes and issues in the Bill folder.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

**Clause 8 (Interpretation)**

1353. **The Chairperson:** This provision contains definitions of words or terms used in the Bill. OLC has raised some technical points in relation to this, and the Bill sponsor has agreed to table amendments to address those. Is the Committee content with clause 8, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 8 agreed to.

**Clause 9 (Transitional provisions)**

1354. **The Chairperson:** This clause gives effect to the provisions of the schedule. No issues were raised in the evidence.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

**Clause 10 (Commencement)**

1355. **The Chairperson:** This clause provides for clauses 5 and 6 to come into operation on the day that the Bill receives Royal Assent. Clause 2(4) will come into operation one month after that. All other provisions will come into operation two months after Royal Assent. OLC raised some concerns, and the Bill sponsor advised that he will move amendments to synchronise the timings of the commencement provisions. That information is contained in the Bill folder. Is the Committee content with clause 10, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 10 agreed to.

**Schedule 1 (transitional provisions: termination payments)**

1356. **The Chairperson:** The schedule makes provision for payment to existing advisers whose appointment is terminated under the legislation. A special adviser is entitled to a payment of three months' salary or the amount stipulated in their contract, up to a maximum of six months' salary. Members may wish to consider the evidence provided under theme 3 in the table of themes and issues in the Bill folder. Is the Committee content with the schedule as drafted?

1357. **Mr Mitchel McLaughlin:** I will state our position, and maybe there should be a vote. An amendment that I am considering tabling to an earlier clause may have a consequence for this provision. I have recorded my interest in the earlier clause. Is that sufficient, or should I indicate that there may be a possible consequence for this provision? I suppose that, for safety, I should.

1358. **The Clerk Of Bills:** Yes. If you feel that there may be a consequential amendment to the Bill, you should. I urge the Committee Clerk to note that you registered this at the time.

1359. **Mr Mitchel McLaughlin:** OK. I would like the Committee to vote on the schedule.

*Question put, That the schedule be agreed.*

*The Committee divided:*

*Ayes 5; Noes 3.*

**AYES**

*Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.*

**NOES**

*Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.*

*Question accordingly agreed to.*

*Schedule 1 agreed to.*

**Long Title**

*Long title agreed to.*

1360. **The Chairperson:** The next step is that the initial draft of the Committee's report to the Assembly on the Bill will be considered at our meeting on 6 February, with a view to agreeing the final draft report on 13 February before the Committee Stage expires on 15 February. Members may wish to consider, at this stage, whether they have any recommendations or requests for assurance that they wish to be included in the report. Consideration Stage is a matter for the Bill sponsor to bring forward in line with the requirements set out in the Assembly's Standing Orders. Any agreed Committee amendments are required to be tabled in advance of Consideration Stage.





Northern Ireland  
Assembly

Appendix 3

# Memoranda and Correspondence from the Bill Sponsor



## **Civil Service (Special Advisers) Bill**

[AS INTRODUCED]

### CONTENTS

1. Meaning of “special adviser”
2. Special adviser not to have serious criminal conviction
3. Meaning of “serious criminal conviction”
4. Annual report
5. Code of conduct
6. Code for appointments
7. Advisers to the Presiding Officer
8. Interpretation
9. Transitional provisions
10. Commencement
11. Short title

SCHEDULE      Transitional provisions: termination payments



*Civil Service (Special Advisers)*

A

**B I L L**

TO

Amend the law on special advisers in the Northern Ireland Civil Service.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

**Meaning of “special adviser”**

**1.**—(1) A person (P) is a special adviser if subsections (2) to (4) apply.

(2) P is appointed to a position in the Northern Ireland Civil Service by a Minister.

5 (3) P is appointed only in order to advise the Minister.

(4) The terms and conditions of the appointment provide that P will cease to hold that position on the date the Minister ceases to hold office.

**Special adviser not to have serious criminal conviction**

10 **2.**—(1) A person is not eligible for appointment as a special adviser if the person has a serious criminal conviction.

(2) Where a person who holds an appointment as a special adviser incurs a serious criminal conviction, that person’s appointment terminates immediately by virtue of this Act.

(3) Where on the date of coming into operation of this section a person—

15 (a) holds an appointment as a special adviser, and

(b) has before that date incurred a serious criminal conviction,

that person’s appointment terminates immediately by virtue of this Act.

(4) Ministers must inform the Department in writing whether any special adviser appointed by them has a serious criminal conviction.

20 **Meaning of “serious criminal conviction”**

**3.**—(1) In this Act “serious criminal conviction” means a conviction for an offence for which—

*Civil Service (Special Advisers)*

- (a) a sentence of imprisonment of 5 years or more was imposed,
  - (b) a sentence of imprisonment for life was imposed,
  - (c) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 was imposed,
  - (d) a sentence of detention during the pleasure of the Secretary of State, or for life, or for 5 years or more, was imposed under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (children convicted of grave crimes), or 5
  - (e) a sentence of detention during the pleasure of the Governor, or for life, or for 5 years or more, was imposed under section 73 of the Children and Young Persons Act (Northern Ireland) 1968 (children convicted of grave crimes). 10
- (2) This section applies whether the person—
- (a) was convicted in Northern Ireland or elsewhere,
  - (b) was convicted before or after the coming into operation of this Act. 15

**Annual report**

- 4.**—(1) The Department must, as soon as possible after the end of each financial year, issue a report about special advisers employed during that year.
- (2) The Minister of Finance and Personnel must lay the report before the Assembly as soon as possible after it has been issued. 20
- (3) Without prejudice to the generality of subsection (1), a report under this section must include information about the number and cost of the special advisers.

**Code of conduct**

- 5.**—(1) The Department must issue a code of conduct for special advisers within 3 months of this section coming into operation. 25
- (2) Without prejudice to the generality of subsection (1), the code must provide that special advisers must not—
- (a) authorise the expenditure of public funds,
  - (b) exercise any function in relation to the management of any part of the Northern Ireland Civil Service, or 30
  - (c) otherwise exercise any function conferred by or under any statutory provision, or any power under the prerogative.
- (3) The code may permit a special adviser to exercise any function within subsection (2)(b) in relation to another special adviser. 35
- (4) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.
- (5) The code forms part of the terms and conditions of employment of special advisers.

*Civil Service (Special Advisers)***Code for appointments**

6.—(1) The Department must issue a code governing the appointment of special advisers within 3 months of this section coming into operation.

5 (2) Without prejudice to the generality of subsection (1), the code must provide that the appointment of special advisers must be subject to the same vetting procedures as the appointment of Senior Civil Servants to the Northern Ireland Civil Service.

(3) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.

**10 Advisers to the Presiding Officer**

7.—(1) In Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999, paragraph (2)(b) (which excludes certain appointments by relevant members from the requirement that persons are to be selected for appointment to the Northern Ireland Civil Service on merit) shall cease to apply in relation to the  
15 Presiding Officer of the Assembly.

(2) Accordingly, in paragraph (3) of that Article, sub-paragraph (a) shall cease to have effect.

**Interpretation**

8. In this Act—

20 “Department” means the Department of Finance and Personnel

“Minister” means

- (a) the First Minister or deputy First Minister,
- (b) a Northern Ireland Minister,
- (c) a junior Minister,

25 and the words in paragraphs (a), (b) and (c) have the same meaning as in the Northern Ireland Act 1998,

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

**Transitional provisions**

30 9. The Schedule (transitional provisions: termination payments) has effect.

**Commencement**

10.—(1) Sections 5 and 6 come into operation on the day on which the Act receives Royal Assent.

35 (2) Section 2(4) comes into operation at the end of the period of 1 month after the day on which the Act receives Royal Assent.

(3) The other provisions of this Act come into operation at the end of the period of 2 months after the day on which the Act receives Royal Assent.

*Civil Service (Special Advisers)*

**Short title**

**11.** This Act may be cited as the Civil Service (Special Advisers) Act (Northern Ireland) 2012.

*Civil Service (Special Advisers)*

SCHEDULE

Section 9

TRANSITIONAL PROVISIONS: TERMINATION PAYMENTS

1. A special adviser whose appointment is terminated by virtue of section 2(3) is entitled to a termination payment from the Department.
- 5 2. The termination payment is an amount equivalent to the greater of—
  - (a) 3 months' salary, or
  - (b) where the special adviser is entitled to a contractual severance payment, that payment.
- 10 3. A contractual severance payment means a payment, to which the special adviser would be entitled under the terms and conditions of the appointment, if the appointment were terminated because the Minister who appointed the special adviser ceased to be a Minister.
4. No termination payment under paragraph 2(b) shall exceed an amount equivalent to 6 months' salary.

*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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## **CIVIL SERVICE (SPECIAL ADVISERS) BILL**

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### **EXPLANATORY AND FINANCIAL MEMORANDUM**

#### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by Mr Jim Allister (“the Member”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

#### **POLICY OBJECTIVES**

3. The first objective of the Bill is 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 (a “serious criminal conviction”).
4. The Bill places a statutory duty on the Department of Finance and Personnel (DFP) to publish a code of conduct and an annual report about the number and cost of special advisers, similar to duties in the Constitutional Reform and Governance Act 2010, passed by the UK Parliament. It also requires the DFP to publish a code for appointment of special advisers.
5. The Bill also amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the Civil Service.

#### **BACKGROUND**

6. Early in the Northern Ireland Assembly’s third mandate an issue arose around the appointment of ministerial special advisers, particularly the ability to appoint someone to such a public office who had a serious criminal conviction. The Member raised the matter in a number of ways, including through public statements, media

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*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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interviews and by tabling Assembly Questions, an Assembly Motion and a Matter of the Day. The relevant Assembly Questions can be viewed on the Northern Ireland Assembly website via the AIMS portal, at <http://aims.niassembly.gov.uk/mlas/search.aspx>

7. In June 2011, in response to the public controversy, the Minister of Finance and Personnel, Sammy Wilson, announced by press release that he would undertake a review of arrangements for the appointment of special advisers. The terms of reference of the review were:

*“To review the current arrangements which are applied to the appointment of Ministers’ Special Advisers, taking account in particular of the policies and processes in place governing the appointment of all other civil servants, and to bring forward recommendations for new appointments, as appropriate”.*

8. The review report was published in September 2011 and is intended to govern all appointments from that date. It did not, however, recommend the disqualification of current special advisers with a serious criminal conviction but made a series of recommendations aimed at strengthening regulation of the Special Adviser appointments process. The report is available at <http://www.dfpni.gov.uk/review-of-arrangements-for-the-appointment-of-ministers-special-advisers.pdf>

## **CONSULTATION**

9. The Member carried out a six-week consultation on the policies behind the Bill in autumn 2011. A total of 818 responses were received. Of those, 808 supported the proposal that anyone with a serious criminal conviction should be prohibited from holding the post of special adviser. A very small minority of respondents opposed the Bill.

## **OPTIONS CONSIDERED**

10. In developing this legislation, the Member considered the following options:
  - Option 1 - that regulation of the process for the appointment of special advisers be based solely on the Department of Finance and Personnel’s review report of September 2011 and the non-statutory *Code of Practice on the Appointment of Special Advisers*. Moreover, to retain the power in the Civil Service Commissioners (Northern Ireland) Order 1999 enabling the Speaker to appoint a special adviser, in addition to the adviser provided by the Assembly Commission.

*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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- Option 2 - to introduce and enact the Civil Service (Special Advisers) Bill to disqualify prospective and existing special advisers with a serious criminal conviction, and to put the duty to lay before the Assembly a code of conduct, code of appointment and annual report on a statutory footing. Moreover, to remove the anomaly of the Speaker still being able to appoint a special adviser by political patronage.
11. The response to the Member’s consultation was overwhelmingly in favour of disqualifying existing special advisers with a serious criminal conviction. The DFP review report did not address this issue and was itself subsequently disputed. In addition, the Member was not aware of any proposal to review the legislation granting the Speaker a residual patronage power. Legislation would also provide an opportunity to reflect the provisions in the UK Parliament’s Constitutional Reform and Governance Act 2010, creating a duty to publish and lay before Parliament an annual report and code of conduct on special advisers. In addition, it would allow for the code of practice on the appointment of special advisers to be put on a statutory basis. For all of the reasons outlined above, the Member concluded that a Bill was necessary.

## **OVERVIEW**

12. The Bill consists of 11 clauses and 1 Schedule.

## **COMMENTARY ON CLAUSES**

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

### **Clause 1: Meaning of “special adviser”**

Clause 1 defines a special adviser as a person appointed to the Northern Ireland Civil Service to advise the First Minister or deputy First Minister, a Northern Ireland Minister or a junior Minister. The position terminates when the Minister ceases to hold office.

### **Clause 2: Special adviser not to have serious criminal conviction**

Clause 2 prohibits a person with a serious criminal conviction from being appointed as a special adviser. Special advisers in post with a serious criminal conviction and those who incur such a conviction while in post will have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any special adviser appointed by them has a serious criminal conviction.

*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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**Clause 3: Meaning of “serious criminal conviction”**

Clause 3 defines “serious criminal conviction” as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

**Clause 4: Annual report**

This provision places a duty on DFP to prepare, and on the Minister for Finance and Personnel to lay before the Assembly, an annual report about special advisers.

**Clause 5: Code of conduct**

This clause places a duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for special advisers. This code forms part of the adviser’s contract of employment.

**Clause 6: Code for appointments**

This clause places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of special advisers. The code must provide that appointment must be subject to the same vetting procedures as apply when appointing senior civil servants to the Northern Ireland Civil Service.

**Clause 7: Advisers to the Presiding Officer**

This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the Civil Service without adhering to the merit principle of appointment on the basis of fair and open competition.

**Clause 8: Interpretation**

This provision contains definitions of words or terms used in the Bill.

**Clause 9: Transitional provisions**

This clause gives effect to the provisions of the Schedule.

**Clause 10: Commencement**

Clauses 5 and 6 will come into operation on the day the Act receives Royal Assent. Clause 2(4) will come into force one month after Royal Assent. All other provisions will come into operation two months after Royal Assent.

*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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### **The Schedule: transitional provisions: termination payments**

The schedule makes provision for payment to existing special advisers whose appointment is terminated under the legislation. A special adviser is entitled to a payment of three months' salary or the amount stipulated in their contract, up to a maximum of six months' salary.

### **FINANCIAL EFFECTS OF THE BILL**

13. The Bill has no significant financial implications. Compensation equivalent to up to six months' salary will be paid to any existing special adviser whose appointment is terminated under the legislation. This is similar to what would be paid if the Minister terminated the contract of the special adviser.
14. No significant additional costs will be incurred as a result of the duty on the Department of Finance and Personnel to produce an annual report, code of conduct and code for appointments of special advisers. The Department has already prepared non-statutory codes on special advisers.

### **HUMAN RIGHTS ISSUES**

15. The provisions of the Civil Service (Special Advisers) Bill have undergone detailed legal examination to ensure their compliance with the European Convention on Human Rights (ECHR). It is not considered that the Bill engages Article 6 of the convention. The Bill sets a qualifying condition for employment as a civil servant; it does not make a determination of an adviser's civil rights. In order to ensure compliance with Article 1 of the First Protocol to the ECHR, on the right to property, compensation is provided for any special adviser whose appointment is terminated under the legislation.
16. The Member is satisfied that the application of a straightforward eligibility criterion to the post of special adviser is human rights compliant.

### **ADDITIONAL LEGAL CONSIDERATIONS**

17. In assessing the legislative competence of the Bill, in accordance with Section 6 of the Northern Ireland Act 1998, careful consideration has been given to the nature and effect of Clause 2(3) of the Bill, which terminates the appointment of any existing special adviser with a serious criminal conviction. Although the provision has a retrospective dimension, in so far as it relates to an appointment that took place in the past, it is clear that its application is wholly prospective. The Bill does not provide that the appointment of a special adviser with a serious criminal conviction was void from the outset, therefore it does not change the legal nature of

*This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)*

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a past event; it simply enables disqualification to be imposed for the future. The competence of the Bill is therefore unaffected.

#### **LEGISLATIVE COMPETENCE**

The sponsor of the Bill, Mr Jim Allister, had made the following statement under Standing Order 30:

*“In my view the Civil Service (Special Advisers) Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## Email regarding the Consultation Period

**From:** Morrison, Samuel [samuel.morrison@party.niassembly.gov.uk]  
**To:** +Comm. Fin & Pers Public Email  
**Cc:**  
**Subject:** Private Members Bill

Dear Mr McAteer,

Mr Allister has asked me to write to you to express his thanks for being able to appear before the committee.

He has also asked me to confirm that the consultation ran from 11th October 2011 to 30th November 2011.

Kind regards,  
Samuel Morrison, PA to Jim Allister

PS Please acknowledge receipt of this email.

# Mr Allister's response to points raised by the Office of the Legislative Counsel

## Civil Service (Special Advisers) Bill Response by Jim Allister to points raised by the Office of Legislative Counsel.

1. I am grateful to OLC for their attention to the drafting detail of the Bill.
2. I accept without reservations the points raised in paragraphs 5, 8, 9, 10, 11, 13 15 and 19 (subject to the exception referred to in paragraph 3 below) of the OLC advice and will move amendments to accommodate these points.
3. I do not accept the point made in paragraph 4 in that a 2007 amendment enabled junior Ministers to each appoint a SPAD. I understand OLC now accept this is correct. It follows I do not accept the suggestion in paragraph 19 of the OLC advice that line 24 of clause 8 should be deleted.
4. In regard to paragraphs 2 and 3 of the OLC advice, I am advised and believe that Bill when passed would stand above prerogative legislation in the hierarchy of law. Moreover, once legislation speaks on a matter, the prerogative is in abeyance. Thus, in my view it is better to underscore the supremacy of proper legislation over prerogative legislation by not including the words "For the purposes of this Act". Thereby the definition of "special adviser" would be retained within legislation passed by the Assembly.
5. In regard to paragraph 6, in my view "incurs a serious criminal conviction" is perfectly clear and understandable.
6. In regard to paragraph 7 I do not believe it is necessary to permit delay in removal of a SPAD once convicted for the following reasons:-
  - a) the precedent in regard to councillors convicted and sentenced to more than 3 months imprisonment (S 4 Local Government Act (NI) 1972) means any appeal does not delay removal;
  - b) anyone sentenced to 5 years or more is unlikely to be on bail pending appeal and, therefore, unavailable to do their job as a SPAD;
  - c) if ultimately acquitted on appeal the person is then available to be reappointed by the Minister.
7. As a follow on to points arising from clauses 2 and 3 I should make it clear that for the avoidance of doubt I intend to move an amendment to Clause 3(1)(a) to clarify that disqualification is triggered only by the imposition of an immediate sentence of 5 years or more and that a suspended sentence of 5 years would not trigger disqualification – of course, suspension of a 5 year sentence while possible would be relatively unusual.
8. I accept the point made in paragraph 12 and will move an amendment to restructure clause 3 so that (1) (c), (d) and (e) will refer to similar sentences under the law of another country or territory outside the United Kingdom.
9. At this point I will deal with a related issue which arose from other evidence about concerns over convictions in unsound jurisdictions. I agree with what the Attorney General told the committee, namely that "convicted" was likely to be interpreted by the courts as "duly convicted" so as to exclude convictions in a country disrespectful of international human rights standards. I am advised and believe it is not necessary to add a qualifier to

“convicted” in the Bill. Such a qualifier, such as “duly convicted”, would be readily implied in accordance with the judicial obligation to interpret law so as to be in accordance with human rights under the Human Rights Act 1998. The term “conviction” by its very nature connotes basic rule of law guarantees of a fair trial. So, no further addition is required to clause 3(2).

