

Code Governing the Appointment of Special Advisers

Laid before the Northern Ireland Assembly
under subsection 8 (4) of Civil Service (Special Advisers) Act
(Northern Ireland) 2013
by the Department of Finance and Personnel
on
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THE CODE GOVERNING THE APPOINTMENT OF SPECIAL ADVISERS

INTRODUCTION

1. This mandatory Code is for use by Ministers who choose to appoint Special Advisers in accordance with the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. Under section 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 (“the 2013 Act”) such an appointment shall be subject to the terms of this Code. DFP has also prescribed the requirements for these appointments under the Civil Service (Northern Ireland) Order 1999 which empowers the department to make regulations or give directions prescribing the requirements for appointment to the Northern Ireland Civil Service (NICS).
2. The appointment of Special Advisers is subject to Northern Ireland’s employment legislation including anti-discrimination legislation. The Code is designed to ensure that good practice is followed in the appointment process and that Ministers, as the appointing authority, provide equality of opportunity and avoid unlawful discrimination.
3. Special Advisers have the status of Civil Servants and are remunerated from public funds. It is accepted, however, that there is a personal nature to such appointments which requires a high degree of rapport and trust between the parties involved to make them a success. Article 3(2) of the Civil Service Commissioners’ Order as amended disapplies the principle of selection on merit on the basis of fair and open competition, where an appointment to a situation in the Civil Service is made for the purpose of providing advice to Ministers during a period terminating on a date on which the relevant Minister ceases to hold office. Nevertheless, it would be incumbent on Ministers not to be overly prescriptive in their candidate field. They must take account, for example, of any potential imbalance of religious belief or gender in the circles from which they are minded to draw someone for an appointment.

4. Such caution is necessary because the arrangements for the selection of Special Advisers will be subject to scrutiny, if challenged, under the provisions of the Sex Discrimination (NI) Order 1976, the Race Relations (NI) Order 1997, the Disability Discrimination Act 1995, the Fair Employment and Treatment (NI) Order 1998 (“the 1998 Order”), the Employment Equality (Sexual Orientation) Regulations (NI) 2003 and the Employment Equality (Age) Regulations (NI) 2006. The 1998 Order makes it unlawful to discriminate not only on grounds of religion but on the grounds of political opinion, although it contains certain exemptions, including jobs where the essential nature of the job requires it to be done by a person holding or not holding a particular opinion. It is ultimately for each Minister to decide whether the nature of his or her Special Adviser’s work falls into this category. The key issue is that arrangements made and actions taken by the Minister as the appointing authority are justifiable and untainted by practices which are discriminatory, either directly or indirectly. Getting the balance right between the undoubted personal nature of the relationship with a Special Adviser and the concept of fairness required by the law should not be seen as an onerous task, but as one designed to provide the Minister with a candidate field which will ensure the selection of a candidate who fully meets the Minister’s needs in terms of competence and attributes. The principles which underpin the need for this Code and the required procedures to give effect to them are outlined below. Ministers should also note that appointments of Special Advisers may be subject to investigation by the Northern Ireland Ombudsman.

FRAMEWORK FOR SELECTION AND APPOINTMENT

5. As an overriding principle, selection and appointment must comply with the law. Given that principle, there is a framework which Ministers must use to guide them in their objective consideration of the selection and appointment process:-

- (a) given Northern Ireland's unique equality legislation, Ministers must not put themselves in a position which gives rise to challenge. Ministers must be careful therefore to make the selection on justifiable grounds, and to consider potential candidates on their merits;
 - (b) Ministers have a personal responsibility to ensure that selection is free from unlawful discrimination;
 - (c) Ministers must ensure that they consider a number of candidates;
 - (d) each stage of the recruitment must be documented and such documentation must be retained for at least one year; and
 - (e) all posts must have a contract of employment.
6. As stated at paragraph 3, a Special Adviser's appointment terminates when the relevant Minister ceases to hold office. The cessation might be caused by an Assembly election or a reshuffling of portfolios by a particular political party. In such situations, a Minister returning to his/her former department or moving to a different department may wish to reappoint his/her former Special Adviser. If that is the case, a Minister does not necessarily have to go through a formal selection and appointment process, but if the original appointment was made prior to the introduction of vetting arrangements for Special Adviser appointments on 6 September 2011, then the former adviser must undergo the vetting arrangements as set out in the 2013 Act to determine whether a re-appointment can be made.

PROCEDURES FOR SELECTION

7. It is ultimately for Ministers to decide how they select their Special Advisers. Whilst recognising the personal nature of these appointments,

there are however a number of basic procedures which must be followed; these flow from the framework which is outlined above.

Job Description

8. A job description and person specification is the first step in the appointment process. The role and duties of a Special Adviser and the terms and conditions of service are set out in the model contract in the Appendix.

