



Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021

CHAPTER 3

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Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021

CHAPTER 3

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Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021

2021 CHAPTER 3

An Act to amend sections 7 and 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013, 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 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. [22nd March 2021]

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.

(2) In section 7 (Code of Conduct), for subsection (3) substitute—

“(3) Within the Executive Office the code may permit a special adviser to exercise any power mentioned in subsection (2)(b) in relation to another special adviser in that office.”.

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

“(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, as that code applies to special advisers, and that there can be no Ministerial interference.

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(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.

(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.”.

(4) In section 8(3) (contents of code for appointments), after paragraph (b) insert—

“(c) must not be remunerated 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.”.

(5) 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.”.

(6) After section 8, insert—

“8A(1) A Minister must ensure that only a person duly appointed as a special adviser in the Minister's department will exercise the functions, enjoy the access and receive the privileges of the person's post as a special adviser; and the permanent secretary to a Northern Ireland department 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.

(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,

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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.”.

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

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), the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 is repealed.

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

3.—(1) 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)”.

(2) In consequence of subsection (1), the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 is repealed.

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

Special Advisers in the Executive Office

4.—(1) Any special adviser in post in the Executive Office under the provisions of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007 shall cease to hold office at the end of the period of three months, beginning with the day on which this Act receives Royal Assent.

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(2) Any person in post under the provisions of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 shall cease to hold office at the end of the period of three months, beginning with the day on which this Act receives Royal Assent.

(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.

(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.

(2) In section 17(1)(a) after “Part” insert “, provided the Commissioner is satisfied in the case of a complaint that it is not frivolous or vexatious or otherwise an abuse of the complaints process”.

(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), at the appropriate place insert—

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

(7) In section 17(3), in the definition of “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.—(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.

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(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.

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—

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- (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.

Record of being lobbied

8.—(1) In the event of a Minister or special adviser being lobbied, the Minister or (as the case may be) special adviser must 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.

(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 seek, make or amend primary or subordinate legislation;
- (b) the development, adoption or modification of any other policy of the department; or
- (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.

(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—

- (a) made in proceedings of the Northern Ireland Assembly or the Executive Committee of the Assembly or any sub-committee of that Committee or any other committee or sub-committee of the Assembly,
- (b) arising in the course of liaison with the Minister's political party or members of the Assembly,
- (c) made at a meeting attended by a person serving in the Northern Ireland Civil Service who is not a special adviser,

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- (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.

Register of interests

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.

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

(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).

Offence of unauthorised disclosure

10.—(1) Without prejudice to the operation of the Official Secrets Acts 1911 to 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 or special adviser to communicate official information to another for the improper (financial or other) benefit of any person.

(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.

(3) A person is taken to have shown the fact mentioned in subsection (2) if—

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- (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).
- (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.
- (5) 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.

Accountability to the Assembly: provision of information

11. A Minister and their department 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—

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

Biennial report

12. The First Minister and deputy First Minister, having consulted with the Civil Service Commissioners for Northern Ireland, the Northern Ireland Public Services Ombudsman, the Comptroller and Auditor General for Northern Ireland and the Commissioner for Public Appointments for Northern Ireland, and having considered any 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.

Assembly scrutiny of the Executive’s in-year monitoring process

13.—(1) The Minister in charge of a Northern Ireland department, or the department, must provide the relevant Assembly committee with a written or oral briefing on the department’s submission to each monitoring round no longer than 7 days following submission to the Department of Finance.

(2) The Department of Finance shall publish the outcome of each monitoring round within 7 days of its being approved by the Executive Committee of the Assembly.

(3) Within 14 days of the publication of the outcome of the monitoring round provided for in subsection (2), the Minister of Finance must lay before the

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Northern Ireland Assembly a statement specifying the changes to each department's net budget allocation as a result of this exercise.

General

Commencement

14.—(1) 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.

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

Interpretation

15. In this Act—

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

“Minister” means—

(a) the First Minister or deputy First Minister,

(b) a Northern Ireland Minister,

(c) a junior Minister,

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

Short title

16. This Act may be cited as the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021.

SCHEDULE

Section 4(4)

TRANSITIONAL PROVISIONS: TERMINATION PAYMENTS

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.
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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