

Functioning of Government (Miscellaneous Provisions) Bill

[AS AMENDED AT CONSIDERATION STAGE]

LEGISLATIVE COMPETENCE

At Introduction the Member in charge of the Bill, Mr Jim Allister, had made the following statement under Standing Order 30:

“In my view the Functioning of Government (Miscellaneous Provisions) Bill would be within the legislative competence of the Northern Ireland Assembly.”

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CONTENTS

1. Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013
 2. Repeal of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007
 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. Presence of civil servants
 8. Record of being lobbied
 9. Register of interests
 10. Offence of unauthorised disclosure
 11. Accountability to the Assembly; provision of information
 12. Biennial report
 13. Assembly scrutiny of the Executive's in-year monitoring process
 14. Commencement
 15. Interpretation
 16. 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)(b) 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 interference.

15 (3B) Subject to subsection (3A), a Minister who appoints a special adviser is responsible for their management, conduct and adherence to the code of conduct.”

(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 by reason of the holding of that post.

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 the special adviser, save as permitted by section 7(3) or required by section 7(3A) above.”

15 **Repeal of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007**

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 The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.

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

20 **3.**—(1) The Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 is repealed.

(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.

25 **Special Advisers in the Executive Office**

4.—(1) Any special adviser in post in the Executive Office under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 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) 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.

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

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.

40 (2) 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”.

Functioning of Government (Miscellaneous Provisions)

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

(4) At the end of Section 17(1)(d) insert “including Ministers”.

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

(6) in Section 17(3) insert the words—

“the Ministerial Code” means Section 1 of the Ministerial Code as provided for by Section 28A of the Northern Ireland Act 1998.

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

(8) In Section 27(1) after “Assembly” insert “or Minister”.

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.

Presence of civil servants

7.—(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).

Record of being lobbied

8.—(1) In the event of a Minister or special adviser, other than as provided for in section 7, 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.

Functioning of Government (Miscellaneous Provisions)

(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—

- 5 (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.

Register of interests

10 **9.**—(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.

15 (3) All Ministers and special advisers must—

- (a) within 28 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
- 20 (b) within 28 days of any change to those registrable interests, inform the Permanent Secretary of that change.

Offence of unauthorised disclosure

25 **10.**—(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.

30 (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).

35 (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.

Accountability to the Assembly; provision of information

40 **11.** 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—

Functioning of Government (Miscellaneous Provisions)

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

Biennial report

5 **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 judgements of the courts relevant to the functioning of government, 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.

15 Assembly scrutiny of the Executive's in-year monitoring process

13.—(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.

20 (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.

25 Commencement

14.—(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.

30 Interpretation

15. In this Act—

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

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

“the Minister” means—

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

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

Functioning of Government (Miscellaneous Provisions)

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

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

5 **Short title**

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

SCHEDULE

Section 4(4)

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.

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[AS AMENDED AT CONSIDERATION STAGE]

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.

Introduced by: Mr Jim Allister

On: 3 February 2020

As amended at
Consideration Stage: 24 November 2020

Bill Type: Non-Executive Bill

ACCOMPANYING DOCUMENTS

**An Explanatory and Financial Memorandum is printed separately as
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