

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

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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.ofmdfmini.gov.uk/conflict-
transformation-news](http://www.ofmdfmini.gov.uk/conflict-transformation-news)' or ([http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-040507-publication-of-
employers.htm](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.'

(<http://www.niassembly.gov.uk/qanda/2007mandate/writtenans/070928.htm#8>)

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.