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Special Advisers: Appointment and Conduct

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The briefing should not be relied upon as legal or professional advice (or as a substitute for these) and a suitably qualified professional should be consulted if specific advice or information is required.

1 Key Points

1. Special Advisers are classed as temporary civil servants in each of the examined legislatures (Northern Ireland, UK, Scotland, Wales, and the Republic of Ireland) and are exempt from being appointed based on merit/following a competitive procedure;
2. The recent update to the Northern Ireland Code of Appointment (2020) removed guidance on the selection of Special Advisers, making the guidelines more similar to those of the other examined legislatures, which do not specify how Special Advisers should be selected;
3. In the Northern Ireland Executive the appointing authority is the relevant minister, in the Government of the UK it is the relevant minister with permission of the Prime Minister, in the governments of Scotland and Wales it is the respective First Minister, and in the Government of the Republic of Ireland it is the relevant minister or minister of state with approval of the government;
4. In each of the examined legislatures, responsibility for the management and conduct of Special Advisers lies with the appointing authority;
5. The recent update of the Northern Ireland Code of Conduct (2020) added guidance for Special Advisers' dealings with outside organisations/individuals, which makes it largely similar to the codes of the UK, Scottish, and Welsh governments;

1 Introduction

This briefing paper has been prepared in response to a request from the Finance Committee for a comparison of the Northern Ireland Code of Appointment and Code of Conduct for Special Advisers to those of other jurisdictions.

In January 2020, the Northern Ireland Department of Finance published updated codes of appointment and conduct for Special Advisers, along with a letter of appointment to be issued to Special Advisers, and an updated remuneration scheme.¹ Minister of Finance Conor Murphy stated:

It is essential that Special Advisers are subject to, and adhere to, the high standards expected of those in public life. Given the public's legitimate concerns in this regard I have moved quickly to produce and agree strengthened rules.²

The following paper outlines, and highlights differences across, the relevant guidelines for Northern Ireland and the neighbouring jurisdictions, and provides a summary of recent trends in the number and overall cost of Special Advisers in the covered legislatures.

2 Northern Ireland

Civil Service Commissioners (Northern Ireland) Order 1999

Appointment of Special Advisers to the Northern Ireland Assembly is legislated under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999, as amended (herein The 1999 Order).³ Special Advisers are temporary civil servants. The 1999 Order stipulates that relevant members can appoint a person to provide them advice and that the appointment is exempt from the usual requirement for civil servants to be appointed on the basis of merit.⁴

The 1999 Order has been amended several times since its initial commencement.⁵

¹ Department of Finance – Special Adviser Appointments. Available from: <https://www.finance-ni.gov.uk/publications/special-adviser-appointments> (Accessed 29th January 2020)

² Finance Minister Written statement – Special Adviser Appointments (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Written%20Statement%20%20Special%20Adviser%20Appointments%20-%2020%20January%202020%20-%20FINAL.pdf> (Accessed 29th January 2020)

³ Civil Service Commissioners (Northern Ireland) Order 1999. Available from: <https://www.nicscommissioners.org/legislation.htm> (Accessed 5th February 2020)

⁴ As cited above.

⁵ As cited above.

1. The 1999 Order initially included provisions for the Presiding Officer of the Assembly to appoint a Special Adviser. This provision was removed by the Civil Service (Special Advisers) Act (Northern Ireland) 2013;⁶
2. The Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007⁷ amended the 1999 Order to include provisions for two junior ministers in the Executive Office to appoint a Special Adviser;
3. Under the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016,⁸ and in exercise of the powers conferred by section 23(3) of the Northern Ireland Act 1998(a),⁹ the First Minister and Deputy First Minister (acting jointly) enabled the appointment of a person ‘for the purpose only of providing specialised support to those Ministers during a period terminating on or before the date of the poll of the election of the next Assembly under section 31 or 32 of the Northern Ireland Act 1998.’¹⁰ The following election was called in 2017.

Therefore as it currently stands, the following relevant members are permitted to appoint a Special Adviser:¹¹

1. The First Minister or Deputy First Minister;
2. Any other member of the Executive Committee;
3. Two junior ministers in the Executive Office.¹²

Regarding number of Special Adviser appointments:

1. The First Minister and the Deputy First Minister may each appoint up to three persons at any one time;¹³
2. Two junior ministers in the Executive Office may each appoint one person at any one time, if authorised by the First Minister and the Deputy First Minister (acting jointly);¹⁴
3. Any other relevant member may appoint one person at any one time.¹⁵

⁶ Section 9 Civil Service (Special Advisers) Act (Northern Ireland) 2013. Available from: <http://www.legislation.gov.uk/nia/2013/8/section/8> (Accessed 29th January 2020)

⁷ Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007. Available from: <https://www.nicscommissioners.org/legislation.htm> (Accessed 5th February 2020)

⁸ Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2016. Available from: <https://www.nicscommissioners.org/legislation.htm> (Accessed 5th February 2020)

⁹ Northern Ireland Act 1996. Available from <http://www.legislation.gov.uk/ukpga/1998/47/contents> (Accessed 5th March 2020)

¹⁰ As cited above.

