



Department of

**Finance and
Personnel**

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AQW 2401/11-15

Mr Allister has asked:

To ask the Minister of Finance and Personnel to detail (i) the outcome of his review into Special Advisers; (ii) when it will be published; (iii) what recommendation it made; and (iv) when these recommendations will be implemented.

ANSWER

I have arranged for a copy of the review report to be placed in the Assembly library. The review was implemented for all future appointments from 6th September 2011.

Sammy Wilson MP MLA

REVIEW OF ARRANGEMENTS FOR THE APPOINTMENT OF MINISTERS' SPECIAL ADVISERS

Introduction

1. During recent weeks there has been public, political and media comment and controversy surrounding the appointment of a Ministerial Special Adviser. That controversy has brought into sharp focus the role of Special Advisers and the processes that are used to appoint them. Special Advisers are civil servants but the manner in which they are appointed to their posts differs in a number of respects from the way in which all other civil servants are appointed. Special Advisers work very closely with Ministers and they are closely identified with their Ministers. It is important that there is public confidence in the individuals who are appointed and in the manner in which they are appointed, otherwise there is a risk of reputational damage to Ministers individually and to the Executive more generally, undermining confidence in the system of Government in Northern Ireland. For that reason the First Minister asked the Minister for Finance and Personnel, who has policy responsibility for the management of the Northern Ireland Civil Service (NICS), to carry out a review of the arrangements for appointing Special Advisers.

Terms of Reference

2. The following terms of reference for the review were agreed:

“To review the current arrangements which are applied to the appointment of Ministers' Special Advisers, taking account in particular of the policies and processes in place governing the appointment of all other civil servants, and to bring forward recommendations for new arrangements, as appropriate”.

The review is to be completed by the end of June 2011.

Role of Special Advisers

3. Special Advisers have the status of civil servants and are remunerated by their employing Departments from public funds. They are employed to help Ministers on matters where the work of the Northern Ireland administration and Ministers' party responsibilities overlap and where it would be inappropriate for permanent civil servants to become involved. The employment of Special Advisers adds a political dimension to the advice available to Ministers, while reinforcing the political neutrality of the permanent civil service by distinguishing the source of political advice and support.

4. Special Advisers have no right to permanency of appointment and their employment terminates on the date on which the Minister who appointed them, for any reason, ceases to hold office. Consequently they do not enjoy the relative job security of other civil servants. Special Advisers are subject to general NICS terms and conditions, including those elements of NICS human resources policies that relate to standards of conduct and the NICS Code of Ethics. Additionally, they are required by their contracts of employment to comply with a separate "Code of Conduct for Special Advisers" which reflects the political nature of their role and its interaction with the work of their employing Department. That Code of Conduct also describes the kind of tasks that Special Advisers might be asked to carry out. It is reproduced in full at **Annex A**.

Arrangements for Appointing Special Advisers

5. Under current arrangements, each Minister is entitled to appoint a Special Adviser (up to 3 Special Advisers in the case of the First Minister and deputy First Minister) in accordance with the Civil Service Commissioners (Northern Ireland) Order 1999. This Order generally requires appointment to the NICS to be on the basis of merit following fair and open competition – the "merit principle". However the Order disapplies the merit principle in respect of Special Advisers in recognition of their unique role and the personal nature of their appointment.

6. Special Advisers are appointed by Ministers. A “Code of Practice on the Appointment of Special Advisers” was drawn up in 1999 and approved by the Executive. It makes clear that each Minister, and the Minister alone, is the “Appointing Authority” for his/her Special Adviser. As with all other appointments to the civil service, Special Adviser appointments are subject to Northern Ireland’s employment legislation, including anti-discrimination legislation. The Code offers Ministers guidance on such matters as equality of opportunity and the avoidance of unlawful discrimination. A copy of the Code is at **Annex B**.
7. The Code recognises that it is ultimately for each Minister to decide precisely how to select his/her Special Adviser. Given the personal nature of the appointment it is considered that there can be no hard and fast rules on procedures. However, the Code suggests a structured framework which complies in general terms with what would be good practice in any recruitment process, covering such matters as the need for a job description, person specification, pool of candidates and record keeping. Compliance with this Code should provide a measure of protection for Ministers against challenges under employment legislation in respect of decisions they take on the appointment of individual Special Advisers.
8. Besides the disapplication of the merit principle, the other unique feature of the manner in which Special Advisers are appointed is the absence of any form of vetting. NICS Departments are obliged to ensure that the correct level of vetting is established for any new post and that certain checks are conducted in relation to the character of a candidate seeking appointment to a post in the NICS. This policy does not apply to prospective appointees to the position of Special Adviser.

