



Northern Ireland
Assembly

Functioning of Government (Miscellaneous Provisions) Bill
Annotated Marshalled List of Amendments
Further Consideration Stage
Tuesday 19 January 2021

Amendments tabled up to 9.30am Wednesday, 13 January 2021 and selected for debate

Amendment 1 [*Made*]

Clause 1, Page 1, Line 5

Leave out ‘amend subsection 3 to read “Within’ and insert -
‘for subsection (3) substitute—
“(3) Within’

Minister of Finance

Amendment 2 [*Made*]

Clause 1, Page 1, Line 7

Leave out ‘under’ and insert ‘mentioned in’

Minister of Finance

Amendment 3 [Made]

Clause 1, Page 1, Line 12

After ‘Service’ insert ‘, as that code applies to special advisers,’

Minister of Finance

Amendment 4 [Made]

Clause 1, Page 1, Line 15

At end insert -

- ‘(3C) For the purposes of subsection (3A), the following are not Ministerial interference—
- (a) the carrying-out of a role given to a Minister by the disciplinary code mentioned in that subsection;
 - (b) the termination of a special adviser’s appointment by the appointing Minister outside of, or before the conclusion of, any process or procedure under that code.’

Minister of Finance

Amendment 5 [Made]

Clause 1, Page 1, Line 16

Leave out subsection (4)

Minister of Finance

Amendment 6 [Made]

Clause 1, Page 1, Line 18

Leave out ‘After subsection (3)(b),’ and insert ‘In section 8(3) (contents of code for appointments), after paragraph (b)’

Minister of Finance

Amendment 7 [Made]

Clause 1, Page 2, Line 1

Leave out from ‘above’ to ‘(Grade 5)’ on line 2 and insert ‘at a level higher than the highest level under the published pay scale applicable to an Assistant Secretary (Grade 5) in the Northern Ireland Civil Service’

Minister of Finance

Amendment 8 [Made]

Clause 1, Page 2, Line 2

At end insert -

‘(5A) In section 8, after subsection (5) insert—

“(6) If, at any time after a special adviser is appointed (and whether or not the appointment has taken effect), a senior officer in the Department of Finance is satisfied that a person exercising functions in respect of the appointment did not have regard to the code, the Department of Finance must as soon as reasonably practicable after that time give the special adviser notice terminating the appointment with effect from the giving of the notice, but this—

(a) does not apply if the appointment otherwise terminates before the notice is given, and

(b) is without prejudice to the person’s rights (if any) to payment in lieu of notice.

(7) In subsection (6) “senior officer” has the meaning given by Article 2(3) of the Departments (Northern Ireland) Order 1999.”.’

Minister of Finance

Amendment 9 [Made]

Clause 1, Page 2, Line 4

Leave out ‘the duly appointed’ and insert ‘a person duly appointed as a’

Minister of Finance

Amendment 10 [Made]

Clause 1, Page 2, Line 5

After first ‘the’ insert ‘Minister’s’

Minister of Finance

Amendment 11 [Made]

Clause 1, Page 2, Line 6

Leave out ‘post’ and insert ‘person’s post as a special adviser’

Minister of Finance

Amendment 12 [Made]

Clause 1, Page 2, Line 6

Leave out ‘a permanent secretary’ and insert ‘the permanent secretary to a Northern Ireland department’

Minister of Finance

Amendment 13 [Made]

Clause 1, Page 2

Leave out lines 10 to 13 and insert -

‘(2) A special adviser—

- (a) in carrying out the functions of their post, is not to be supervised or directed by,
 - (b) is not to report on their carrying-out of the functions of their post to, and
 - (c) is not answerable for their carrying-out of the functions of their post to,
- any person other than their appointing Minister, save as permitted by subsection (3) or (4) or section 7(3) or required by section 7(3A).

(3) A special adviser’s appointing Minister may authorise the special adviser, to such extent as the appointing Minister specifies, to be directed by or report to a junior Minister in the same department as the appointing Minister.

(4) Where a special adviser is a member of a profession or organisation, subsection (2) does not stop them being answerable to the profession or organisation for acts done in carrying out the functions of their post if they would be similarly answerable—

- (a) for corresponding acts done in carrying out the duties of an employment otherwise than as a special adviser, or
- (b) for corresponding acts done otherwise than in the course of an employment.’.

