

CONSULTATION PAPER on Proposal for a Special Advisers Bill

Issued by Jim Allister MLA

Deadline for responses: 30th November 2011

Please respond to:

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INTRODUCTION

The appointment in May 2011 of a person convicted of murder as Special Adviser to the Minister for Culture, Arts and Leisure caused considerable public controversy, leading me to explore the adequacy of the law relating to such appointments.

BACKGROUND

In Northern Ireland ministerial Special Advisers are appointed in accordance with Article 3(2)(b) of the Civil Service Commissioners (Northern Ireland) Order 1999 as amended (the 1999 Order). Each minister of the Executive, including junior ministers, is entitled to make one appointment, but the First Minister and deputy First Minister can appoint three each. Thus, at present there are 19 appointees.

A Code of Practice, prepared by the Department of Finance and Personnel and dated March 2011 indicates any such appointment made by a Minister terminates when the relevant Minister ceases to hold office. Such appointments are therefore temporary, making them in that regard significantly different from other civil servants.

Special Advisers have access to government papers and senior civil servants. They are not subject to security clearance. Article 3(1) of the 1999 Order provides that a person shall not be appointed to a situation in the Civil Service unless "*the selection of that person for appointment was made on merit on the basis of a fair and open competition.*" Though Special Advisers acquire the status and benefits of Civil Servants, under their appointment process they are exempted from the merit principle by Article 3(2) of the 1999 Order.

Thus, their appointment lies in the gift of their minister. Special Advisers are paid within one of two salary bands. Band A: £36,320-£51,775 and Pay Band B: £57,300- £90,000 pa, with the appointing minister determining the level of salary paid, which is not made public. Most Special Advisers are paid within Band B.

At Westminster the appointment and conduct of Special Advisers is now governed by The Constitutional Reform and Governance Act 2010. This law provides for a code of conduct for special advisers and the roles, responsibilities, numbers and costs of Special Advisers, including a system of annual reports on the numbers and costs involved.

THE ISSUE

Is it a) compatible with maximising public confidence; b) consistent with respecting victims of crime; and c) acceptable that a person with a serious criminal conviction can be appointed to such a significant public office?

The Rehabilitation of Offenders (Northern Ireland) Order 1978 (the 1978 Order) limits requirements to disclose previous convictions for rehabilitation purposes. However, this only relates to ‘spent convictions’, a concept which does not apply where the sentence is greater than 30 months.

Moreover, is there a case for introducing in Northern Ireland provisions akin to those contained in The Constitutional Reform and Governance Act 2010?

THE PROPOSAL

It is proposed that a Bill should be introduced in the Assembly to prohibit any person with a serious criminal conviction from holding the position of Special Adviser. It is suggested that anyone who on conviction received an immediate custodial sentence of five years or more should be so prohibited, though the severity of triggering sentence is one of the issues upon which views are being sought.

It is proposed that when the law comes into force, anyone holding office who has a serious criminal conviction would lose that position. This would be applied in keeping with the right to a fair process under Article 6 ECHR.

Question 1

Do you agree that there is a case for reform of the system through legislation?

Yes No Unsure

Comments: _____

It is proposed that anyone with a serious criminal conviction should be prohibited from holding the position of Special Adviser.

Question 2

Do you agree?

Yes No Unsure

Comments: _____

It is suggested that the threshold for disqualification should be a custodial sentence of 5 years. Alternatives could be 10 years or a sentence of life imprisonment, or another tariff.

Question 3

Which do you think is appropriate as the sentence which should trigger disqualification?

5 years 10 years Life Imprisonment Alternative suggestion:

Comments: _____

It is proposed that the prohibition on holding office, because of a serious criminal conviction, should apply not just to new appointees but also to those already in post.

Question 4

Do you agree?

Yes No Unsure

Comments: _____

It is proposed to include provisions as to procedural fairness for any affected person already in post so as to comply with Article 6 ECHR. Such could include a timeframe of notification, a right to make representations and a body to verify due process.

Question 5

Do you agree?

Yes No Unsure

Comments: _____

If you have suggestions to make as to the process which would be appropriate then provide below: _____

Question 6

Should we introduce legislation, as in GB, to govern the appointment and conduct of Special Advisers including annual reports on numbers and costs.

Do you agree?

Yes No Unsure

Comments: _____

Human Rights & Equality Implications

Question 7

How do you think the proposed legislation will impact on human rights?

Positively Negatively Not at all/not significantly Unsure

Comments: _____

Question 8

How do you think the proposed legislation will impact on equality of opportunity?

Positively Negatively Not at all/not significantly Unsure

Comments: _____

Question 9

Do you have any comments on the likely cost / financial implications of the proposed legislation?

Question 10

Do you have any other comments on the proposed legislation?

Your Contact Details:

Name:.....

Name of Organisation (if relevant).....

Address.....

Tel No:.....

Email:.....

Privacy statement

Following the end of the consultation we may publish a paper summarising the responses. Information you provide in your response to this consultation, may be published or disclosed in accordance with the Freedom of Information Act 2000 (FOIA).

The Northern Ireland Assembly will process your personal data in accordance with the Data Protection Act 1998 and this will mean that if you request confidentiality your personal information will not be disclosed to third parties.

Please tick if you request confidentiality