



# Civil Service (Special Advisers) Act (Northern Ireland) 2013

## 2013 CHAPTER 8

An Act to amend the law on special advisers in the Northern Ireland Civil Service.  
[8th July 2013]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Meaning of “special adviser”**

- 1.—(1) A person (P) is a special adviser if subsections (2) to (4) apply.
- (2) P is appointed to a position in the Northern Ireland Civil Service by a Minister.
- (3) P is appointed only in order to advise the Minister.
- (4) The terms and conditions of the appointment provide that P will cease to hold that position on or before the date the Minister ceases to hold office.

### **Special advisers: serious criminal convictions**

- 2.—(1) Subject to subsection (2) and section 3, a person is not eligible for appointment as a special adviser if the person has a serious criminal conviction.
- (2) Where a Minister proposes to appoint as a special adviser a person who has a serious criminal conviction, that person may refer the proposed appointment to the Department of Finance and Personnel.

(3) Where a person who holds an appointment as a special adviser incurs a serious criminal conviction, that person's appointment terminates immediately by virtue of this Act.

(4) Where on the date of coming into operation of this subsection a person—

- (a) holds an appointment as a special adviser, and
- (b) has before that date incurred a serious criminal conviction,

that person's appointment terminates immediately by virtue of this Act.

(5) But a person to whom subsection (4) will apply may refer the appointment to the Department, within 21 days of this subsection coming into operation.

(6) A Minister must inform the Department in writing whether any special adviser appointed by the Minister has a serious criminal conviction.

#### **Commencement Information**

- II** S. 2 wholly in operation at 8.9.2013; s. 2(5) in operation at Royal Assent see s. 12(1); s. 2(6) in operation at 8.8.2013 see s. 12(2); s. 2(1)-(4) in operation at 8.9.2013 see s. 12(3)

#### **Determination of eligibility of special advisers by review panel**

**3.—**(1) This section applies where an appointment, or proposed appointment, of a person as a special adviser is referred to the Department under section 2(5) or (2).

(2) The Department must, within 14 days of the referral, establish a review panel and refer the matter to it.

(3) The review panel must determine whether the person is eligible for appointment as, or to continue to hold appointment as, a special adviser.

(4) The person is only eligible if the review panel is satisfied that there are exceptional circumstances justifying it—

- (a) after having regard to the matters set out in subsection (5), and
- (b) in the case of a proposed appointment, after taking account of the outcome of the vetting procedures mentioned in subsection (6).

(5) Those matters are—

- (a) whether the person has shown contrition for the offence to which the serious criminal conviction relates,
- (b) whether the person has taken all reasonable steps to assist in the investigation and prosecution of all other persons connected with the commission of the offence,
- (c) the views of any victim of the offence, or where a victim has died, the views of any close family member of the victim.

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(6) The Department must arrange for the proposed appointee to be the subject of the same vetting procedures as apply to the appointment of persons as Senior Civil Servants to the Northern Ireland Civil Service.

(7) The Department must—

- (a) appoint independent persons to be members of the review panel,
- (b) pay those persons such fees, allowances or expenses as appear appropriate,
- (c) provide the review panel with staff, accommodation or other facilities as appear appropriate.

(8) A review panel may regulate its own procedure.

(9) A review panel only remains in existence for so long as is necessary for it to exercise its functions.

#### **Appeals against review panel's determinations**

4.—(1) Where a person who is the subject of a determination of a review panel is aggrieved by that determination, that person may appeal to the High Court.

(2) The appeal can only be brought on the ground that it was not reasonable for the review panel to make that determination.

(3) The appeal must be brought within 21 days from the day on which the review panel made the determination.

(4) On hearing the appeal, the High Court may make such order as it thinks fit in respect of a person's eligibility for appointment as, or to continue to hold appointment as, a special adviser.

#### **Meaning of “serious criminal conviction”**

5.—(1) In this Act “serious criminal conviction” means a conviction for an offence for which—

- (a) a sentence of immediate imprisonment of 5 years or more was imposed,
- (b) a sentence of imprisonment for life was imposed,
- (c) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 was imposed,
- (d) a sentence of detention during the pleasure of the Secretary of State or the Minister of Justice, or for life, or for 5 years or more, was imposed under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (children convicted of grave crimes), or
- (e) a sentence of detention during the pleasure of the Governor or the Secretary of State, or for life, or for 5 years or more, was imposed under section 73 of the Children and Young Persons Act (Northern Ireland) 1968 (children convicted of grave crimes).