10. In regard to paragraph 14, I am content to move an amendment to change the reference to “function” to “power” in clause 5.
11. In regard to paragraph 16, I will move an amendment to synchronise the timings of the commencement provisions. This will involve amendment of clauses 5(1) and 6(1) so that the Department has 2 months to issue the code of conduct and the code for appointments from the date of Royal Assent. The commencement clause will also be altered so that sections 5,6,8,10 and 11 come into operation on the day on which the Bill receives Royal Assent.
12. In regard to paragraph 18, I intend to amend clause 6 to add a provision requiring Ministers to have regard to the code.

Jim Allister



Northern Ireland  
Assembly

Appendix 4

# Memoranda and Papers from the Department of Finance and Personnel



**Assembly Section**

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Mr Shane McAteer  
 Clerk  
 Committee for Finance and Personnel  
 Room 419  
 Parliament Buildings  
 Stormont

13 September 2012

Dear Shane,

**Civil Service (Special Advisers) Bill**

This paper provides the Committee with an introductory briefing on the above Private Member's Bill (the Bill) in advance of the evidence session by officials on Wednesday 19th September 2012. It sets out the background to the current arrangements for the appointment of Special Advisers, the proposals in the Bill, and highlights the key areas of difference.

The Minister for Finance and Personnel, who has policy responsibility for issues affecting the management of the Northern Ireland Civil Service (NICS), including arrangements for the appointment of individuals to posts in the NICS, undertook a review of the arrangements for the appointment of Special Advisers in 2011. Special Advisers are civil servants appointed under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. The main outcome of the review was the decision by the Minister to introduce a vetting / character checking process for the appointment of Special Advisers similar to that which is applied to all other civil servants. The Minister informed his Ministerial colleagues that the new arrangements for appointing Special Advisers were effective from September 2011.

The Bill proposes a number of key changes to the current arrangements. **Clause 2** prohibits a person with a serious criminal conviction from being appointed as a Special Adviser. Special Advisers currently in post with a serious criminal conviction and those who incur such a conviction while in post would have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any Special Adviser appointed by them has a serious criminal conviction. A 'serious criminal conviction' is defined in **Clause 3** of the Bill as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed. This goes beyond the current vetting arrangements for the appointment of civil servants by automatically providing for a bar on appointment as a result of a "serious criminal conviction" and does not provide for any mitigating factors to be taken into account in the vetting process such as an expression of remorse/regret; no pattern of repeat offending; the relevance of the conviction to the post to be filled; the nature of the offence; evidence of rehabilitation and contribution to the community; and third party references regarding the individual's character. Under the current arrangements for appointing civil servants, disclosure of an unspent criminal conviction prior to appointment will result in a decision on the individual's appointment being taken on a case by case basis in accordance with the policy on convictions set out in the NICS recruitment policy and procedures manual. The Bill contains a retrospective dimension as the current arrangements relate to future appointments only.

**Clause 4** of the Bill would require the preparation by DFP of an annual report on Special Advisers, and its submission by the Minister for Finance and Personnel to the Assembly, providing information about the number and cost of Special Advisers employed during

the year. At present there is no such central collation of information of this kind, although information about the number of Special Advisers employed and the salary bands on which they are paid is routinely included in each department's published Annual Resource Accounts.

**Clause 5** of the Bill places a statutory duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for Special Advisers. There is currently in existence a Code of Conduct for Special Advisers, which forms part of a Special Adviser's contract of employment, but it is not on a statutory footing.

**Clause 6** of the Bill places a statutory duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of Special Advisers. The existing code of practice on the appointment of Special Advisers, as amended by the guidance issued by the Minister for Finance and Personnel in September 2011, is not on a statutory footing. It also provides that the code should ensure that any such appointments are subject to the same vetting procedures as apply when appointing senior civil servants to the NICS. Under current NICS policy, vetting arrangements for civil servants apply equally to staff at all grades. There are no separate vetting arrangements for senior civil servants.

**Clause 7** proposes to amend the Civil Service Commissioners (NI) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a Special Adviser to the Civil Service without adhering to the merit principle of appointments on the basis of fair and open competition. This Clause may have limited practical impact on existing arrangements in that it is not thought that the Presiding Officer of the Assembly has ever appointed a Special Adviser to the civil service. Any Special Advisers to the Presiding Officer are thought to have been appointed as employees of the Northern Ireland Assembly, rather than the civil service.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Norman", with a long horizontal stroke extending to the right below the name.

**NORMAN IRWIN**

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# Office of the Legislative Counsel, 19 November 2012

**Assembly Section**

Craignantlet Buildings  
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Tel No: 02890 163376  
Fax No: 02890 523600  
email: Norman.Irwin@dfpni.gov.uk

Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref –MISC82/11-15

19 November 2012

Dear Shane,

## Civil Service (Special Advisers) Bill

I attach, for the information of the Committee, comments by the Office of the Legislative Council on some drafting and technical issues in respect of the above Bill. The comments and any amendments which might flow from them do not affect the policy of the Bill.

Yours sincerely,



**NORMAN IRWIN**

## Civil Service (Special Advisers) Bill

### Some drafting and technical issues

1. This note deals only with drafting and associated technical issues. It does not deal with the general legal effectiveness of the Bill or with legislative competence. The points below vary in significance and some are, to some extent, matters of style or taste. But I note in particular drafting which does appear to accord with the norms of the NI statute book.

### Clause 1

2. In the context of the Bill as a whole it seemed to me that clause 1 should contain a definition intended to operate for the purposes of the Bill only. But it is drafted as a proposition of law which would define “special adviser” in law generally. The definition is I think inaccurate (see para 4 below) - but in any event I would suggest that subsection (1) should begin with words such as “For the purposes of this Act” to indicate that section 1 is a definition and not a statement of law of general application.
3. Since the concept of a special adviser is already defined in law - by Article 3 of the Civil Service Commissioners (NI) Order 1999 - a more direct drafting approach might have been simply to refer to this existing law in defining “special adviser”. This would also have the benefit of automatically picking up any change to that definition (there has already been change to the definition since 1999). As matters stand, if the prerogative order is changed to alter the meaning of special adviser, a Bill will be needed to update any Act resulting from this Bill.
4. The definition of special adviser in the Bill appears to be wrong in law, in that it differs in two respects from the definition in the 1999 Order. Under the Bill a special adviser can be appointed by a junior Minister to advise the junior Minister. But the 1999 Order makes no provision for such appointments. Under Article 3(2)(b) read with Article 3(3) a special adviser may only be appointed by FM, dFM and any other member of the Executive Committee. A junior Minister is not a member of the Executive (NI Act section 20(1)) and so may not appoint a special adviser.
5. The second difference is that under the Bill a special adviser is someone who is appointed on terms providing that he ceases to hold office **on the date** the Minister ceases to hold office. But under the 1999 Order a special adviser is someone appointed for a period terminating **on or before the date** on which the Minister ceases to hold office. So a person serving on a short fixed term basis ending before the Minister ceases to hold office is a special adviser under the 1999 Order but arguably not under the Bill. This obviously opens up scope to evade the Bill by simply appointing special advisers on short term rolling contracts. The correction needed to correct this issue is to add the words “or before” in clause 1(4)

### Clause 2

6. Subsection (2) provides for immediate termination of the appointment of a special adviser who “incurs a serious criminal conviction”. That language in itself is somewhat unconventional and I have been unable to find reference to the incurring of a conviction on the statute book.
7. Another issue on subsection (2) is what happens if the conviction is overturned on appeal? Immediate termination involves in a sense pre-empting the final outcome of the criminal process. If the person appeals immediately against conviction should the clause not allow the criminal process to run its full course before termination?
8. Subsection (3) does not work as drafted. It provides for the appointment of a special adviser holding office “on the coming into operation **of this section**” to be terminated

immediately. The difficulty is that under clause 10(2) different parts of section 2 come into operation on different dates. The correction needed is to amend clause 2(3) to refer instead to the coming into operation **of this subsection**.

9. The drafting of subsection (4) is unconventional and ambiguous in that it is drafted in the plural and places obligations on "Ministers" to report appointments "by them". Read literally this requires all Ministers to report all amendments made by any Ministers. The correction needed is to re-write the provision in the singular to require a Minister to report an appointment made by that Minister.

### Clause 3

10. The list of convictions in clause 3(1) is defective in a number of respects.
  - in subsection (1)(d) reference is made to detention "during the pleasure of the Secretary of State"; while this correctly covers sentences passed before the devolution of policing and justice it does not cover sentences after that event; the correction is to insert an additional reference to detention during the pleasure of the Minister of Justice;
  - on similar lines subsection (1)(e) refers to a sentence of detention "during the pleasure of the Governor"; again while this correctly covers sentences passed before 1973, it does not cover sentences passed under section 73 of the 1968 Act after 1974; the correction is to insert an additional reference to detention during the pleasure of the Secretary of State.
11. Clause 3(2) repeats the mistake mentioned above by referring to "the coming into operation of this Act". The Act comes into operation in three stages, thus rendering the reference ambiguous. The correction needed is to refer to "this section" instead of "this Act".
12. Clause 3(2) also provides that the section applies whether the conviction was in Northern Ireland or elsewhere. But a conviction "elsewhere" cannot fall within subsection (1)(c), (d) or (e) as these are sentences known only to the law of Northern Ireland. A possible solution is to refer to corresponding sentences under the law of other countries.

### Clause 4

13. Subsection (1) refers to employment "during that year" which I take to mean employment during the whole year. Possibly what is intended is employment "**at any time** during that year".

### Clause 5

14. I understand this clause is intended to reflect the corresponding UK provision in section 8 of the Constitutional Reform Act 2010. If so, it seems odd that the drafting has been changed in a few minor respects but in ways which seem to render it defective:
  - in subsection (2)(b) and (c) the corresponding UK provision refers to a special adviser not exercising certain "powers" whereas the NI version has been changed to "function". As "function" includes "duty", it seems rather odd to say that a special adviser must not fulfil a duty;
  - the duties (functions) which the special adviser must not exercise are those "under any statutory provision". If that includes the Bill itself, then the provision is completely self-contradictory since the adviser would not be able to exercise a function which consists of the duty to comply with the code of practice;
  - the UK provision refers to Her Majesty's prerogative whereas the NI Bill refers to "the prerogative" - is it clear what this means?

15. Subsection (5) has again been changed from its UK counterpart and refers to “the terms and conditions of **employment**” of special advisers. This is at odds with clause 1(4) which refers to them having terms and conditions of **appointment**. This latter wording seems preferable given the doubt about whether civil servants are “employed” in the traditional sense of employment under a contract of employment.
16. There seems to be a lack of co-ordination between the timings in this clause and those in clause 10. Under clause 10 the Bill is fully operation 2 months after Royal Assent. But clause 5 comes into operation on Royal Assent but allows 3 months for the Code to be made. So the Bill could be in operation without the Code being in place. Would it not be sensible to synchronise the timings?

**Clause 6**

17. The same point on timings arises as in clause 5.
18. What is the legal effect (if any) of the Code. Is an appointment in breach of the Code a valid one?

**Clause 8**

19. Very minor points but ideally  
“**the** Department” in line 20;  
“the Minister” in line 21;  
delete line 24 - the reference to junior Minister is incorrect (see above);

**Clause 10**

20. The commencement provisions do not work properly. If clauses 5 and 6 are to come into operation at an early date then sections 8, 10 and 11 need to come into operation along with them.

# Response to Assembly Committee query regarding Vetting procedures

## **Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref: CFP180/11-15

7 December 2012

Dear Shane,

## **Civil Service (Special Advisers) Bill**

In your letter of 29 November 2012 you asked for comments on the issues raised by NIACRO on the application of the Civil Service Code and vetting procedures.

All appointments to the Northern Ireland Civil Service (NICS) are made in line with the Civil Service Commissioners' Recruitment Code and the NICS Recruitment Policy and Procedures Manual. This ensures that appointments are made on merit on the basis of fair and open competition – the merit principle. The Civil Service Commissioners (Northern Ireland) Order 1999 disappplies the merit principle in respect of Special Advisers in recognition of their unique role and the personal nature of their appointments.

NICS policies and procedures comply with the Rehabilitation of Offenders Order (NI) 1978 which is aimed at protecting the rights of rehabilitated ex-offenders.

NICS recruitment policy and procedures are kept under review. In 2010 the Department of Finance and Personnel conducted an internal review of its recruitment security vetting arrangements. As a result the NICS Risk Assessment, used to carry out security vetting/ character checking of applicants with convictions, was revised. The revised Risk Assessment is attached at Annex A and sets out the guidelines which must be applied. This has resulted in a less constrictive approach when considering applicants with convictions and has promoted inclusion rather than exclusion. Each case is considered carefully on its own merits. Applicants with convictions, including those which cannot be "spent", are not automatically rejected for appointment. To ensure greater consistency in the treatment of those with criminal records all decisions on acceptability are taken by DFP Corporate HR. When considering potential candidates with criminal convictions against the Risk Assessment Corporate HR also follows a process which gives candidates the opportunity to provide statements of disclosure to provide information about the context to their convictions. The following factors are also taken into account before decisions are made:

- Relevance of conviction to post applied for;
- Nature of the conviction and severity of penalty imposed by court;
- Circumstances surrounding conviction;

- Rehabilitation and contribution to society;
- Statements of character;
- Any other information provided by the candidate which tends to suggest that the convictions are not representative of the overall character of the individual.

Without specific information it is difficult to comment on the applicants' experiences to which NIACRO has referred in the correspondence to the Committee for Finance and Personnel. However I would wish to make the Committee aware that the application of our policy and procedures for vetting have frequently resulted in candidates who might otherwise be rejected for appointment being found suitable when the context and mitigating circumstances of their convictions are disclosed.

Our policy and procedures are communicated openly in the NICS Recruitment Policy and Procedures Manual which is published on the DFP and NICS recruitment websites and can be accessed at:

<https://irecruit-ext.hrconnect.nigov.net/resources/documents/r/p/p/rppmv13.pdf>. In particular, Section 9.1 details the process for Criminal Record Checks and clearly describes how disclosures are managed. The Manual provides contact details for the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to help and support potential applicants with criminal convictions seeking assistance in making application for employment in the NICS. The Candidate Information Booklets for all NICS recruitment competitions also advise potential candidates "you should not put off applying for a post because you have a conviction."

The Department believes that these procedures provide a sound and fair basis for determining the suitability of candidates to be appointed to the NICS.

Yours sincerely,



**NORMAN IRWIN**

## Annex A – NICS Risk Assessment

In making appointments to the NICS the following guidelines must be adhered to:

	<b>Generally Reject</b>
1	Convictions demonstrating a propensity to violent, destructive, or abusive behaviour.
2	Convictions demonstrating serious negligence causing death or injury to others.
3	Convictions demonstrating dishonesty.
4	Convictions for motoring offences which are directly related to the post applied for or where the individual has been convicted on more than one occasion for the same offence.

These guidelines must be applied in line with current law on rehabilitation of offenders. The vast majority of convictions will usually become “spent” after a prescribed period. Spent convictions can only legally be taken into account for certain ‘excepted’ posts e.g. those involving substantial access to children or vulnerable persons.

Employing departments or agencies may apply enhanced standards or additional checks for particular posts where they can justify and defend it e.g. for posts involving contact with young people (see above); driving test work where particular offences or penalty point levels may cause concern or otherwise, for example, in posts which involve driving duties and where any reasonable person would be likely to conclude that a particular conviction indicates a significant risk or is incompatible with the duties of a particular post. Any specific additional requirements should be decided upon, at latest, prior to the vacancy being advertised.

A candidate should not normally be appointed if he/she has repeated, or has been convicted on more than one occasion for an offence. All candidates who have convictions which could preclude them from appointment must be invited to provide a statement of disclosure before any decision on his/her suitability is made.

Convictions which cannot be ‘spent’ – Applicants with convictions which cannot be ‘spent’ should not be automatically rejected. All information available will be considered.

In-post Candidates –In-post candidates with criminal convictions which would preclude them from being appointed to an externally advertised competition are required to advise their Departmental HR of such convictions and may be subject to internal disciplinary proceedings.

Pending charges or convictions– In accepting offers of appointment, candidates are required to advise of any convictions they have had in jurisdictions outside the United Kingdom and of any pending charges which have not yet been dealt with by the Courts. Failure to advise of any pending charge or conviction, including those outside of the United Kingdom, will invalidate the offer of appointment.





Northern Ireland  
Assembly

Appendix 5

# Written Submissions



MAST



MAST

Mourne Action for Survivors of Terrorism

Committee Clerk  
Room 419  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

11<sup>th</sup> October 2012

Dear Sir,

**Civil Service (Special Advisers) Bill – Call for Evidence**

Some time ago we in MAST responded to a consultation supporting a bill to ban people with serious criminal convictions from holding the post of Special Adviser at Stormont.

We understand that this bill has passed its second stage by 62 votes to 32 and that the bill has now been referred to the Finance and Personnel Committee.

We in MAST support Clause 2 of this bill because we believe it is totally wrong and unacceptable that someone with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to innocent victims' families.

Special Advisers are positioned within the top ranks of government and with this comes status, standing and the wages of top civil servants. This is not allowed to happen within the regular ranks of the civil service so why should they be able to hold the top position of Special Adviser?

We are also in support of Clause 4 (the production of an annual report) as we believe that the public have a right to know how much of their money is going to Special Advisers and this requirement is already in place in the rest of the UK.

MAST are also in support of the introduction of a Code of Conduct and a Code for Appointments (Clauses 5 and 6) as this will introduce greater regulation to the issue.

Reivers House, 10 Newcastle Street  
Kilkeel, BT34 4AF  
Charity Ref No: XR94402

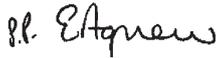
Tel/Fax: 028417 63280  
Mob: 07733913077

e-mail: [office@mastkilkeel.co.uk](mailto:office@mastkilkeel.co.uk)  
web: [www.mastni.co.uk](http://www.mastni.co.uk)

Finally, we in MAST are in full support of Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. The Speaker has never exercised the right to appoint a Special Adviser and the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

We in MAST would like the comments we have made within this correspondence recognised and taken into consideration.

Yours sincerely,



Sandra Johnston  
Chairperson

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# Tar Anall

## Evidence submission to the Civil Service (Special Advisers) Bill

This bill aims to discriminate against former political prisoners imprisoned during the conflict. Political prisoners will be barred as Special Advisers to Government Ministers and serving Special Advisers will be sacked.

Former political prisoners already face serious discrimination in many areas that detrimentally affects their lives and the lives of their families. This is especially so in the area of employment where many barriers exist, both structural and political, excluding them employment in numerous sectors of the labour market.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

This bill will operate as a breach of the international agreement between two sovereign states, the Irish and British governments, that gave effect to the Good Friday Agreement. It will also contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement. If it is passed in the form proposed its retrospective penalisation of current special advisors will be in contravention of domestic and international human rights provision.

**This Bill should be rejected in its entirety; it has no place in the current political circumstances of the North of Ireland, specifically,**

The purpose of Clause 2 would;

1. Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.
2. It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.
3. Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.
4. The Bill in its entirety has not been Equality Impacted Assessed
5. In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

This Bill (CSSAB) and the discriminatory thinking behind it demonstrate the need for change in three important areas, that is;

1. Article 2(4) of the FETO(1998) should be amended, or repealed to reflect the changed political circumstances of the north of Ireland, in order to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment.
2. The urgent need for the promised review of the 'effectiveness of the operation of the voluntary guidance' (Employers' Guidance On Recruiting People With Conflict-Related Convictions) after 18 months. That promise was made in May 2007. The guidance has been completely ineffective in 'reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions'.