¹¹ Civil Service Commissioners (Northern Ireland) Order 1999.

Section 9 Civil Service (Special Advisers) Act (Northern Ireland) 2013.

¹² Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007.

¹³ Civil Service Commissioners (Northern Ireland) Order 1999.

¹⁴ Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007.

¹⁵ Civil Service Commissioners (Northern Ireland) Order 1999

Code Governing the Appointment of Special Advisers, 2020

In January 2020, the Department of Finance published a revised Code Governing the Appointment of Special Advisers (hereon the Code of Appointment 2020).¹⁶ The Finance Minister stated:

Reflecting the personal nature of the appointment, it does not prescribe the process by which the Minister selects a special adviser. The Code for appointment makes clear that civil service involvement commences at the point at which the Minister advises the Department of the name of the person they wish to appoint as their special adviser.¹⁷

The Code of Appointment 2020 is issued under Section 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 (hereon the Special Advisers Act 2013).¹⁸ The code states that:

1. A Special Adviser is appointed by the Minister as Appointing Authority;
2. The Appointing Authority must ensure that the appointment is made in accordance with the law and with the terms of this Code;
3. The legal framework governing employment in Northern Ireland applies to the appointment of Special Advisers, including anti-discrimination laws.¹⁹

The code reiterates that, while Special Advisers are appointed as temporary civil servants, their appointments are exempt from the normal requirement that civil servants are appointed on merit on the basis of fair and open competition.²⁰ This stipulation is issued under Article 3(2) of The 1999 Order²¹ and remains unchanged from the previous Code of Appointment 2013.²²

The code sets out the formal requirements for the appointment 'from the point at which the Minister advises the Department of the name of the person they have chosen to be their special adviser'.²³ This differs from the prior Code of Appointment 2013²⁴, which provided a framework for ministers to guide candidate selection and

¹⁶ Department of Finance – The Code Governing the Appointment of Special Advisers (2020). Available from:

<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/THE%20CODE%20GOVERNING%20THE%20APPOINTMENT%20OF%20SPECIAL%20ADVISERS%20-%20FINAL%20-%202020%20JANUARY%202020.pdf> (Accessed 29th January 2020)

¹⁷ Finance Minister Written statement – Special Adviser Appointments (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Written%20Statement%20%20Special%20Adviser%20Appointments%20-%202020%20January%202020%20-%20FINAL.pdf> (Accessed 29th January 2020)

¹⁸ Civil Service (Special Advisers) Act (Northern Ireland) 2013. Available from: <http://www.legislation.gov.uk/nia/2013/8/section/8> (Accessed 29th January 2020)

¹⁹ Department of Finance – The Code Governing the Appointment of Special Advisers (2020).

²⁰ As cited above.

²¹ Order of the Secretary of State Civil Service Commissioners (Northern Ireland) Order 1999. Available from: <https://www.nicscommissioners.org/wp-content/uploads/2011/06/CSCNI-Order-1999.pdf> (Accessed 29th January 2020)

²² Department of Finance and Personnel - Code of Conduct for Special Advisers (2013). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Code%20Governing%20the%20Appointment%20of%20Special%20Advisers%20-%202027%20June%202016.pdf> (Accessed 29th January 2020)

²³ Department of Finance – The Code Governing the Appointment of Special Advisers (2020).

²⁴ Department of Finance and Personnel - Code of Conduct for Special Advisers (2013).

appointment. This included: making the selection on justifiable grounds and considering candidates on merit, considering a number of candidates from a broad pool, documenting each recruitment stage and retaining documents for at least one year, and recording the minister's reasoning for the selection.²⁵

An individual proposed for appointment as Special Adviser must be subject to the same vetting procedures as persons to be appointed as Senior Civil Servants to the Northern Ireland Civil Service (NICS).²⁶ Under the Special Advisers Act 2013, a person with a serious criminal conviction is not eligible for appointment as Special Adviser.²⁷ If a minister proposes an individual with a serious criminal conviction, they may be referred to a review panel, who will assess whether the person satisfies certain exceptional circumstances and are thus eligible for appointment. If an individual has already been vetted under Section 3 of Special Advisers Act 2013, no further vetting is required.²⁸