Person Specification

9. The Minister must then set out the requirements to be met by the person selected to fill the job and these will derive from the duties and tasks contained in the job description. It is critical to ensure that objectivity is maintained and all the requirements are justifiable. A number of headings should be systematically considered and requirements should be listed as essential or desirable. The use of essential requirements means that a candidate who does not have these criteria will be rejected. The desirable requirements indicate additional criteria which will help to distinguish between candidates who have the essential requirements. The requirements may include criteria which are personal attributes to reflect the personal relationship between the Special Adviser and the Minister as this is relevant and important to the job. It may be necessary to weight the criteria which means attaching greater importance and higher possible scores to those factors which most critically affect successful job performance.
10. There are 3 types of Special Adviser – expert, political or both. Setting criteria for experts is reasonably straightforward. There may be difficulties when it comes to criteria for political advisers. In Northern Ireland it is unlawful to discriminate on the grounds of political opinion. While that is subject to the “essential nature of the job” exemption referred to in paragraph 4, Ministers are advised that the exemption is likely to be given

a very narrow construction by the courts. It would be unreasonable, for example, to expect a Minister to consider appointing as a political adviser a person who was politically opposed to the Minister's interests. A Minister could make it a requirement that an applicant must have knowledge of the policies and personnel of the Minister's party and a willingness to promote that party's objectives. However, a requirement that a candidate must be a member of the Minister's political party may be unnecessary and unlawful.

Candidature Pool

11. Using the job description and the person specification, the Minister must decide how wide the trawl for candidates should be. One way to achieve this would be for the Minister to invite a number of people of varying backgrounds and opinions to suggest names of those they thought might meet the Minister's stated criteria from which the Minister will make his or her final selection. How a pool is achieved will vary from Minister to Minister (public advertisement is another option, especially for an expert adviser) but the key is that the pool must be broadly based.
12. On the basis of the job description and person specification, potential candidates should be invited to make their case for their candidature. When the Minister makes a selection from the pool, either by interview or as a paper exercise, the selection must be made on sustainable and lawful grounds and the Minister's reasons must be recorded.
13. Departments must ensure that the necessary documentation associated with the processes set out above is completed and retained so that Corporate HR in the Department of Finance and Personnel is in a position to report compliance with this Code to the Minister of Finance and Personnel.

PROCEDURES AFTER SELECTION

14. Once the selection has been made, the Minister's Permanent Secretary must be informed of the choice, along with the reasons for it, in writing. Subsection 8 (3) (a) of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 has put on a statutory footing the current standard NICS vetting policies and procedures, which require an assessment of the character of any candidate actively being considered for appointment to a position in the NICS, including Special Advisers. AccessNI will carry out a criminal record check on each prospective Special Adviser who is selected for appointment by a Minister.

15. Before a formal appointment of a Special Adviser is made the Permanent Secretary of the Department wishing to make the appointment should notify Corporate HR in the Department of Finance and Personnel of the name of the prospective candidate and Corporate HR will make arrangements for AccessNI to carry out a criminal record check. Should the check reveal an unspent conviction other than a serious criminal conviction as defined in the 2013 Act, Corporate HR will consider the unspent conviction against the NICS Risk Assessment Matrix as it would for any candidate seeking appointment to the NICS and make a recommendation to the appointing Minister on the appropriateness of the appointment, using the arrangements that are applied to all other civil servants. Should the check reveal a serious criminal conviction as defined in the 2013 Act, subsection 2 (2) and sections 3 and 5 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 will apply.

16. This means that, where a Minister proposes to appoint as a Special Adviser someone who has incurred such a serious criminal conviction, that person may refer the proposed appointment to the Department of Finance and Personnel (DFP). DFP must establish a review panel, comprised of independent persons, and refer the matter to it. A person will be deemed eligible for appointment if the review panel is satisfied that there are

exceptional circumstances justifying it, having had regard to:
:

- whether the person has shown contrition for the offence to which the serious criminal conviction relates;
- 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;
- the views of any victim of the offence, or where the victim has died, the views of any close family member of the victim.

and after taking account of the outcome of the Senior Civil Service vetting procedures.

16. If a person is aggrieved by a determination of the review panel, that person may appeal to the High Court.

17. If the appointment is to proceed, the Permanent Secretary will communicate the name to the Secretary to the Executive for notification to the Executive. The Permanent Secretary will then set in train the practical arrangements to enable the successful candidate to take up the post.

SUMMARY

18. Essentially a Minister will have complied with the mandatory requirements of this Code if he or she can answer affirmatively the following questions:-

- Have I a clear idea of the requirements of the job and the person to do it?
- Have I created a wide enough candidate field?
- Have I selected on justifiable grounds from the pool of candidates?
- Has the character check/vetting process been completed?

- Have I made a written record at all stages of the appointment and selection processes?

Corporate HR

Department of Finance and Personnel

June 2013

APPENDIX

MODEL CONTRACT FOR SPECIAL ADVISERS

LETTER OF APPOINTMENT TO BE ISSUED TO SPECIAL ADVISER BY APPOINTING AUTHORITY

Dear

APPOINTMENT AS SPECIAL ADVISER TO [name of minister]

This is to confirm the terms of your appointment as my Special Adviser with effect from [date]. Unless terminated earlier, your appointment will be for a period terminating on a date on which I cease to be a Minister or move to another appointment.

The details of your terms and conditions are set out in the NICS HR Handbook, the NICS Pay and Conditions of Service Code and related Civil Service Circulars. Copies of these documents are available for inspection in Departmental HR in [name of department]. The HR Handbook can be accessed on HR Connect.

