



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous
Provisions) Bill: Department of Finance

17 June 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Seán Lynch
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:

Mr David Hughes	Department of Finance
Mr Bill Pauley	Department of Finance

The Chairperson (Dr Aiken): We welcome Bill Pauley, who is the director of the strategic policy and reform division, and David Hughes, who is head of the renewable heat incentive (RHI) inquiry sponsorship team in the Department of Finance. I remind everybody that the item is being recorded by Hansard. Bill, can you make an opening statement, please?

Mr Bill Pauley (Department of Finance): Thank you, Chair. I will say briefly that the Minister and our permanent secretary gave evidence to the Committee a couple of weeks ago. David and I, in our respective roles, report to them in the normal ways. What they said will overarch what we might say here in looking at things in more detail.

We will also briefly refer the Committee to some of the generic issues that were raised in the Minister's cover note to it on 27 April. Much of what is proposed relates to the issues that were covered in the revised codes for Ministers, spads and civil servants. Those codes were completed after the talks process last summer and were reflected in the 'New Decade, New Approach' document, which recognised the need for a new approach as well as transparency about and accountability for what happened in the past, and that is entirely accepted. Having rules and standards for Ministers, spads and civil servants is an important issue, as is its enforcement.

We have a couple of points about the Minister's cover note from 13 June. The view is that the codes sufficiently address the issues and that legislation is not necessary. That overarches what we might say in our responses to questions. Also, the codes will be re-examined in light of the RHI recommendations.

Mr Allister: Mr Pauley, I want to return to the codes, because the Department's basic message is not so much to dispute the content of the Bill but the "how" of the Bill and whether legislation is needed or it is sufficient to put it into codes. The Department's basic stance is, "Even though they failed us in the past, codes are enough", but, when it comes to appointment, the codes that failed us in the past were better than the codes that we have today, because, as I have put to you before, the very significant fact on the code for the appointment of spads is that it stripped out all the process of selection by the Minister. Two weeks ago, the former Commissioner for Public Appointments, Mrs Felicity Huston, whom you probably know, said this to the Committee:

"we have to ask ourselves whether the code" —

the code of appointment —

"as it stands looks like a credible document in the eyes of the public. Does a code that sets aside all recognised appointment procedures, because of the personal nature of the spad appointment, persuade the public that all is well?"

She went on to say:

"it would provide tremendous confidence for the public if they thought that, in appointments like this, some sort of process could be seen and there was some sort of evidence of why x or y had been appointed."

You are coming to the Committee and telling us that you want to stand over a code that makes sure that no sort of process can be seen in the selection and no sort of evidence can be available for why X or Y was appointed. Is that seriously the Department's position?

Mr Pauley: I accept your point about whether the difference is codes or legislation. Certainly, as we said, and, as I said in my introduction, we accept the need for change, as did the talks process that the codes responded to in the 'New Decade, New Approach' document, just, I suppose —.

The Chairperson (Dr Aiken): I do not wish to cut across, but just to put this on the record — I have already put this on the record with the Minister and the permanent secretary — unlike anybody else in this Chamber, I sat at the party leaders' group at those talks. The discussion about what we would do to restore accountability and responsibility to the Assembly and to control Ministers and processes is not what ended up in 'New Decade, New Approach' and was not what is in this code. For the record, I make that abundantly clear. Every time I hear an official say, "This was agreed between the party leaders and by the parties as part of New Decade, New Approach", I say that it was not. That is not what was agreed, and, clearly, the Ulster Unionist Party never signed up to what ended up in 'New Decade, New Approach'. As a party leader, I never signed up to it. Let us make that abundantly clear right now. I do not want to hear that put in front of the Committee again. I am sorry for being angry, but I am getting really fed up with this.

Mr Pauley: Following the 'New Decade, New Approach' document, which indicated that the codes should be put in place as a matter of urgency, the Civil Service put that to Ministers and asked them to respond. All the new codes and their supporting documents have been agreed by the Executive and published with the exception of the code of ethics document, which is going through the agreement processes and has been provided to the Committee because it relates to some of the documentation. That is what we have been doing, and the codes have been agreed by the Executive.

Mr Allister: I know that they have been agreed, but I am asking you the question because Sir Patrick Coghlin, in his report, says that the letter and the spirit of the codes need to be seen to be implemented. Why, before that report was ever published, had the Executive agreed to strip basic things that Mrs Huston referred to as "recognised appointment procedures" out of the code of appointment? A pool of candidates, criteria, personal abilities etc are all stripped out. Now, you cannot say that that strengthens the code. The protestation of the Minister is that he strengthened the codes, but he has shredded the code of appointment.

Mr Pauley: The codes have been agreed by the wider Executive, but, yes, it was the Minister of Finance who brought them to the Executive as proposals —.

Mr Allister: Do you agree that it is a weaker code in terms of its process?

Mr Pauley: I have not come to the code of appointment yet. The first question that you put to me and was whether we agreed that, broadly, it was about whether this is a code or legislation. The other point — I am not sure if I made it, but I will say it again — is that three clauses in the Bill are not covered by the codes, as we understand it, and relate to reducing the number of spads, the power to make the special appointment and the requirement to publish a biennial report. It is our understanding coming here that those matters are not covered by the codes, wherever they might be done.

We believe that the code of appointment is a much simpler code, reflects the reality of what happens when appointing spads and is consistent with the Civil Service (Special Advisers) Act (Northern Ireland) 2013. The code for the appointment of spads requires the appointing authority, which is the Minister, to apply all appropriate employment law in their work to appoint their spad. Subsequent to that, when we are informed by the appointing authority, which is the relevant Minister, who the spad is, the Department takes over the work and takes the process from there. That is a much simpler version that reflects the reality of the situation.