Arrangements for Appointing Civil Servants other than Special Advisers

9. The Northern Ireland Civil Service Commissioners have a statutory duty to ensure that all appointments to the NICS are made on merit on the basis of fair and open competition. The Commissioners are required by statute to publish a Recruitment

Code which interprets how the Commissioners expect the merit principle to operate in practice. Amongst other things, this requires appointment to be on the basis of a “merit order list”. Compliance with the Commissioners’ Recruitment Code is mandatory.

10. Under the Civil Service (Northern Ireland) Order 1999 the Department of Finance and Personnel (DFP) may make regulations prescribing the requirements for appointment to the NICS. DFP has prescribed requirements for appointment to the NICS in respect of age, health, character, ability and nationality. The Department publishes and maintains a Recruitment Policy and Procedures Manual which explains in detail the arrangements followed by the NICS both to comply with statutory requirements and to ensure that good practice is followed in recruitment procedures.
11. For the most part the main steps in the process that must be followed in making appointments to the NICS do not differ significantly from the main steps set out in the Code of Practice for Appointing Special Advisers. A job analysis is undertaken to establish the duties and responsibilities of the post and to enable the development of effective eligibility and short-listing criteria. The recruitment literature, for example a Candidate Information Booklet and application form, is finalised and the job is publicly advertised. Applications received are validated to establish each candidate’s age, nationality and immigration status and if they have previously been dismissed or medically retired from the NICS. An agreed selection process, involving testing and/or interview, is carried out for all valid applications. An order of merit, based on an agreed assessment process, is compiled and pre employment checks are initiated on the successful candidate(s) before appointment.
12. The main difference from the arrangements for appointing Special Advisers is that NICS recruitment policies and procedures require an assessment of a candidate’s character. A security check is carried out in line with the requirements for the position for those candidates who are actively being considered for appointment.

This includes a criminal record check carried out by AccessNI¹. Should any such check reveal an unspent criminal conviction², Corporate HR in DFP considers the unspent convictions against an NICS Risk Assessment Matrix. A copy of the current Risk Assessment Matrix is at **Annex C**. If the conviction does not fall within one of the four categories listed in the Risk Assessment Matrix, the application is allowed to proceed.

13. If a conviction falls under any of the four categories listed in the Risk Assessment Matrix the candidate is normally asked to confirm that the conviction relates to them and is offered the opportunity to provide any comments which he/she considers to be appropriate and relevant before a final decision regarding their appointment can be made. Corporate HR will consider all the information received prior to making a decision on whether the offences should preclude candidates from appointment. In deciding if a candidate can be appointed, Corporate HR will consider any mitigating circumstances provided by the candidate which suggest that the convictions are not representative of the overall character of the candidate. This may include evidence of a person's rehabilitation and a contribution made to the community. Information received regarding criminal records is destroyed when a recruitment decision is taken.

14. NICS policies and procedures comply with the Rehabilitation of Offenders Order (NI) 1978 which is aimed at protecting the rights of rehabilitated ex-offenders. The NICS Recruitment Policy and Procedures Manual provides contact details for the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to aid potential applicants with criminal convictions seeking assistance in making an application for employment in the NICS.

¹ AccessNI provides a criminal history disclosure service. It supplies criminal history information to organisations that are required by law to consider the suitability of applicants for certain positions or to confirm that applicants are not barred from working with vulnerable groups.

