



Northern Ireland
Assembly

Functioning of Government (Miscellaneous Provisions) Bill

Annotated Marshalled List of Amendments
Consideration Stage

Tuesday 24 November 2020

Amendments tabled up to 9.30am Wednesday, 18 November 2020 and selected for debate

The Bill will be considered in the following order-

Clauses, Schedules and Long Title

Amendment 1 *[Made]*

Clause 1, Page 1, Line 7

After '(2)' insert '(b)'

Mr Jim Allister

Amendment 2 *[Made]*

Clause 1, Page 1, Line 12

Leave out 'involvement or'

Mr Jim Allister

Amendment 3**[Made]****Clause 1, Page 1, Line 13**

Before ‘A minister’ insert ‘Subject to section 3A’

*Mr Jim Allister***Amendment 4****[Negatived on division]****Clause 1, Page 1, Line 14**

At end insert -

‘(3A) In section 8 (Code for appointments), after subsection (1) insert the words:

“(2) Without prejudice to the generality of subsection (1), the code must provide that the appointing minister must -

- (a) create a job description and person specification for the post,
- (b) set out the requirements to be met by a successful applicant,
- (c) achieve a candidate pool from which the minister shall select on sustainable and lawful grounds, and
- (d) complete and the department retain documentation associated with the above processes, including recording the minister’s reasons for the selection made.””

*Mr Jim Allister***Amendment 5****[Made]****Clause 1, Page 2, Line 9**

After ‘adviser’ insert ‘by reason of the holding of that post’

*Mr Jim Allister***Amendment 6****[Made]****Clause 1, Page 2, Line 12**

Leave out ‘him’ and insert ‘the special adviser’

Mr Jim Allister

Amendment 7**[Made on division]****New Clause**

Before clause 2 insert -

‘Repeal of the Civil Service Commissioners (Amendment) Order in Council 2007

A2. The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.’

*Mr Jim Allister***Clause 2****[Question that clause 2 stand part negated]**

The Member listed below gives notice of his intention to oppose the question that clause 2 stand part of the Bill.

*Mr Jim Allister***Amendment 8****[Made]****Clause 4, Page 2, Line 28**

After ‘Office’ insert ‘under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007’

*Mr Jim Allister***Amendment 9****[Made]****Clause 4, Page 2, Line 33**

Leave out subsection (3)

*Mr Jim Allister***Amendment 10****[Made]****Clause 5, Page 3, Line 4**

At end insert -

‘(1A) In Section 17(1)(a) after “Part” insert- “, provided the Commissioner is satisfied the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process”.’

Mr Jim Allister

Amendment 11 [Made]

Clause 5, Page 3, Line 11

Leave out from ‘means’ to end of line 12 and insert ‘means Section 1 of the Ministerial Code as provided for by Section 28A of the Northern Ireland Act 1998.’

Mr Jim Allister

Amendment 12 [Made]

Clause 5, Page 3, Line 14

At end insert -

‘(6A) In Section 27(1) after “Assembly” insert “or minister”.’

Mr Jim Allister

Amendment 13 [Negated on division]

Leave out clause 6 and insert -

‘Records of meetings

6. A civil servant, other than a special adviser, must make and the department must retain an accurate written record of every internal departmental meeting attended by a minister recording, in particular, those present, date and time, topics discussed, and every decision and action point.’

Mr Jim Allister

Clause 7 [Question that clause 7 stand part negated]

The Member listed below gives notice of his intention to oppose the question that clause 7 stand part of the Bill.

Mr Jim Allister

Amendment 14 [Made on division]

Leave out clause 8 and insert -

‘Presence of civil servants

8.—(1) A civil servant, other than a special adviser, must be present and take an accurate written record of every meeting held by a minister or special adviser with non-departmental personnel about official business; except for liaison with the minister’s political party.

(2) The department must retain the record made pursuant to subsection (1).’

Mr Jim Allister

Amendment 15**[Made on division]****New Clause**

After clause 8 insert -

‘Record of being lobbied

8A.—(1) In the event of a minister or special adviser, other than as provided for in section 8, being lobbied, then, the minister or (as the case may be) special adviser must provide at the earliest opportunity a written record to their department of all such lobbying and the department must retain such records.

(2) In this section “being lobbied” means to receive personally a communication, either oral or written, on behalf of the person making the communication or another person or persons, relating to:

- (a) the development, adoption or modification of any proposal of the department to make or amend primary or subordinate legislation;
- (b) the development, adoption or modification of any other policy of the department;
- (c) the making, giving or issuing by the department of, or the taking of any other steps by the department in relation to,—
 - (i) any contract or other agreement,
 - (ii) any grant or other financial assistance, or
 - (iii) any licence or other authorisation; or
- (d) the exercise of any other function of the department.