Mr Allister: Mr Pauley, the code kicks in only when the Minister has hand-picked whomever he wants. He does not have to consider a pool of candidates or what the criteria for the job are, assess anyone against any criteria or even keep a note of why he made the choice. Please, do not suggest to us that the code is compatible with the good practice of the past, which had all those elements. It is weakening the code, not strengthening it, and anyone, except the Department, it seems, can see that.

Mr Pauley: The code requires that the appointment is made in line with all aspects of employment law. That is a statement in the code.

Mr Allister: Let me move on. You mentioned one of the clauses that are not compatible with and not covered by the codes. That is the clause on subjecting the exercise of prerogative powers to Assembly resolution. We are a legislative Assembly, yet, we have a situation where, in the past and into the future, the First Minister and deputy First Minister had and will have the opportunity to, in secret and with no appointment process open to scrutiny, as they did with Mr David Gordon, make an appointment at £75,000 a year and never inform the Assembly about it. Clause 3 makes any such proposal subject to the approval of the Assembly. Why would a Department want to disbar the approval of a legislative Assembly in situations such as that? Why would you want to hide that from the Assembly?

Mr Pauley: We have responded to the point about that clause in the comments that we made to the Committee. As we said, we believe that it would remove the power of the First Minister and deputy First Minister to engage any specialised, expert support that they might need in some form of emergency or other situation through such an appointment. We have not got an example for you of a situation that might arise. There have been no such appointments made under this Administration. There has only ever been the one to which you referred. Since then, the normal processes of recruitment and appointment have been applied where the individual is not advising one Department as a civil servant in that way. The processes that exist can be applied to recruit experts when we have sufficient time and when it is appropriate to do that to recruit the expertise that we need. We are looking at how we —.

The Chairperson (Dr Aiken): Excuse me, Bill. Speaking as somebody who has been a chief executive and all the rest of it, I know that, when you have to bring people in at short notice, you bring them in on a consultancy basis; you do not bring them in as full-time employees. You do that in the Civil Service as well. If you need somebody in a specific area, you bring them in as a consultancy service. You spent a fortune on PwC to bring it in as a consultancy service. I do not get that.

Mr Pauley: That is another route by which temporary specialist appointments can be made for different periods of time.

The Chairperson (Dr Aiken): What you are talking about is short-circuiting the system so that you can have a full-time appointment. How is that following normal human resources (HR) process?

Mr Pauley: That is an option that is open under the legislation but that has not been used by this Administration. It has been used once in the past for the individual Mr Allister referred to.

As part of our wider thinking about Civil Service reform, we are, indeed, looking at how our Civil Service Commissioners work and the role that they play, and we are looking at, for example, the

number of exemptions to the merit principle. Fewer exemptions are available to Civil Service Commissioners here than to Civil Service Commissioners in Britain, so there is a difference in what can be applied in expertise or whatever. It takes you to look at some wider issues of getting the expertise that we need when we need it, which is an RHI issue, and that will potentially lead to that and to Civil Service reform. In this instance, the Department's comment on the clause is to note that it would remove from the First Minister and deputy First Minister the ability to appoint in this way —

Mr Allister: And make it subject to the Assembly.

Mr Pauley: — to make it subject to the Assembly — and to note that it is not a power that has been used.

Mr Allister: Yes, so why are you so precious about it?

Mr Pauley: We are precious about the need for legislation in this area and whether —.

Mr Allister: You see, Mr Pauley, if you were concerned —.

Mr Pauley: The overarching point is about whether legislation is needed in this area to serve what we need.

Mr Allister: You see, Mr Pauley, I could understand your position — the Chair pointed out that you could simply go to consultancy, and there is no real answer for why you could not do so — if you were coming to the Committee and saying, "OK. We get it that it does not look good to have prerogative powers exercised behind the back of the Assembly, and, therefore, although we are concerned about the need for speed, we suggest that, instead of having a positive resolution procedure in the Bill, you have a negative resolution procedure". I could understand you taking that stance, because that would maintain a role for the Assembly, but you are coming to the Committee and saying, "We do not want anyone to touch the facility to appoint behind people's backs by virtue of the royal prerogative". You are saying that to elected Assembly Members, who are supposed to legislate.

Mr Wells: Do you want to phone a friend?

The Chairperson (Dr Aiken): No. Through the Chair, please. Please withdraw that remark.

Mr Wells: OK. Sorry about that.

The Chairperson (Dr Aiken): That is beneath you, Jim. Sorry about that, Bill. I apologise.

Mr Pauley: In relation to the clause, we said that, as an overarching position, we do not believe that legislation is required in this area or around it. If we were to make legislation solely for this clause, we point to the fact that it has been used once and is not used now, and we point to the responses that we made —.

The Chairperson (Dr Aiken): Just for clarification, you said that it has not been used recently and that you think that there is only one example of where it has been used. Are there any other examples of where it has been used?

Mr Pauley: Not locally, no. This is 2016 legislation that has been used once — that is my understanding — for the individual whom Mr Allister named and has not been used since.

The Chairperson (Dr Aiken): If it has been used only once, why are you so determined to keep it in? I do not understand the logic.

Mr Pauley: We pointed out in our response that it would remove this facility from the First Minister and deputy First Minister now, and we have —.

The Chairperson (Dr Aiken): But we have already explained —.

Mr Pauley: No —.