(2) This section applies whether the person—

- (a) was convicted in Northern Ireland or elsewhere,
- (b) was convicted before or after the coming into operation of this section.

(3) Where the person was convicted in a country or territory outside Northern Ireland, the references in subsection (1)(c), (d) and (e) to sentences are to be read as references to equivalent sentences in the country or territory in which the person was convicted.

### **Annual report**

6.—(1) The Department must, as soon as possible after the end of each financial year, issue a report about special advisers employed at any time during that year.

(2) The Minister of Finance and Personnel must lay the report before the Assembly as soon as possible after it has been issued.

(3) Without prejudice to the generality of subsection (1), a report under this section must include information about the number and cost of the special advisers.

### **Code of conduct**

7.—(1) The Department must issue a code of conduct for special advisers within 2 months of this section coming into operation.

(2) Without prejudice to the generality of subsection (1), the code must provide that special advisers must not—

- (a) authorise the expenditure of public funds,
- (b) exercise any power in relation to the management of any part of the Northern Ireland Civil Service, or
- (c) otherwise exercise any power conferred by or under any statutory provision, or any power under the prerogative.

[<sup>F1</sup>(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.]

[<sup>F2</sup>(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.

(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—

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- (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) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.
- (5) The code forms part of the terms and conditions of appointment of special advisers.

#### Textual Amendments

- F1** S. 7(3) substituted (22.3.2021) by [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021 \(c. 3\), ss. 1\(2\), 14\(2\)](#)
- F2** S. 7(3A)-(3C) inserted (22.9.2021) by [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021 \(c. 3\), ss. 1\(3\), 14\(1\)](#)

#### Code for appointments

- 8.—**(1) The Department must issue a code governing the appointment of special advisers within 2 months of this section coming into operation.
- (2) Where a Minister proposes to appoint a special adviser, such an appointment shall be subject to the terms of the code.
- (3) Without prejudice to the generality of subsection (1), the code must provide that persons proposed for appointment as special advisers—
- (a) must be subject to the same vetting procedures as persons to be appointed as Senior Civil Servants to the Northern Ireland Civil Service,
  - (b) must not be subject to further vetting procedures if they have been subject to vetting procedures in accordance with section 3.
  - [<sup>F3</sup>(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.]
- (4) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.
- (5) All persons exercising functions in respect of the appointment of special advisers must have regard to the code.
- [<sup>F4</sup>(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.]

#### Textual Amendments

- F3** S. 8(3)(c) inserted (22.3.2021) by [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021 \(c. 3\), ss. 1\(4\), 14\(2\)](#)
- F4** S. 8(6)(7) inserted (22.3.2021) by [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021 \(c. 3\), ss. 1\(5\), 14\(2\)](#)

[<sup>F5</sup>**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,

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

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- (b) for corresponding acts done otherwise than in the course of an employment.]

#### Textual Amendments

- F5** S. 8A inserted (22.3.2021) by [Functioning of Government \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2021 \(c. 3\), ss. 1\(6\), 14\(2\)](#)

#### Advisers to the Presiding Officer

**9.**—(1) In Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999, paragraph (2)(b) (which excludes certain appointments by relevant members from the requirement that persons are to be selected for appointment to the Northern Ireland Civil Service on merit) shall cease to apply in relation to the Presiding Officer of the Assembly.

(2) Accordingly, in paragraph (3) of that Article, sub-paragraph (a) shall cease to have effect.

#### Interpretation

**10** In this Act—

“the Department” means the Department of Finance and Personnel

“the 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,

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

#### Transitional provisions

**11** The Schedule (transitional provisions: termination payments) has effect.

#### Commencement

**12.**—(1) Sections 1, 2(5), 3, 4, 5, 7, 8, 9, 10, 12 and 13 come into operation on the day on which the Act receives Royal Assent.

(2) Section 2(6) comes into operation at the end of the period of 1 month after the day on which the Act receives Royal Assent.

(3) The other provisions of this Act come into operation at the end of the period of 2 months after the day on which the Act receives Royal Assent.

**Short title**

**13** This Act may be cited as the Civil Service (Special Advisers) Act (Northern Ireland) 2013.

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SCHEDULE

Section 11.

TRANSITIONAL PROVISIONS: TERMINATION PAYMENTS

- 1** A special adviser whose appointment is terminated by virtue of section 2(4) 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.
- 4** No termination payment under paragraph 2(b) shall exceed an amount equivalent to 6 months' salary.

**Changes to legislation:**

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