

Functioning of Government (Miscellaneous Provisions) Bill

[AS INTRODUCED]

CONTENTS

1. Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013
2. Amendment of the Civil Service Commissioners (Northern Ireland) Order 1999
3. Repeal of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016
4. Special Advisers in the Executive Office
5. Amendment of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.

Administrative and operational requirements

6. Records of meetings
7. Records of contacts
8. Presence of civil servants
9. Use of official systems
10. Register of interests
11. Offence of unauthorised disclosure
12. Biennial report
13. Commencement
14. Interpretation
15. Short title

Schedule Transitional Provisions: Termination Payments

A

BILL

TO

Amend sections 7 and 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 and Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 in relation to special advisers in the Northern Ireland Civil Service, repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016, amend section 17 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 and to make additional provision for the functioning of government in Northern Ireland and connected purposes.

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

Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013

1.—(1) The Civil Service (Special Advisers) Act (Northern Ireland) 2013 is amended as follows.

5 (2) In section 7 (Code of Conduct), amend subsection 3 to read “Within the Executive Office the code may permit a special adviser to exercise any power under subsection (2) in relation to another special adviser in that office.”

(3) In section 7 (Code of Conduct), after subsection (3) insert—

10 “(3A) Without prejudice to the generality of subsection (1), the code must provide that special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service and that there can be no ministerial involvement or interference.

(3B) A minister who appoints a special adviser is responsible for their management, conduct and adherence to the code of conduct.”

15 (4) In section 8 (Code for appointments), after subsection (2) insert the words “and any failure to adhere to the code shall render the appointment of no effect.”

(5) After subsection (3)(b), insert—

Functioning of Government (Miscellaneous Provisions)

“(c) must not be remunerated above the rate within the Senior Civil Service Pay Structure applicable to Assistant Secretary (Grade 5)”.

(6) After section 8, insert—

5 “8A(1) A minister must ensure that only the duly appointed special adviser in the department will exercise the functions, enjoy the access and receive the privileges of the post; and a permanent secretary must ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser.

10 (2) No special adviser, directly or indirectly, shall be supervised by, directed by, answerable to, or report to any person other than the minister who appointed him, save as permitted by section 7(3) or required by section 7(3A) above.”

15 **Amendment of the Civil Service Commissioners (Northern Ireland) Order 1999**

2.—(1) The Civil Service Commissioners (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 3 (Selection on merit), in paragraph (4) for the words “up to three persons” substitute “one person”.

20 **Repeal of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016**

3.—(1) The Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 is repealed.

25 (2) An order under section 23(3) of the Northern Ireland Act 1998 may not be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

Special Advisers in the Executive Office

4.—(1) Any special adviser in post in the Executive Office shall cease to hold office on 31 March 2021.

30 (2) Any person in post under the provisions of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 shall cease to hold office on 31 March 2021.

(3) Appointments made after 31 March 2021 shall respect the additional provisions activated by section 13.

35 (4) A person who ceases to hold office under subsection (1) or (2) and is not reappointed as a special adviser shall be entitled to a termination payment, as long as no other recompense is payable.

(5) The Schedule (Transitional provisions: termination payments) has effect.

Functioning of Government (Miscellaneous Provisions)

Amendment of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.

5. —(1) The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 is amended as follows.

5 (2) In Section 17(1)(b) after “Code of Conduct” insert “or the Ministerial Code, or both.”

(3) At the end of Section 17(1)(d) insert “including ministers”.

(4) In Section 17(2)(a) after “Code of Conduct” insert “or the Ministerial Code, or both”.

10 (5) in Section 17(3) insert the words

“the Ministerial Code” means the Ministerial Code as defined by Section 28A of the Northern Ireland Act 1998

(6) in Section 17(3) for the purposes of defining “relevant time” after “Code of Conduct” insert “or the Ministerial Code, or both”.

15 *Administrative and operational requirements*

Records of meetings

6. The Civil Service will make and keep an accurate written record of every meeting attended by a minister in departmental service, recording, in particular, those present, date and time, topics discussed, each ministerial indication of intent and every decision and action point.

Records of contacts

7. Ministers and special advisers must log and retain records of all meetings they hold with non-departmental personnel about departmental matters; except for liaison with the minister’s political party.

25 **Presence of civil servants**

8. A civil servant must be present and take a contemporaneous note at every meeting held by a minister or special adviser with non-departmental personnel about departmental matters; except for liaison with the minister’s political party.

Use of official systems

30 9.—(1) It shall be an offence for any minister, civil servant or special adviser when communicating on government business by electronic means to use personal accounts or anything other than departmental systems and email addresses.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for the failure.

35 (3) 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.

Functioning of Government (Miscellaneous Provisions)

Register of interests

10 **10.**—(1) Within 3 months of this Act coming into effect the Department of Finance must establish, maintain and make available for public inspection a register of interests in respect of ministers and special advisers for the purpose of recording all such interests as are prescribed in a scheme defining the categories of financial and other interests that are registrable, including gifts and hospitality.

(2) The Minister of Finance must lay the scheme and any revisions thereof before the Assembly as soon as possible after compilation.

(3) All ministers and special advisers must—

- 10 (a) within 21 days of taking up their post inform the Permanent Secretary of the Department of Finance of their registrable interests, including those of their spouse, partner or close family members; and
- (b) within 21 days of any change to those registrable interests, inform the Permanent Secretary of that change.

15 **Offence of unauthorised disclosure**

11.—(1) Without prejudice to the operation of the Official Secrets Acts 1911-1989, it shall be an offence for any Minister, special adviser or civil servant to communicate, directly or indirectly, confidential and/or commercially sensitive information to any natural person or legal entity for the financial or other potential benefit of any natural person, legal entity, minister, special adviser or civil servant.

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

- (a) on indictment, to imprisonment for a term not exceeding 5 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

25 **Biennial report**

12. The First Minister and deputy First Minister, having consulted with the Civil Service Commissioners for Northern Ireland, The Northern Ireland Public Services Ombudsman, the Comptroller and Auditor General for Northern Ireland and the Commissioner for Public Appointments for Northern Ireland, and having considered any relevant judgements of the courts on governmental administration and actions, will

- (a) lay a report in the Assembly on the functioning of government on a biennial basis and
- (b) bring forward by statutory provision or other means, as appropriate, proposals to improve the functioning of government.

Commencement

13.—(1) Section 1(5), section 2 and section 3(1) come into operation on 1 April 2021.

(2) The other provisions of this Act come into operation on the day on which the Act receives Royal Assent.

Interpretation

14. In this Act—

Functioning of Government (Miscellaneous Provisions)

“special adviser” has the meaning given by section 1 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013.

“the Executive Office” means the department exercising the functions of the First Minister and deputy First Minister, acting jointly.

5 “the Minister” means—

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

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

Short title

15. This Act may be cited as the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2020.

SCHEDULE

Section 4(5)

TRANSITIONAL PROVISIONS: TERMINATION PAYMENTS

- 5 1. A person whose appointment is terminated in consequence of section 4(1) or 4(2) is entitled to a termination payment from the Department.
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.