The Chairperson (Dr Aiken): Excuse me: I am the Chair here. I already explained that there is a very normal process that happens across all government of bringing in consultants. There is a process of bringing in consultants at short notice to specific roles. You explained to us that there is an issue here with HR issues. The only thing under HR issues that would protect somebody who did not get that role is that the royal prerogative had been used. Therefore, that would be the defence if somebody who did not get the job and decided to take legal proceedings. If it has only ever been used once, I am really struck by why you want to retain it.

Mr Pauley: We say in the later responses to the question that there is a broader issue about how the Civil Service can recruit at short notice and, at times, get the expertise that it might need. This is a facility that exists at the moment. It has been used once and not in the most current Administration. In terms of how we believe that these things should be done, in a reformed Civil Service or a new approach, in this new decade, there might be linkages to that.

I also pointed to the fact that the Civil Service Commissioners oversee how we appoint people to the Civil Service and the process of doing that. I indicated to the Committee that the list of exemptions to that, where the full merit principle and the full application of recruitment processes have to be applied, is less for us than it is in Whitehall and other areas. Until such time as we look at wider Civil Service reform, we do not see a need to legislate solely to remove the clause or solely on this area. As I said, it is not something that we covered in the codes. It is not something that we covered in how we looked at or responded to the issues on it or how it became part of that process. It is something that was put in place, was used once and has not been used since. There are, to my understanding, no plans in any Department, but certainly not in ours —

Mr Allister: The power still exists. Let us understand —

Mr Pauley: The power still exists, as we have acknowledged.

Mr Allister: — it was not just that David Gordon was appointed — it could have been anyone — it was that the First Minister and deputy First Minister made legislation.

Mr Allister: They exercised an executive power to change the Civil Service Commissioners Order 1999. They made, by prerogative order, new legislation called the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016. They made the law. They did not tell the Assembly that they had made it. The clause is about making sure that they cannot change the law again without the consent of the Assembly. It is as basic as that, but you want to keep a power that was created in that way, saying, "It won't be used, but it could be used". Chair, there is one other area, but I am conscious that I have hogged the proceedings. I will come back if there is time.

The Chairperson (Dr Aiken): I will give you the opportunity to speak now, Jim. Just go ahead.

Mr Allister: OK. Clause 5 is about suggesting that we need a more objective process of investigating breaches of the ministerial code. The Department's stance is, "We do not need clause 5 because, under New Decade, New Approach, we will appoint three new commissioners who will survey all these matters and deal with any complaints against Ministers". Is it correct, Mr Pauley, that, whereas the standards commissioner, to whom I say that function should be given, is appointed by open competition in a transparent way, there is no such parallel with the hand-picking of three commissioners by the First Minister and the deputy First Minister? Secondly, whereas the standards commissioner has the power to compel witnesses, to compel documents and to take evidence on oath, the three commissioners suggested in 'New Decade, New Approach' would have no such powers and could only ask the head of the Civil Service about factual matters?

With the Commissioner for Standards, there are, for good reason, disqualifications around who cannot hold the post, such as a former senior civil servant; in fact, 20 disqualifications are listed in the legislation. There would be no disqualifications when the First Minister and deputy First Minister appoint suitable commissioners. Even from the point of view of a presentation of objectivity, is it not clear that giving the function to an independent standards commissioner would be far more presentable and acceptable from a public perception point of view than giving it to three hand-picked commissioners who cannot even compel documents or evidence or take evidence on oath?

Mr Pauley: The proposed enforcement process that has been agreed by the Executive includes provision for a panel of three, one of whom is, in an ex officio role, the Assembly Commissioner for

Standards. We believe that that commissioner would be part of the potential panel of commissioners who would look at this. It was discussed during the talks process that taking the role of the Assembly Commissioner for Standards, who is responsible mainly, as I understand it — I have not looked at the legislation in detail — for maintaining standards among MLAs and solely reading that role across to make it apply to maintaining standards among Ministers could lead to some areas where that was inappropriate. However, we felt that it was appropriate that he or she — whoever is appointed to the role — should be a part of the panel, because it is likely that there could be breaches of standards that would also be breaches in respect of the fact that the Minister is also an MLA. The proposed panel is a multiple-person panel, and that is to allow different areas of expertise or knowledge among the individuals who will be appointed. They can then use that to carry out investigations into breaches or complaints and determine the person who is best capable of investigating the matter.

Mr Allister: Without the powers.

Mr Pauley: Certainly, it is envisaged that those people will be expected to comply fully with the panel for ministerial standards — I think that that is what we call it — when that panel is carrying out investigations. Certainly, when they needed to come to the Executive secretary for any information, that would be fully complied with *[Inaudible.]*

Mr Allister: Mr Pauley, may I demonstrate to you the absurdity of the situation? The independent Commissioner for Standards investigating an MLA has the right to call for documents and call witnesses to take their evidence on oath. That same person, ex officio as one of the trio of ministerial commissioners, if he is performing that role in respect of a Minister, cannot call for evidence, cannot administer an oath and cannot take evidence in the manner in which he can against an MLA. Is it not absurd that Ministers are treated with the kid glove approach of three commissioners who are toothless and without powers and depend for their facts and what the head of the Civil Service tells them, as opposed to a commissioner who, when interrogating an issue in respect of a mere MLA's alleged breaches, has that whole panoply of powers? Is that not plainly absurd?

Mr David Hughes (Department of Finance): If I may just make an observation on how this operates in other jurisdictions —.

Mr Allister: Look, we are worried about here. It is here that had the catastrophe of RHI.

The Chairperson (Dr Aiken): Just be aware that the Committee has heard time and time again from the permanent secretary and head of the Northern Ireland Civil Service that Northern Ireland is a unique situation. Now, you are trying to tell the Committee that it is not unique. Please, give us the benefit.