Those parts of the Handbook and Code that have contractual effect, as amended from time to time, form part of your terms and conditions. The main elements of your conditions of service are contained in the attached Schedule 1. The Code of Conduct for Special Advisers at Schedule 2 outlines the duties and responsibilities of a Special Adviser.

Your basic salary is £ [insert amount] within the Special Adviser Pay Band of £ [insert amount] to £ [insert amount] per annum as set out in Schedule 3 of your contract.

You will be paid monthly in arrears via Bankers Automatic Clearing Service. You should advise Departmental HR in [name of department] immediately of

the bank or building society into which your salary should be paid.

Your appointment is pensionable under the Northern Ireland Civil Service pension arrangements from the outset. You do not have to join the Northern Ireland Civil Service pension arrangements; you may opt out and be covered instead by a personal pension or the State Second Pension Scheme (S2P). However, if you opt to join the Principal Civil Service Pension Scheme (NI) [PCSPS (NI)] you will normally be able to choose between two pension arrangements:

- a) Membership of the nuvos arrangement, which is a defined benefit occupational pension arrangement. It pays a pension based on 2.3% of your pensionable earnings for each year you are in nuvos. You contribute 3.5% of your salary. Your employer meets the rest of the cost of the scheme; or
- b) Membership of the Partnership pension account, a stakeholder pension with an employer contribution based on your age. Your employer will pay this regardless of whether you choose to contribute anything. You do not have to contribute, but, if you do, your employer will also match your contributions up to 3% of your pensionable earnings. The contributions are in addition to the age-related contribution mentioned above.

If you have a PCSPS (NI) pension already in payment, you should be aware that the pension scheme rules prevent members from receiving more by way of NICS pay and pension combined on re-employment that they were earning as salary before they retired. This is called 'abatement'. If you want to know more about how this may affect you, please contact Civil Service Pensions at the contact details provided below.

If you left the NICS with an early retirement, severance or redundancy package then your existing benefits may be affected if you accept this post. If your service was enhanced (increased) when you left then you will not be able

to build up benefits in the defined benefit arrangement. If you opt to join the stakeholder scheme, we will not pay employer contributions for this enhancement period but you will be able to contribute if you wish. If you are receiving a pension or annual compensation payment then this may be reduced during your re-employment. If you received a top-up payment under early severance temporary arrangements then your pay may be reduced during your re-employment.

You will find enclosed a pensions questionnaire which you must complete and return to Civil Service Pensions (CSP), Department of Finance and Personnel (DFP), at the address shown below. Your response to this questionnaire will be evaluated by CSP and you will receive a letter on appointment about the pension choices which are available to you. This letter will be accompanied by the Pension Starter Pack setting out full information on the arrangements available to you. If you do not receive your pension letter and starter pack within 3 days of your start date please contact [\[insert departmental contact details\]](#).

You will automatically be entered into the nuvos arrangement on appointment and we will deduct contributions from your salary with effect from your start date. If you wish to open a Partnership pension account and you notify your choice within 3 months, CSP will backdate your choice to your start date. If CSP do not receive your form within 3 months you will remain a member of nuvos.

As mentioned above you do not have to join the NICS pension arrangements. If you opt out, you will build up benefits in the State Second Pension Scheme (S2P) instead. If you are considering opting out, CSP strongly recommends that you read the Starter Pack before you make a decision.

Please note that you will **not** be covered during your appointment as a Special Adviser by the provisions of the Civil Service Compensation Scheme (Northern Ireland), irrespective of whether you join the NICS pension arrangements or opt out.

In the event that you join either nuvos or partnership and your health subsequently becomes such that our medical adviser agrees that you should be medically retired, you will be entitled to the ill health retirement benefits provided by the relevant pension arrangement. For this purpose, in the case of nuvos, you will be treated as serving for a fixed term expiring at the latest date at which the Administration that appointed you must end.

In the case of partnership, the maximum benefits payable cannot exceed the amount that you would have earned had your appointment continued until the date defined above for the purposes of determining the end of the fixed term.

Please contact CSP (contact details provided below) if you have any questions about the pension arrangements.

Civil Service Pensions

Waterside House

75 Duke Street

Londonderry

BT47 6FP

Tel: 028 71319000

E-Mail: cspensions.cpg@dfpni.gov.uk

Web address: www.dfpni.gov.uk/civilservicepensions-ni

Please indicate your acceptance of these terms, both to me and [**name of department**], on the forms set out below, and provide Departmental HR with Parts II and III of Income Tax Form P45 completed by your last employer and also your National Insurance Number.

Yours sincerely

APPOINTING AUTHORITY

To: [name of Minister]

I accept the offer of appointment as your Special Adviser on the terms and conditions referred to in my appointment letter dated [insert date]

Signed:

Dated:

Name: _____
(In block capitals)

To: [Insert Departmental HR contact]

I have accepted the offer of appointment as Special Adviser to [insert name of Minister] on the terms and conditions referred to in my appointment letter dated [insert date]. I enclose Parts II and III of Income Tax Form P45 and confirm that my National Insurance Number is [insert NI number]

Signed:

Dated:

Name: _____
(In block capitals)

SCHEDULE 1

SPECIAL ADVISERS – MAIN TERMS AND CONDITIONS**Job Title**

1. You have been appointed in accordance with Article 3 paragraph 2(b) and 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 as amended as a Special Adviser to [name of Minister](Appointing Authority) for the purpose only of providing advice to the Appointing Authority. Article 3 paragraph 2 (b) disapplies the principle of selection on merit on the basis of fair and open competition, where an appointment to a situation as a Special Adviser to a Minister is made during a period terminating on a date on which the relevant Minister ceases to hold office.
2. As a Special Adviser appointed to a situation in the Northern Ireland Civil Service by the Appointing Authority, you will be employed for the period of your service in [name of department]. Your role is detailed in the Code of Conduct for Special Advisers at Schedule 2.