² A conviction resulting in a custodial sentence of over two and a half years can never become spent. Spent convictions can only legally be taken into account for certain 'excepted' posts, e.g. those involving substantial access to children or vulnerable persons.

Proposals for Change

15. In considering changes to the process for appointing Special Advisers there are three general considerations that need to be addressed if public confidence in the process is to be established and maintained:

- (i) whether the appointment process generally represents good recruitment practice, taking account of the particular nature of the role of Special Advisers, and complies with employment legislation;
- (ii) whether the appointment process will ensure that the person selected possesses the necessary skills, experience and attributes to perform the function effectively; and
- (iii) whether the appointment process contains adequate safeguards to ensure that the person appointed will be deemed a fit and proper person for a high profile, publicly funded position of this nature and that controversy surrounding the character of the appointee will be avoided.

Merit Principle

16. The existing legislation exempts Special Advisers from the merit principle. This recognises the very particular nature of the relationship that needs to exist between a Minister and a Special Adviser if the Special Adviser role is to be carried out effectively. Each Minister of necessity and quite legitimately has a personal interest in and a personal role in the selection of his/her Special Adviser. Any attempt to curtail Ministers' role in the appointment process by insisting on a full and open competition would appear to undermine this relationship and strike at the heart of the role of Special Advisers. Recruitment on merit based on open competition would appear to be inimical to the very concept of Special Advisers. It is therefore recommended that the exemption from the merit principle, as provided for in the existing legislation, is retained.

Strengthening the Current Arrangements

- 17.** The existing Code of Practice on the Appointment of Special Advisers provides a framework that addresses the key components of any recruitment process that might be regarded as good practice – development of a job description, an associated person specification, the identification of a candidate field, selection process and maintenance of records. It has much to commend it in that it describes a structured and systematic process that, if applied, offers assurance of compliance with employment legislation and of selection of an individual capable of performing effectively in the role. But the Code simply represents advice and there is no requirement for Ministers to comply with it, or for any monitoring of compliance.
- 18.** It is recommended that the process set out in the Code of Practice should be mandatory for Ministers. In practice this will require each Minister to:
- (i) prepare a job description setting out the role and duties of his/her Special Adviser post;
 - (ii) prepare a person specification setting out the requirements, in terms of experience, knowledge, skills, attributes, to be met by the person selected to fill the post if the role and duties contained in the job description are to be fulfilled;
 - (iii) identify a broadly based pool of potential candidates;
 - (iv) identify a process for selection from the pool of candidates, either by interview or as a paper exercise, and record the reasons for the selection of the preferred candidate; and
 - (v) ensure that the records associated with the process are maintained.

Adherence to the Code will ensure that the public can have confidence that the process for appointing Special Advisers produces candidates who are appropriately qualified to fulfil the role.

19. Each Department should be charged with ensuring that the Code has been complied with in respect of each Special Adviser's appointment and that the necessary documentation has been prepared and retained in accordance with the Code. Corporate HR should report to the Minister for Finance and Personnel, as the Minister with policy responsibility for staffing matters in the NICS, on the extent of compliance with the Code following each round of Special Adviser appointments.
20. In view of the public, political and media interest in the role of and process for appointing Special Advisers it is recommended that all the relevant documentation, namely the Code of Practice for Appointing Special Advisers, the Code of Conduct for Special Advisers and the Model Contract of Employment for Special Advisers (though not individual contracts of employment), should be included routinely in DFP's publication scheme and published on its website so that it is freely available for inspection and that there is full transparency surrounding such matters.
21. Strict adherence to the Code would meet the considerations identified at (i) and (ii) in paragraph 15 above. These arrangements would not, however, provide a specific test of the "appropriateness" of a candidate for the post of Special Adviser and do not therefore meet the consideration at (iii) of paragraph 15 above.

Introduction of Vetting/Character Checking

22. It is recommended that the vetting/character check principles associated with the appointment of civil servants should similarly apply to the arrangements for appointing Special Advisers, albeit with some procedural differences. In addition to the assurances offered by compliance with the Code of Practice in respect of due process and identifying a candidate who is suitably qualified to perform effectively

in this role, this would offer assurance of compliance with the consideration at paragraph 15 (iii) above.