3. The North Ireland Civil Service Recruitment Policy should be amended to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment, and that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

#### **Human Rights and Equality Issues**

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

#### **Legislative Competence**

Jim Allister has not provided details of his discussions with the Secretary of State for Northern Ireland regarding this Bill. It is therefore necessary for the Committee for Finance and Personnel to confirm that this Bill does not breach any agreements between the Northern Ireland Assembly and the Westminster Government and that it falls within the legislative competence of the Assembly.

# Sinn Féin

## Sinn Féin consultation response to Civil Service (Special Advisers) Bill

Sinn Féin are opposed to this Bill. We believe this is an issue of equality and fairness. This is an obvious attempt to prevent republican ex-prisoners from fulfilling the role of special advisers now and in the future. Many legal impediments are put in front of republican and loyalist ex-prisoners. Sinn Féin will not acquiesce to a situation in which further restricts access to employment or to the provision of goods, facilities and services.

Legislating to prohibit ex-prisoners from employment as a Special Adviser would further institutionalize discrimination. Prohibiting ex-prisoners from employment as a Special Adviser would be discriminatory and would run contrary to the Good Friday Agreement and the St Andrews Agreement. Sinn Féin believe it would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements on government, this would be patently unfair.

Sinn Féin are opposed to clauses 2 and 3 of the Special Advisers Bill on the basis that:

Ex-Prisoners have played a significant role in the peace process and the political process here. The peace process itself is premised on inclusivity. The system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality.

All of this was enshrined in the Good Friday Agreement which was endorsed by majority north and south. The release of prisoners under the terms of the GFA bears out the fact that without addressing the issue of prisoners there would not have been a peace process. The GFA also recognized the need for measures to facilitate the reintegration of prisoners into the community including removing barriers to employment. This was again formally recognized in the St Andrews Agreement.

In the GFA the British and Irish governments pledged to:

*'continue to recognize the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education' (Annex B, point 5. 10 April 1998.*

The St Andrew's Agreement (2006, Annex B) pledged that:

*'government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners'.*

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MPs, MLAs, Councilors, TDs and MEPs. The fact that ex-prisoners are returned to these positions demonstrates clearly that a significant section of society have confidence in these ex-prisoners to act as their representatives. It is important that inclusivity and representativeness transect all sections of government, elected, civil service, public appointments etc.

Legislating to prohibit ex-prisoners from any position of employment will alienate many former political prisoners and their families and whole sections of society. We live in a society which is still emerging from conflict. Punitive measures against one particular group of former participants in the conflict runs contrary to the ethos of conflict resolution and may lead to alienation from the very political process which maps the route away from conflict. Conflict resolution requires a no-winners and no-losers approach.

Sinn Féin believes this Bill is in complete opposition to these fundamental concepts.

## Éirí na Gréine



Éirí na Gréine  
5 James Street  
Omagh  
Co Tyrone  
BT78 1DH

24/10/12

A Chara,

The Tyrone ex-prisoners organisation Éirí na Gréine would like to register our outright opposition to the Private Members bill on the employment of Special Advisors within the local political institutions.

Éirí na Gréine represents a considerable number of former political prisoners in the mid and East Tyrone areas, many who have been to the fore in the development of the peace process. The contribution by former political prisoners to the peace process has been widely recognised, as has our input into the development of our local communities. The fact that the release of political prisoners was integral to the GFA demonstrates the importance our input into the process. There is no doubt that former political prisoners have been central in bedding down the political institutions and building support for them, not only on a national level but also at a very basic grassroots level.

We oppose clauses 2 and 3 of the Bill.

We believe these are a blatant attack on former political prisoners despite the very influential role they have played in the developing political situation over the last number of years. Indeed the bill is very specific in its aim of frustrating the positive influence of former political prisoners in the political institutions.

Éirí na Gréine believe that the bill is contrary to the Good Friday Agreement which, despite its shortcomings, was committed to assisting former political prisoners and their families. Similar commitments were once again made in the St Andrews Agreement of 2006. This bill represents yet another employment barrier to political ex prisoners who still face a myriad of barriers and blockages when it comes to issues of employment, travel and many other 'bread and butter' issues. This bill represents yet another employment barrier to us, as political ex prisoners, and also calls into question, if passed, the equality within the political institutions locally.

So we believe this bill is divisive, discriminatory and sends of a very negative message.

In closing, we believe this bill alienates a significant proportion of the population to the path of conflict resolution and engagement with the political process. According to a report compiled by George Quigley (OFMDFM) in 2007 there were up to 30,000 political ex prisoners in the north of Ireland. These people, many of whom are trusted by their communities to be their councillors, MLAs, MPs and TDs should not be targeted in this very dilate and unapologetic manner by those who are opposed to the political process and the out workings of the Good Friday Agreement.

Is sinne le meas

Kevin McGrade  
(Cathaoirleach)

Glenn Campbell  
(Rúnaí)

# Cairde

To Whom It May Concern,

I am writing in relation to the bill, which has been tabled regarding the employment of ex-prisoners as Special Advisers.

Barring ex-prisoners from employment as a Special Adviser would be discriminatory and would run contrary to the Good Friday Agreement and the St Andrews Agreement.

## **GFA.**

In the **GFA** the British and Irish governments pledged to:

*“continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retaining and / or re-skilling, and further education” (Annex B, point 5 10 April 1998)*

## **St Andrew’s Agreement.**

The St Andrew’s Agreement (2006 Annex B) pledged that:

*“government will work with business, trade unions and ex-prisoners groups to produce guidance for employers which will reduce barriers to employment and enhance re – integration of former prisoners”*

Legislating to bar ex-prisoners from employment as a Special Advisors would again institutionalise discrimination. Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP’s MLA’s Councillors, TD’s and MEP

Many Ex-prisoners are involved in community development roles and projects within their own community. These individuals strive day and daily to develop facilities and programmes that will enhance their community to the betterment all. The fact that ex-prisoners are in these positions demonstrates clearly that a significant section of society trust and relay on ex-prisoners as their representatives and community leaders.

We would ask that this bill is not passed as it will have a discriminatory effect upon the whole Ex-prisoners community.

Is Mise

John Mc Crory  
Chairperson  
Cairde  
Strabane Republican Ex-prisoners Group.

## Tar Abhaile

**From:** Meabh Tar Abhaile [meabh@tarabhaile.com]

**To:** +Comm. Fin & Pers Public Email

**Cc:**

**Subject:** Submission to SpAd Bill Call for Evidence

To whom it may concern,

Please find attached a submission to the Call for Evidence in relation to the Civil Service (SpAd Bill).

Tar Abhaile is a welfare group for republican ex-prisoners and their families. Much of our daily work is in assisting our target group to overcome the many barriers to their full and equal participation in society.

Ex-prisoners already face difficulties in many aspects of normal life, in accessing home insurance, in entry to some countries, in some fields of employment.

We are extremely concerned at the proposed Bill which would seek to enshrine in legislation discrimination against political ex-prisoners.

Regards,

Méabh Mackel  
Project Coordinator  
Tar Abhaile

028 7126 6675

074 3261 9423

## Written Submission to Civil Service (SpAd Bill) Call for Evidence

Tar Abhaile call for this Bill to be rejected in its entirety. Our specific objection centres on Clause 2 of the Bill.

*Clause 2: Special Advisor not to have serious criminal conviction.*

1. Barring Ex-Prisoners from employment as a Special Advisor is discriminatory and creates further barriers to their full and equal participation in society. Ex-Prisoners already face barriers in accessing home insurance, in entry to some countries, adoption etc.
2. We live in a society that is still emerging from conflict, legislating to penalise Political Ex-Prisoners will alienate that section of society, which recent studies suggest is significant in size.

According to the *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI* study, of men aged 50-59, the proportion of those who are former politically motivated prisoners could be up to 30.7%. *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI 2010, p127.*

'there can be little doubt that former politically motivated prisoners constitute a significant proportion of men over 50 in NI and this should be taken into account by those responsible for health and social well-being policy and programmes.' *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI 2010, p128.*

3. It would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements in government.

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

4. It would run contrary to the Good Friday Agreement and the St Andrews Agreement and contravene the commitments given in regard to Political Ex-Prisoners.

'The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling, and further education.' **Annex B, point 5. 10 April 1998**

The *St Andrew's Agreement (2006, Annex B)* pledged that:

'government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners'.

5. It ignores the crucial role Ex-Prisoners have played in the peace process and the political process.

Tar Abhaile, as with many of the other ex-prisoner groups, work closely with other groups in our community to engage in difficult 'outreach' work. This work is crucial in cementing the peace process on a local basis.

6. Ex-Prisoners are entitled to be MLAs and Ministers in government. Our First Minister and deputy First Minister are both Political Ex-Prisoners.

7. Tar Abhaile have worked with the Ex-Prisoners Working Group within OFMdfM to promote the OFMdfM issued '*Employers' Guidance On Recruiting People With Conflict-Related Convictions*' (EGRPCRC) May 4th 2007, the proposed Bill is entirely contradictory to this work.

Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions stated in its introduction;

*'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'*

8. The Bill is based on the presumption that Ex-Prisoners cannot be victims, and promotes a 'hierarchy of victims'. Several studies highlight the ongoing harm Ex-Prisoners experience relating to physical and mental health and employment.

In particular the *Blocks to the Future* study **2005** and the *Ageing & Social Exclusion Amongst Former Politically Motivated Prisoners in NI* **2010**. See links below.

<http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Publications/worddocs/Filetoupload,226499,en.pdf>

<http://www.brandonhamber.com/publications/Report%20Blocks%20to%20the%20Future.pdf>

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# Tar Isteach

**From:** Tommy Quigley [tommy@taristeach.org]

**To:** +Comm. Fin & Pers Public Email

**Cc:**

**Subject:** Northern Ireland Assembly: Vote NO to the Civil Service (Special Advisers) Bill - Sign the Petition!

Sir/Madam, On behalf of the management committee of Tar Isteach, please find attached a submission in regard to the Civil Service (Special Advisers) Bill.

I also wish to submit as evidence an online petition opposing this Bill. The petition was initiated 10 days ago and to date 723 responses oppose the Bill. The petition can be accessed at the link below.

[https://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?share\\_id=YjsETtDFpr&utm\\_campaign=mailto\\_link&utm\\_medium=email&utm\\_source=share\\_petition](https://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?share_id=YjsETtDFpr&utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition)

Kind regards Thomas Quigley

Tar Isteach Project Coordinator

Tar Isteach

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## Evidence submission to the Civil Service (Special Advisers) Bill

This Bill should be rejected in its entirety; it has no place in the current political circumstances of the North of Ireland, specifically,

The purpose of Clause 2 would;

1. Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.
2. It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.
3. Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.
4. The Bill in its entirety has not been Equality Impacted Assessed
5. In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

The OFMDFM press release on the publication of the guidance stated:

*"04 May 2007 - Publication of employers' guidance on recruiting people with conflict-related convictions*

*Guidance for employers which is aimed at reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions has been published*

*At St Andrews the Government gave a commitment to work with business, trade unions and ex-prisoner groups to produce guidance for employers in the private and public sector.*

*Published by the Office of the First Minister and Deputy First Minister, the voluntary guidance is the product of extensive work between Government departments, representatives of the Confederation of British Industry in Northern Ireland, the Irish Congress of Trades Unions and ex-prisoner groups.*

*The effectiveness of the operation of the voluntary guidance will be reviewed after 18 months.*

*Copies of the guidance can be downloaded from the Department's website 'www.ofmdfmi.gov.uk/conflict-transformation-news' or ( <http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-040507-publication-of-employers.htm>)*

This Bill (CSSAB) and the discriminatory thinking behind it demonstrate the need for change in three important areas, that is;

1. *Article 2(4) of the Fair Employment and Treatment Order (FETO) 1998 should be amended, or repealed to reflect the changed political circumstances of the north of Ireland, in order to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment.*
2. *The urgent need for the promised review of the 'effectiveness of the operation of the voluntary guidance' (Employers' Guidance On Recruiting People With Conflict-Related Convictions) after 18 months. That promise was made in May 2007. The guidance has been completely ineffective in 'reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions'.*
3. *The North Ireland Civil Service Recruitment Policy should be amended to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment,*

*and that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.*

Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions stated in its introduction;

*'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'*

In their January 2007 Fair Employment Tribunal judgment *McConkey Marks V The Simon Community (N.I.)* the Tribunal concluded that Article 2(4) of the Fair Employment and Treatment Order 1998 specifically limits the protection against fair employment that the Order as a whole provides.

*"In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear."*

However, they also stated that:

*"In light of the Belfast/Good Friday Agreement, and the changed environment in Northern Ireland since the words set out in Article 2(4) were first enacted, there may be good reasons to consider appropriate amendments to the said Article, or even its repeal, to reflect those changed circumstances; and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment."*

*"In the view of the Tribunal it is therefore a matter for Parliament and not this Tribunal whether amendments ... should be made, and if so the terms of any such amendments, and/or whether the provision should be repealed."*

Further, the judgment of Mr Justice Kerr, (*McComb* [2003] NIQB 47) then, Lord Chief Justice and current member of the Supreme Court, of July 2003 on the importance of the government's commitment to the re-integration of ex-prisoners in line with the Good Friday Agreement;

*'The agreement contemplated that mechanisms would be put in place for the accelerated release of prisoners and that those prisoners who benefited from that programme would be reintegrated into the community. It appears to me therefore that particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public.'*

*'that there is a positive duty on public authorities to take account of early release arrangements and their consequence for "re-integration" in their guidelines and policies.'*

It should also be noted that the example set for employers and the total ineffectiveness of the 'voluntary guidance' was demonstrated on Friday 28th of September 2007 in NI Assembly Written Answers to Questions, when Gregory Campbell asked the then Minister of Finance and Personnel, Peter Robinson, (now First Minister) to detail what implications the employers' guidance on recruiting people with conflict-related convictions has for Civil Service recruitment.

*'Mr Robinson: As the guidance has not been applied there have been no implications for recruitment to the Northern Ireland Civil Service. As the Minister responsible for recruitment to the Northern Ireland Civil Service it is not my intention to apply the guidance as I believe the existing recruitment policies and procedures provide appropriate arrangements*

*for dealing with candidates with criminal records.'*

The minister knew that the 'existing recruitment policies and procedures' for the civil service bar political ex-prisoners from employment.

Sir George Quigley stated in the final sections of the Guidance to Employers;

*" Finally, following the recent Fair Employment Tribunal judgment in McConkey and Marks v the Simon Community the Government has initiated, as a matter of urgency, a review of fair employment legislation to consider whether there is a need to amend Article 2 (4) of the Fair Employment and Treatment Order 1998 in the Tribunal words*

*".....to reflect those changed circumstances [in light of the Good Friday Agreement] and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment"*

*(March 2007)*

The Jim Allister Bill, Civil Service (Special Advisers) Bill, is intended to further discriminate against former republican political prisoners by excluding them from yet another area of employment.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

### **Human Rights and Equality Issues**

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

### **Legislative Competence**

Jim Allister has not provided details of his discussions with the Secretary of State for Northern Ireland regarding this Bill. It is therefore necessary for the Committee for Finance and Personnel to confirm that this Bill does not breach any agreements between the Northern Ireland Assembly and the Westminster Government and that it falls within the legislative competence of the Assembly.

NIACRO



**NIACRO'S RESPONSE TO THE COMMITTEE FOR  
FINANCE AND PERSONNEL CIVIL SERVICE  
(SPECIAL ADVISERS) BILL**

**DATE: 31/10/2012**

**CRU Ref: 2012/69**

**NIACRO Ref:HFJ25485**

Ms. Kathy O' Hanlon  
Assistant Assembly Clerk  
Committee for Finance and Personnel  
Room 252  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

31<sup>st</sup> October 2012

Dear Ms. O' Hanlon

I enclose NIACRO's response to the Committee for Finance and Personnel Civil Service (Special Advisers) Bill.

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for over 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people; with adults in the community and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We appreciate the opportunity to respond to this consultation and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact us.

We look forward to receiving the final policy document.

Yours faithfully

Olwen Lyner  
**Chief Executive**

**Enc**

NIACRO welcomes the opportunity to comment upon the draft Civil Service (Special Advisers) Bill, which raises important issues about rehabilitation of people with previous convictions, particularly those related to the conflict in Northern Ireland.

We continue to advocate for a review of the rehabilitation of offenders legislation which, at present, does little to protect anyone with any type of conviction. Evidence from our work demonstrates clearly that discrimination exists in both organisational practices and wider society. Employment is critical to reducing re-offending; therefore it is important that people with a conviction are given fair treatment when trying to find a job.

We do not believe that anyone should be completely prohibited from holding any position simply by virtue of having a criminal conviction.

The Rehabilitation of Offenders legislation (1978 and 1979 Orders) already sets out a matrix of those convictions which are disclosable, as well as providing guidance on the circumstances under which convictions should be considered spent. Any new legislation which was not compatible with this would require careful consideration under Section 8 of the Justice (Northern Ireland) Act 2004 by the Attorney General.

Furthermore, NIACRO believes that the resettlement of people convicted of conflict related offences, and their return to full civic life (including employment), is an essential for any society emerging from conflict.

In March 2007, the Office of the First Minister and deputy First Minister produced guidelines for employers entitled 'Recruiting people with conflict-related convictions'. The parties to this guidance (OFMDFM, the Irish Congress of Trade Unions, the Confederation of British Industry and a representative group of ex-prisoners) recommended the following:

- the onus of proof is on the employer to show material relevance;
- the conviction must be manifestly incompatible with the position in question;
- the seriousness of the offence is not in and of itself enough to make a conviction materially relevant; and
- it will only be in very exceptional circumstances that a conviction will be relevant.

NIACRO reiterates that the proposal within the Bill to set any such threshold for disqualification would not be in line with rehabilitation periods for custodial sentences detailed in the Rehabilitation of Offenders (NI) Order 1978, and is unlikely to be considered legislatively competent by the Attorney General.

Furthermore, we oppose the retrospective extension of any such legislation to those already in post, as this would clearly breach the common law principle of opposing ex post facto laws.

In general, we would support increased transparency and accountability throughout the public sector. NIACRO is opposed to the automatic extension of legislation from any other jurisdiction without appropriate consideration of the local issues by the Northern Ireland Assembly, so local policy proposals would need to be developed.

NIACRO argues that as well as the barriers which exist for people represented in the Section 75 groupings, this legislation would present an additional barrier for people with criminal records to contend with.

We appreciate the opportunity to comment on this matter and would be happy to provide further information if that would be helpful. We look forward to meeting with the Committee in due course to discuss this response further.

# Northern Ireland Human Rights Commission

## Submission on the Civil Service (Special Advisers) Bill 2012

### Summary

- A. In this submission the Commission advises on the provisions of the Civil Service (Special Advisers) Bill which provides 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.
- B. The European Court of Human Rights affords member states a wide margin of appreciation with respect to access to the civil service. The Commission advises, however, that the Committee considers the absolute nature of the proposed prohibition in light of the current arrangements for the appointment of special advisers operational from September 2011.
- C. The Commission advises that the Committee considers whether, or not, the restriction on employment as a special adviser constitutes a penalty that was not applicable at the time the criminal offence was committed and any potential breach of Article 15 of the ICCPR and Article 7 of the ECHR.
- D. Relevant international standards relating to lustration are referred to.
- E. The Commission refers the Committee to the UN Standard Minimum Rules for the Treatment of Prisoners which emphasise the importance of ensuring the social rehabilitation of prisoners.
- F. The Commission refers to initiatives undertaken by the Executive to assist in the reintegration of those involved in the conflict and recalls the UN Standards regarding disarmament, demobilization, and re-integration of ex-combatants. The Commission considers that the Bill may be inconsistent with these standards and with the developments in this area taken by the NI Executive.