Terms and Conditions

3. The details of your terms and conditions are set out in the NICS HR Handbook (accessible on HR Connect) and related Civil Service Circulars. Copies of the latter documents are available for inspection in your Departmental HR.

Salary

4. Your salary is set out in your letter of appointment. It will be reviewed annually from 1 August and you will be notified in writing of any change to your salary. You are not entitled to the payment of any overtime. The system for the remuneration of Special Advisers is set out in Schedule 3.

Pensions

5. Your appointment is pensionable from the outset but you do not have to join the Northern Ireland Civil Service pension arrangements; you may opt out and be covered instead by a personal pension or the State Second Pension Scheme (S2P).
6. You should note that as a member of the Principal Civil Service Pension Scheme (NI), you may retire, without having your accrued pension entitlement reduced, at age 65 – the pension age for members of the nuvos arrangement of the Principal Civil Service Scheme (NI) rules (but see paragraph 18).
7. You will not be covered during your appointment as a Special Adviser by the provisions of the Civil Service Compensation Scheme (Northern Ireland), irrespective of whether you join the NICS pension arrangements or opt out.

Performance Management and Appraisal

8. Your employment requires performance consistent with the high standards expected of senior members of the Civil Service. Your performance will be subject to regular appraisal and review, with an opportunity to discuss that performance with the Appointing Authority.

Hours of Work

9. You are required to work a minimum (over a 5 day week) of 42 hours, including daily meal breaks of one hour.
10. You will be required to work additional hours as may from time to time be reasonable and necessary for the efficient performance of your duties subject to any limitations imposed by law.

Annual Leave

11. Your annual leave allowance is 30 days. The leave year runs from 1 February to 31 January.

Public and Privilege Holidays

12. You are entitled to all public holidays and to 2 privilege days in addition to your annual leave allowance and you will be paid for each day. Details are set out at the back of this Schedule.

Sickness

13. The rules relating to sickness and injury are to be found in sections 3.01 and 3.09 of the "Leave and Attendance" part of the Handbook. There is provision for absence on full pay and on half pay depending on the length of absence and subject to a ceiling on total paid absence within a given period.

Maternity Leave

14. Detailed provisions relating to maternity leave and pay arrangements are set out in section 3.02 of the "Leave and Attendance" part of the Handbook. In addition, you may be eligible for parental leave in accordance with section 3.04 of the "Leave and Attendance" part of the Handbook. Further details are available from your Departmental HR.

Paternity Leave

15. You are entitled to 2 days contractual paid paternity leave on each relevant occasion. Provisions relating to paternity leave are set out in section 3.03 of the "Leave and Attendance" part of the Handbook. In addition, you may be eligible for parental leave in accordance with section

3.04 of the “Leave and Attendance” part of the Handbook. Further details are available from your Departmental HR.

Adoption Leave

16. Detailed provisions relating to adoption leave and pay are set out in section 3.05 of the “Leave and Attendance” part of the Handbook.

Notice

17. As a civil servant you are not entitled to a period of notice terminating your employment. However, unless your appointment is terminated by agreement or results from disciplinary proceedings, inefficiency, subsection 2 (3) of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 or grounds justifying summary dismissal at common law, you will in practice normally be given not less than 3 months’ notice in writing terminating your employment or one month’s notice in writing if the termination occurs within 6 months of your appointment. On the expiration of such notice your employment will terminate.

18. Unless terminated earlier, your employment will terminate on the day on which your Appointing Authority, for any reason, ceases to be a Minister or moves to another appointment (see paragraph 6).

19. If your employment terminates because your Appointing Authority ceases to be a Minister or moves to another appointment, or if you resign:

- (a) in order to comply with the Civil Service (Parliamentary, and Assembly Candidature) (Northern Ireland) Order 1990 as amended by the Civil Service (Parliamentary and Assembly Candidature) (Amendment) Order (Northern Ireland) 1998, on

becoming publicly identified as a candidate or prospective candidate for election; or

- (b) in order to take part in a General, European, Northern Ireland Assembly Election or Northern Ireland By-Election campaign or to help in a Party headquarters or research unit during such an Election,

you will receive a severance payment, as detailed below, on the understanding that should you be re-appointed as a Special Adviser within the time span to which the payment refers, you will be entitled only to an amount equivalent to that which your salary would have been during the gap between the 2 periods of employment. On taking up re-appointment you will be required to repay any element of the payment which exceeds that amount in accordance with arrangements agreed with your Departmental HR.

