

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

COMMENTARY ON CLAUSES

12. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Section 1: Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013

This section requires the Code of Conduct, established under the 2013 Act, to restrict the management of special advisers by other special advisers to within the Executive Office and to provide that special advisers are subject to the processes and procedures of the disciplinary code operative in the Northern Ireland Civil Service and makes clear there can be no ministerial interference. Ministerial responsibility for special advisers is clearly established by this clause and a statutory duty imposed on the departmental minister and permanent secretary to ensure only the duly appointed special adviser can exercise the functions and privileges of that office. This clause also requires the Code for Appointments, provided for in the 2013 Act, to prescribe that special advisers must not be remunerated above the rate applicable to Grade 5 civil servants and that any appointment made in breach of the code is of no effect.

Section 2: Repeal of the Civil Service Commissioners (Amendment) Order in Council 2007

This section removes the right of Junior ministers to appoint special advisers with the resulting effect of reducing the number of special advisers in The Executive Office from 8 to 6.

Section 3: Repeal of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016

This section repeals the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016 and prevents further amendment of the Civil Service Commissioners (Northern Ireland) Order 1999 other than by Act of the Assembly.

Section 4: Special Advisers in the Executive Office

This section provides for compensation for any special adviser losing their job in consequence of the reduction in the number of special advisers in the Executive Office, as per the Schedule.

Section 5: Amendment of the Assembly Members (Independent Review and Financial Standards) Act (Northern Ireland) 2011.

This section extends the powers of the Commissioner for Standards to investigate and report on complaints against ministers.

Section 6: Records of meetings

This section requires a civil service note to be kept of all ministerial meetings.

Section 7: Presence of civil servants

This section requires notes to be made and kept by the Civil Service of all ministerial and special adviser meetings with persons from outside the department.

Section 8: Record of being lobbied

This section requires instances of lobbying of ministers and special advisers to be logged. The clause includes a detailed definition of what is meant by “being lobbied” and includes exemptions in respect of Assembly proceedings and meetings with the minister’s political party.

Section 9: Register of Interests

This section requires a publicly available register of interests in respect of ministers and special advisers.

Section 10: Offence of unauthorised disclosure

This section makes it a specific criminal offence for a minister or special adviser to communicate confidential government information to a third party, though with a reasonable behaviour or public interest defence

Section 11: Accountability to the Assembly: provision of information

This section imposes a statutory duty on departments to provide requested information to Assembly committees.

Section 12: Biennial report

This section establishes a process whereby the First Minister and deputy First Minister shall report on a biennial basis on the functioning of government and initiate improvements.

Section 13: Assembly scrutiny of the Executive’s in-year monitoring rounds

This section provides for Assembly scrutiny of the Executive’s in-year monitoring rounds.

Section 14: Commencement

This section provides that section 1(3) comes into effect six months after the Act receives Royal Assent and the rest of the Act upon Royal Assent.

Section 15: Interpretation

This section defines the terms “special adviser” and “minister”.

Section 16: Short Title

This section cites the new law as the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021.

13. Hansard Reports

First Stage	3 February 2020
Second Stage	16 March 2020
Committee Stage Report	11 November 2020
Consideration Stage	24 November 2020
Further Consideration Stage	19 January 2021
Final Stage	2 February 2021
Royal Assent	22 March 2021