If not terminated beforehand, a Special Adviser's appointment ends when their minister ceases to hold office or moves to another appointment.²⁹ If a minister returns to their department/moves to another department and wishes to reappoint their former adviser, re-vetting is required. The department should make the arrangements for a new criminal record check with AccessNI.³⁰

Code of Conduct for Special Advisers, 2020

The Code of Conduct for Special Advisers is issued under section 7 of the Special Advisers Act 2013.³¹ The updated Code of Conduct 2020³² includes additional guidelines around transparency and record keeping in comparison to the prior Code of Conduct (2013)³³. This brings the Code of Conduct 2020 closer to the codes of the

²⁵ As cited above.

²⁶ NICS Recruitment – Appointment. <https://irecruit-ext.hrconnect.nigov.net/pages/content.aspx?Page=how-do-i-apply/appointments>. Accessed 5th February 2020

²⁷ Civil Service (Special Advisers) Act (Northern Ireland) 2013. Available from: <https://www.legislation.gov.uk/nia/2013/8/contents> (Accessed 29th January 2020)

²⁸ Department of Finance – The Code Governing the Appointment of Special Advisers (2020).

²⁹ Department of Finance – Code of Conduct for Special Advisers (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/CODE%20OF%20CONDUCT%20FOR%20SPECIAL%20ADVISERS%20-%20FINAL%20-%202020%20JANUARY%202020.pdf> (Accessed 29th January 2020)

³⁰ Department of Finance – The Code Governing the Appointment of Special Advisers (2020).

³¹ Civil Service (Special Advisers) Act (Northern Ireland) 2013.

³² Department of Finance – Code of Conduct for Special Advisers (2020).

³³ Department of Finance and Personnel – Code of Conduct for Special Advisers (2013).

governments of the UK, Scotland and Wales.³⁴ In line with the New Decade New Approach deal³⁵, the Code of Conduct 2020 includes:

A new overarching introduction making clear the critical role special advisers have in supporting ministers and that they are an important part of the team, working closely alongside other civil servants to deliver Ministers' priorities. This section also requires Special Advisors to serve the Executive as a whole, not just their own Minister.³⁶

The code states that Special Advisers should establish mutual relationships of confidence and trust with their Minister, and outlines the responsibilities that Special Advisers can undertake:

1. Give assistance on any aspect of departmental business, and give advice (including expert advice as a specialist in a particular field);
2. Undertake long-term policy thinking and contribute to policy planning within the Department;
3. Write speeches and undertake related research, including adding party political content to material prepared by other civil servants;
4. Liaise with the Party, briefing party representatives and Assembly members on issues of departmental and Executive policy;
5. Liaise with other Special Advisers in support of the work of the Executive;
6. Represent the views of their Minister to the media (including from a party viewpoint), where they have been authorised by the Minister to do so; and liaise with outside interest groups (including those with a political allegiance)³⁷

The code further outlines the responsibilities that Special Advisers can undertake in relation to other civil servants:

³⁴ Code of Conduct for Special Advisers UK. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf .

Code of Conduct for Special Advisers Wales. Available from: <https://www.cynulliad.cymru/laid%20documents/gen-ld10974/gen-ld10974-e.pdf> .

Code of Conduct for Special Advisers Scotland. Available from:

<https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2017/04/special-advisers-code-of-conduct-and-model-contract/documents/code-conduct-special-advisers-pdf/code-conduct-special-advisers-pdf/govscot%3Adocument/Code%2Bof%2Bconduct%2Bfor%2BSpecial%2Badvisers.pdf>

³⁵ New Decade New Approach – Annex A: Transparency, accountability and the functioning of the executive. Available from:

³⁶ Finance Minister Written statement – Special Adviser Appointments. Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Written%20Statement%20%20Special%20Adviser%20Appointments%20-%2020%20January%202020%20-%20FINAL.pdf> (Accessed 29th January 2020)

³⁷ Department of Finance – Code of Conduct for Special Advisers (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/CODE%20OF%20CONDUCT%20FOR%20SPECIAL%20ADVISERS%20-%20FINAL%20-%2020%20JANUARY%202020.pdf> (Accessed 29th January 2020)

1. Convey to officials Ministers' views, instructions and priorities, including on issues of presentation. In doing so, they must take account of any priorities Ministers have set;
2. Request officials to prepare and provide information and data for Ministers, including internal analyses and papers; and
3. Review and comment on – but not change, suppress or supplant – advice submitted to Ministers by civil servants.³⁸