23. It is recommended that Corporate HR DFP applies the vetting/character checking process to prospective Special Advisers as they do for other civil servants. This will ensure consistency of treatment. Corporate HR would then make a **recommendation** to the appointing Minister regarding test of character, consistent with the decision that would have been taken with any other applicant to the civil service. In order to avoid a situation in which civil servants in Corporate HR are placed in the invidious position of being in direct conflict with a Minister over such decisions, it is recommended that an independent appeals mechanism is built into the decision-making process.
24. If a Minister or a prospective candidate for a Special Adviser post disagrees with a recommendation from Corporate HR on the outcome of the vetting/character checking process, an appeal may be made to an external, independent panel whose decision will be final. The panel should be wholly independent of both Ministers and the NICS and should comprise people who could bring appropriate experience and expertise to bear on such matters.
25. The kind of criteria that would be applied to the vetting/character checking test would be:
 - (i) An expression of remorse/regret;
 - (ii) The absence of a pattern of repeat offending;
 - (iii) The relevance of the conviction to the post to be filled;
 - (iv) The nature of the offence and the severity of the sentence;
 - (v) Evidence of rehabilitation and contribution to the community; and
 - (vi) Third party references regarding the individual's character.

Conclusion

26. This paper has identified differences in the processes used for appointing Special Advisers and other civil servants. Taking account of the particular role of Special Advisers, the personal nature of their appointment and the need for a very close working relationship between Ministers and Special Advisers, the paper recommends changes to the processes.

27. It is recommended that:

- (i)** There should be no change to the current exemption to the merit principle in respect of Special Advisers, as provided for in the existing legislation.
- (ii)** Compliance with the existing Code of Practice on the Appointment of Special Advisers should be made mandatory for each Minister and Departments should ensure that the necessary documentation is completed and retained, with Corporate HR in DFP reporting compliance with the Code to the Minister for Finance and Personnel.
- (iii)** All generic documentation surrounding the arrangements for appointing and remunerating Special Advisers, and the standards of conduct expected from them, should be routinely published on the DFP website.
- (iv)** A new vetting/character checking process should be introduced to apply to the appointment of Special Advisers. AccessNI should carry out a criminal record check on each prospective Special Adviser who is selected for appointment by Ministers and Corporate HR should make a recommendation to the Minister on the appropriateness of the appointment using the arrangements that are applied to all other civil servants. Appeals against those decisions should be heard by an

external, independent panel whose decision will be final.

28. The application of these arrangements will help provide assurance to the public that a proper and robust process for appointing Special Advisers is in place in order to comply with employment legislation; that any Special Advisers who are appointed are properly qualified to perform their duties; and that the tests of character that are applied to any other civil servant are equally applied to Special Advisers.
29. The Minister for Finance and Personnel is taking legal advice on whether these arrangements can be applied retrospectively to Special Advisers who have already been appointed.

June 2011

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 ceasing to hold office or moving to another appointment.
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. They should not be responsible for budgets or for the line management of permanent civil servants including their recruitment and matters covered by their contract of employment such as their appraisal, reward, discipline and promotion.

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 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

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.

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.

ANNEX B

A CODE OF PRACTICE ON THE APPOINTMENT OF SPECIAL ADVISERS

INTRODUCTION

1. This Code of Practice is intended to assist Ministers who choose to appoint Special Advisers in accordance with the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. The appointment of Special Advisers is subject to Northern Ireland's employment legislation including anti-discrimination legislation. The Code's aim is to identify good practice and provide Ministers, as the appointing authority, with guidance on the provision of equality of opportunity and the avoidance of unlawful discrimination.
2. 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 Member ceases to hold office. Nevertheless, it would be prudent for Ministers not to be overly prescriptive in their candidate field. They should 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.
3. Such caution is advisable 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 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 appointing authority are justifiable and untainted by practices which are discriminatory, either directly or indirectly, either consciously or unconsciously. 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 avail the Minister of a candidate field which will ensure the selection of a candidate who fully meets the Minister's needs in terms of talent and attributes. Some principles which underpin the need for this Code and some suggested 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