This is a Northern Ireland situation that was brought about because of RHI, and the aim is to make sure that it does not come happen again. That is why, specifically, we are doing that.

Mr Hughes: Sorry, if —

The Chairperson (Dr Aiken): Sorry, Jim is still giving evidence. I will bring you back in in a second.

Mr Allister: I think that the gentleman wants to reply.

Mr Hughes: I just want to mention the experience of Scotland and Wales, where independent advisers have been appointed. In Scotland, the First Minister made the appointment for the investigation of the First Minister. In that context, it has been publicly acceptable that, of course, the First Minister will appoint an independent adviser; otherwise, that investigation has no credibility. The two current independent advisers have not only that standing but, because of their background as prosecutors, carry standing from their previous employment and background. It is important to recognise that there is precedent for the approach being taken, but an enforcement mechanism here means that the panel has a greater capacity to bring things into the open than is set up in the Scottish context.

It is also worth noting that the method of appointment of the panel has not been settled. It is not explicitly set out in the enforcement mechanism.

Mr Allister: Will it be set in legislation?

Mr Hughes: I am not aware that there are any plans.

Mr Allister: No. It will be hand-picked. You know that perfectly well. It will be three individuals hand-picked by Ministers who could themselves be subject to an investigation. If not them, the majority of Executive Ministers come from the same parties. Those are the people who will hand-pick the panel, instead of having an open competition such as we have for MLAs.

Well dare an MLA step out of line. MLAs are subject to the full panoply of investigation, sworn evidence and everything else, but a Minister might step out of line, and some hand-picked individual with no such powers reaches some conclusion that they suggest to the person who appointed them, and the person who appointed them decides whether to take any action. Really?

The Chairperson (Dr Aiken): We need to be careful with our tone. As Chair, I accept that my tone has been slightly exasperated during the session as well, but there is good reason for it.

Mr Allister: OK. Thank you.

The Chairperson (Dr Aiken): Maolíosa, go ahead.

Mr McHugh: I am interjecting for that very reason, Chair. I thought that it was downright rude that, when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, you and Mr Allister went down his throat. I thought that that was downright rude.

I appreciate, in every respect, the information that you have provided during the meeting. Although Sinn Féin stands for "Ourselves Alone", we do not believe in reinventing the wheel. In other words, we look at what is happening in other jurisdictions and look to the best possible practice in every respect.

I felt embarrassed for a minute because of the way in which you were being treated, Mr Pauley.

The Chairperson (Dr Aiken): Thank you very much, Maolíosa. Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.

Mr Frew: Thank you very much. You are very welcome here. It has been very informative.

Are you here, Mr Pauley, as an individual, with all your years of experience and as the director — the role that you hold now — or are you here to represent the view of your Minister?

Mr Pauley: I am here to represent the view of our Minister. That is the basis on which all civil servants attend all Committees, and that is the basis on which I am here.

Mr Frew: Would there never be a time, at an evidence session like this, when you would say, "The Department is going in the wrong direction" or, "The Minister may well be incorrect"?

Mr Pauley: No. I act under the direction of my Minister. In our opening statement, I referred to the fact that he was here a few weeks ago with my permanent secretary. I report to both those people in different ways that, I believe, are widely understood, and that is the basis on which I give evidence to the Committee.

Mr Frew: Thank you for clearing that up. That is helpful.

I want to ask about the appointment of a person of expertise. I was part of the talks process, and you have already mentioned that talks process. A lot of the time, the language used was about co-design. How does this law, this rule, this royal prerogative sit with the concept of co-design?

Mr Pauley: Is this the prerogative?

Mr Frew: Yes.

Mr Pauley: It is not the wider bit about the codes and the practices.

Mr Frew: No. The power to appoint a specialist.

Mr Pauley: It is not a policy that has been subject to co-design, as I understand it to mean when it is used to refer to consulting the third sector or when it was used, for example, in the draft Programme for Government and for other things, that our policymaking processes and that should be subject to co-production and co-design or the different terms that relate to consultation with wider stakeholders.

Mr Frew: In your answers, you have basically justified having the power by saying that it has not been used this term and has only been used once ever. Am I correct in saying that you said, "We have this power, but it has not been used, except once, and that was a one-off"?

Mr Pauley: I do not think that I ever said that the power was justified. I said, as reported in the response to the Committee, that this is a power that, if it were removed, would remove the capacity of the First Minister and the deputy First Minister to appoint a specialist or expert or whatever an emergency situation might require. I also said that, looking forward, as is in the written submission, there are aspects of Civil Service reform that are being kept under review. We were asked what it means for the provision to be kept under review, and I have alluded to the fact that we believe that the Civil Service Commissioners, the requirements on our Civil Service for recruitment, our ability to recruit and the exemptions from the recruitment process, where the full rigour of the merit principle must be applied, are different here from elsewhere. There may be a time when we need expertise to take things forward as expeditiously as possible, but I have no example of that or thought of what the situation may be, and I know of no part of our current Administration that is considering using the power at this time.

Mr Frew: You started your answer by saying that you never said that the power was justified: are you saying that it is not justified?

Mr Pauley: No. I am explaining the impact, as the Department sees it, of the clause, should it remove the power from the First Minister and the deputy First Minister.

Mr Frew: Again, I do not understand this. Does the power allow the First Minister and the deputy First Minister to appoint one person of expertise or more than one?

Mr Hughes: Only ever one at any time.