20. Severance pay will be calculated as follows: if termination occurs after 6 months during the first year of service, you will receive three months' pay. For each additional completed year of service you will receive a month's pay, subject to a maximum of six months' pay, but if your employment terminates in any of the circumstances identified above within 6 months of your appointment, you will only be entitled to one month's severance pay.

21. You are not entitled to any period of notice or pay in lieu of notice if you are in receipt of severance pay.

22. Any severance payment made under paragraph 20 is non-pensionable.

23. You may terminate your appointment by giving not less than 5 weeks' notice in writing to your Appointing Authority.

Conduct

24. As a civil servant high standards of confidentiality must be observed. You are required to exercise care in the use of official information acquired in the course of official duties and not to disclose, without the authorisation of your Appointing Authority, information which is held in confidence. The rules governing the use of confidentiality and official information are set out in section 6.01 of the Employee Relations Part of the Handbook.
25. You are also subject to the Official Secrets Acts 1911-1989. An explanatory leaflet summarising the provisions of the Acts as they affect civil servants will be provided to you.
26. You are required to abide by the conduct provisions in section 6.01 of the Employee Relations Part of the Handbook with the exception of the rules on political activities. The rules on political activities that apply to you are set out in the Code of Conduct for Special Advisers at Schedule 2.
27. You are required to conduct yourself in accordance with all the provisions of the NICS Code of Ethics except for those aspects of paragraphs 1.2c, 1.2d and 2.3 which relate to the impartiality and objectivity of the Civil Service and of civil servants and those in paragraph 2.5 which relate to a future Administration or future Ministers. A copy of the Code of Ethics will be provided to you by your Department.
28. If you wish to take part in any outside activity where information or experience gained in the course of your work is likely to be relevant, you must first seek permission from the Permanent Head of the Department.
29. You will not have access to papers relating to civil servants personally. You will also be subject to the rules which apply to Ministers as regards access to papers of a previous Administration. Subject to these exceptions and to Paragraph 33 below, you may, at the discretion of your Appointing Authority, have access to all papers submitted to Ministers.

30. You must comply with the rules on the publication of personal memoirs and books based on official experience set out in the Handbook.

Disciplinary and Grievance Procedures

31. Disciplinary matters are dealt with in accordance with the Department's disciplinary procedures, which are set out in section 6.03 of the Employee Relations Part of Handbook. The inefficiency procedures set out in the Handbook do not apply to you.

32. If you have any grievances relating to your employment, or if you wish to appeal against any decisions or actions which affect you adversely, you must bring this in writing to the attention of your Appointing Authority or the Permanent Head of your Department.

Acceptance of Outside Appointments

33. The rules on the acceptance of outside employment can be found in section 6.01 of the Employee Relations Part of the Handbook. These set out the circumstances in which you are required to obtain the agreement of the NICS before accepting an offer of employment outside the Civil Service which would start within two years of leaving NICS employment. It is important that you familiarise yourself with the rules, and the circumstances in which they apply. If you wish to know how the rules might apply in particular circumstances, you should seek advice from the Permanent Head of your Department or Head of Departmental HR.

PUBLIC AND PRIVILEGE HOLIDAYS

You are entitled to public and privilege holidays up to a maximum of 12 days a year. The distribution of these days over the year is as follows:

New Year's Day (or the following Monday when New Year's Day falls on a Saturday or Sunday)	Bank Holiday if proclaimed
17 March – St Patrick's Day (or the following Monday when St Patrick's Day falls on a Saturday or Sunday)	Bank Holiday
Easter Monday	Bank Holiday
Easter Tuesday	in lieu of Good Friday
May Day Bank Holiday (first Monday in May)	Bank Holiday if proclaimed
Spring Bank Holiday (last Monday in May)	Bank Holiday
12 July (or any day proclaimed a Public Holiday in place of 12 July)	Bank and Public Holiday if proclaimed
13 July (or the next working day following either (i) 12 July or (ii) any day proclaimed a Public Holiday in place of 12 July)	Privilege Holiday

Late Summer Bank Holiday

Bank Holiday

(last Monday in August)

Christmas Day (or the following Monday when
25 December falls on a Saturday or the following Tuesday
when 25 December falls on a Sunday)

Common Law Holiday

Boxing Day (or the following Monday when 26 December
falls on a Saturday or the following Tuesday when
26 December falls on a Sunday)

Bank Holiday

A third day at Christmas to be announced each
year.

Privilege Holiday

SCHEDULE 2

CODE OF CONDUCT FOR SPECIAL ADVISERS

1. The employment of Special Advisers adds a political dimension to the advice available to Ministers, and provides Ministers with the direct advice of experts in their professional field, while reinforcing the political neutrality of the permanent Civil Service by distinguishing the source of political advice and support.
2. Special Advisers are employed to help Ministers on matters where the work of the Northern Ireland Administration and Ministers' party responsibilities overlap and it would be inappropriate for permanent civil servants to become involved. They are an additional resource for the Minister, providing advice from a standpoint that is more politically committed and politically aware than would be available to a Minister from the Civil Service.
3. The Minister may instruct a Special Adviser to carry out the following sorts of work:
 - i. reviewing papers going to the Minister, drawing attention to any aspect which they think has party political implications, and ensuring that sensitive political points are handled properly. They may give advice on any aspect of departmental business (other than staffing issues), including giving advice to their Minister when the latter is taking part in party political activities;
 - ii. "devilling" for the Minister, and checking facts and research findings from a party political viewpoint;
 - iii. preparing speculative policy papers which can generate long-term policy thinking within the Department, including policies which reflect the political viewpoint of the Minister's party;

