

Jim McManus  
Clerk, Committee for Finance  
Northern Ireland Assembly  
Belfast BT4 3SY

4 June 2020

Dear Mr McManus,

**Re: Draft Functioning of Government (Miscellaneous Provisions) Bill**

I am writing in response to your letter of 11 May 2020, addressed to Ms Bronwen Maddox, Director of the Institute for Government (IfG), in which you requested comments from the IfG on the draft Functioning of Government (Miscellaneous Provisions) Bill currently being considered by the Committee for Finance. I am responding as I lead our research on ministers and special advisers.

I would like to thank the committee for the invitation to contribute to its important task of scrutinising this piece of legislation. The role and regulation of special advisers are subjects that the IfG has taken an interest in over a number of years. We have also conducted research of various kinds into the operation of devolution in Northern Ireland and elsewhere across the United Kingdom. However, I should emphasise that most of our work on special advisers has focused on their role in Westminster and Whitehall, and we have not closely followed the debate about special advisers in the Northern Ireland Executive.

The IfG has consistently argued that special advisers play an important role in supporting ministers to deliver upon their objectives, and also that in the context of multi-party government, there is an additional need for advisers who can engage in political negotiations, in order to help governments reach collective decisions.

At the same time, the IfG agrees that there is scope for improvement in the appointment and accountability arrangements relating to special advisers. In a [recent article on the IfG website](#) I argued that the higher public profile of special advisers such as Dominic Cummings and David Frost meant that it was “entirely legitimate for there to be greater scrutiny of what advisers actually do, particularly from parliamentarians”, and that the existing code of conduct for special advisers ought to be updated. At the same time, “it is government ministers themselves who are responsible for what advisers do and how their conduct should be judged.” This leads to the conclusion that there should be greater transparency about the precise role that special advisers fulfil within government.

In terms of the specific provisions of the Bill, I thought it would be helpful to respond to some of the objectives as outlined in paragraph 3 the Explanatory and Financial Memorandum, rather than particular clauses. I have not included comments on all of the objectives, and particularly do not feel qualified to comment on objectives l) and m) on the criminalisation of particular actions by ministers or special advisers. Below are some more detailed thoughts on some of the objectives from the EFM:

**b) to provide that special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service;** this seems like a sensible objective. The [code of conduct for special advisers](#) in the UK government makes clear that special advisers are temporary civil servants and includes, as an annex, the Civil Service Code with which all civil servants working for the UK government must comply (although special advisers are exempt from its provisions on merit-based recruitment and the requirement to operate with objectivity and impartiality, to recognise the political nature of their appointment and role).

**f) to reduce the number of special advisers within the Executive Office from 8 to 4;** the Institute's view is that a larger number of special advisers is not a bad thing per se; the question is how to ensure that a larger team has a proper understanding of their minister's views and priorities.

Clearly, the Executive Office is not a direct comparator of 10 Downing Street or the Cabinet Office, and the multiparty government in Northern Ireland is not the same as a coalition government at the UK level. However, the experience of the 2010-15 Conservative-Liberal Democrat government suggests that more advisers are particularly helpful for a multi-party government, as more communication between ministers and their teams is necessary. David Cameron came to office pledging to reduce the [number of special advisers](#) and then saw the number steadily increase throughout the coalition years, not least as Nick Clegg, as deputy prime minister, realised the benefits of a larger team of advisers. The number of advisers did then decrease somewhat after the return to single-party government following the 2015 general election.

**h) to extend the powers of the Commissioner for Standards to include investigation of complaints against ministers;** under the UK government's Ministerial Code, the prime minister may refer investigations of complaints against ministers to the [independent adviser on ministers' interests](#). However, as the Code makes clear, it is the prime minister who is ultimately the judge of ministers' behaviour.

I hope this is helpful to you and the members of your committee.

With best wishes,

**Tim Durrant**

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*(letter submitted electronically)*