4. As an overriding principle, selection and appointment must comply with the law. Given that principle, there is a framework which Ministers should use to guide them in their objective consideration of the selection and appointment process:-
 - (a) given Northern Ireland's unique equality legislation, Ministers should not put themselves in a position which gives rise to challenge. Ministers should 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 should ensure that they consider a number of candidates;
- (d) each stage of the recruitment should be documented and such documentation should be retained for at least one year;
- (e) all posts must have a contract of employment.

PROCEDURES FOR SELECTION

- 5. It is ultimately for Ministers to decide how they select their Special Advisers. Given the personal nature of the appointment there can be no hard and fast rules on procedures. However, there are certain basic procedures which could be followed which flow from the framework outlined above.

JOB DESCRIPTION

- 6. A job description and person specification is a logical 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

- 7. The Minister should 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 could be systematically considered and requirements could 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 such as disposition or personality if these are 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.

8. 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 3, 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

9. Using the job description and the person specification, the Minister should 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 should be broadly based.
10. On the basis of the job description and person specification potential candidates may 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, it is important that the selection is made on sustainable and lawful grounds and that the Minister’s reasons are recorded.

PROCEDURES AFTER SELECTION

11. Once the selection has been made, the Minister's Permanent Secretary should be informed of the choice, along with the reasons for it, in writing. The Permanent Secretary will communicate the name to the Secretary to the Executive Committee for notification to the Executive Committee. The Permanent Secretary will then set in train the practical arrangements to enable the successful candidate to take up the post.

SUMMARY

12. Essentially a Minister will have conformed with the spirit 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?
 - Have I made a record at all stages of the appointment and selection processes?

Corporate HR

Department of Finance and Personnel

March 2011

ANNEX C

RISK ASSESSMENT MATRIX

In making appointments to the NICS the following guidelines must be adhered to:

	Generally Reject
1	Convictions demonstrating a propensity to violent, destructive, or abusive behaviour.
2	Convictions demonstrating serious negligence causing death or injury to others.
3	Convictions demonstrating dishonesty.
4	Convictions for motoring offences which are directly related to the post applied for or where the individual has been convicted on more than one occasion for the same offence.

*These guidelines must be **applied in line with current law on rehabilitation of offenders**. The vast majority of convictions will usually become “**spent**” after a prescribed period. Spent convictions can only legally be taken into account for certain ‘excepted’ posts e.g. those involving substantial access to children or vulnerable persons.*

*Employing departments or agencies may apply **enhanced standards or additional checks** for particular posts where they can justify and defend it e.g. for posts involving contact with young people (see above); driving test work where particular offences or penalty point levels may cause concern or otherwise, for example, in posts which involve driving duties and where any reasonable person would be likely to conclude that a particular conviction indicates a significant risk or is incompatible with the duties of a particular post. Any specific additional requirements should be decided upon, at latest, prior to the vacancy being advertised.*

*A candidate should not normally be appointed if he/she has repeated, or has been convicted on more than one occasion for an offence. All candidates who have convictions which could preclude them from appointment must be invited to provide **a statement of disclosure** before any decision on his/her suitability is made.*

Convictions which cannot be ‘spent’ – Applicants with convictions which cannot be ‘spent’ should not be automatically rejected. All information available will be considered.

In-post Candidates –In-post candidates with criminal convictions which would preclude them from being appointed to an externally advertised competition are required to advise their Departmental HR of such convictions and may be subject to internal disciplinary proceedings.

Pending charges or convictions– In accepting offers of appointment, candidates are required to advise of any convictions they have had in jurisdictions outside the United Kingdom and of

any pending charges which have not yet been dealt with by the Courts. Failure to advise of any pending charge or conviction, including those outside of the United Kingdom, will invalidate the offer of appointment.