- iv. contributing to policy planning within the Department, including ideas which extend the existing range of options available to the Minister with a political viewpoint in mind;
- v. liaising with the Minister's party to ensure that the Department's own policy reviews and analysis take full advantage of ideas from the party, and encouraging presentational activities by the party which contribute to the Administration's and Department's objectives;
- vi. helping to brief Assembly Members and officials of the Minister's party on issues of the Administration's policy;
- vii. liaising with outside interest groups including groups with a political allegiance to assist the Minister's access to their contribution;
- viii. speechwriting and related research, including adding party political content to material prepared by permanent civil servants;
- ix. representing the views of the Minister to the media, including a party viewpoint, where they have been authorised by the Minister to do so;
- x. providing expert advice as a specialist in a particular field;
- xi. attending party functions (although they may not speak publicly at the party conference) and maintaining contact with party members;
- xii. taking part in policy reviews organised by the party for the purpose of ensuring that those undertaking the review are fully aware of the Administration's views and the Minister's thinking and policy.

Status and conduct as civil servants

4. Special Advisers are civil servants appointed under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. They are exempt from the general requirement that civil servants should be appointed on merit and behave with political impartiality and objectivity so that they may retain the confidence of future Administrations. Their appointment ends, if not terminated earlier, on their appointing Minister's ceasing to hold office or moving to another appointment. An example of an earlier termination would be as a result of the application of the provisions of the Civil Service (Special Advisers) Act (Northern Ireland) 2013
5. Special Advisers should conduct themselves with integrity and honesty. They should not deceive or knowingly mislead the Assembly or the public. They should not misuse their official position or information acquired in the course of their official duties to further their private interests or the private interests of others. They should not receive benefits of any kind which others might reasonably see as compromising their personal judgement or integrity. They should not without authority disclose official information which has been communicated in confidence in the Administration or received in confidence from others.
6. Special Advisers should not use official resources for party political activity. They are employed to serve the objectives of the Administration and the Department in which they work. It is this which justifies their being paid from public funds and being able to use public resources, and explains why their participation in party politics is carefully limited. They should act in a way which upholds the political impartiality of civil servants. They should avoid anything which might reasonably lead to the criticism that people paid from public funds are being used for party political purposes. They stand outside the departmental hierarchy and

are bound by the provisions of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 in that they should not be responsible for budgets or authorising the expenditure of public funds; also, they must not exercise any power in relation to the management of any part of the Civil Service including the line management of permanent civil servants, their recruitment and matters covered by their contract of employment such as their appraisal, reward, discipline and promotion, although they may do so in relation to another Special Adviser. They must not otherwise exercise any power conferred by or under any statutory provision, or any power under the prerogative.

Relations with the Appointing Minister's Party

7. Special Advisers provide advice on the development of policy of the Administration and its presentation. It is in these two areas of activity that the Administration and party may overlap.
8. The Civil Service has no monopoly of policy analysis and advice. The Administration takes account of views from many sources including political parties. Although public funds and resources must not be used to support the contribution of such views, the Administration may need to liaise with a particular party, as it does with others, to obtain a full and accurate understanding of the party's policy analysis and advice.
9. The Administration needs to present its policies and achievements to the public in order to aid understanding and so maximise the effectiveness of its policies, and this is a legitimate use of public funds and resources. It would be damaging to the Administration's objectives if the Minister's party took a different approach to that of the Administration, and the Administration therefore needs to liaise with the Minister's party to make sure that party publicity is factually accurate and consistent with the Administration policy. To secure this consistency, the Administration will

also want to make sure that Assembly Members and officials of the Minister's party are briefed on issues of the Administration's policy.

10. In providing a channel of communication in these areas of overlap, Special Advisers paid from public funds have a legitimate role in support of the Administration's interest, which they can discharge with a degree of party political commitment and association which would not be permissible for a permanent civil servant. In all contacts with their party, Special Advisers must observe normal Civil Service rules on confidentiality unless specifically authorised, in a particular instance, by their Appointing Authority.
11. Special Advisers must not take part in the work of their party's national organisation; and although they may continue, during Elections, to give specialist or political advice to their Ministers they must be careful not to take any active part in the campaign going beyond the provision of such advice.
12. Where a Special Adviser wishes to undertake work for a political party which does not arise out of the Administration's business they may do this either in their own time, outside office hours, or under a separate contract with the party, working part-time for the Administration. Detailed rules on their involvement in political activities are set out below.

Involvement in politics in a private capacity: national political activities/local political activities

National Political Activities

13. Special Advisers must not take part in national political activities, which are: holding, in a party political organisation, office which impinges wholly or mainly on party politics in the field of the Northern Ireland Administration, the Westminster Parliament or the European Parliament; speaking in public on matters of national political controversy; expressing

views on such matters in letters to the Press, or in books, articles or leaflets; being announced publicly as a candidate or prospective candidate for the Northern Ireland Assembly, Parliament or the European Parliament; and canvassing on behalf of a candidate for the Northern Ireland Assembly, Parliament or the European Parliament or on behalf of a political party.