### Submission of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights.<sup>1</sup> In accordance with this function the following statutory advice is submitted to the Committee for Finance and Personnel on the Civil Service (Special Advisers) Bill 2012.
2. The Commission bases its views on the internationally accepted human rights standards, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include:
  - The European Convention on Human Rights, 1950 ('ECHR') [UK ratification 1951] and
  - The International Covenant on Civil and Political Rights, 1966 ('ICCPR')[UK ratification 1976].
3. The Northern Ireland Executive and Assembly are subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Private Members Bill for full compliance with international human rights standards.
4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding in

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<sup>1</sup> Northern Ireland Act 1998, s.69 (4)

themselves but they are considered to constitute explications of the treaty provisions and they provide further guidance in respect of specific topic areas. The relevant standards in this context are:

- the UN Standards for Disarmament, Demobilization, Re-integration of ex-combatants
- the UN Standard Minimum Rules for the Treatment of Prisoners
- the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

5. This advice relates to clauses 1, 2, 3 and 9 of the Civil Service (Special Advisers) Bill. The effect of these clauses is summarised in the Explanatory Memorandum which states that they:

*“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 (a “serious criminal conviction”).”*

6. The Bill will have implications for those convicted of a criminal offence and consequentially victims of crime. The Commission notes the potential impact upon those convicted of a conflict related offence, who may be designated as an ex-combatants under the relevant international standards.<sup>2</sup> The Bill, therefore, has implications for victims and survivors of the conflict.

#### **Vetting Arrangements**

7. The Bill introduces a prohibition on the appointment to the post of special adviser, which is a civil service appointment, made by the relevant Minister. The Commission recalls the case of *Sidabras v Lithuania* in which the European Court stated, *“that access to the civil service as such cannot be basis for a complaint under the Convention...”*<sup>3</sup> It should be noted that the European Court has afforded member states a wide margin of appreciation in respect of access to the civil service.<sup>4</sup>

8. The Commission notes that under the Civil Service (NI) Order 1999, the Department of Finance and Personnel may make regulations or give directions prescribing the requirements for appointment to the Northern Ireland Civil Service. At present every position in the NICS carries a security vetting level which is determined by the individual Departmental Security Officer, under the terms of which:

*“A person must not be appointed to the NICS where there is a significant risk that he or she would represent a threat to the people, assets or information which the Service has a duty to protect.*

*To enable this assessment to be made, as a minimum, candidates who are liable to be appointed must complete an application for a criminal application for a criminal record check at the appropriate level which meets the requirements of the post.”*<sup>5</sup>

9. Following a review of arrangements for the appointment of special advisers a new vetting process was introduced which provides for Corporate Human Resources to make a recommendation to the appointing Minister with respect to the appropriateness of a proposed

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2 Disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment, Principles and Guidance Principles and Guidelines

3 *SIDABRAS AND DŽIAUTAS v. LITHUANIA* (Applications nos. 55480/00 and 59330/00) See for discussion Virginia Mantouvalou 'Work and private life: Sidabras and Dziautas v Lithuania' *European Law Review* [30, 2005]

4 *Glaserapp and Kosiek v. Germany* judgments of 28 August 1986 (Series A nos. 104, § 49, and 105, § 35)

5 See DFP Risk Assessment Matrixa

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appointment (hereinafter ‘the 2011 Review’).<sup>6</sup> This arrangement has been operational since September 2011.

10. The Commission recalls that in general the European Court has found blanket prohibitions to be disproportionate interferences with the relevant rights engaged. For instance in **Hirst v United Kingdom** the Court found that an automatic blanket prohibition on convicted prisoners exercising the right to vote was arbitrary in its effects and no longer served its stated aim of punishing offenders.<sup>7</sup> Similarly in the case of **S and Marper v UK** the Court ruled that the indiscriminate approach towards the retention of DNA profiles “fail to strike a fair balance between the competing public and private interests”.<sup>8</sup>
11. The European Court has recognised that in certain circumstances restrictions on employment may engage the right to private life.<sup>9</sup> Whilst the circumstances provided for by the proposed Bill do not appear to engage the right to private life, the jurisprudence of the European Court is evolving and the Commission advises the Committee to consider the possibility of a potential future challenge. If such a challenge were brought the relevant court would assess whether the interference with an applicant’s right to private life was a proportionate means of achieving a legitimate aim.
12. The Bill proposes an indefinite prohibition on those convicted of a serious offence being appointed as a special adviser. The Commission advises that the Supreme Court of the United Kingdom has previously found that the imposition of indefinite restrictions, which represent an interference with the right to private life, may be found to be disproportionate where there is no provision for an independent review into the circumstances of an individual.<sup>10</sup>
13. The availability of an independent review mechanism is a relevant consideration in assessing the proportionality of an interference or restriction. The Commission notes that whilst the mechanisms put in place by virtue of the 2011 Review makes provision for individual assessment, the restriction proposed by the current Bill does not make provision for individual assessment or review. The Commission advises that the imposition of a blanket restriction without provision for individual review may be considered disproportionate.

#### **Retroactive Penalty**

14. The ICCPR (Article 15) and the ECHR (Article 7) prohibit the imposition of a heavier penalty than the one that was applicable at the time a criminal offence was committed. It is noted that the relevance of Article 7 ECHR has been raised with the Committee. Articles 15 (ICCPR) and 7 (ECHR) would only be relevant if the prohibition on recruitment could be considered a heavier penalty than the one applicable at the time a criminal offence was committed. The Commission advises that the Committee assures itself that the proposed restriction does not amount to the imposition of an additional and retroactive penalty.
15. The issue of penalties has been considered by the European Court on a number of occasions. In the *Welch* case, the European Court ruled:

*“the starting point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a ‘criminal offence’. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure*

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6 ‘Special Advisors - Review of arrangements for the appointment of Ministers special advisers’ DFP 6 September 2011 available at: <http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers>

7 (No 2) [2005] ECHR 6

8 *S and Marper v United Kingdom*, applications nos 30562/04 and 30566/04, Council of Europe: European Court of Human Rights, 4 Dec 2008

9 The European Court has ruled that the right to private life may include the right to seek employment *Niemitz v Germany* (1992) 16 E.H.R.R. 97, s.29.

10 ‘*R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department*’ [2010] UKSC 17

*in question; its characterisation under national law; the procedures involved in the making and implementation of the measure and its severity.”<sup>11</sup>*

16. The UN Human Rights Committee which is responsible for ensuring compliance with ICCPR, in its General Comment 29, stated that Article 15 includes a requirement that ‘*criminal liability and punishment [be] limited to clear and precise provisions in the law that were in place and applicable at the time the act or omission took place*’.
17. The Commission notes that the Bill makes provision for transitional measures and importantly provides compensation for any person who may be removed from post as a consequence of a serious conviction. The Explanatory Memorandum states that these measures have been put in place to ensure compliance with Article 1 of the First Protocol to the ECHR, on the right to property.

### **Lustration**

18. International human rights standards recognise the importance of ensuring that public institutions are structured in such a manner as to ensure respect for the rule of law and human rights. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (‘Updated Principles’)<sup>12</sup> state:

*“Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination.”*

19. The Updated Principles are intended to address impunity and primarily to address individuals who have committed gross violations, including extra-legal, arbitrary or summary executions in order to prevent further violations.<sup>13</sup> The removal of certain individuals from public office (referred to as lustration) is, therefore, recognised in international human rights standards and good practice under certain circumstances.
20. The European Court has ruled that to ensure human rights compliance lustration measures must meet certain criteria which are summarised below:
- Lustration law should be accessible to the subject and foreseeable as to effects
  - Lustration should not exclusively serve the purpose of retribution or revenge
  - If domestic law allows restrictions on ECHR rights, it must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and contain adequate procedural safeguards
  - National authorities must keep in mind that lustration measures are temporary, and therefore their necessity diminishes with time.<sup>14</sup>
21. The Commission advises that the Committee assure itself that the imposition of lustration for those already in office and who have been convicted of a serious offence is compliant with these criteria and with the Updated Principles.

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11 Welsch v UK, (App. 17440/90), 9 February 1993, Series A No 307-A

12 E/CN.4/2005/102/Add.1

13 E/CN.4/2005/102/Add.1, Updated Set of principles for the protection and promotion of human rights through action to combat impunity Principle 26 refers to ‘gross violations of human rights, such as torture; enforced disappearance; or extra-legal, arbitrary or summary execution.’

14 Adamsons v Latvia (no. 3669/03, 24 June 2008) Para 116

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### **Transitional Justice and Rehabilitation – Reintegration**

22. The Commission recalls that international human rights standards require state authorities to assist in the rehabilitation and reintegration of prisoners. The UN Standard Minimum Rules for the Treatment of Prisoners state:
- “The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.”*
23. In addition the Commission notes that in May 2007, the Office of the First Minister and deputy First Minister (OFMdfM) issued guidance for employers on the recruitment of people with conflict-related convictions.<sup>15</sup>
24. This guidance is intended to assist in the reintegration of those involved in the conflict and its stated aim is *“to ensure that .. a [conflict related] conviction is not taken into account, unless it is materially relevant to the post or service in question”*.
25. A Review Panel established to assess the effectiveness of the guidance reported its findings in March 2012.<sup>16</sup> The Panel recommended that legislative changes be introduced to underpin the effectiveness of the guidance, namely amendments to the Fair Employment and Treatment (Northern Ireland) Order 1998 to ensure those with conflict related offences are protected from discrimination.
26. The Commission advises that the United Nations has issued relevant guidance on transitional justice and treatment of former combatants, including the ‘Standards for Disarmament, Demobilization, and Re-integration of ex-combatants’ (DDR). These Standards emphasise the importance of ensuring that those involved in conflict are able to re-integrate into society. The Standards state:
- “DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilizing members of armed forces and groups, and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life.”*
27. The Commission advises the Committee that the OFMdfM guidance and the current arrangements for the appointment of special advisers are broadly consistent with human rights standards. The prohibition contained within the Bill may be inconsistent with the UN Standards.

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15 OFMdfM ‘Guidance for Employers on the Recruitment of People with Conflict Related Convictions’ May 2007

16

# Coiste na nIarchimí

**From:** Michael Culbert [michael@coiste.com]

**To:** +Comm. Fin & Pers Public Email

**Cc:**

**Subject:** Civil Service (Special Advisers) Bill

A chara

My organisation strongly objects to this Bill and its intent to further marginalise the political ex prisoner community here.

I would refer you to the section of the Good Friday Agreement – strand 3 as below and St Andrew's Agreement.

## Prisoners

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.
2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.
3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.
4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.
5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling, and further education.

The Bill as proposed by Mr Allister runs contrary to this Governmental commitment as in Point 5 above.

Our specific objections are based upon the following:

## Clause 2: Special adviser not to have serious criminal conviction

**Clause 2 prohibits a person with a serious criminal conviction from being appointed as a special adviser. Special advisers in post with a serious criminal conviction and those who incur such a conviction while in post will have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any special adviser appointed by them has a serious criminal conviction.**

Clause 2 will

- Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.
- It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.
- Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.
- The Bill in its entirety has not been Equality Impacted Assessed
- In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

### Clause 3: Meaning of "serious criminal conviction"

**Clause 3 defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.**

On this we would refer you to Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions, who stated in its introduction;

*'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'*

Again we repeat that this measure is designed to mitigate against one particular sector of society and that we consider that it is discriminatory in its design and intent

**I am requesting an opportunity to make a verbal submission with more detail to the Committee for Finance and Personnel**

Le meas  
Michael Culbert

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# Equality Commission for Northern Ireland



## **The Civil Service (Special Advisers) Bill**

### **Briefing for the Committee for Finance and Personnel (5 December 2012)**

1. The Equality Commission for Northern Ireland (Commission) advises on those provisions of the Civil Service (Special Advisers) Bill which relate to its remit<sup>1</sup>. The Commission's remit has relevance to:
  - Clause 2, that is, the exclusion of any person with a serious criminal conviction;
  - and Clauses 4-6, that is, the placing on a statutory basis aspects relating to the remuneration, conduct and appointments of Special Advisers.
2. The Commission previously wrote to the Minister of Finance and Personnel, Mr Sammy Wilson MP MLA (September 2011) in the context of the Review of Arrangements for the Appointment of Ministers' Special Advisers.
3. The Commission's evidence includes the commentary provided for the Review of Arrangements for the Appointment of Ministers' Special Advisers and additional observations on The Civil Service (Special Advisers) Bill.

### **Review of Arrangements for the Appointment of Ministers' Special Advisers (September 2011)**

4. In 2011 the Commission considered the appointment of Special Advisers and the extent to which the mode of their appointment engaged equality legislation and the Commission's remit, in particular its responsibilities in respect of the Fair Employment and Treatment Order 1998, (as amended) and the other anti-discrimination statutes in respect of employment matters.
5. In summary, the Commission recognised the importance of Special Advisers, in terms of their role in shaping public policy in Northern Ireland. The Commission also noted that Special Advisers are privileged in the terms and conditions that apply to them. Accordingly the process by which these positions are filled is a matter of some public significance. The Commission also appreciated the unique nature of Special Advisers and the legal framework within which they are established in Northern Ireland and throughout the rest of the United Kingdom. It also noted that there is a current Code of Practice on the Appointment of Special Advisers in Northern Ireland.
6. The Commission has proposals in two areas to make to the Committee. Firstly the Commission would wish that the application of relevant equality and employment law be seen to clearly apply in these appointments. Secondly because of the expenditure of public moneys involved, there is a need for, and value in putting in place the most open and transparent arrangements possible.

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<sup>1</sup> Annex 1 The Equality Commission for Northern Ireland

7. The Commission welcomes the references to equality law and principles in the Code of Practice on the Appointment of Special Advisers that is current in Northern Ireland. It also recognises the particular circumstances that may remove some of these appointments from the requirement not to take account of the political views of candidates or of those being considered for appointment. The Commission previously drew to the attention of the Minister of Finance and Personnel, Mr Wilson MP MLA, a number of considerations that might be borne in mind, in the context of the Review of Arrangements for the Appointment of Ministers' Special Advisers.
8. Specifically the Commission drew attention to the following considerations:
- The exemption in respect of political opinion based on the "essential nature of the job", as provided for in fair employment legislation, be invoked only after careful consideration<sup>2</sup>;
  - Future practices in respect of the filling of Special Adviser posts where it is considered appropriate to invoke the exemption in respect of political opinion, should include some tangible measure, beyond good counsel, whereby the arrangements are otherwise transparently and publicly in accord with the prevailing equality legislation.
  - All other appointments to posts of Special Adviser should be, and seen to be, made within the letter and spirit of the equality and employment legislation.
  - Consideration should be given to introducing an arrangement whereby there is, within the Civil Service appointments process, some objective standard or measure against which the expertise, qualification and suitability of the person to be appointed can be independently evaluated.
  - In the interests of transparency, greater clarity should be available as to the remuneration of the Special Advisers. The Commission considered that an approach such as that adopted by the Cabinet Office in this regard would be a useful guide.
9. The Commission is aware that the Review of Arrangements for the Appointment of Ministers' Special Advisers was completed in September 2011 and a Report on the Review was placed in the Assembly Library around the end of 20 October 2011<sup>3</sup>.

**The Civil Service (Special Advisers) Bill. Clause 2: Ineligibility for Appointment on the Grounds of a Serious Criminal Conviction**

10. The following comments relate to Clause 2 of the Civil Service (Special Advisers) Bill, that is, those provisions which prohibit a person with a serious criminal conviction from being appointed as a Special Adviser. In summary, our comments relate to the application of blanket exceptions in recruitment processes generally and specifically the recruitment of people with conflict related convictions, as they relate to the provisions of the Fair Employment and Treatment (NI) Order 1998.
11. The Commission advises employers to exercise particular caution with criteria which might directly or disproportionately exclude persons who have certain characteristics, or which might discourage such persons from applying for work that they are actually

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<sup>2</sup> Article 70(4) of the Fair Employment and Treatment (NI) Order 1998

<sup>3</sup> AQW 240/11-15

- suitably qualified to do<sup>4</sup>. Such criteria may relate to, for example, prescribing that applicants must be a certain height. This criteria, although applied equally to all candidates may have the impact of disproportionately excluding women. An employment decision that is indirectly discriminatory will normally be unlawful unless the decision (e.g. the job criterion in question) can be objectively justified. The test of objective justification is where an employer is able to demonstrate that the criterion is a proportionate means of achieving a legitimate aim in the full context being considered.
12. The Commission recognises that there are particular occupations where it may be legitimate to exclude people from employment based on specific criminal convictions. For example, where the aim is to protect children and vulnerable adults it would be considered proportionate (and necessary) to exclude from employment an applicant with a criminal conviction where there is a direct relevance of the crimes committed to the job in question.
  13. In relation to recruitment for Special Advisers, it is noteworthy that in 2001 a discrimination complaint has been made in relation to a Special Adviser appointment in England.<sup>5</sup> In the case of Coker and Osamor – v- the Lord Chancellor and the Lord Chancellor’s Department, the EAT ruled that the arrangements for the appointment were not indirectly discriminatory. The fact that the arrangements were challenged on the grounds of sex and race is however of relevance.
  14. In the scenario of the Civil Service (Special Advisers) Bill, a potential applicant could, for example, complain that the criterion of prohibiting all persons with a serious criminal conviction disproportionately excludes men. If this scenario were correct (that is, that men (or another protected equality ground) were disproportionately excluded by the application of the criterion), it would be for the employer to objectively justify that the criterion was a proportionate means of achieving a legitimate aim, taking into account relevant factors in any such complaint.
  15. In terms of the recruitment of people with conflict related convictions, the Commission is mindful of the new era post the Good Friday Agreement. Currently Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 excludes from protection those whose political opinion supported the use of violence<sup>6</sup>. The Commission, in the context of a proposed Single Equality Act in 2002<sup>7</sup>, considered that the legislature should use the Single Equality Act to clarify the position in relation to this, given the passage of time and the new political environment.
  16. The fair employment case of *McConkey & Marks v The Simon Community* clarified the position in terms of current fair employment provisions. In summary, the Fair Employment Tribunal (December 2006) handed down a decision relating to a case

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<sup>4</sup> Equality Commission Guidance, ‘A Unified Guide to Promoting Equal Opportunities in Employment’ Section 10B.3

<sup>5</sup> [2002] IRLR 80, England and Wales Court of Appeal

<sup>6</sup> Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 which states that, ‘*In this Order any reference to a person’s political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.*’

<sup>7</sup> Position paper: Update on the Single Equality Act: Autumn 2002

involving two individuals with conflict related convictions. The Tribunal found that, subject to Article 2(4) of the Fair Employment and Treatment (NI) Order 1998, the applicants' claims of political discrimination must fall and their cases were dismissed. The Tribunal considered that Article 2(4) applied to political opinions held in the past, as well as those held in the present<sup>8</sup>. The Tribunal suggested that the case highlighted the need for the legislation to be reviewed in light of more recent political developments. McConkey and Marks subsequently appealed the decision of the Fair Employment Tribunal to the Court of Appeal. The Court of Appeal dismissed their appeals. McConkey and Marks then appealed the Court of Appeal decision to the House of Lords. The House of Lords subsequently upheld the Court of Appeal decision and dismissed McConkey and Marks appeals.