Mr Frew: You have painted a scenario in which we are in a bit of a sticky situation, for which we really need to get in expertise from somewhere, and we cannot find it anywhere — anywhere — in our Civil Service. Is there not a real danger that, by plumping for and appointing only one expert, one scientist or one medical expert, you are limiting the scope of your expertise? We know that science and expertise vary on any subject matter.

Mr Pauley: Yes. That would be a risk in the scenario that you have painted. I indicated that I cannot see a scenario in which we would want to use that power again, but that would be a risk in your scenario.

Mr Frew: Are there any other ways in which the Civil Service can temporarily appoint experts to get it through a period of review or emergency?

Mr Pauley: Yes.

Mr Frew: Will you explain what those are, please?

Mr Pauley: The Chair outlined how, through our procurement approaches, some framework contracts are in place for some types of expertise or for individuals, depending on whether they are available or whether they offer their services on a consultancy basis. I was going to say that that happens every day of the week, but I will say that it is common for that to happen. It happened on many occasions as we prepared for Brexit, and it happens where other particular aspects of expertise have been sought by the Civil Service.

Mr Frew: You say that it is common. Is the Civil Service comfortable instigating that function? Is it an everyday, mundane area of work, with nothing controversial or contentious about it? Do you simply employ a temporary consultant to advise on a certain subject?

Mr Pauley: Beyond the fact that the use of consultancy, and the extent and nature of it, has been much criticised in the past, it is not a controversial process. It is a common process. It happens often. The overall level of consultancy, however, is monitored because of those other wider uses to make sure that we are not using consultants for something that could be done internally.

Mr Frew: You are here —.

The Chairperson (Dr Aiken): Paul.

Mr Frew: Last question. You are here at the behest of your Minister. An awful lot of your answers in red in the paper start off, "The Minister has", "The Minister is bound" or, "The Minister has the power". You, as civil servants, are bound by your Minister. Is there a concern, when you are talking about other Ministers having the power to —?

Mr Hughes: Sorry, but can you point us to some examples? Some sentences start that way for different reasons.

Mr Frew: I read it earlier. It is in the tabled papers. I certainly was paraphrasing, but let me check. Under the response on clause 1(2), you state:

"In terms of their role within government, individual SpAds are accountable to the Minister who appointed them."

Under the response on clause 1(3), you state:

"Ministers are responsible for the conduct and discipline of their special advisers".

At the top of the next page, it is stated:

"Whilst the investigation of misconduct may, for instance, be undertaken by a civil servant, the Minister is ultimately responsible for the discipline of a special adviser, though the civil service may be expected to contribute".

In answer to question 2.d., you state:

"All Ministers have agreed the current codes and guidance."

We are putting a lot of weight on Ministers here. All Ministers.

Mr Hughes: The answer is there under clause 1(3), which refers to all Ministers or the Minister who has appointed the special adviser. It is a point on which everyone is agreed: that there has to be absolute clarity that the appointing Minister is responsible for the discipline of a special adviser.

The answer at 2.d. outlines how the Executive have agreed the codes and guidance that exist. In some places, the answer will refer to the Minister of Finance, who has responsibility — I cannot think of an example for this instance — for the publication of the Civil Service code of ethics. That is a Department of Finance responsibility, under the Minister's direction and control. It depends on context, obviously, but there are areas in which the Minister of Finance has a responsibility. Some answers in the paper come from the Executive Office and therefore have been seen and agreed by the First Minister and the deputy First Minister, because it is an Executive Office remit.

Mr Frew: OK. That will do me, Chair.

Mr Wells: You have watched this place collapse for years on the back of absolutely appalling behaviour by spads. You are now sitting here advocating no real change other than a slightly beefed-up code to cover the affairs of spads. You have looked uncomfortable throughout the hearing, Mr Pauley. You are a gentleman of vast experience. You have been around here longer than me, and

that is saying something. I dare not tell you how long I have been around here. Are you uncomfortable with some of the things that you are being asked to say here this afternoon?

Mr Pauley: No.

Mr Wells: Having witnessed the absolute chaos that spads have caused to devolved government in Northern Ireland, you are personally standing over what you have been asked to say to the Committee.

Mr Pauley: Subject to the Chair's comments about the New Decade, New Approach agreement. During suspension, the Civil Service, on a number of occasions, through the head of the Civil Service and others, made it clear that it wanted our institutions back and called for that to happen, just as much as — in fact, more than — anyone, and we needed that. I fully concur with all the things that were said and done. We value and appreciate our institutions, because we live here too. These things are important to us.

As I intimated in reference to what you said, the New Decade, New Approach agreement acknowledged that change from what had happened in the past was necessary. I do not want to split hairs, but a couple of questions posed by the Committee were framed "in light of" previous events. My understanding is that the reference is to the RHI situation and others. Our Department, my Minister and the Executive have accepted all 377 findings in the RHI inquiry report. We have decided to accept them. I believe that New Decade, New Approach, whatever its standing — doubt has been raised here about whether it was an agreement — indicated that people wanted the institutions to come back to deliver public services again in Northern Ireland, if the approach that emerged during RHI, and more broadly, could be changed. If that can be delivered, do we want our institutions? Yes. Do I want them? Yes, I do. I believe in them.

Mr Wells: That is not the question that I asked. Are you comfortable with what you have been asked to say here today?

Mr Pauley: I am comfortable with the basis of New Decade, New Approach. People said that in light of the things that had happened, there had to be change, and they expected that there would be change. In all of this, I personally believe that people have to change and respond to that change, whether that is through legislation or codes. There are those who are committed to behaving badly. Every day, people break laws — that is commonplace — just as they can breach codes, but they have to be committed to all of the institution. That applies to Ministers, spads, civil servants and Members of the Assembly. It is about how we treat each other every day, and there have been questions about that today. There has to be a new approach across the full gamut.