14. In particular:

- (i) if Special Advisers are publicly identified as a candidate or prospective candidate for the Northern Ireland Assembly, Parliament or the European Parliament, either by adoption by a political party or in any other way, they must resign their appointment¹;
- (ii) if they wish to take part in a General, European, Northern Ireland Assembly or by-election campaign, or to help in a party headquarters or research unit during such a campaign, they must first resign their appointment. If they wish their appointment to carry on during a campaign, they may continue to give specialist or political advice to their Appointing Authority as before but they must be careful not to take any active part in the campaign going beyond the provision of such advice. They should not, for example, take part in public meetings relating to an election campaign.
- (iii) if, with the approval of their Appointing Authority, they wish to assist with other party political matters such as a leadership campaign, they may do so while on paid or

¹ Civil Service (Parliamentary and Assembly Candidature) Order 1990, as amended by the Civil Service (Parliamentary and Assembly Candidature) (Amendment) Order (Northern Ireland) 1998 prohibits members of the Northern Ireland Civil Service from publicly announcing themselves or allowing themselves to be publicly announced as candidates or prospective candidates for election to certain Parliamentary and Assembly bodies listed therein.

unpaid leave or at times which do not interfere with their normal duties, for example, out of office hours.

Local Political Activities

15. With the approval of their Appointing Authority, Special Advisers may undertake, or continue to undertake, all forms of local political activity, but not local activities in support of national politics. They must comply with any conditions laid down by the employing Department.
16. Local activities are: candidature for, or co-option to, local authorities; holding, in a party political organisation, office impinging wholly or mainly on party politics in the local field; speaking in public on matters of local political controversy; expressing views on such matters in letters to the Press, or in books, articles or leaflets; and canvassing on behalf of candidates for election to local authorities or a political organisation.
17. If Special Advisers take part in local political activities, they must at all times observe discretion, take care to express comment with moderation and avoid personal attacks. In particular, if they serve on a local authority they must adhere to the following points:
 - a. they should not speak publicly or in the Council or vote on matters for which their Appointing Authority has responsibility;
 - b. they should not serve on any committee considering such matters;
 - c. they should not take part in deputations or other representations to their Appointing Authority;
 - d. they should declare an interest in relation to any case or application which comes before the Council in which the Northern Ireland Administration is involved;

- e. they should observe discretion in relation to policies for which other Appointing Authorities of the Northern Ireland Administration are responsible, in order to avoid causing them embarrassment;
- f. they should not disclose to the Council privileged information obtained in the course of their duties.

SCHEDULE 3**SYSTEM FOR REMUNERATION OF SPECIAL ADVISERS****Introduction**

1. This schedule sets out the system for remunerating Special Advisers.

Background

2. Special Advisers are appointed under the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. Article 3 paragraph 2 (b) of the Order disapplies the principle of selection on merit on the basis of fair and open competition, where an appointment to a situation as a Special Adviser to a Minister is made during a period terminating on a date on which the relevant Member ceases to hold office.
3. Under the Order, the First Minister and deputy First Minister may each have up to three Special Advisers at any one time and members of the Executive Committee and Junior Ministers may each have one Special Adviser at any one time.
4. The Appointing Authority for Special Advisers is the appropriate Minister.

Principles of the system

5. The following principles underpin the system:
 - a. it must be fair and equitable and consistently applied;
 - b. it should take account of the nature of the job and the personal contribution of the individual;

- c. it should be capable of recruiting, motivating and retaining appropriate Special Advisers;
- d. changes to the pay bands should be in line with the revalorisation of the Senior Civil Service pay scales.

Salary Arrangements

- 6. Special Advisers will be paid on personal pay points contained within two broad pay bands. Individuals will be allocated to pay bands based on the role descriptions outlined in paragraph 7 below. In exceptional circumstances, a Special Adviser may be appointed on a higher salary.

Role Description

- 7. The concept of a role description is somewhat different from that of formal job evaluation of posts, which is considered too constraining in the case of Special Advisers who operate in a very dynamic environment and, although all do so within the broad parameters of the model contract, the nature of the role will differ depending on many factors. These include the individual Appointing Authority's requirements, whether the Special Adviser is operating as a singleton or a member of a Special Adviser team and the Adviser's own abilities and experience. It is acknowledged that, on occasions, an Adviser may effectively "grow" the role and there will also be increasing demands on the role in relation to supporting and servicing the Executive as a whole. The pay bands and role descriptions are -

Pay Band A (current rate shown at Appendix A)

Role Description

- 8. In line with the job requirements as determined by the Appointing Authority, the post holder has appropriate experience and skills to provide advice and research on policy and political issues. The post holder

undertakes analysis and maintains contacts both within and outside government on policy and political issues. The Adviser may be a subject specialist.

Pay Band B (current rate shown at Appendix A)

Role Description

9. Post holder has senior level experience in public or commercial life, with an acknowledged track record of achievement. In line with the job requirements as determined by the Appointing Authority, the post holder provides a significant level of policy advice and meets and influences key policy and decision-takers within and outside Government, contributing significantly beyond the level required by those remunerated within Pay Band A.