17. In relation to assisting individuals with conflict related convictions to re engage in society and in particular to reenter the labour market, in May 2007 the Office of the First Minister and deputy First Minister issued guidance on the recruitment of people with conflict – related convictions. The guidance was developed by the Ex-Prisoners Working Group comprising representatives of Government Departments, the Confederation of British Industry, the Irish Congress of Trade Unions, and a representative group of ex-prisoners<sup>9</sup>.
18. The voluntary guidance for employers is aimed at reducing barriers to employment and enhancing the reintegration of ex-prisoners with conflict-related convictions. The guidance advises employers to disregard any conflict related conviction unless it is materially relevant to the post to be filled. The overarching principle upon which the guidance is based is, 'that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought'<sup>10</sup>.
19. As part of the Employers' Guidance a tripartite review panel was formed. This panel comprised one representative from each of the parties involved in developing the guidance, i.e. OFMdfM, ICTU, CBI, as well as an Independent Chair. In its terms of reference, the Panel was tasked with considering individual cases, building up evidence regarding the acceptance and adoption of the Guidance, and producing a progress report on the impact of the Employers' Guidance after an 18 month period. The Review Panel published an interim report in June 2011 and its final Report was issued in March 2012<sup>11</sup>.

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<sup>8</sup> Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 states that, '*In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.*'

<sup>9</sup> The Equality Commission and other organisations, such as the Federation of Small Businesses joined the Ex-Prisoners Working Group in 2009.

<sup>10</sup> Employers' Guidance on Recruiting People with Conflict-Related Convictions: Office of the First Minister and deputy First Minister 2007

<sup>11</sup> Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions March 2012

20. The Report of the Review Panel is quite extensive with a number of conclusions. As part of the Report it is noted that 'a range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement', and that 'Given this, the view of the Review Panel is that the Employers' Guidance should be implemented by legislative change'. The Review Panel therefore 'recommends removing Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998 or alternatively allowing Article 2(4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998'.
21. The work of the Review Panel and its Report are a testament to the present difficulties faced by ex prisoners in re entering the labour market. The Assembly may therefore consider that arrangements for recruiting positions of Special Advisor should as recommended by the Review Panel, also adopt the perspective that a conflict related offence that pre dates 1998 should not be taken into account unless it is materially relevant to the position being filled.

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

22. As noted above, the Commission is in agreement, in principle, with those Clauses of the Bill which relate to transparency with regard to the conduct, recruitment and selection and remuneration of Special Advisers. It is for the legislature to decide whether these aspects should be on a statutory or voluntary basis.
23. It is noted that Clause 6: Code of Appointments includes a provision that appointment must be subject to the same vetting procedures as apply when appointing senior civil servants to the Northern Ireland Civil Service. The Commission would again note the necessity of ensuring that any vetting procedures are as far as possible transparent, are relevant to the specific position being appointed and are in accordance with rehabilitation of offenders' principles.

#### **Conclusion**

24. In conclusion, the Commission appreciates the importance and also the sensitivity around the appointment of Special Advisers and is in agreement that the arrangements for the recruitment, conduct and remuneration should be the most open and transparent.
25. For the reasons set out above, the Commission cautions against the use of blanket exemptions unless they can be objectively justified. The test of objective justification means that an employer is able to show that what is done is a proportionate means of achieving a legitimate aim in the particularities, and full context, of the criterion being challenged.
26. The Commission welcomed (in 2007) the development of the Employer Guidance on Recruiting People with Conflict Related Convictions by the Office of the First Minister and deputy First Minister. As recommended by that guidance, the Commission therefore agrees that employers should take an individualised approach and consider the material relevance of any conflict related conviction to the post to be filled rather than rely on blanket exemptions<sup>12</sup>.

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<sup>12</sup> A conflict related conviction that pre-dates the Good Friday Agreement

## **Annex 1**

### **The Equality Commission for Northern Ireland**

1. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission’s remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).
3. The Commission, along with the NIHRC, has also been designated as the “independent mechanism” in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCPRD).

# Dr Máire Braniff and Dr Cillian McGrattan

## **The Civil Service (Special Advisors) Bill: Democratic Implications and Considerations**

Dr Máire Braniff (University of Ulster)

Dr Cillian McGrattan (Swansea University)

### **Introduction**

The appointment of Mary McArdle as special advisor to the Minister of Culture, Arts and Leisure, Carál Ní Chuilín, in 2010 provoked a media storm that Jim Allister MLA has cited as the impetus behind the Civil Service (Special Advisors) Bill.<sup>1</sup> Although Mr Allister's preparation and support of the Bill has, in turn, created much debate, only a fraction of it has overtly considered what the Bill and the situation it seeks to address might mean for the Northern Irish polity. This paper seeks to draw out some of those considerations.

### **Democracy as Power-Sharing**

Northern Ireland enjoys what is known in political science literature as consociationalist governance. This is a form that is common to many countries around the world in which power is shared between ethnic, national or religious communities.<sup>2</sup> Consociationalism is often defined against the winner-takes-all, first-past-the-post majoritarianism of Westminster as it is based on governmental posts being portioned out among political parties (in effect, power-division) and important decisions being made subject to a system of mutual vetoes. Although the Northern Irish system has been extolled as an exemplar of managing divided societies it has also given rise to periodic debates on the lack of an official opposition.

Because of its delicate balancing of communal division the system might also be seen to contain within it the persistent possibility of crisis, of which the McArdle appointment is one clear example. A consociational system fastens together otherwise polarised and segmented blocs and their elites within a single policy-making framework. Consensus on decision-making and implementation

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<sup>1</sup> Official Report (Hansard) Committee for Finance and Personnel, 'Civil Service (Special Advisors) Bill: Briefing from Mr Jim Allister MLA. Available at <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>2</sup> Adrian Guelke, *Politics in Deeply Divided Societies*. London: Polity, 2012, pp. 6-7.

becomes, paradoxically, the only option as agreement is created through a system of checks and balances (veto powers in particular) and a subsequent tampering of ethnic sentiments. Within this system politics becomes effectively de-politicised: the culture of openness, transparency and debate that is commonly understood to be the hallmark of politics becomes deferred through the procedural requirement to reach consensus – an inversion of Heaney’s ‘Whatever you say, say nothing’.<sup>3</sup> The element of crisis contained within this arrangement is that it is impossible to suppress issues such as victimhood, truth recovery or the search for justice for ever and that cases such as that of McArdle will inevitably appear and recur.

### **Democracy and Representation**

The question of how to deal with such appearances and recurrences goes therefore to the heart of any democracy. They constitute a fundamental dilemma over what the roles of politicians should be and how ordinary citizens are represented and re-presented by political elites.

In his contribution to the ‘Federalist Papers’ (the series of radical and revolutionary articles that envisioned a new democratic American republic), James Madison drew explicit links between political representation and popular participation. For Madison, the paradox of democratic government resides in the fact that it has to be simultaneously *for* the people and *of* the people. It must necessarily involve ordinary citizens and communities in the processes of governance, while also observing a system of checks and balances to ensure that one group does not exercise unfair, unjust or unethical sway over another: ‘To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed’.<sup>4</sup>

Madison’s point echoes in the oral evidence of Professor Brice Dickson to the Committee. Human rights law, in his opinion ‘would allow states a certain margin of appreciation’ in deciding on employability protocols for special advisors or ex-paramilitary prisoners. Professor Dickson and his colleagues Dr Rory O’Connell and Dr Anne Smith argued for an ‘individualised approach’ – a point

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<sup>3</sup> Seamus Heaney, “Whatever You Say Say Nothing.” In *New Selected Poems, 1966–1987*. London: Faber and Faber, 1990, pp. 78-80.

<sup>4</sup> James Madison, ‘Number X: The Same Subject Continued’. In James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*. Harmondsworth: Penguin, 1987 [1788], p. 123.

that was reflected in the Human Rights Commission's interpretation of the treatment by the European Court of Human Rights on lustration and domestic restriction of employment rights.<sup>5</sup> The Madisonian corollary to that proposition is the question of how to balance those individual rights with societal ones. Mr Mitchel McLaughlin MLA alluded to this in his response to Professor Dickson's arguments:

We have great sympathy with and sensitivity for the individuals who have been hurt as a result of the actions of others, but we also have an absolute duty to try to move beyond post-conflict into reconciliation processes such as truth recovery to deal with the fact that there are many victims in our community who have never had redress.<sup>6</sup>

The issue of how to move forward as a society, building a sound infrastructure for future generations while acknowledging the divisions, hurts, grievances and injustices of the past lies at the heart of the Bill. Although this involves issues of rights and issues of ethics, it is fundamentally a political question: it creates polarisation and debate and is, perhaps, ultimately unsolvable.<sup>7</sup>

### Politics and Ethics

This is not to say the issue should be ignored, nor is it to indulge trite, sentimentalising of the notion that we should agree to disagree. In our view, the point deserves consideration, for it goes to the heart of what we perceive the Bill to be about: namely, the repudiation of a slide towards equivalency. What we mean by equivalency should be made clear: it involves the suggestion that there is no distinction between state killings and those of extra- or anti-state forces. Three points follow from this.

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<sup>5</sup> Northern Ireland Human Rights Commission, 'Submission on the Civil Service (Special Advisers) Bill 2012, paragraph 20. In the interests of precision, the Bill deals with employment rights rather than lustration *per se*.

<sup>6</sup> Official Report (Hansard), Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: Human Rights Issues, 21 November 2012. Available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-2012/Civil-Service-Special-Advisers-Bill-Human-Rights-Issues/>.

<sup>7</sup> Cillian McGrattan, 'Spectres of History: Nationalist Party Politics and Truth Recovery in Northern Ireland', *Political Studies*, Vol.60 (3): 455-473.

Firstly, there is the issue of accountability: despite the failings of the British state to persecute those culpable for heinous acts of murder and terror against individuals and whole sections of society, it is subject to the law. Mr McLaughlin and Sinn Féin implicitly recognise this in their calls for the state to admit to its actions. There results an immediate moral confusion. For, just as the state is accountable before the law (that is, before the legal process), the idea that loyalist and republican volunteers should also give evidence before an independent or international tribunal becomes mere rhetoric: those groups are unaccountable to anyone but their own codes of ethics, apart from outside coercion they are not under any compulsion to partake in a truth and reconciliation process. (The willingness of the Northern Irish political class to entertain ideas to the contrary speaks to the resilience of the central conceit of the Report of the Consultative Group on the Past that both state and anti-state actors could invest willingly in a 'Legacy Commission'.)<sup>8</sup>

Secondly, the consequence is not just moral confusion between the distinction between accountability (the law) and murder, there is also a political effect to equivalency: namely, that the state is accountable, paramilitaries are not. The effect is to weight the political process in favour of paramilitaries. This is not to say that the British and Irish states were not culpable of atrocious actions (and omissions). It is rather only to point out that the playing field becomes uneven through the application of an implicit system of double standards.

Thirdly, not all voices are equal. Contrary to Mr McLaughlin's otherwise laudable promotion of acknowledgement,<sup>9</sup> 'understanding' is not synonymous with justice. In other words, some stories are more easily told than others and victims – namely, those marginalised and muted (if not silenced) through political violence – start from a point of disadvantage vis-à-vis their perpetrators. Equalising that disparity remains radically different from fostering an equivalence of experience. Within this understanding, acknowledgement and (uneasy) understanding fall short of redress or justice and may, through repeated reference, create a discursive framework that militates against actually achieving justice or uncovering the truth about what happened to victims.

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<sup>8</sup> Cillian McGrattan *Memory, Politics, Identity: Haunted by History*. Basingstoke: Palgrave Macmillan, 2013, pp. 12-17.

<sup>9</sup> It is not that they would become friends or could completely set aside what happened, but, at a human level, people have acknowledged one another's dignity as well as the trauma and may have addressed, in a satisfactory way, their responsibility for that. Available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-2012/Civil-Service-Special-Advisers-Bill-Ann-TraversCatherine-McCartney-Briefing/>, accessed on 7 December 2012.

## Political Realities

The impulse to side-line ethical or political realities remains a key theme in submissions to the Committee. The essentially problematic nature of that impulse is that it is couched in benign, inclusivist language. The submissions of NIACRO and the loyalist and republican ex-(paramilitary) prisoners harness that language. Mr Pat Conway (NIACRO), for example, argued that ‘Our view is that [if] someone commits an offence, goes to court and is dealt with by due process [...] they are either found guilty or innocent’. He seemingly elides punishment with what he calls ‘the real world’: ‘In our view, there is no such thing, for example, as politically motivated rape’.<sup>10</sup> Now, that this was the attitude of the South African Truth and Reconciliation Commission, which is often cited in relation to these ‘dealing with the past’ debates in Northern Ireland, says little for the political and moral reality of the ‘international norms’ that were alluded to in passing and directly within the legal briefings.<sup>11</sup>

A more ambiguous area is that alluded to in Mr Michael Culbert’s testimony (on behalf of the republican ex-prisoner group Coiste na nIarchimí) who has argued before the Committee that ‘We either accept that we have moved forward and that we will make major efforts to be accepting of all aspects of our former society, or we do not, in which case we have second-class citizenship’.<sup>12</sup>

The political *effect* of this is to use the language of rights to press a factional agenda on to an entire society. As Ann Travers pointed out in her testimony, there is a demonstrable difference between society partaking in free and fair elections and people being returned who we may not like and them appointing individuals to public positions whom we may not like.<sup>13</sup> It is politically loaded and it is morally offensive. The effect of the strategy of NIACRO, the ex-prisoner groupings and Sinn Féin of

<sup>10</sup> Official Report (Hansard), Committee for Finance and Personnel, ‘Civil Service (Special Advisers) Bill: NIACRO Briefing’, 7 November 2012. Available at [http://www.niassembly.gov.uk/Documents/Official-Reports/Finance\\_Personnel/2012-2013/121107\\_CivilServiceSpecialAdvisersBillNIACROBriefing.pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2012-2013/121107_CivilServiceSpecialAdvisersBillNIACROBriefing.pdf).

<sup>11</sup> Fiona C Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa*. London: Pluto, 2003.

<sup>12</sup> Official Report (Hansard), Committee for Finance and Personnel, ‘Civil Service (Special Advisers) Bill: Coiste na nIarchimí/Tar Isteach Briefing’, 28 November 2012. Available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-2012/Civil-Service-Special-Advisers-Bill-Coiste-na-nIarchimiTar-Isteach/>.

<sup>13</sup> Official Report (Hansard), Committee for Finance and Personnel, ‘Civil Service (Special Advisers) Bill: An Travers/Catherine McCarthy Briefing’, 21 November 2012. Available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-2012/Civil-Service-Special-Advisers-Bill-Ann-TraversCatherine-McCartney-Briefing/>.

conflating perpetrators who *choose* to carry out violent acts and victims who suffered those acts is to create an ethical aspic that serves only to confuse and obscure.

### **Politics and Democracy**

It is imperative that political leaders remove that aspic rather than perpetuating it. However, it is our contention that the political context of this Bill will result in the latter rather than the former. In the first instance the proposer of the Bill remains an ‘outsider-figure’ within the Assembly: the fact that it was he and not one of the parties of government who has tried to tackle the anomalies that resulted from a previous review<sup>14</sup> speaks to a willingness by those in power to abdicate responsibility when it comes to issues that go to the heart of where Northern Ireland stands as a political community.

Madison’s response to the question of balancing individual rights against the need to create a coherent, cohesive polity was straightforward: either the elite (what he referred to as the majority faction) contains itself or it is made ‘unable to concert and carry into effect schemes of oppression’.<sup>15</sup> Sadly one of the things this Bill highlights is the fact that the predilection of certain factions within Northern Irish society to indulge in ethnic politics continues to oppress and re-traumatise individuals who suffered the effects of political violence. The willingness of other parties to vocalise disgust at one incident while turning a blind eye to or actively indulging in others is an indictment of our political class.

That the Bill is deemed necessary is in and of itself evidence of the moral confusion at the heart of Northern Irish society. The choreography surrounding its preparation and much of the debate it has spurred, in our eyes, only reproduces that confusion. Political leaders enjoy a role different from most of us in society – most people are expected to fulfil the roles they find themselves in, politically and economically, but this is precisely what political leaders need not and indeed should not do. They may question society and its frameworks, they may question their position within, and they may and must question what form society is taking and what values define it.

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<sup>14</sup> See Civil Service (Special Advisers) Bill: Explanatory and Financial Memorandum, paragraphs 7-8. Available at <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/non-executive-bills/session-2011-12/civil-service-special-advisers-bill-efm.pdf>

<sup>15</sup> Madison, ‘Number X’, p. 126.

# Written submissions from individuals supporting the Bill

1

Dear friend,

Some time ago you responded to my consultation on a bill to ban people with serious criminal convictions from holding the post of Special Adviser at Stormont.

I was overwhelmed with the support which my proposal received with over 800 groups and individuals responding to the consultation.

On 25th September the Bill passed its second stage by 62 votes to 32. Now the Bill has been referred to Finance and Personnel Committee.

The DFP Committee is currently asking for evidence.

In essence, this is a second consultation. It is important that as many people as possible send in supportive comments to the committee.

You can contact the committee by emailing [committee.finance&personnel@niassembly.gov.uk](mailto:committee.finance&personnel@niassembly.gov.uk) or writing to Committee Clerk, Room 419, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX.

You could include the following points:

- (i) Say you support Clause 2 because you believe that no one with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to victims' families;
- (ii) Point out that SPADs hold a role at the top of government with the status, standing and pay of top civil servants. No such convicted person could hold such a post as a regular civil servant so why should they be able to be a Special Adviser;
- (iii) Say you support Clause 4 (the production of an Annual Report) because you believe the tax paying public have a right to know how much of their money is going towards Special Advisers. Make the point that this is already the case in the rest of the UK;
- (iv) Say you support the introduction of a Code of Conduct and Code for Appointments (Clauses 5 and 6) as this will bring greater regulation to the issue and
- (v) Say you support Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. Make the point that the Speaker (a) has never exercised the right to appoint a Special Adviser and (b) the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

Please adapt these points as you please so as to avoid uniformity and feel free to add further points.

My speech in the Assembly on the issue is online here <http://www.tuv.org.uk/press-releases/view/1634/special-advisers-bill-passes-second-stage>

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If you could advise me of any response received from the Committee I would appreciate

*Name supplied.*

2

Dear Sir,

Here are my views on this Bill.

**Clause 2** prohibits a person with a serious criminal conviction from being appointed as a special adviser.

**I support the sentiments of this clause because those with a serious criminal conviction should not be appointed a Special Adviser. Just consider what the victim's families would think.**

**Top Civil Servants would not be allowed to be convicted persons so why should Special Advisers be?**

**Clause 3** defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

**I entirely support this clause.**

**Clause 4: Annual report**

This provision places a duty on DFP to prepare, and on the Minister for Finance and Personnel to lay before the Assembly, an annual report about special advisers.

**As in the rest of the UK tax payers have a basic right to know how much of their money is paid to Special Advisers.**

**Clause 5: Code of conduct**

This clause places a duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for special advisers.

**This is a very good idea and I fully support it.**

**Clause 6: Code for appointments**

This clause places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of special advisers.

**Agree. If top civil servants need to be vetted, then so do Special Advisers.**

**Clause 7: Advisers to the Presiding Officer**

This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser.

**Entirely agree. The Speaker should be above party politics and should not indulge in party patronage.**

*Name supplied*

3

To whom it may concern

Please see my response below,

- Can I voice my support for Clause 2 because I believe that no one with a serious criminal conviction should be allowed to hold a position of Special Adviser due to the hurt that this can/will cause the victims' families surely we can all agree that they have suffered enough.
- Secondly Special Adviser hold a role at the very top of our government (whether we agree with the current arrangements or not) it is a position of status and high standing it is also a position that demands a top rate of pay. And no convicted person should hold such a post.
- I also support Clause 4 (Annual Report) because I believe the public (who pay the salary of these people) have a right to know how much of our money (Tax) is going towards Special Advisers. I believe that this is how it works in the rest of the UK and like it or not we are still part of the UK.
- There must be a Code of Conduct and Code for all such Appointments, and those who are not willing to sign up to this, have excluded themselves from any such post.
- Finally can I voice my support for Clause 7 the Speaker has never exercised the right to appoint a Special Adviser and as the role of the Speaker is above party politics they therefore should not have the option to appoint a Special Adviser, as by doing so they will bring the post to the level of all other MLA's and thereby make it party political.