Minister of Finance

Amendment 14 [Made]

Clause 2, Page 2, Line 16

At the beginning insert -

‘(1) In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—

- (a) in paragraph (3) omit sub-paragraph (d) (and the “or” preceding it); and
- (b) in paragraph (4) omit the words after “paragraph (2)(b)”.

(2) In consequence of subsection (1),’

Minister of Finance

Amendment 15 [Made]

Clause 3, Page 2, Line 20

At the beginning insert -

‘In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—

- (a) in paragraph (2), omit sub-paragraph (c) (and the “or” preceding it);
- (b) omit paragraph (4A); and
- (c) in paragraph (5), omit “or (c)”.

(1A) In consequence of subsection (1),’

Minister of Finance

Amendment 16 [Made]

Clause 4, Page 2, Line 28

Leave out ‘on 31 March 2021’ and insert ‘at the end of the period of three months, beginning with the day on which this Act receives Royal Assent’

Mr Jim Allister

Amendment 17 [Made]

Clause 4, Page 2, Line 30

Leave out from ‘on’ to ‘2021’ on line 31 and insert ‘at the end of the period of three months, beginning with the day on which this Act receives Royal Assent’

Mr Jim Allister

Amendment 18 [Made]

Clause 5, Page 2, Line 41

Leave out ‘the complaint’ and insert ‘in the case of a complaint that it’

Minister of Finance

Amendment 19 [Made]

Clause 5, Page 3, Line 6

Leave out subsection (6) and insert -

‘(6) In section 17(3), at the appropriate place insert—

“‘the Ministerial Code’ means the Ministerial Code of Conduct set out in Schedule 4 to the 1998 Act;”.’

Minister of Finance

Amendment 20 [Made]

Clause 5, Page 3, Line 9

Leave out ‘for the purposes of defining “relevant time”’ and insert ‘, in the definition of “relevant time”,’

Minister of Finance

Amendment 21 [Not moved]

Leave out Clause 6 and insert -

‘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 during which any substantive Ministerial decision including the authorisation of spending, or the development of legislation in the Northern Ireland Assembly is taken.’

Mr Matthew O’Toole

Mr Pat Catney

Amendment 22 [Made]

Leave out Clause 6 and insert -

‘Records of meetings

6.—(1) The permanent secretary to a Northern Ireland department must ensure that relevant arrangements are put in place.

(2) “Relevant arrangements” are arrangements designed to ensure—

- (a) that an appropriate written record of each relevant meeting is compiled by the civil servant, or one of the civil servants, attending the meeting,
- (b) that, where an official Ministerial decision is made at a meeting other than a relevant meeting, an appropriate written record of the decision is compiled by a civil servant as soon as reasonably practicable after the decision is first communicated to a civil servant, and
- (c) that the written records mentioned in paragraphs (a) and (b) are retained in accordance with the department’s policy on the retention and disposal of records.

(3) A “relevant meeting” is a pre-arranged meeting set up to conduct official business—

- (a) where those attending include—
 - (i) at least one Minister, and
 - (ii) at least one civil servant serving in the department, or
- (b) where those attending include—
 - (i) at least one special adviser,
 - (ii) at least one civil servant serving in the department, and
 - (iii) at least one person who is not a Minister, is not a special adviser and is not a civil servant,

but this is subject to subsection (4).

(4) The following are not relevant meetings—

- (a) a meeting of the Assembly;
- (b) a meeting of any committee of the Assembly other than the Executive Committee of the Assembly;
- (c) a meeting of any sub-committee of the Assembly other than a sub-committee of the Executive Committee of the Assembly;
- (d) a meeting within subsection (3)(a) where the official business does not include anything other than the presence of, or a presentation by, the Minister.

(5) An “official Ministerial decision” is a decision made by a Minister—

- (a) under any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954),
- (b) in exercising any of the prerogative or other executive powers of Her Majesty in relation to Northern Ireland, or
- (c) otherwise in the course of official business.