Mr Wells: One of the things that emerged during the Red Sky issue was the conduct of Stephen Brimstone. I am interested not in the facts of that case but in the allegation that the conduct of the special advisers fell far below acceptable standards. The Minister was the only person who could take disciplinary action against Mr Brimstone, and he opted not to do so. How does that change under your code?

Mr Hughes: The critical change is to the ministerial code of conduct, which makes clear that the Minister is required, under that code of conduct, to ensure that the rules on the management and conduct of special advisers, including discipline, are adhered to.

Mr Wells: Who forces the Minister to do that?

Mr Hughes: I understand that a failure to fulfil the terms of the ministerial code of conduct is a breach of the Pledge of Office. One deals with such a breach through the Assembly rather than any other mechanism. An enforcement mechanism has been designed to be introduced, and it can, if necessary, help that. The disciplinary authority for Ministers rests in section 30 — I am sure that someone will correct me if I am wrong on that — of the Northern Ireland Act, where it falls to the Assembly. That insertion into the ministerial code of conduct is new. It had never been expressed so clearly at that level and with that degree of impact where a breach might have taken place.

Mr Wells: What happens if a Minister decides not to let the Assembly know what has been going on?

Mr Pauley: Our response to the Committee states that there would be a key role for the Civil Service in this process, depending on the nature of the behaviour. Certain behaviours, such as bullying and harassment, cannot be tolerated or accepted in our workplace, no matter who the perpetrator is. The Civil Service, if and when necessary, would intervene and go to the Minister and, if necessary, the head of the party. It would then be reported to the ministerial standards panel, and its investigation, carried out according to the outlined enforcement process, would be made public.

Parts of our enforcement mechanism are much stronger than those elsewhere, in that anyone can make a complaint. It is not confined to the Prime Minister or head of the Government, as it is elsewhere. There are tight timescales within which any investigation should be carried out. Whatever failing existed, if the Minister was not taking action, it would be the Civil Service's role to call that out and to intervene to say that such behaviour must not continue in our workplace. In the nature of different breaches, the code of conduct covers everything from how we conduct ourselves in our daily interaction with people to behaviour that could be illegal.

Mr Wells: Is that the same radical action that was taken when it was discovered that two super-spads were operating on the Falls Road and that information was being taken from Stormont Castle?

Mr Pauley: What happened in the past —.

The Chairperson (Dr Aiken): Jim, I think that you have made your point.

Mr Wells: OK. I will move on to my last question. The whole argument that you are dying in a ditch over — I think that you are very uncomfortable about dying in a ditch about this — is whether there should be a statutory code or legislation. We are all dancing on the head of that pin. The best legislation is legislation that never has to be used because it is a deterrent.

You have not convinced me that we could not have the best of both worlds: a statutory code and, overarching that, legislation. Then, when somebody steps out of line, you have that ultimate deterrent of a court case, with all the evidence having to be collected, the cross-examination and the disclosure of all documents. That is a real deterrent, far more so than any Civil Service investigation. Why can you not accept your idea of a code and Mr Allister's overarching legislation? What is wrong with that?

Mr Pauley: I have addressed a question previously as to whether I was uncomfortable with deviating from the basis and principles for which I am here, which is that I am under the direction of my Minister. The position of my Minister is that we do not believe that legislation is necessary in this area. The Executive have agreed new codes. They have agreed that, in other areas, there needs to be a changed approach. They have agreed that increased transparency and accountability need to be applied across a whole range of areas. I am entirely comfortable and agree with the fact that those changes need to happen and need to be taken forward.

Mr Wells: If your code will be so successful and so effective, why are you worried about there being legislation that may never have to be used?

Mr Hughes: I just want to add a point about the deterrent effect of legislation. We have to bear in mind the chilling effect, as it were, or the deterrent effect on someone doing the right thing in the circumstances if it means that they fall foul of the legislation. A code allows for the interpretation of what the rules and the breaches might be.

Mr Wells: As could legislation.

Mr Hughes: Once the legislation has determined that something is wrong, there may be a defence, absolutely, but having to consider the defence may well be a deterrent to or chilling element in someone doing the right thing.

Mr O'Toole: I will be brief. Earlier, we discussed clause 3, which is about the prerogative power to appoint civil servants. I want to absolutely clear, because I was not in Northern Ireland at the time, never mind Northern Ireland politics, that the only time when that was ever used was for David Gordon.

Mr Pauley: That is my understanding.

Mr O'Toole: Are you aware of any other discussions in which it was considered?

Mr Pauley: No.

Mr O'Toole: Fine. The purpose of it being there is to appoint someone to a Civil Service role. There are provisions whereby, as the Chair mentioned, you could appoint someone as a consultant — if you needed someone from PwC, if you needed an actuary for something or if you needed a lawyer or whatever — but this is about having the legislative power to appoint a civil servant in extremis. Is that what you are saying?

Mr Pauley: Yes.

Mr O'Toole: You talked about this earlier. David Gordon is a former journalist. Basically, he is a comms person/press officer, and I would not demean either role because I performed both. Of course, I regard them as highly expert and specialised roles, but others might not. What other roles do you imagine that power being used for, given that the Department has responded by saying that, effectively, it believes that the power should be retained, whatever about the transparency issues and the irregularity of it?

Mr Pauley: I indicated that I did not have an example or a role, but I know the type of role. It is common for a PwC-type person, for example, with expertise in trade to be recruited to the Department for the Economy to work on Brexit-type issues.

