

## **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