I trust that this will help you to formulate a Bill that is proper and correct in the eyes of all thinking people.

Regards

*Name and address supplied.*

4

Dear Sir/Madam,

Bill re. Post of Special Advisers (SA). Call for Evidence.

I offer my congratulations to the Members of the NI Assembly for the expeditious manner in which this Bill has made its way to the Committee stage.

**Clause 2**

This clause makes it clear that anyone with a serious criminal conviction should not be appointed to the post of SA.

I fully agree with this clause as it appears to me to be in line with practice in most sectors of employment where appointments are being made to posts of high responsibility and trust.

**Clause 4**

This clause sets out the need for an Annual Report on SA. Such legislation would bring NI into line with the rest of the UK. It would provide for greater transparency as to how public monies are being spent and such a report would add to public confidence in, and respect for, those in government who are entrusted with the spending of Tax Payer's money.

**Clauses 5 & 6**

I agree with both of these clauses as SAs occupy positions of high responsibility and trust. Positions, comparable to those of higher Civil Servants. SAs are also in close contact with

their respective Ministers when very confidential matters are being discussed which may have a bearing on the government of the citizens of this Province. This being the case, only those who have been adequately vetted should hold such posts.

### **Clause 7**

It seems rather strange to me that the Presiding Officer/Speaker has authority to appoint SA. Who are; it seems to me, closely associated with the political party of their respective Minister, and as the Office of Presiding Officer/Speaker ought to be above Party Politics. I understand that to-date no SA has been appointed by the holder of that Office.

I agree with clause 7 as it would regularise this situation.

I would like this Bill to be passed into law as I was appalled by an earlier appointment of a SA.

Yours faithfully

*Name and address supplied*

### **5**

I support Clause 2 - How absurd that a criminal could ever achieve the post of special adviser, and how repulsive that they be appointed as such, adding insult to injury of their victims family, while occupying a role at the very top of Government, with a top salary to match, when no such convicted person could ever hold a position of a regular civil servant.

I support Clause 4 - By the producing of an Annual Report as I believe the Tax paying public (of which I and my family

are) have a right to know how much of our money goes towards Special Advisers, as is rightly already the case in the UK, of which Northern Ireland is part of.

Clause 5 & 6 I very much support the introduction of a

code of conduct and code of appointments, creating greater control and supervision, in turn greater regulation.

I am in support of clause 7 - By removing the Speakers right to appoint a special adviser. The speaker - as I believe- has never exercised this right and also, the role of the speaker - as I understand it is/should be above Party Politics, therefore should not be in the position of appointing a special adviser.

*Name not supplied*

### **6**

Dear Sir/Madam,

I will like to follow up with the following questions:

- (i) . I support Clause 2 because you believe that no one with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to victims' families;
- (ii) . I would like to point out that SPADs hold a role at the top of government with the status, standing and pay of top civil servants. No such convicted person could hold such a post as a regular civil servant so why should they be able to be a Special Adviser;

- (iii) I support Clause 4 (the production of an Annual Report) because you believe the tax paying public have a right to know how much of their money is going towards Special Advisers. Make the point that this is already the case in the rest of the UK;
- (iv) I support the introduction of a Code of Conduct and Code for Appointments (Clauses 5 and 6) as this will bring greater regulation to the issue and
- (v) I support Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. Make the point that the Speaker (a) has never exercised the right to appoint a Special Adviser and (b) the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

*Name supplied*

## 7

In my opinion, legislative reform of the rules governing the selection of Special Advisers to Government Ministers in Northern Ireland is a necessity.

I firmly believe that a person who has been previously convicted of a serious criminal offence should be prohibited from holding or being employed to the position of ministerial Special Adviser, or any other paid similar post in our Government.

I agree with the suggestion that the threshold for disqualification of office role should be a previous custodial sentence of 5 years. Thi should be the case irrelevant of any Good Friday Agreement release considerations; or when and where the sentence was delivered and conviction imposed; or what length of the sentence was actually served by the convict.

A serious crime in this context should not only include activities related to terrorism; violence; murder; or conspiracy or attempts to commit these types of acts; whether politically motivated or not.

The term 'serious criminal conviction' should include all crimes committed in any jurisdiction, in any decade, for whatever motivation, which resulted in a conviction of 5 years or more in our jurisdiction.

I agree that the proposed prohibition of those persons with a previous serious criminal conviction should apply not only to new appointees, but also to those persons currently in post.

Such a prohibition of current Special Advisers who have a previous serious criminal conviction should include some form of timeframe of notification as with any termination of temporary employment, but should most definitely not include a redundancy package/pay-off in any shape or form.

In addition, I feel that the salaries of all Special Advisers should be greatly reduced. Special Advisers earn an obscene annual salary, even without considering the current economic recessionary situation, spending cuts, and new social reforms announced recently.

I believe that all citizens and communities of this fine country would feel the benefit of tighter regulations i.e. a Code of Appointment as to who the Ministers of the Executive/Assembly employ to advise them. In line with this, a Code of Conduct should be drafted and ratified in the typical way. It is the hard earned money of this country's people that goes to the salaries of Special Advisers. We the people should not be paying the salaries of those persons who have been convicted in any Justice System for causing pain, suffering, and national insecurity and instability. This is the whole point as to why our power-sharing Government was devolved and established yet again- to move forward from such idiotic Governmental schemes which ignore calls for respect echoing from victims of serious crime and their families. Our country will only flourish from the removal of ex-convicts from Special Advisory roles. I feel that

these aforementioned 'national interest' points greatly outweigh any alleged human rights implications for the individual.

I will never trust the opinions or advice of previously convicted Special Advisers whom elected politicians or parties employ, especially if that Adviser cannot even boast an impressive CV of specialised knowledge or even interest in the area of said employing Minister's duty. Our Ministers already boast such emptiness in the enactment of their roles, in my opinion.

I would like to express my gratitude for this opportunity to put forward evidence in relation to and in support of the Civil Service (Special Advisers) Bill. I truly wish this Bill to be passed and enacted to both the satisfaction of its contents and other required adjustments as may be necessary.

*Name supplied.*

**Note: separate but identical submissions to No. 7 above were provided by four other individuals.**

## 8

In May 2011, the only person to be convicted for the murder of my sister Mary was appointed Special Advisor to the Sinn Fein Culture Minister.

This ill considered appointment had a drastic effect on both mine and my family's emotional health and well being. It forced me back to a dark place where I had no wish to return. It succeeded in re-traumatising me to the effect where I would find myself reliving the 8th of April 1984 in inappropriate places such as whilst driving, while in the supermarket, crying uncontrollably. I could no longer mention my sister's name without tears coming to my eyes. My children saw their normally calm, controlled mum anxious, stressed, hyperactive despite being sleep deprived. I was back to being that 14 year old teenager who saw her Mum leaning over her Dad and sister lying awkwardly on the dirty gravel in Windsor Avenue.

I pleaded through various media outlets that Sinn Fein would reconsider this appointment. They chose to ignore me and indeed proceeded to talk about the rights of ex-prisoners while ignoring the fundamental rights of the victim. Indeed during this process I have been made to feel as though I am anti the process of peace and moving forward. This could not be further from the truth. I celebrate how far N Ireland has come on and welcome that men and women can go to work freely in the job of their choice to support their families without the fear of being killed.

I do however feel that politicians who supported the use of violence in the past now have a duty of care towards the victims created by such violence. It is within their power not to re-traumatise these victims. I may have spoken up but there are thousands like me who hurt quietly at home, forced to relive the day evil visited their lives because of an arrogance that ex-prisoners somehow have more human rights or protected more from the Good Friday Agreement than the very victims they created. This Bill isn't about my family seeking revenge or justice for Mary, it's about protecting future innocent families from having to relive their hell as we did. Just because people don't speak out doesn't mean they are not hurting, it's important and vital to protect them. Speaking out and leaving yourself open to criticism is difficult and traumatic, I quite understand why there are those who don't choose this path.

Thank you for taking the time to read this email and I hope it will help you understand the impact of last year's Special Advisor appointment on me. Everyone is entitled to work but take ownership and have a duty of care towards your victims.

You may be aware I am in the process undergoing treatment for Breast Cancer, my next treatment date is the 8th of November, if you deemed it appropriate I would be happy to meet with the committee in person.

*Name supplied*

## 9

We believe that people with serious criminal convictions should not hold the post of Special Adviser at Stormont. Besides the hurt that having such a person in this role would cause to the victims' families these people would be at the very top of government with the status, standing and pay of a top civil servant and yet no such convicted person would get a job as a regular civil servant. For this reason we support Clause 2.

The tax paying public have a right to know how much of their money is being paid to Special Advisers and for this reason we support Clause 4, the production of an Annual Report. This is already the case in the rest of the UK.

We also support Clauses 5 and 6, the introduction of a Code of Conduct and Code for Appointments, as this will bring greater regulation to the issue.

Since the role of Speaker is above party politics and since the appointment of a special Adviser is by its very nature party political, why should the speaker have the right to appoint a Special Adviser, a right which he has never before exercised? We therefore support Clause 7 which removes the right of the Speaker to appoint a special Adviser.

*Joint submission – two names supplied*

## 10

Dear DFP Committee

I would like to take this opportunity to add my support for the Special Advisers Bill, as introduced by Jim Allister MLA, in the assembly.

I believe that no one with a serious criminal conviction should be allowed to hold a position such as Special Adviser as this only seeks to inflict more hurt and pain on the families of those who lost loved ones over the past 40 years of a sustained terrorist campaign. For someone to hold such a position at the top of government along with the huge salary and perks that it brings, and not to have worked for it, is deeply insulting to all those who have to live with the pain caused by these very same people. No such person could hold position as a regular civil servant so therefore why a Special Adviser ?

The tax paying public of Northern Ireland has a right to know how much of their money is going towards Special Advisers as is the case in the rest of the UK, so therefore it is essential that an annual report is produced to advise of this. More regulation is needed.

The speaker of the house should not be permitted to appoint a Special Adviser as he /she has never exercised that right before, purely because their role is supposed to be above party politics and to appoint such a post would be in essence party political.

I hope you take these points into consideration and look on this Bill most favourably.

Regards

*Name supplied*

---

# Written submissions from individuals opposing the Bill

1

Greetings,

Vote NO to the Civil Service (Special Advisers) Bill

This bill aims to discriminate against former political prisoners imprisoned during the conflict. Political prisoners will be barred as Special Advisers to Government Ministers and serving Special Advisers will be sacked.

Former political prisoners already face serious discrimination in many areas that detrimentally affects their lives and the lives of their families. This is especially so in the area of employment where many barriers exist, both structural and political, excluding them employment in numerous sectors of the labour market.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

This bill will operate as a breach of the international agreement between two sovereign states, the Irish and British governments, that gave effect to the Good Friday Agreement. It will also contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement. If it is passed in the form proposed its retrospective penalisation of current special advisors will be in contravention of domestic and international human rights provision.

Note: this email was sent as part of a petition started on Change.org, viewable at <http://www.change.org/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill>. To respond, click here

The Committee received over 820 email submissions via the above online petition. Additional comments were made to the above text on a number of these submissions; those comments can be viewed via the above link.

2

A chara

I oppose the Special Advisers Bill as, barring an ex prisoner from employment as a Special Adviser is discriminatory and would contravene both the letter and spirit of the Good Friday Agreement, which was passed by overwhelming majorities in both the north and south of Ireland and also the St Andrews Agreement.

Without the participation and involvement of ex prisoners in the peace process, there wouldn't be one.

Is mise le meas

*Name supplied*

3

A chara,

I am writing in response to the proposed special advisor bill which seeks to bar ex-prisoners from becoming special advisors in Stormont.

I am opposed to this bill in the strongest terms as it goes against the Good Friday Agreement and St Andrews agreements, both of which recognised the need for lifting the barriers to employment faced by the ex-prisoner community.

We live in a society which is still emerging from conflict.

Punitive measures against one particular group of former participants in the conflict run contrary to conflict resolution and leads to alienation from the political process which maps the route away from conflict.

Conflict resolution requires a no-winners and no-losers approach. This Bill is in opposition to this.

I trust you will take these matters into consideration

Is Mise

*Name and address supplied*

4

A chara,

I am writing in response to the proposed special advisor bill which seeks to bar ex-prisoners from becoming special advisers in Stormont.

Ex-Prisoners have played a significant role in the peace process and the political process.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement.

I look forward to hearing from you.

Is Mise

*Name and address supplied*

5

A chara,

I am writing in opposition to the Special Advisors Bill which has been tabled in the Assembly by Jim Allister which if successful will bar ex-prisoners from becoming special advisors.

As an ex-prisoner myself, I am outraged at the proposals contained within this bill. It goes against the Good Friday agreement in which the British and Irish Governments pledged to:

*'continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education'* (Annex B, point 5. 10 April 1998)

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As it stands, ex-prisoners can become, MLA's, Ministers and MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives.

Legislating to bar ex-prisoners from any position of employment will alienate many former political prisoners and their families and sections of society and does not take account of the contribution ex-prisoners made to the peace process.

I wish for my comments to be included in responses to these proposals and I hope that this Bill does not proceed further through the Assembly.

Is Mise

*Name and address supplied.*

## 6

A Chara

I write in response to the Bill which Mr Jim Allister is sponsoring through the Assembly at this time. I wish for you to re-consider this Bill as the implications of such a piece of legislation would have far reaching consequences.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement

Ex-prisoners are entitled to be MLAs, and Ministers in government.

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives. I myself serve on Magherafelt District Council as a councilor, and four of my colleagues' are former prisoners, in fact three of them topped the poll in each of their own DEA's at the last council election.

Punitive measures against one particular group of former participants in the conflict run contrary to conflict resolution and leads to alienation from the political process which maps the route away from conflict.

Conflict resolution requires a no-winners and no-losers approach. This Bill is in opposition to this.

I trust that the committee will consider this response when dealing with this issue.

*Name and address supplied*

## 7

A Chara

I write in response to the proposed Bill which Mr Jim Allister MLA is sponsoring through the Assembly at this time.

With reference to the proposal that ex-political prisoners be excluded from posts I propose that such a Bill would, in barring ex-prisoners from employment as a Special Adviser would be discriminatory, would run contrary to the Good Friday Agreement and the St Andrews Agreement. It would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements on government, this would be patently unfair.

Ex-Prisoners have played a significant role in the peace process and the political process.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives.

It is important that inclusivity cuts across all sections of government, elected, civil service, public appointments etc.

Legislating to bar ex-prisoners from any position of employment will alienate many former political prisoners and their families and sections of society.

We live in a society which is still emerging from conflict.

I trust that you will take this response into account and prevent this Bill from going any further

Yours Sincerely

*Name and address supplied*

8

To whom it may concern,

I am writing to voice my complete and utter opposition to this bill. Political ex-prisoners have made and continue to make a valuable contribution to peace building on this island, through the social, community and political fields. This is a process that should be encouraged not prohibited.

Furthermore, the fact that a political ex-prisoner can be a Minister yet a political ex-prisoner cannot be an advisor to the same Minister demonstrates clearly the discriminatory and ludicrous nature of this bill.

Yours sincerely,

*Name supplied*

9

A chara

As an elected representative, being a serving Councillor and former Mayor of my Borough I would like to express my strongest concerns regarding Clauses 2 and 3 of the proposed Special Advisers Bill, which will in my opinion and that of many other public figures who were critical for the delivery of the Good Friday Agreement and the St Andrews Agreement, will unduly discriminate against ex-prisoners in their employment and the contribution that group continue to make to the democratic process. These are punitive measures that run contrary to conflict resolution, and potentially could lead to alienation from the political process. There must be no barriers to the employment of ex-prisoners and no equivocation regarding this matter

Is mise

*Name supplied*

---

10

A chara,

As a former ex prisoner and former councillor I am opposed to clauses 2 & 3 of the Civil Service (Special Advisers) Bill as barring ex-prisoners from employment as a Special Adviser would be discriminatory, go against the Good Friday Agreement and the St Andrews Agreement.

I believe ex prisoners have played a key role in the peace process and many elected representatives through-out Ireland are ex prisoners thus demonstrating a large section of society support and rely on ex prisoners as their elected representatives.

Is mise le meas,

*Name supplied*

11

To whom it may concern. Jim Allister motion to ban ex prisoners as special advisors is not only discriminating against a valued section of our community but shows a degree of sectarianism as he is directing this to harm Sinn Fein I am strongly opposed to both Jim Allister and his perpetual brow beat of the nationalist republican section of our community.

*Name supplied*

12

I am writing to register my opposition to the Civil Service (Special Advisors) Bill. This is a discriminatory piece of legislation which goes against the principles of the Good Friday Agreement. Former political prisoners have played and continue to play a vital role in our society through their peace building work through contributions within the Assembly, local government and community organisations.

Thousands of former prisoners are discriminated against in society. This includes barriers preventing them from travelling to certain countries, accessing insurance, mortgages etc, accessing foster/adoption services and in many cases barriers to employment. The Assembly should not be involved in creating a barrier to employment and should be leading the way in creating a society which values equality for all.

Is mise le meas

*Name and telephone supplied*

13

Cléireach an Choiste  
Seomra 417  
Árasáin na Parlaiminte  
Cnoc Anfa  
Béal Feirste  
BT4 3XX

23 Deireach Fómhair 2013

A Chara

Is mian liom mo thuairim a thabhairt ar an reachtaíocht atá ag dul tríd an Tionól faoi láthair maidir le ceapúchán iar-chimí mar Chomhairleoirí Speisialta.

Creidim go mbheidh an reachtaíocht má ritear í leatromach ar iar-chimí polaitiúla agus go mbheid sí glan in aghaid spiorad Chomhaontaithe Aoine an Chéasta agus Chill Rímhinn.

I gComhaontú Aoine and Chéasta, deir sé faoi larscríbhinn B Alt 5:

“Aithníonn na Rialtais I gcónaí tábhacht na mbeart chun ath-lánpháirtiú prionsúnach isteach sa phobal a éascú trí thacaíocht a sholáthar sula scaoilfear soar iad agus tar éis a scaoilte soar araon, lena n-áirítear cúnaimh a bheidh dírithe ar leas a bhaint as deiseanna fostaíochta, atraenáil agus/nó athoiliúint, mar aon le breisoideachas.”

Ghlac tromlach mhuintir na hÉireann leis an Chomhaontú agus gach cuid de. Téann an reachtaíocht seo ina aghaidh seo.

Is mise le meas

The Committee Clerk  
Room 417  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

Dear Sir/Madam,

I wish to express my opinion on the legislation currently going through the Assembly regarding the appointment of former prisoners as Special Advisers.

I believe that the legislation, if enacted, will be discriminatory against former political prisoners and that it will be completely against the spirit of the Good Friday and St Andrews agreements.

Paragraph 5 of annex B of the Good Friday Agreement states:

“The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.”

The majority of the people of Ireland accepted every part of the agreement. This legislation goes against that.

Yours faithfully,

*Name and address supplied*

14

TO WHOM IT MAY CONCERN

I am a former elected member of the Assembly and an ex - political prisoner. I am also the Mother of three sons who are ex- political prisoners. If this Bill becomes law, at least two members of my family will be prevented from taking up employment as Special Advisors to elected members of the Assembly. This means that the out working of the Peace Process, part of which includes the legislative Assembly is being subverted in the interests of political discrimination. The responsibility of legislators is to ensure that the political, social and human rights perspectives of the Peace Process and the Good Friday Agreement are not undermined by the sectarian posturing of any individual whether elected or not.

---

I reject this Bill in its entirety and I have specific objections to Clause 2

Clause 2: Special Advisor not to have serious criminal convictions.