I cannot think of all the exemptions as I sit here, but the list of exemptions to the merit principle that is available to the Northern Ireland Civil Service through our Civil Service Commissioners is shorter than the one in GB. It does not include all those that can be applied by the Civil Service Commissioners in Britain.

The use of exemptions as a means of expediting a recruitment process is permissible by the Civil Service Commissioners. How and why ours is different is a question that we are thinking about, among others, in relation to future Civil Service reform.

If you compare the two lists of exemptions, you see that GB has a couple of categories that we do not, and those might be in the area into which you want to move. We would be happy to send you the two lists so that you can see that they are different.

The Chairperson (Dr Aiken): Yes, please. Thank you.

Mr O'Toole: I am thinking of examples in Whitehall when a body is set up and an appointment made. A few years ago, the UK Government set up a body on infrastructure and appointed Lord Adonis, a former Minister, to chair it. I presume that that will not have gone through an open competition based on Civil Service rules. If a similar public body were set up here, would that provision be more limited in terms of making that appointment? I really cannot see why that power is required, given that we are all finding it quite hard to give an example of where it would be used.

Mr Pauley: The example that you describe was much more akin to a public appointment. If he was to be paid, and I imagine that he was, it was certainly a public appointment as opposed to an appointment to the Civil Service.

Many people sit on advisory panels for the greater good. They provide those services for some hours per week for free, or it might be related to another role that they have. There are numerous scenarios where you can have advice and expertise. Experts write to us every day with their views about things that should be different.

Mr O'Toole: There is no rule that says that a special adviser has to be a party member or even a party sympathiser.

Mr Pauley: No.

Mr O'Toole: It just happens to be the case here that DUP, Sinn Féin, SDLP, UUP special advisers tend to have worked for, sympathise with or have been councillors for those parties, but that is not always the case in special adviser appointments. It could be that an urgent appointment is wanted. If

the First Minister and deputy First Minister decide that they need particular expertise, whether from David Gordon or anyone else, they could appoint a special adviser, and that person would have to comply with the special adviser code or the updated legislation that Mr Allister is putting forward, if it passes. That appointment could be made, could it not? Someone could be appointed in that way.

Mr Pauley: I believe so. When developing and considering the salary scales of special advisers, we looked at other jurisdictions. Pay bands with a difference of up to three points took into account that special advisers might bring expertise as well as a political perspective. Indeed, some of our special advisers, as well as being party members, have experience and a background in the area to which they have been appointed.

Mr O'Toole: I will be quick, because I know that Seán wants to come in. Is there a degree of circularity in saying that you —? Actually, I will leave it. I have asked enough questions.

Mr Lynch: Most answers today have provided clarification. Bill made a very good point, which was that, whether you have legislation or codes, if there is a culture of bad behaviour, that is different and will not change. Mr Wells asked, "What do you do with a Minister?". We know the case that he is talking about. Elections are the final arbiter in such cases, and the people of North Belfast made a decision on the Minister.

Mr Wells: Wrong Minister.

The Chairperson (Dr Aiken): Hold on. Go ahead, Seán.

Mr Lynch: I just wanted to say that it does not matter whether we have codes or legislation.

Mr McHugh: Tá faillte romhaibh anseo inniu fosta. You are very welcome here this afternoon. I want to reinforce Seán's point. A lot of our discussion has been about the appointment of special advisers. Matthew expanded on that. In many respects, a special adviser does not have to have a particular qualification. People can be experts and play significant roles in certain fields without having GCSEs, A levels, degrees or the like.

If we move away from looking at the appointment of advisers and qualifications, what is required out of New Decade, New Approach is a change of culture. You more or less confirmed that. A member referred to Mr Brimstone. Whether it is Mr Brimstone or Mr Johnston, that reflects a culture, and it is the very thing that has to change in every respect. The same member talked about Sinn Féin having two special advisers on the Falls Road. We do not have any special advisers in any office on the Falls Road operating independently of this institution in any way. I refute that entirely.

Mr Catney: This is not an attack, but, in the private sector, I am telling you, for £85,000, I would want people to have all the qualifications, skills and necessary experience that they could have.

Is there anything in the code of appointment to stop a Minister from appointing a chum and bringing him in with no qualifications, special skills or experience? There is nothing, is there?

Mr Pauley: There is nothing in there about what a Minister does before he informs the Civil Service of the appointment or about what he considers the job and role to be. The Civil Service role begins when we are told of the appointment, and issues such as that are taken into account when we determine the salary.

Mr Catney: I am speaking not only about the Minister of Finance but about all Ministers. I am just looking for good government.

Mr Allister raised this point, as did the former Commissioner for Public Appointments, who stated:

"as we have seen with the publication of the Code of Appointment for special advisers ... if a code is basically silent on procedures then it can be very easy to comply with".

What is your response to that?

Mr Pauley: The code of conduct for special advisers begins, very deliberately, by setting out the valuable role that special advisers can play and are expected to play in good government. The code

sets out what special advisers can bring to the role and how they interact with the Civil Service and Ministers. Advisers can go to certain places that are difficult for the Civil Service to go to in place of Ministers. They play a very valuable role in decision-making and the process of good government here.

Our expectation is that the job description for special advisers is the code of conduct for special advisers. Paragraphs 1 to 4 of that document set out the role that they are supposed to play. The code also details some roles that they cannot play. Our expectation is therefore that the people who are recruited to the role can perform those functions. The merit principle is set aside for spads, because it is accepted, I think by all, that special advisers should have a similar political affiliation or outlook to their Minister so that they can advise him or her. Special dispensation from the merit principle is allowed, but, as you said earlier, that could mean that they have no qualifications at all. I cannot, however, foresee a scenario in which Ministers would want to do that, as they would be left with a fistful of Executive papers twice a week, with little advice given on them.

