

These notes refer to the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 (c.3) which received Royal Assent on 22 March 2021

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

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

3. Controversy about the number, cost and disciplinary regime applicable to special advisers caused the Member to investigate the arrangements within the devolved institutions elsewhere in the United Kingdom. This comparison revealed that whereas there are 16 special advisers in Northern Ireland there are only 7, plus two part-time, in Wales and 14 in Scotland. The last full year for which figures are available (2015/16) shows Northern Ireland's special advisers cost £2,027,835.05, whereas in Scotland the cost in 2017/18 was £1,045,486 and the pay bill cost in Wales in 2018/19 was £814,069 (plus £119,636 in net severance payments). It is also notable that in Scotland half of the special advisers are employed on the lowest pay band.
4. In the question of discipline, the Committee for Social Development investigation into "the Redsky affair" highlighted that though an independent fact-finding investigation by DFP recommended the minister's special adviser should be subject to disciplinary investigation, his minister was able to intervene and abort any such course of action. Thus raising for the Member the adequacy of the current arrangements.
5. The unpublicised exercise of prerogative powers in 2016 by the First Minister and deputy First Minister to amend the Civil Service Commissioners (Northern Ireland) Order 1999, so as to permit the arbitrary appointment of a handpicked 'spin doctor', provoked controversy and unease which the Member proposes to address in this Bill by requiring any amendment to this legislation to be subject to the affirmative resolution process of the Assembly.
6. The very last motion passed (without division) by the Assembly before its collapse in January 2017 endorsed expanding the role of the Standards Commissioner to include alleged breaches of the Ministerial Code.
7. The evidence to the RHI Inquiry exposed a number of matters directly relevant to the positions and conduct of special advisers and the functioning of government, including:
 - a) appointments of special advisers in breach of the code for appointments;

- b) a failure to accept ministerial responsibility for special advisers;
 - c) lack of record keeping within the civil service in regard to ministerial decisions;
 - d) evidence of attempted deliberate circumvention, on the part of one party of the arrangements governing the control of special advisers following the passing of the Civil Service (Special Advisers) Act (Northern Ireland) 2013;
 - e) use of non-governmental email systems;
 - f) unwarranted passing of information to third parties; and
 - g) the direction of special advisers across departments under a hierarchy of special advisers.
8. Additionally, the absence of a publicly available register of interests for Ministers and special advisers appears as a gap in accountability, as does any requirement to keep the functioning of government under review.
9. Though the document ‘New Decade, New Approach’ anticipates measures to address some of the above matters, none of it would be on a statutory basis and, therefore, lacks binding assurance. Accordingly, the Member proposes to address these issues in this Bill.
10. The Act has fifteen objectives:
- a) to render ineffective any appointment of a special adviser which does not comply with the provisions of the code for appointments;
 - b) to provide that special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service;
 - c) to make it plain that an appointing minister is accountable and responsible for his special adviser;
 - d) to restrict the remuneration of special advisers so that it cannot be greater than that applicable within the Senior Civil Service Pay Structure to Assistant Secretary (Grade 5);
 - e) to impose a statutory duty on a departmental minister and Permanent Secretary to ensure no person exercises the functions or enjoys the privileges of a special adviser other than the duly appointed person;
 - f) to reduce the number of special advisers within the Executive Office from 8 to 6 by removing the right of Junior ministers to appoint special advisers.
 - g) to prevent the exercise of prerogative powers to perfect amendment of the Civil Service Commissioners (Northern Ireland) Order 1999;

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- h) to extend the powers of the Commissioner for Standards to include investigation of and report on complaints against ministers;
- i) to ensure the activities and meetings of ministers and special advisers are adequately recorded and retained within the Civil Service;
- j) to provide for the keeping of records when ministers or special advisers are lobbied.
- k) to provide for a register of interests in respect of ministers and special advisers;
- l) to provide for a statutory duty on departments to provide requested information to Assembly committees;
- m) to make provisions relating to Assembly scrutiny of the Executive's in-year monitoring process;
- n) to make it a specific criminal offence for a minister or special adviser to communicate confidential government information to a third party while including a reasonable behaviour defence; and
- o) to require the First Minister and deputy First Minister to report biennially on the functioning of government and act to improve same.