Starting Salary on Appointment

10. The Permanent Secretary, the Head of the Civil Service (HOCS) and the Appointing Authority shall jointly determine the appropriate pay band and the starting salary within that pay band for each Special Adviser. It will be for the Appointing Authority to determine the extent of his/her involvement in the decision. The decision will be on the basis of a business case prepared by the Appointing Authority which should set out the requirements of the post, together with the relevant qualifications, experience, skills and track record of achievement of the individual. In addition to these factors, starting salary within the relevant Pay Band may also be informed by the appointee's previous remuneration package (including all quantifiable benefits, such as a company car or private health care payments).
11. The requirement for a business case shall also apply where, in exceptional circumstances, a starting salary in excess of the maximum of Pay Band B is recommended (see paragraph 4 above). In this circumstance, any

starting salary determined following the process detailed above shall also be subject to the agreement of the First Minister and the deputy First Minister.

12. In all circumstances, a written record must be held of the rationale for the salary determined.

Pay Review - Revalorisation of Pay Bands

13. The pay bands will normally be reviewed annually with effect from 1 August and revalorised in line with movement to the appropriate reference points on the Senior Civil Service pay scales. Departments will be notified of changes to the pay bands by the Department of Finance and Personnel. These reviews of Special Advisers' pay will be subject to the approval of the Minister for Finance and Personnel.

Pay Progression

14. Annual pay progression will be based on the average Senior Civil Service salary increase, subject to the appropriate Appointing Authority's views on the Adviser's satisfactory performance. Special Advisers appointed on or after 1 January are not entitled to a pay progression award at the following 1 August.

15. Occasionally a higher increase may be given because of specific experience in post. This is clearly an argument which could be made by all staff and care needs to be taken. Nonetheless there is some validity in it because the role of the Special Adviser does vary in line with the needs of the Appointing Authority and the ability of the Adviser, and is capable of being shaped by the individual.

16. Where there has been significant substantiated change to the weight and range of the post this should be recognised. In such circumstances the

Appointing Authority should make a case for pay review to the Permanent Secretary, who, acting jointly with the HOCS and the Appointing Authority, will have the scope to increase salary by up to 10%, or make a case to move an individual from Pay Band A to Pay Band B. Again, it would be for the relevant Appointing Authority to decide the extent of his/her involvement before a determination is reached. It is important to ensure that the outcome of any such review can be objectively justified, and is suitably documented.

17. It would be expected that such changes should be on an exceptional rather than a routine basis as any such amendment is not expected to take the place of the normal pay progression review process which rewards the individual for their performance in their post. In addition, the proposed changes should not alter the fundamental nature of the role of Special Advisers, which is to provide advice rather than carry out executive functions.

Pension

18. Special Adviser appointments are pensionable under the Northern Ireland Civil Service pension arrangements. Under these arrangements the Special Adviser may normally choose between two pension arrangements:

- a) Membership of the nuvos arrangement, which is a defined benefit occupational pension arrangement. It pays a pension based on 2.3% of pensionable earnings for each year of membership of nuvos. Details of the contributions you will pay are shown in the annex to your appointment letter; or
- b) Membership of the Partnership pension account, a stakeholder pension with an employer contribution based on the age of the individual. An individual does not need to contribute however if they choose to do so the employer will match the individual's contribution by up to 3% of pensionable earnings.

19. A Special Adviser may choose not to join the Northern Ireland Civil Service pension arrangements and may instead opt out to be covered by a personal pension and/or the State Second Pension Scheme (S2P). They also have the option of joining the Northern Ireland Civil Service Stakeholder pension arrangement; Standard Life is the designated stakeholder pension provider for the Northern Ireland Civil Service. It is not compulsory to contribute to a stakeholder pension, nor to use the NICS designated provider, but if a designated provider is selected, the facility is available to make contributions to Standard Life through payroll if you choose. **The employer will not make any contributions towards this pension (see also letter of appointment).**
20. You will not be covered during your appointment as a Special Adviser by the provisions of the Civil Service Compensation Scheme irrespective of whether you join the Civil Service pension arrangements or opt out.

Hours of Attendance/Overtime

21. Special Advisers are required to work a minimum (over a 5-day week) of 42 hours, including daily meal breaks of one hour. They will be required to work additional hours as may from time to time be reasonable and necessary for the efficient performance of their duties. Prospective Special Advisers should be made aware that long and sometimes unsocial hours may be required, subject to any limitations imposed by law.
22. Special Advisers are not entitled to the payment of any overtime.
23. Departments should note that the terms of the EU Working Time Directive apply to Special Adviser posts. Advisers should be asked whether they wish to waive certain rights. Section 3.11 of the "Leave and Attendance" part of the Handbook gives full detail and should be brought to the attention of Special Advisers.

Payment of Salary

24. Salary will be paid monthly in arrears via Bankers Automatic Clearing Service (BACS).

{For other conditions of service see Schedule 1 to the Letter of Appointment issued to Special Advisers by their Appointing Authority.}

Department of Finance and Personnel

Pay and Grading Unit

February 2012

APPENDIX A

SPECIAL ADVISERS

SALARY BANDS

Rates payable from 1 August 2013 to 31 July 2014

Pay Band A £37,050 - £52,816

Pay Band B £58,452 - £91,809