Mr Catney: Can we get a criminal offence out of your code? Is there a tariff or are fines applied?

Mr Pauley: There are sanctions that can be applied to special advisers if they behave badly, in different ways. Most of the sanctions relate to the fact that complying with the special adviser code and the Civil Service code of ethics is part of a special adviser's contract. We received questions on the ways in which people can be disciplined for misconduct.

The Chairperson (Dr Aiken): It is up to the Minister to terminate the contract.

Mr Pauley: Normally, we would expect an investigation to be carried out if it is about something that happened in the Civil Service.

The Chairperson (Dr Aiken): The Minister is ultimately responsible for the spad.

Mr Pauley: Yes.

The Chairperson (Dr Aiken): If the spad has therefore done something that breaches the Civil Service code of conduct, he is, by your legal definition, in breach of contract.

Mr Pauley: Yes.

The Chairperson (Dr Aiken): He is in breach of contract. Who therefore terminates his contract? Is it the Civil Service or is it the Minister?

Mr Pauley: Ultimately, it has to be the Minister who does it, because he is the appointing authority. The last question in, I think, a series of five about one of the subsections was, "Would it be acceptable for no action to be taken?". Our response is a clear no. The Civil Service would have to take the issue further. There are certain behaviours and things that we cannot allow in our buildings. If special advisers are working among, with and alongside our employees, there are standards of behaviour and conduct that must be observed that are slightly different from political standards.

The Chairperson (Dr Aiken): Let us say that somebody breached cybersecurity or computer security or did something along those lines that is a very definite breach of the Civil Service code. Would you be allowed to exclude that special adviser from the building or the system, or would that be a ministerial decision?

Mr Pauley: The ultimate application of the sanction would have to be by the Minister.

The Chairperson (Dr Aiken): I appreciate that this has been quite a long day —

Mr Pauley: You are all right.

The Chairperson (Dr Aiken): — but there is an issue on which we have to ascertain the answer. Obviously, if the Minister does not impose the ultimate sanction, the Minister then comes before the Assembly, but what sanctions can the Assembly impose on the spad who is in breach of the code of conduct? The way in which I read the ultimate sanction is that, if the Minister does not do anything

about the spad, he or she somehow ends up in front of the Assembly, and the Assembly then decides. What is the sanction that the Assembly can use?

Mr Hughes: I would have to go back to the Northern Ireland Act, to, I think, section 30.

The Chairperson (Dr Aiken): Yes. I think that it is.

Mr Hughes: My recollection is that it is suspension of up to 12 months and that that can be renewed, but apologies if I cannot say that with absolute confidence. It has been a long time since I have looked at the Act. The sanction is therefore removal from office for a period.

The Chairperson (Dr Aiken): It would have to be done by cross-community vote in the Assembly.

Mr Pauley: Yes.

Mr Hughes: There is certainly a threshold.

The Chairperson (Dr Aiken): There would be a considerable threshold. We just needed to ask that.

Pat, are you finished?

Mr Catney: I was not. Thanks anyway. I want confidence built into the foundations of what we are trying to do as legislators.

I cannot see where the policing is here if the issue goes back to a Minister. As you have stated, Ministers appoint their special advisers, and spads then follow their Minister's direct line. There is no guarantee that we, as a legislative Assembly, can overturn or overrule a decision or speak of any wrongdoing that has happened.

I am looking for sanctions, tariffs or some accountability, and there does not seem to anything available. I am sorry, Chair, and this is an observation, but I find myself supporting Mr Allister's Bill more, the more that I hear.

Mr Pauley: The sanctions that can be applied to any civil servant are set out in our handbook. They range from a verbal warning to a written warning, right through to a formal written warning. Warnings can be about attendance or for behaving inappropriately by bullying staff. There are overarching degrees of misconduct. There are also elements about email security and being in breach of the code around gifts and hospitality.

The Chairperson (Dr Aiken): This speaks back to the role of a consultant. If you bring a consultant into an organisation, that consultant abides by the terms, rules and conditions of the organisation. The difference here is that, if a spad does something wrong and breaches the Civil Service code, unless the Minister agrees to sanction the spad and agrees with the sanction, the process goes all the way to the Minister being hauled in front of the Assembly, and the Assembly has to go through the entire process in order to get to a cross-community vote. That is the problem with the code.

Mr Pauley: If we all behave differently —.

The Chairperson (Dr Aiken): Yes, but we do not, so —.

Mr Pauley: If our parties here say that they are not going to behave differently, yes.

The Chairperson (Dr Aiken): We have had an example. I am really sorry for keeping you for this length of time, but this is important legislation. I started off quite agnostic about the Bill. The more evidence that I have heard, the more that I am becoming convinced that it is important that we go down the legislative route, as Pat said.

We are trying to extract emails from the Department. We are trying to do all sorts of things, but we are not seeing that cultural change. Anybody who comes to the Committee says every time, "It's a cultural change, and everything's changing". I will put my hands up. I am not being party political about this. I

am somebody who really wants to see Northern Ireland work and work well, and I am not seeing that change of culture. That is what bothers me.

Bill and David, thank you very much indeed. I know that we have probably been slightly more robust with you than we would like to be. Please take an apology from me for that. Thank you very much for coming to the Committee, and we look forward to seeing you again soon.

Mr Pauley: Thank you.