(6) In this section “civil servant” means a person serving in the Northern Ireland Civil Service who is not a special adviser.’

Minister of Finance

Amendment 23 [Made on Division]

Leave out Clause 7 and insert -

‘Presence of civil servants

7.—(1) A Minister, or special adviser, who holds a meeting with a third party about official business must take such steps as are reasonable to ensure that the meeting is attended by at least one person serving in the Northern Ireland Civil Service who is not a special adviser.

(2) Subsection (1) does not apply if the meeting is for liaison with the Minister’s political party.

(3) In this section “third party” means a person who is not acting in the person’s capacity as—

- (a) a Minister or a Minister of the Crown or a member of the Scottish or Welsh Government or a junior Scottish Minister,
- (b) a Minister of the Government of Ireland,
- (c) a member of—
 - (i) the Assembly,
 - (ii) the House of Commons,
 - (iii) the House of Lords,
 - (iv) the Scottish Parliament,
 - (v) Senedd Cymru,
 - (vi) Dáil Éireann, or
 - (vii) Seanad Éireann,
- (d) a member of the Assembly’s staff,
- (e) a person serving in any part of the civil service of the State,
- (f) the Attorney General, or
- (g) a member of the Attorney General’s staff.

(4) The duty under subsection (1) applies only so far as it is exercisable in or as regards Northern Ireland.’

Minister of Finance

Amendment 24 [Not called]

Clause 7, Page 3, Line 22

After ‘party’ insert ‘or other Members of the Assembly’

Mr Jim Allister

Amendment 25 [Made]

Clause 8, Page 3, Line 25

Leave out from ‘, other’ to ‘then,’ on line 26 and insert ‘being lobbied,’

Minister of Finance

Amendment 26 [Made]

Clause 8, Page 3, Line 27

Leave out from ‘provide’ to end of line 28 and insert ‘as soon as reasonably practicable provide their department with a written record of the lobbying; and the department must retain the record in accordance with its policy on the retention and disposal of records.’

Minister of Finance

Amendment 27 [Made]

Clause 8, Page 3, Line 33

After ‘to’ insert ‘seek,’

Minister of Finance

Amendment 28 [Made on Division]

Clause 8, Page 3, Line 40

Leave out from second ‘or’ to end of line 41

Minister of Finance

Amendment 29 [Not moved]

Clause 8, Page 4, Line 2

At end insert -

‘(3A) The Minister may determine to waive compliance with subsection (1) if the subject matter is inconsequential.’

Mr Jim Allister

Amendment 30 [Made]

Clause 8, Page 4, Line 5

After ‘Committee’ insert ‘of the Assembly or any sub-committee of that Committee or any other committee or sub-committee of the Assembly’

Minister of Finance

Amendment 31 [Not moved]

Clause 8, Page 4, Line 6

After ‘party’ insert ‘or other Members of the Assembly’

Mr Jim Allister

Amendment 32 [Made]

Clause 8, Page 4, Line 6

After ‘party’ insert ‘or members of the Assembly’

Minister of Finance

Amendment 33 [Made]

Clause 8, Page 4, Line 6

At end insert -

- ‘(c) made at a meeting attended by a person serving in the Northern Ireland Civil Service who is not a special adviser,
- (d) received personally by a Minister or special adviser after having been first received and recorded by a person serving in the Northern Ireland Civil Service who is not a special adviser, or
- (e) made to a Minister by a member of the public in their capacity as a member of the public, or in their capacity as a community representative, and relating to a matter in which the person

making the communication has only the same interest as all other members of the public or all other members of a section of the public.’

Minister of Finance

Amendment 34 [Negatived on Division]

New Clause

After clause 8 insert -

‘Use of official systems

8A.—(1) A Minister or special adviser when communicating on official business by electronic means should 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 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 of consequence relating to departmental matters.’

Mr Jim Allister

Amendment 35 [Made]

Clause 9, Page 4, Line 20

At end insert -

‘(4) For the purposes of subsection (3)(a), two people are partners if—

- (a) they are civil partners of each other, or
- (b) they are not married to, or civil partners of, each other but are living together as if spouses of each other.