My specific objections to Clause 2 of the Bill is that it will open the floodgates to political vetting of political ex-prisoners i, contrary to the equality requirements of the GFA. Legislating to bar ex-prisoners from obtaining employment as Special Advisors is discriminatory and can be used to exclude ex prisoners from other areas of employment. It is also a failure to recognise the fundamental right of those imprisoned during the conflict to continue to play a major role in the process of conflict resolution. Ex- prisoners have and are continuing to make important contributions to peace in their communities.

Political vetting in the past has alienated many communities listed in the indices of Social deprivation. Legislating to exclude ex prisoners from employment as Special Advisers will reinforce that concept of alienation. Statistics show that unemployment among political ex-prisoners is highest in those communities already suffering serious deprivation.

Clause 2 of the Bill represents a breach of Human Rights, contravenes the ECHR and is contrary to the Equality requirements of the Good Friday and St Andrews Ageeement.

The Good Friday Agreement was endorse by a majority of voters North and South. The author of this Bill is opposed to the Good Friday Agreement and by implication Human Rights and Equality legislation.

Clause 2 discriminates against those political ex- prisoners who served longer than five years in prison but who on appeal later had their sentences quashe

*Name supplied*

15

25th October 2012

A chara

Re: Special Advisers Bill Consultation

I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of it's legislative process.

Having considered the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. In particular I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement .

The Bill focuses on the role former prisoners now play in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont.

The Bill would in my opinion create a further punishment on former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners. This Bill undermines that commitment and is therefore in breach of the St Andrews Agreement

I respectfully request that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

*Name and address supplied*

16

25/10/2012

A chara,

I am writing in relation to the Special Advisers Bill, which is currently being considered by the Finance and Personnel (DFP) Committee. I would like to record my opposition to clauses 2 and 3 and my opposition to the bill as a whole for the reasons which I will now outline.

Barring ex-prisoners from employment as Special Advisers would, in my view, be discriminatory and would run contrary to the both the Good Friday and St Andrews Agreements. Furthermore, it would represent a breach of Human Rights, contravene the ECHR and would run against the equality requirements on government. Legislating to bar ex-prisoners from employment as a Special Adviser would once again institutionalise discrimination. Institutionalised discrimination against nationalists was common practice in the North of Ireland for decades, and ultimately the proposed Special Advisers Bill would be a retrograde step towards a return to such discrimination.

It is important to remember that Ex-Prisoners have played a significant role in the peace process and the political process. The Good Friday Agreement recognised the need for measures to facilitate the reintegration of prisoners into the community, including removing barriers to employment. This was again formally recognized in the St Andrews Agreement. The Good Friday Agreement was endorsed by majority north and south.

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's, MLA's, Councillors, TD's and one MEP. The fact that the electorate vote ex-prisoners into these positions clearly demonstrates that a large volume of people have no difficulty electing ex-prisoners as their representatives.

At a meeting of Omagh District Council on 4th October 2011, a motion was adopted that required Omagh District Council to adopt the employer's guidance issued by the Office of First Minister and Deputy First Minister and commit itself to ensuring that former political prisoners are allowed to compete for employment on exactly the same terms as every other citizen. The Special Advisers Bill would obviously go against the guidance issued by OFMDFM.

In conclusion, I wish to record my opposition to the Special Advisers Bill for the reasons outlined above.

Is mise le meas,

*Name supplied*

17

25th October 2012

A chara

Re: Special Advisers Bill Consultation

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I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of its legislative process.

Having considered the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. In particular I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement.

The Bill focuses on the role former prisoners now play in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont.

The Bill would in my opinion create further punishment on former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners. This Bill undermines that commitment and is therefore in breach of the St Andrews Agreement.

I would ask that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

*Name and address supplied*

18

25th October 2012

A chara

Re: Special Advisers Bill Consultation

I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of its legislative process.

In considering the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement .

The Bill focuses on the role former prisoners have in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont. It is ironic that this Bill should be seeking to exclude individuals from employment while the tens of thousands of the electorate have put their trust in elected representatives many of whom are themselves former prisoners.

The Bill provides for further punishment of former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners.

This Bill undermines the commitments made and is therefore in breach of the St Andrews Agreement

I would ask that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

*Name and address supplied*

## 19

A chara

As an ex-prisoner and supporter of the political process that has been ongoing in this country for some time now I wish to register in the strongest possible terms my objections in particular clauses two and three of the Speical Advisers Bill which will discriminate against the employment prospects of many of us who were pivotal to the success of the delivery of peace here. All of this is contrary to the Good Friday Agreement and also the St Andrews Agreement and would if passed prove detrimental to equality provision. I trust that the efforts of many ex-prisoners and their contributions will continue to help shape all progress here.

*Name and address supplied*

## 20

As a former political prisoner I wish to outline my opposition to the proposed bill on special advisors, being sponsored by Jim Allister.

I, like many other prisoners were released as a result of the Good Friday Agreement, an internationally binding agreement, and one which recognised the reason for our imprisonment was political and as such prisoners were integral to the GFA. This bill runs contrary to the Agreement and flies in the face of the limited work that has been done by the Institutions at helping Ex Prisoners and our families move on from our imprisonment.

I had been imprisoned for ten years from 1988-1998 on the basis of a forced confession, which in recent years has been proven in the courts to be flawed and unjust. The courts accepted that I was wrongly imprisoned for something I didn't do. Unfortunately there are many more like me. If this bill proceeds, people like myself who have been imprisoned unjustly for over 5 years would be prohibited from applying for a job as a special advisor. I am one of the lucky ones who have successfully challenged my conviction after many years of perseverance and a large personal cost to myself. Others may not have the perseverance or actually know how to challenge such forced convictions which were extracted under duress. This bill would effectively bar them from potential employment opportunities. Indeed we, as ex prisoners already face enough barriers to employment without those opposed to us creating more barriers. It is an affront to section 75 equality legislation in operation in the north at present.

I am greatly opposed to clauses 2 and 3 of the bill as I believe many Ex Prisoners have had a great input into their communities since their release. They have gained the respect of their local communities to become leaders and on many occasions, become their elected representatives. Many political ex prisoners have embraced the political institutions and helped develop the peace process amongst our local communities. This bill goes against any good work that has been done to make political ex prisoners feel 'involved' in the political process and will alienate many from the political institutions.

The very unique composition of the local Government institutions accepts that a power sharing government is required given the very unique political situation in our country for the past number of decades. Equality must be at the heart of every political institution. Indeed

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it is estimated that somewhere in the region of 30,000 political ex prisoners are living in the north at present, a substantial number of people, who will be actively discriminated against if such legislation proceeds in the Assembly.

*Name supplied*

21

To whom it may concern

I wish to voice my opposition to the SPAD bill tabled by Jim Alister.

It is my view that that this bill is at best discriminatory and at worst sectarian. There can be no doubt that former POW's have played a significant role through out the peace process and still have An important contribution to make.

Ex prisoners currently form part of the government both North and South including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's demonstrating that a large number of people trust and rely on ex-prisoners as their representatives.

Creating a law to deliberately exclude one particular group of former participants in the conflict runs contrary to conflict resolution and goes against the principles of the GFA which recognized the need for measures to facilitate the reintegration of prisoners into the community including removing barriers to employment.

Conflict resolution requires a no-winners and no-losers approach. This Bill is in opposition to this and must be opposed.

Yours Sincerely

*Name and address supplied*

22

I am writing in opposition to the "Civil Service (Special Advisors) Bill".

I am opposed to clauses 2 and 3 as I believe ex-prisoners have played a valuable and very substantial role in the peace process, and the current political process is testament to their work and commitment.

It should also be noted that within both the Good Friday and St. Andrews Agreements there is a direct reference to reducing barriers to employment for ex-prisoners, this bill is in direct conflict with those commitments.

If we are truly attempting to move forward, advancing the peace process into the next stages, alienating sections of our communities will only serve to hinder further development.

*Name supplied*

23

A chara

I write to voice my opposition to the Jim Alisters bill which seeks to bar ex prisoners from the role of special advisor within the Assembly.

As a former prisoner I reject this attempt to legalise discrimination. The peace process is premised on inclusivity, the system of government in the north is designed to guarantee

inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement.

Former prisoners are elected both sides of the border as I am myself. Respected and trusted by a large number of people to represent them.

Legislating to bar ex-prisoners from any position of employment within the Assembly will send a very clear message to all employers and therefore must be opposed.

With Regards

*Name and address supplied*

## 24

A Chara,

Today is the 26 October 2012. This is the deadline day for submissions on the Allister Bill, seeking to impose further penalties on the politically motivated former prisoners who are currently employed in a support capacity at the Assembly.

If enacted into law Clause 2 of the Bill will:

- Be a breach of the international agreement between the Irish and British governments
- Contravene the commitments made to politically motivated ex-prisoners in the Good Friday Agreement and St Andrews Agreement.
- Be in contravention of domestic and international human rights provision, due to its 'retrospective penalisation' of those current special advisors.
- Have failed to be given an Equality Impact Assessment.
- Contradict, in its intention and spirit, the purpose of the 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' May 4th 2007, as commissioned by OFMDFM.

In the Good Friday Agreement 1998 which led to the release of politically motivated prisoners there is a clear recognition of the need to create a new beginning and to move away from the dark days of conflict. This new beginning will not be enhanced by the implementation of punitive sanctions against a section of our community which has been so deeply involved in helping to change the future of our society for a whole generation of young people.

At every stage and at every level former political prisoners have played an immensely important role within the Republican constituency and across the wider community. The progress which has made our peace process the envy of many countries would not have been possible without them.

Republican former prisoners continue to play a role in the peace process and in the political process.

Widespread discrimination against members of the nationalist population helped set the scene for the 3 decades of conflict we have all endured and recently emerged from. Attempts to repeat aspects of that discrimination against a valued section of our community today will do nothing to help bring about a new dispensation for our children.

We should all be committed to the eradication from our society of all measures of discrimination, not just among the political ex-prisoner constituency but also across wider society. We believe that only the implementation of legislation to guarantee equality of citizenship for all can bring about a fair and stable society. Allister's proposed Bill flies in the face of that!

Recent research by academics at QUB indicates that around 25,000 members of our community are former Republican prisoners. That is a massive section of our population in itself but when family members are brought into the reckoning it shows the scale of the proposed discriminatory practices envisaged in this Anti Agreement Unionist's Bill.

Society in this part of Ireland is still emerging from conflict. The idea of singling out one particular group of activists for punishment is anathema to the building of a better safer future for all. How can anyone who has an eye to a more equal and settled community give this legislation other than a complete rejection?

The enemies of our cherished new dispensation relish this type of antediluvian thinking and seek to continue conflict and friction at every opportunity.

*Name and address supplied*

25

Dear Sir,

I would like to make three simple observations about the provisions of the Civil Service (Special Advisers) Bill. Section 2 of the Civil Service (Special Advisers) Bill provides that 'A person is not eligible for appointment as a special adviser if the person has a serious criminal conviction' (serious criminal conviction defined in s. 3(1)). Clearly, the Bill is aimed at former politically motivated prisoners and the fact that it affects a relatively small number of people does not alter the flawed reasoning on which it is based.

First, it is argued that persons who have a serious criminal conviction should be excluded from appointment as special advisors to Stormont Ministers on the grounds that they pose a danger to the public. There is no evidence that this is the case as the extremely low recall rate over the 12 year period of operation of the Sentence Review Commission demonstrates. Indeed, the judgement of Kerr J recognises that "... a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public." No convincing justification has been established for countermanding the findings of the Sentence Review Commissions.

Second, it is argued that the appointment of politically motivated former prisoners as special advisors to Stormont Ministers is offensive to public opinion ignoring the fact that the holding of a referendum (here the referendums of 22 May 1998) constitute the most rigorous test of public opinion available in a democracy. The Good Friday/ Belfast Agreement and its provisions (set out in Command Paper 3883) was ratified in referendums both in Northern Ireland and in the Republic. A very substantial majority (81%) of the people of the Northern Ireland voted in support of the Agreement and its provisions, including those on paramilitary prisoners which recognised that the politically motivated nature of their convictions. Paragraph 5 of the Agreement's provisions on prisoners stipulate that "The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling and further education." Barring ex-politically motivated prisoners from employment hardly constitutes assisting them to avail of employment of opportunities.

Third, the effect of the Civil Service (Special Advisers) Bill's provision to debar anyone having a 'serious criminal conviction' – including anyone with a politically motivated conviction – is to retrospectively increase a penalty imposed by the courts, and this is counter to Article 7 of European Convention on Human Rights which specifies that a heavier penalty than the one that was applicable at the time the criminal offence was committed shall not be imposed. Therefore, it is very likely that a court would find that an imposition of a disqualification from

employment on these grounds is inconsistent with both the Good Friday Agreement and the European Convention on Human Rights.

Yours sincerely,

*Name supplied*



Northern Ireland  
Assembly

Appendix 6

# Other Papers





NIACRO works to reduce crime and its impact on people and communities

Amelia House  
4 Amelia Street,  
Belfast, BT2 7GS

Tel: (028) 9032 0157

Fax: 087 0432 1415

Email: [niacro@niacro.co.uk](mailto:niacro@niacro.co.uk)

Web: [www.niacro.co.uk](http://www.niacro.co.uk)

HFJ25498

Mr Shane McAteer  
Committee Clerk  
Committee for Finance and Personnel  
Northern Ireland Assembly  
Room 419  
Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST  
BT4 3XX

22 November 2012

Dear Shane,

### **Re Civil Service (Special Advisers) Bill**

Thank you for your letter of 12 November requesting NIACRO's views to the restrictions in the application of the Civil Service Code and vetting procedures.

Since it was established, NIACRO has highlighted its concerns around the lack of opportunity for individuals with convictions wishing to access employment. Most particularly we have voiced our concerns on behalf of individuals seeking employment opportunities within NICS and the application of the Risk Assessment Grid used in making recruitment decisions.

Following NIACRO's first consultation response to the Civil Service Commissioners' Draft Recruitment Code (2005), we met with the Commissioners to explore some of the points we raised in greater detail.

We explained that whilst encouraged by the use of terms such as "merit", "fair" and "open competition", used throughout the draft Recruitment Code, that this was not the reality experienced by applicants with convictions.

Our promotion of best practice and getting the right person for the job was reflected in NICS previously with significant evidence of directing applicants to our advice line for disclosure advice. The extent to which this was considered and fairly and transparently risk assessed by DFP at the time however was questionable. Since the move to an external recruitment provider there has been a noticeable shift with less evidence of transparent processes.

Some examples of applicant experiences are detailed below:

- a. One individual had his job offer rescinded by the DFP, due to his unspent convictions despite the fact that he was initially selected on "Merit". The Department failed to explore details of convictions further with the candidate to assess relevance before taking such action. This clearly goes against the principle of best practice.
- b. Another individual received a phone call the day before his interview to tell him that it had been cancelled as he did not meet "the general entry requirement for character" on the grounds of having a four and half year old conviction for excess alcohol: again not relevant to the duties of the job and an example of failure to comply with the Merit Principle.
- c. One employee with a conviction in a temporary post within the Civil Service applied for a similar permanent position. Notwithstanding the fact that he had been doing the job for a substantial period of time, with his line manager providing an excellent reference, his application was disallowed as did not meet the general entry requirement for character. This evidences inconsistent and inequitable consideration within Departments and as such the Code would need to ensure against such future practices.

The above practices we believe are mainly attributable to the application of the DFP / NICS Risk Assessment Grid which promotes exclusion rather than inclusion which we consider fundamentally flawed.

NIACRO recognises that employers in Northern Ireland need to recruit safely but they must also ensure that such individuals are not permanently excluded from the workforce. We call for a less static instrument that provides greater flexibility.

In the 2005 we recommended that the application process clearly lays out how individuals can make informed decisions about applying for opportunities and be clear about how disclosures will be handled and what it will mean for the individual applicant.

Yet in 2012, seven years on, we note that the NICS Risk Assessment Grid still remains discriminatory and exclusive. The Grid was applied in a recent case to initially reject a Doctor who applied for a Disability Analyst post and who posed minimal risk. NIACRO is concerned about the arbitrary application of the grid used to reject suitable candidates.

NIACRO's fundamental concern lies in the DFP's use of the Risk Assessment Grid. While the Grid appears to have been updated in recent years, we believe that it is still unsuitable and discriminatory and would question fit with the AccessNI Code of Practice. We call for NICS to be more transparent about how it complies with AccessNI requirements when vetting candidates.

In addition, the Grid does not take account of individual circumstances. An example of this relates to an applicant who was refused employment as a Paramedic because he had a (conflict related) conviction for personation which is a dishonesty offence. Despite having provided a disclosure statement the Grid automatically excluded him.

To conclude NIACRO continues to call for a more transparent application of the Recruitment Code that pays closer attention to objective assessment of each individual's circumstances relating to their conviction history.

I hope this provides the Finance and Personnel Committee with some background information regarding our concerns with current risk assessment practices.

Please contact me should you have any further questions.

Yours sincerely



PAT CONWAY  
Director of Services



Northern Ireland Association for the Care and Resettlement of Offenders  
Recognised by the Inland Revenue as a charity XN 48280 Company Limited by Guarantee No. N.I 18121  
Chairman: S McDowell; Chief Executive: O Lyner; Chairman Finance Committee: Patrick L Farry BSc FCC,

# Letter to the Secretary of State



## COMMITTEE FOR FINANCE AND PERSONNEL

The Rt Hon Theresa Villiers MP  
Secretary of State for NI  
NIO  
Stormont House  
Stormont Estate  
Belfast  
BT4 3SH

28 November 2012

Dear Secretary of State

### Civil Service (Special Advisers) Bill

The Committee for Finance and Personnel is currently undertaking Committee Stage scrutiny of the Civil Service (Special Advisers) Bill. The Bill seeks to amend the Civil Service Commissioners (NI) Order 1999; however, in evidence from the Department of Finance and Personnel and the Attorney General for NI<sup>1</sup>, the Committee heard that the Civil Service Commissioners are a reserved matter. Members therefore agreed to seek clarification from you on whether any necessary consent has been provided in respect of the provisions in the Bill which deal with a reserved matter.

The Committee also agreed to request your view on the compatibility of the Bill with the fulfilment of any commitments or obligations in respect of ex-prisoners which the Westminster Government made in the Good Friday/Belfast Agreement and the St Andrews Agreement. In particular, this includes implications as regards the ability to apply the *Employers' Guidance on Recruiting People with Conflict-Related Convictions* (attached) which was published in 2007 and expressly aimed to fulfil such commitments.

I would be grateful for a response by 11 December 2012.

Yours sincerely

**Daithí McKay**  
Chairperson

Enc

<sup>1</sup> Evidence received on the Bill to date, including the Official Reports of the Department of Finance and Personnel and Attorney General's evidence sessions can be found at <http://www.nia-assembly.gov.uk/assembly/finance-and-personnel-committee/committee-reports/committee-reports-on-civil-service-special-advisers-bill/civil-service-special-advisers-bill-committee-stage>

# Response from Minister of State



**Northern  
Ireland  
Office**

Northern Ireland Office  
Stormont House  
Stormont Estate  
Belfast BT4 3SH  
Telephone 028 9052 7888  
Facsimile 028 9052 7040  
www.nio.gov.uk

Minister of State

**COMMITTEE FOR**  
**FINANCE AND PERSONNEL**  
**F & P**

Mr Daithi McKay MLA  
Chairperson of the Committee for  
Finance and Personnel  
Room 419  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

7<sup>th</sup> December 2012

*Dear Daithi*

## **CIVIL SERVICE (SPECIAL ADVISERS) BILL**

Thank you for letter of 28 November 2012 to the Secretary of State. As the matters raised fall within my area of responsibility your letter has been passed to me to reply.