(3) For the purposes of subsection (2), it does not matter whether the communication occurs in or outwith the United Kingdom.

(4) Nothing in this section shall apply to a communication—

- (a) made in proceedings of the Northern Ireland Assembly or the Executive Committee, or
- (b) arising in the course of liaison with the minister’s political party.’

*Mr Jim Allister***Amendment 16****[Negatived on division]**

Leave out clause 9 and insert -

‘Use of official systems

9.—(1) A minister, special adviser or civil servant when communicating on official business by electronic means must not use personal accounts or anything other than devices issued by the department, systems used by the department and departmental email addresses.

(2) If out of necessity it is not possible to comply with the requirements of subsection (1) the minister or (as the case may be) special adviser or civil servant must within 48 hours, or as soon thereafter as reasonably practicable,

- (a) copy to the departmental system any written material generated during the use of non-departmental devices or systems; and
- (b) make an accurate record on the departmental system of any verbal communications relating to departmental matters.

(3) It shall be an offence for any minister, special adviser or civil servant to fail to comply with the requirements of subsection (2).

(4) In proceedings in respect of a charge against a person (“A”) of the offence under subsection (3), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(5) A person is taken to have shown the fact mentioned in subsection (4) if—

- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (4), and
- (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (4).

(6) A person guilty of an offence under this section is liable on conviction

- (a) on indictment, to imprisonment for a term not exceeding 2 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.'

Mr Jim Allister

Amendment 17

[Made]

Clause 10, Page 4, Line 10

Leave out ‘21’ and insert ‘28’

Mr Jim Allister

Amendment 18

[Not moved]

Clause 10, Page 4, Line 12

Leave out ‘close’

Mr Jim Allister

Amendment 19

[Made]

Clause 10, Page 4, Line 13

Leave out ‘21’ and insert ‘28’

Mr Jim Allister

Amendment 20**[Made on division]**

Leave out clause 11 and insert -

'Offence of unauthorised disclosure'

11.—(1) Without prejudice to the operation of the Official Secrets Acts 1911-1989 and save in the discharge of a statutory obligation or in the lawful pursuit of official duties, it shall be an offence for any minister, civil servant or special adviser to communicate, directly or indirectly, official information to another for the financial or other improper benefit of any person or third party.

(2) In proceedings in respect of a charge against a person ("A") of the offence under subsection (1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances or was in the public interest.

(3) A person is taken to have shown the fact mentioned in subsection (2) if—

- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (2), and
- (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (2).

(4) A person guilty of an offence under this section is liable on conviction

- (a) on indictment, to imprisonment for a term not exceeding 2 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.'

Mr Jim Allister

Amendment 21**[Made]****New Clause**

After clause 11 insert -

'Accountability to the Assembly; provision of information'

11A. Ministers and their departments have a duty to report to an Assembly committee such information as that committee may reasonably require in order to discharge its functions, being information which—

- (a) has been requested in writing; and
- (b) relates to the statutory functions exercisable by the Minister or their department.'

Mr Jim Allister

Amendment 22**[Made]****Clause 12, Page 4, Line 30**

Leave out from 'relevant' to 'actions' on line 31 and insert 'judgements of the courts relevant to the functioning of government,'

Mr Jim Allister

Amendment 23**[Made]****New Clause**

After clause 12 insert -

‘Assembly scrutiny of the Executive’s in-year monitoring process

12A.—(1) Ministers and their officials must provide the relevant Assembly Committee with a written or oral briefing on the department’s submission to each monitoring round in advance of it being submitted to the Department of Finance.

(2) The Department of Finance shall publish the outcome of each monitoring round within 7 days of Ministerial approval being granted.

(3) Within 14 days of the publication of the outcome of the monitoring round provided for in subsection (1), the Minister of Finance must lay before the Northern Ireland Assembly a statement specifying the changes to each department’s net budget allocation as a result of this exercise.’

*Mr Paul Frew**Mr Christopher Stalford**Mr Gary Middleton**Mr Keith Buchanan***Amendment 24****[Not moved]****Clause 14, Page 5, Line 10**

At end insert -

“family member” has the same meaning as set out in Schedule 1(3) to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.’

*Mr Jim Allister***Amendment 25****[Made]****Clause 14, Page 5, Line 10**

At end insert -

“department” means a Northern Ireland department as set out in Schedule 1, Departments Act (Northern Ireland) 2016.’

*Mr Jim Allister***Amendment 26****[Made]****Clause 14, Page 5, Line 10**

At end insert -

“The Executive Committee” means the Executive Committee as established by section 20 of the Northern Ireland Act 1998.’

Mr Jim Allister