(5) For the purposes of subsection (3)(a) “close family member”, in relation to a person, means someone who is—

- (a) a parent, or parent-in-law, of the person,
- (b) a child of the person,
- (c) a whole-blood sibling of the person, or
- (d) the spouse or civil partner of someone within paragraph (b) or (c).’

Minister of Finance

Amendment 36 [Made]

Clause 10, Page 4, Line 24

Leave out ‘, civil servant’

Mr Jim Allister

Amendment 37 [Not called]

Clause 10, Page 4, Line 24

Leave out from ‘, civil servant’ to end of line 26 and insert ‘or special adviser to communicate official information to another for the financial benefit or other improper advantage of any person or third party, except for a communication arising in the course of liaison with the Minister’s political party.’

Mr Matthew O’Toole

Mr Pat Catney

Amendment 38 [Made]

Clause 10, Page 4, Line 25

Leave out ‘, directly or indirectly,’

Minister of Finance

Amendment 39 [Made]

Clause 10, Page 4, Line 26

Leave out ‘financial or other improper’ and insert ‘improper (financial or other)’

Minister of Finance

Amendment 40 [Made]

Clause 10, Page 4, Line 26

Leave out ‘or third party’

Minister of Finance

Amendment 41 [Not called]

Clause 10, Page 4, Line 38

At end insert -

‘(5) In this section “civil servant” means a person serving in the Northern Ireland Civil Service who is not a special adviser.’

Minister of Finance

Amendment 42 [Made]

Clause 10, Page 4, Line 38

At end insert -

‘(6) In this section “statutory obligation” means—

- (a) an obligation under a statutory provision, as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954, or
- (b) an obligation under any legislation for the time being in force in any part of Great Britain or in any country or territory outside the United Kingdom.’

Minister of Finance

Amendment 43 [Made]

Clause 11, Page 4, Line 40

Leave out ‘Ministers and their departments’ and insert ‘A Minister and their department’

Minister of Finance

Amendment 44 [Made]

Clause 13, Page 5, Line 16

Leave out ‘Ministers and their officials’ and insert ‘The Minister in charge of a Northern Ireland department, or the department,’

Minister of Finance

Amendment 45 [Made on Division]

Clause 13, Page 5, Line 18

Leave out ‘in advance of it being submitted’ and insert ‘no longer than 7 days following submission’

Mr Matthew O’Toole

Mr Pat Catney

Amendment 46 [Made]

Clause 13, Page 5, Line 20

Leave out 'Ministerial approval being granted' and insert 'its being approved by the Executive Committee of the Assembly'

Minister of Finance

Amendment 47 [Made]

Clause 13, Page 5, Line 22

Leave out '(1)' and insert '(2)'

Minister of Finance

Amendment 48 [Made]

Clause 14, Page 5, Line 26

At the beginning insert -

'(A1) Section 1(3) comes into operation at the end of the period of 6 months beginning with the end of the day on which this Act receives Royal Assent.'

Minister of Finance

Amendment 49 [Made]

Clause 14, Page 5, Line 26

Leave out subsection (1)

Mr Jim Allister

Amendment 50 [Not called]

Clause 14, Page 5, Line 26

After '3(1)' insert 'and (1A)'

Minister of Finance

Amendment 51 [Not moved]

Clause 14, Page 5, Line 28

Leave out ‘other’

Mr Jim Allister

Amendment 52 [Made]

Clause 15, Page 5

Leave out lines 34 and 35

Minister of Finance

Amendment 53 [Made]

Clause 15, Page 5, Line 36

Leave out “the Minister” and insert “Minister”

Minister of Finance

Amendment 54 [Not called]

Clause 15, Page 5, Line 41

At end insert -

“close family members” means—

- (a) parent or parent-in-law;
- (b) child;
- (c) brother or sister; and
- (d) spouse or partner of any person set out in paragraphs (b) or (c).’

Mr Jim Allister

Amendment 55 [Made]

Clause 15, Page 6

Leave out lines 1 to 4

Minister of Finance

Amendment 56 [*Made*]

Long Title

Leave out from ‘and Article 3’ to ‘section 17’ and insert ‘, repeal the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007, repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016, amend sections 17 and 27’

Mr Jim Allister