In relation to your first question, I can advise that the Secretary of State has received no request for consent from the Speaker in regard to this Bill. If the Bill proceeds, the Secretary of State will of course need to consider whether any of its provisions deal with a reserved matter, as well as its compatibility with the European Convention on Human Rights, prior to Royal Assent.

Turning to your second question, relating to the compatibility of the Bill with the Belfast and St Andrews Agreements and the OFMDFM Code on employment of ex-terrorists, the interpretation of the Agreements and guidance in this area is a transferred matter. It is therefore for the Assembly and Executive to consider this matter.

*Mike Penning*  
*MP*

**MIKE PENNING MP**  
Minister of State for Northern Ireland

# Letter to the Civil Service Commissioners for Northern Ireland



Northern Ireland  
Assembly

## COMMITTEE FOR FINANCE AND PERSONNEL

Mr Brian Rowntree  
Chairperson  
Civil Service Commissioners for NI  
Office of the Civil Service Commissioners for NI  
Room 105  
Stormont House  
Stormont Estate  
Belfast  
BT4 3SH

28 November 2012

Dear Mr Rowntree

### Civil Service (Special Advisers) Bill

The Committee for Finance and Personnel is currently undertaking Committee Stage scrutiny of the Civil Service (Special Advisers) Bill. The Bill seeks to amend the Civil Service Commissioners (NI) Order 1999; however, in evidence from the Department of Finance and Personnel and the Attorney General for NI<sup>1</sup>, the Committee heard that the Civil Service Commissioners are a reserved matter. Members agreed to request the Commissioners' views on the Bill, given that it will have an impact on the legislation under which you operate.

The Committee also agreed to seek clarification on the extent to which the Civil Service Commissioners' mandatory Recruitment Code for appointments to the wider NI Civil Service takes account of the *Employers Guidance on Recruiting People with Conflict-Related Convictions* (attached) which was published by OFMDFM in 2007, and which expressly aims to fulfil the Westminster Government's commitments in the Good Friday/Belfast Agreement and St Andrews Agreement regarding ex-prisoners.

I would be grateful for a response by 11 December 2012.

Yours sincerely

**Daithí McKay**  
Chairperson

Enc

<sup>1</sup> Evidence received on the Bill to date, including the Official Reports of the Department of Finance and Personnel and Attorney General's evidence sessions can be found at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Civil-Service-Special-Advisers-Bill---Committee-Stage/>

# Response from Civil Service Commissioners for Northern Ireland

Mr Daithi McKay  
Chairperson  
Committee for Finance and Personnel  
Northern Ireland Assembly  
Room 419  
Parliament Buildings  
BELFAST  
BT4 3XX



11 December 2012

Dear Mr McKay

Thank you for your letter of 28th November 2012.

You are of course correct when you write that responsibility for the Civil Service Commissioners is a reserved matter. In those circumstances you will understand that it may be more appropriate for you to seek the views of the Northern Ireland Office in relation to the content of the Civil Service (Special Advisers) Bill. However, wishing to be as helpful as possible, I would add that, whilst not seeking to comment on the Bill in general, it is worthy of note that its provisions do not appear to impact on the work of Commissioners.

With regard to your request for clarification in relation to the Employers' Guidance on Recruiting People with Conflict-Related Convictions, the position is that Commissioners considered this matter when drawing up the Revised Recruitment Code. They took the view, following discussion that the wording was sufficiently inclusive to deal with the Guidance in relation to this situation. In stating this it is, of course, important to remember that the appointment of Special Advisers is outside the terms of the Recruitment Code by virtue of the provisions of Article 3(2) and (3) of the Civil Service Commissioners (Northern Ireland) Order 1999.

I hope that this response has been helpful.

Yours sincerely

**Brian Rowntree, CBE**  
**Chairperson**

Cc Marion Matchett  
Raymond Mullan  
Vilma Patterson  
Jim Scholes  
Heather Stevens  
Bernie Gray  
Julian King, NIO

## Correspondence from the Commission for Victims and Survivors



Windsor House  
9-15 Bedford Street  
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Email: [commission@cvsni.org](mailto:commission@cvsni.org)  
Web: [www.cvsni.org](http://www.cvsni.org)

6<sup>th</sup> December 2012

Mr Shane McAteer,  
Committee Clerk,  
Committee for Finance and Personnel,  
Room 428,  
Parliament Buildings,  
Ballymiscaw,  
Stormont,  
Belfast,  
BT4 3XX.

*Dear Shane McAteer*

Following my meeting with the Committee for Finance and Personnel on 14<sup>th</sup> November 2012 I would like to provide a brief response in answer to a question asked by Dominic Bradley MLA. During the meeting, Mr Bradley raised the issue that the current Bill does not achieve balance between the rights of victims of trauma and those of ex-prisoners.

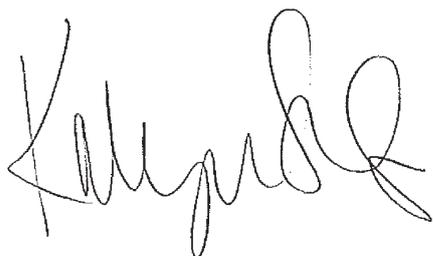
In responding to this query, I returned to the Forum to canvass their views on this issue. The responses from Forum members broadly reflect those expressed by members when I previously asked for their views prior to the Committee meeting. On the particular "clash of rights" issue raised by Mr Bradley, one Forum member expressed the view that, 'it is vital that every applicant for special adviser posts be treated equally under the law...with reference to ex-prisoners my view is that they have served their time and provided they meet the criteria for the post, they should get it.'

Meanwhile, another Forum member commented that, 'I would like politicians to consider victims and the effect any appointment may have on them. I would like them to contact the family concerned prior to the appointment, not to ask their permission but to pre-warn them...before hearing from the media, another source or accidentally at a later date.'

In closing, I would like to repeat the central point that I raised in my opening statement to the Committee. Whether or not the current Bill before the Committee

becomes law, as Commissioner for Victims and Survivor, I would impress upon all Ministers and their respective political parties the imperative of exercising responsibility and display empathy to the plight of all victims and survivors who have been affected by the conflict.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn Stone', written in a cursive style.

Kathryn Stone  
Commissioner

## NIHRC correspondence

Mr Shane McAteer  
Room 428,Parliament Buildings,  
Ballymiscaw, Stormont,  
Belfast, BT4 3XX

11th December 2012

Dear Shane,

### RE: Civil Service (Special Advisers) Bill

I refer to your correspondence of 29 November 2012.

The Commission has reviewed information which is available to us with respect to the Northern Ireland Civil Service Risk Assessment Matrix. The Commission notes that the Risk Assessment Matrix sets down general guidelines rather than prohibitions.

The information available to the Commission does not suggest that there is an opportunity for an individual to appeal a decision to reject his or her application. However there appears to be potential for some consideration of the particular circumstances of the individual.

The Committee may wish to seek the Department's assessment of how the Matrix strikes the correct balance between the public interest and the rights of the individual.

If you require any further information, please do not hesitate to contact me here at the Commission.

Yours sincerely,



**Professor Michael O'Flaherty**  
**Chief Commissioner**

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## Additional papers considered by the Committee

Office of the First Minister and deputy First Minister: Employers' Guidance on Recruiting People with Conflict-Related Convictions

[http://www.ofmdfmni.gov.uk/1.05.07\\_ex\\_prisoners\\_final\\_guidance.pdf](http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf)

Department of Finance and Personnel: Review of Arrangements for the Appointment of Ministers' Special Advisers

<http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers>

Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions

[http://www.ofmdfmni.gov.uk/final\\_review\\_panel\\_report\\_2012.pdf](http://www.ofmdfmni.gov.uk/final_review_panel_report_2012.pdf)

Ruth Jamieson, Peter Shirlow and Adrian Grounds: Ageing and social exclusion among former politically motivated prisoners in Northern Ireland and the border region of Ireland

<http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Publications/worddocs/Filetoupload,226499,en.pdf>

Professor Bill Rolston: Review of literature on republican and loyalist ex-prisoners

[http://www.ofmdfmni.gov.uk/final\\_literature\\_review.pdf](http://www.ofmdfmni.gov.uk/final_literature_review.pdf)





Northern Ireland  
Assembly

Appendix 7

# Assembly Research Papers





Northern Ireland  
Assembly

Research and Information Service  
Bill Paper

28 September 2012

NIAR 606-12

**Michael Potter**

# The Civil Service (Special Advisers) Bill 2012

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.**

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## 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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## Key Points

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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

1 The Civil Service (Special Advisers) Bill 2012: <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/current-non-executive-bill-proposals/civil-service-special-advisers-bill/>.

2 Bill page on the Northern Ireland Assembly website: <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/current-non-executive-bill-proposals/civil-service-special-advisers-bill/>.

3 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/globalassets/documents/finance-2011-2016/legislation/civil-service-special-advisers-amendment-bill/151007\\_civilservicespecialadvisersamendmentbillmrmjmallistermla.pdf](http://www.niassembly.gov.uk/globalassets/documents/finance-2011-2016/legislation/civil-service-special-advisers-amendment-bill/151007_civilservicespecialadvisersamendmentbillmrmjmallistermla.pdf).

Paragraphs 7-8.

4 Paragraph 27.

5 The Code of Conduct is at Annex B of the Review report.

6

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.

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.

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.

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7 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.

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

9 Explanatory Memorandum, p.3.

10 Review, Paragraph 3.

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

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

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Formerly, no form of vetting was required for Special Advisors, 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 Advisors, 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 Advisors, 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 Advisors. 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 Advisors<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 Advisors, to form part of the Adviser's contract of employment. Special Advisors are currently contractually bound by a Code of Conduct for Special Advisors, including the NI Civil Service Code of Ethics, as set out in the Model Contract for Employment for Special Advisors<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 Advisors. Special Advisors are currently appointed in accordance with the Code of Practice on the Appointment of Special Advisors 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 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 Advisors in Other Jurisdictions**

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

13 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/p/rppmv12nd.pdf>.

14 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/>.

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

16 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-2017/deposited-papers-2012/>.

17 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 Advisors (see note 3 above); Civil Service Commissioners (Northern Ireland) Order 1999: <http://nicscommissioners.org/wp-content/uploads/2011/06/CSCNI-Order-1999.pdf>.

### 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.
- **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>.

18 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>.

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

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

21 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).

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

23 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).

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

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

26 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/>.

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

### 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 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

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

29 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>.

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

31 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>.

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

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

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

35 See also Research and Library Services Briefing Note 68/09 Employing Ex-Offenders with Conflict-Related Convictions in Northern Ireland: <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2009/ofmdfm/6809.pdf>.

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

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

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

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.

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.

39 [2003] NIQB 47 7 July 2003: [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2047/j\\_j\\_KERF3984.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2047/j_j_KERF3984.htm).

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

41 [2009] UKHL 24 20 May 2009: <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm>.

42 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).

43 Explanatory and Financial Memorandum, p.5.

44 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/>.

45 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/>.

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

47 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.



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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**Michael Potter**

# The Employment of Ex-Prisoners Released under the Belfast Agreement

## 1 Introduction

This paper is written in the context of the consideration by the Committee for Finance and Personnel of the Civil Service (Special Advisers) Bill 2012<sup>1</sup>, which includes a provision to exclude individuals with a serious criminal offence from the post of special adviser (Clause 2). In response to discussions within the Committee<sup>2</sup>, this paper briefly considers the effectiveness of guidance for the employment of prisoners released in relation to the Belfast Agreement<sup>3</sup>.

## 2 The Context of the Employment of Ex-Prisoners

Among the commitments in the Belfast Agreement is the following<sup>4</sup>:

1 Call for Evidence on the Civil Service (Special Advisers) Bill.

Committee for Finance and Personnel 3 October 2012.

2 For a summary and background to the Bill, see Research and Information Service Bill Paper 141/12 The Civil Service (Special Advisers) Bill 2012: [http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/finance\\_personnel/14112.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/finance_personnel/14112.pdf).

3 Belfast Agreement, 'Prisoners': <http://www.nio.gov.uk/agreement.pdf>.

4

The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Subsequent to the commitments of the Belfast Agreement, the following is stated in the St Andrews Agreement<sup>5</sup>:

The Government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners.

### 3 The Employment of Ex-Prisoners

Studies of former prisoners in Northern Ireland have highlighted difficulties in finding employment due to having unspent convictions<sup>6</sup>.

Sir George Quigley and Sir Nigel Hamilton were tasked with convening a working group on the employment of ex-prisoners, which led to the publication of voluntary guidance for employers. This guidance recommends that convictions for conflict-related offences prior to the Belfast Agreement should not be taken into account in applications for employment unless materially relevant to the employment being applied for<sup>7</sup>. In response to difficulties reported by ex-prisoners in accessing employment, the Consultative Group on the Past suggested the guidance was not well used and that it should be set in statute<sup>8</sup>.

A review of the guidance was completed in March 2012. The conclusions are summarised as follows<sup>9</sup>:

- 1) Where the Employers' Guidance has been implemented by employers it has functioned well and without difficulty;
- 2) A range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement;
- 3) Given this, the view of the Review Panel is that the Employers' Guidance should be complemented by legislative change;
- 4) The Panel recommends either –
  - a. removing Article 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998, or
  - b. allowing Article 2 (4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998;

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5 Agreement at St Andrews, Annex B: [http://www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf).

6 For example, Peter Shirlow (2001), *The State they are In: Republican Ex-Prisoners and Their Families*, Belfast: Tar Isteach; Adrian Grounds and Ruth Jamieson (2003), 'No Sense of an Ending: Researching the experience of imprisonment and release among Republican ex-prisoners' in *Theoretical Criminology*, 7(4) 347-362; Bill Rolston (2007), 'Demobilisation and Reintegration of Ex-combatants: The Irish Case in International Perspective' in *Social Legal Studies*, 16(2) 259-280; Kieran McEvoy (2008), *Enhancing Employability in Prison and Beyond: A Literature Review*, Belfast: NIACRO; Bill Rolston (2011), *Review of Literature on Republican and Loyalist Ex-Prisoners*, Jordanstown: University of Ulster; etc.

7 Office of the First Minister and deputy First Minister (2007), *Recruiting People with Conflict-Related Convictions: Employers' Guidance*, Belfast: OFMdfmni, 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).

8 Consultative Group on the Past (2009), *Report of the Consultative Group on the Past*, Belfast: CGPNI, p.82.

9 Peter Shirlow, Fergus Devitt, Brendan Mackin and Alan Mercer (2012), *Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions*, p.5.

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- 5) In the interim and in the absence of the Guidance being supported by statutory change a review panel should exist as an appeal mechanism for job applicants with conflict-related convictions;
- 6) The Panel notes the increased cooperation between ex-prisoner groups from across the political divide and recommends that these groups should continue to work together to engage with employers and develop employability and training initiatives to meet employer needs.

Article 2(4) of the 1998 Order, as referred to in conclusion 4 above, states the following<sup>10</sup>:

In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.

The Article was used in the appeal to the House of Lords in 2009 by John McConkey and Jervis Marks<sup>11</sup>, who were refused employment on the grounds of their conflict-related convictions.

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10 Section 2 of the Fair Employment and Treatment (Northern Ireland) Order 1998: <http://www.legislation.gov.uk/nisi/1998/3162/article/2/made>.

11 [2009] UKHL 24 20 May 2009: <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm>.



Northern Ireland  
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## Research and Information Service Briefing Paper

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**Michael Potter**

# The Release of Prisoners as Part of the Belfast Agreement 1998

## 1 Introduction

This paper is written in the context of the consideration by the Committee for Finance and Personnel of the Civil Service (Special Advisers) Bill 2012<sup>1</sup>, which includes a provision to exclude individuals with a serious criminal offence from the post of special adviser (Clause 2). In response to discussions within the Committee<sup>2</sup>, this paper briefly summarises the circumstances and conditions of the release of prisoners as part of the Belfast Agreement 1998<sup>3</sup>.

## 2 Prisoner Releases and the Belfast Agreement

Secondary sources indicate that the release of prisoners with conflict-related convictions was seen as a key demand and key concession for various negotiators<sup>4</sup>, was seen as

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1 Call for Evidence on the Civil Service (Special Advisers) Bill.

Committee for Finance and Personnel 3 October 2012.

2 For a summary and background to the Bill, see Research and Information Service Bill Paper 141/12 The Civil Service (Special Advisers) Bill 2012: [http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/finance\\_personnel/14112.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/finance_personnel/14112.pdf)

3 Jeremy Smith (2002), *Making Peace in Ireland*, London: Longman, pp.229, 240.

4

controversial to many<sup>5</sup> and was a major area of conflict during the discussions<sup>6</sup>, reflected by being one of the two remaining issues to be resolved on the eve of the Belfast Agreement<sup>7</sup>. The release of prisoners was to take place over a period of two years, which was a compromise of proposals of longer and shorter periods<sup>8</sup>, but was seen as a major confidence-building measure of the agreement<sup>9</sup>.

Full primary source documentation on the negotiations is not in the public domain.

With regard to prisoners, the Belfast Agreement states the following<sup>10</sup>:

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.
2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.
3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.
4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.
5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Provisions for prisoners under the Agreement were introduced by the Northern Ireland (Sentences) Act 1998<sup>11</sup>. This provides for the establishment of the Sentence Review Commissioners<sup>12</sup> (Section 1), to whom applications may be made for release<sup>13</sup>. The four conditions for release are as follows (Section 3):

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5 G.K.Peatling (2004), *The Failure of the Northern Ireland Peace Process*, Dublin: Irish Academic Press, pp.10, 12, 18, 74.

6 Graham Dawson (2007), *Making Peace with the Past? Memory, Trauma and the Irish Troubles*, Manchester: Manchester University Press, p.23.

7 The other being the decommissioning of paramilitary weapons, Frank Millar (2004), *David Trimble: The Price of Peace*, Dublin: Liffey Press, p.66.

8 Deaglán de Bréadún (2008), *The Far Side of Revenge: Making Peace in Northern Ireland*, Cork: Collins, p.132.

9 John Bew, Martyn Frampton and Iñigo Gurruchaga (2009), *Talking to Terrorists: Making Peace in Northern Ireland and the Basque Country*, London: Hurst, p.147.

10 Belfast Agreement, 'Prisoners': <http://www.nio.gov.uk/agreement.pdf>.

11 Northern Ireland (Sentences) Act 1998: <http://www.legislation.gov.uk/ukpga/1998/35/data.pdf>.

12 Website of the Sentence Review Commissioners: <http://www.sentencereview.org.uk/>.

13 See also House of Commons Library Research Paper 98/65 Northern Ireland: The Release of Prisoners under the Northern Ireland (Sentences) Bill, which sets out the background to the Northern Ireland (Sentences) Bill: <http://www.parliament.uk/documents/commons/lib/research/rp98/rp98-065.pdf>.

The prisoner has been sentenced for life or at least five years for a scheduled offence in relation to the conflict in Northern Ireland before 10 April 1998

The prisoner is not a supporter of a specified organisation<sup>14</sup>

The prisoner is not likely to become a member of a specified organisation or to be involved in the commission, preparation or instigation of acts of terrorism

The prisoner would not be a danger to the public

From 1998 to 2012, 482 prisoners have been released under these provisions, 21 of whom have been recalled<sup>15</sup>.

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14 These are subject to change, as designated by the Secretary of State, currently the Continuity Irish Republican Army, the Loyalist Volunteer Force, The Orange Volunteers, The 'Real' Irish Republican Army, The Red Hand Defenders and Óglaigh na hEireann.

15 Sentence Review Commissioners (2012), Annual Report 2011/2012, Norwich: The Stationery Office, p.25.

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