

NICS Records Management Protocol for Special Advisers

Background

1. Special Advisers are temporary civil servants. The appointment of Special Advisers (SpAds) is legislated for under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999, as amended.¹ In January 2020 the Department of Finance published a revised *Code Governing the Appointment of Special Advisers*² (under Section 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013³), and *Code of Conduct for Special Advisers* (under section 7).
2. As temporary civil servants, Special Advisers are subject to the NICS *Code of Ethics*⁴ except for the requirements of impartiality and objectivity and the NICS *Staff Handbook* Standards of Conduct.⁵ In addition, they are required to comply with the Code of Conduct for Special Advisers. This guidance is intended to assist Special Advisers, and the staff supporting them, to apply the requirements of these Codes in practice.

Code of Conduct for Special Advisers, 2020

3. The updated *Code of Conduct* includes guidelines around transparency and record keeping, stipulating that:
 - Special Advisers must keep accurate official records, including minutes of relevant meetings, and handle information as openly and transparently as possible within the legal framework
 - Special Advisers must use official email systems for communications relating to official business. Exceptionally, where this is not possible, the Special Adviser must copy any message to their official email account, and

¹ <https://www.nicscommissioners.org/legislation.htm>

² <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/THE%20CODE%20GOVERNING%20THE%20APPOINTMENT%20OF%20SPECIAL%20ADVISERS%20-%20FINAL%20-%202020%20JANUARY%202020.pdf>

³ <http://www.legislation.gov.uk/nia/2013/8/section/8>

⁴ https://www.nicscommissioners.org/wp-content/uploads/2015/09/nics_code_of_ethics.pdf

⁵ <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Standards%20of%20Conduct%20-%20version%2018.0%20-%20June%202017.pdf>

- Information generated in the course of government business must be handled in accordance with the requirements of the law (including the Freedom of Information Act, GDPR/ Data Protection Act, and the Public Records Act), regardless of how it is communicated

Governance

4. The information handled by a Special Adviser can originate from a wide range of sources, including a submission from a Business Area, Assembly Questions, Correspondence, Invitations, etc. Adhering to this guidance will ensure good records management, and compliance with the legislation outlined in the *Special Adviser Code of Conduct*.
5. Suitable Information Governance arrangements must be put in place to support Special Advisers: Departmental Private Offices will appoint an Information Asset Owner (IAO, likely to be a Private Secretary or DALO), who will undertake IAO training to understand their role and responsibilities.
6. While final responsibility lies with the Adviser, including deciding what is required to be saved, in practice records management tasks will usually be carried out on their behalf by Private Office staff; it is important that these arrangements be documented (see also paragraph 8 below).
7. Special Advisers should familiarise themselves with the relevant records management policies and procedures for their Department. They will also have the same access to the expert advice of the department's records managers, Data Protection Officer and other specialists where required.

Email

8. Special Advisers will have an official departmental email account created for their use.⁶ As with all civil servants, the 3-month rule will be applied, under which any emails not filed into HPRM before 90-days have elapsed will automatically be deleted. (This reduces the load on the system, and ensures GDPR compliance.)
9. Special Advisers will be responsible for working with the Private Office to agree clear procedures to ensure the Special Adviser's mailbox and associated emails are appropriately managed and all relevant emails are saved to HPRM within the 3 month time span on the mailbox.

⁶ Varies between departments.

10. When a Special Adviser leaves or transfers to another department, the adviser's mailbox will not be retained. Any information within the mailbox considered to be a Departmental record must be saved to HPRM prior to the mailbox being deleted.
11. Use of private email accounts are an exceptional basis as provided for in the Code of Conduct, or other media used for official business will still form part of the official record and be subject to Fol, etc.⁷

HPRM/ TRIM

12. Within Private Offices, one or more suitably trained HPRM Power Users/ Local Information Managers should be identified, and provide HPRM first-line support to the Private Office and Special Adviser, including the creation of containers.⁸
13. An HPRM account (created as an external location) may be set up for the Special Adviser, if required, with appropriate access to the relevant areas of their departmental file-plan. The Power User and the departmental records team can provide advice on where within the fileplan this information should be filed. Again, while operating under the direction of the Special Adviser, it is likely that the actual filing will be done by a member of staff in the Private Office. If a Special Adviser wants to use HPRM themselves, e.g. to search for information, they should complete the end user eLearning course available on LInKS, the NICS training platform.
14. The benefits from proper use of HPRM include:
- All documentation and any associated revisions relating to a subject are retained in the one HPRM container and accessible to all the relevant appropriate parties
 - The impact on users' mailboxes and the email system is reduced by allowing documents to be shared as an HPRM link rather than as an attachment

⁷ See ICO guidance: https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf

⁸ Some departments have a central function for container creation; in others, the originating business area creates the container and grants access.

- A reduction in duplications, multiple drafts, versions being retained outside HPRM, etc., so minimising the administrative impact when requests for information are received by Departments
- The department's Retention and Disposal Schedules can easily be implemented, an important part of GDPR compliance

Knowledge Network (KN2)

15. KN2 is designed as a casework tracking system, which generates a case number for correspondence, submissions and invitations received in the Private Office; HPRM is the NICS' official records repository, therefore KN2 should only be used to log and track their status. Power Users in the Private Office can create an HPRM container for each case, reference it in KN2, and provide access to the appropriate Business Area. Staff should ensure anything generated by KN2 that requires being retained longer term, e.g. commissioning notes, is saved into the container.

Paper Records

16. The same principles apply to any paper records generated. While the Special Adviser retains ultimate responsibility for ensuring that their output is accurately recorded, support staff will carry out the actual filing.

Access to Papers of a Former Minister

17. There is a convention, set out in the Cabinet Office's *Cabinet Manual*⁹, that Ministers and Special Advisers of an incoming administration may not see the papers of a former administration of a different political party that indicate the views of their predecessors, including the advice they received from officials and correspondence. This does, however, need to be balanced against the requirement for continuity. Any such requests should be referred to the relevant permanent secretary who may wish to take the advice of the Head of the Civil Service. In relation to FOI requests where Ministerial approval is required for the purposes of a relevant exemption relating to papers of a previous Administration eg Section 36, the Attorney General will act as the accountable

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf



person.

18. A Department should normally, if requested by its Minister, provide access to departmental papers on a specific issue during a period in which there was no Minister. However, if the department believes that providing access might:

- reasonably breach the Memorandum of Understanding between the UK government and the Devolved Administrations
- otherwise damage inter-administration trust
- breach a duty of confidence, or
- be contrary to the public interest

the matter should be referred to the relevant Permanent Secretary who may wish to seek the advice of the Head of the Civil Service.