The code further outlines what Special Advisers must not do:

1. Authorise the expenditure of public funds;
2. Exercise any power in relation to the management of any part of the Northern Ireland Civil Service, except in relation to another special adviser;
3. Otherwise exercise any power conferred by or under any statutory provision, or any power under the prerogative;
4. Be involved in the line management of civil servants or in matters affecting a civil servant's career such as recruitment, promotion, reward and discipline; or
5. Ask civil servants to do anything which is inconsistent with their obligations under the Northern Ireland Civil Service Code of Ethics or behave in a way which would be inconsistent with standards set by their employing department.³⁹

The code further outlines guidance for Special Advisers, particularly in the areas of transparency and participation in politics, which is summarised below:

1. Special advisers should not disclose official information which has been communicated in confidence on official business or received in confidence from others, or prepare or disseminate inappropriate material or personal attacks;
2. Special Advisers must keep accurate official records, including minutes of relevant meetings, and handle information as openly and transparently as possible within the legal framework;
3. Special Advisers must use official email systems for communications relating to official business, or exceptionally, where this is not possible, the Special Adviser must copy any message to their official email account. Information

³⁸ As cited above.

³⁹ As cited above.

generated in the course of government business must be handled in accordance with the requirements of the law (including the Freedom of Information Act (FoI), GDPR and Public Records Act), regardless of how it is communicated.⁴⁰

Transparency

1. Special advisers must, at all times, ensure that no conflict arises, or could be perceived to arise, between their public duties and their private interests, financial or otherwise, and comply with NICS rules and departmental procedures concerning conflicts of interest, including completing a Declaration of Interest form upon appointment;
2. Special advisers are required to declare details of gifts and hospitality received in accordance with the rules set out in the NICS Handbook. Departments will publish, on a quarterly basis, information about gifts and hospitality received by their special advisers and details of special advisers' meetings with external organisations / individuals;
3. Information will be published annually about the number and cost of special advisers, including salaries and any severance payments.⁴¹

Participation in politics

1. Special Advisers should act in a way which enforces the political impartiality of the civil service and not use official resources for party political activity
2. In relation to national-level political activities in: the Northern Ireland Assembly, the Welsh Assembly, the Scottish Parliament, the Westminster Parliament, the House of the Oireachtas, and the European Parliament, Special Advisers must not:
 - a. Hold, in a party political organisation, office which impinges wholly or mainly on party politics in the field of the listed legislatures
 - b. Speak in public on matters of national-level political controversy or express views on such matters in letters to the Press, or in books, articles or leaflets;
 - c. Be announced publicly as a candidate or prospective candidate for the relevant legislatures;
 - d. Canvass on behalf of a candidate for the relevant legislatures or on behalf of a political party, or take part in a campaign going beyond the provision of advice⁴²

⁴⁰ As cited above.

⁴¹ As cited above.

⁴² As cited above.

3. With approval of the appointing minister, Special Advisers may undertake all forms of local political activity, but not local activities in support of national politics. If participating in local politics, Special Advisers:
 - a. Should not speak publicly or in the Council or vote on matters for which their Appointing Authority has responsibility
 - b. Should not serve on any committee considering such matters;
 - c. Should not take part in deputations or other representations to their Appointing Authority;
 - d. Should declare an interest in relation to any case or application which comes before the Council in which the Northern Ireland Ministers or a Northern Ireland Department is involved;
 - e. Should observe discretion in relation to policies for which other Ministers in the Northern Ireland Executive are responsible;
 - f. Should not disclose to the Council privileged information obtained in the course of their duties.⁴³

The Minister who made the appointment is responsible for the management, conduct, and discipline of their Special Adviser, including ensuring that the adviser adheres to the Code of Conduct 2020.⁴⁴ As Special Advisers are temporary civil servants, they are additionally required to follow the NICS Code of Ethics⁴⁵ and the NICS Staff Handbook Standards of Conduct⁴⁶. Breaches of the NICS codes and the Code of Conduct (2020) are to be treated as disciplinary matters.⁴⁷

Northern Ireland Civil Service Code of Ethics

The NICS Code of Ethics lays out the standards of behaviour expected from civil servants: integrity, honesty, objectivity, and impartiality, which further comprises political impartiality.⁴⁸

In sum, behaving with integrity means Special Advisers must:

⁴³ As cited above.

⁴⁴ As cited above.

⁴⁵ Civil Service Commissioners for Northern Ireland – NICS Code of Ethics. Available from: https://www.nicscommissioners.org/wp-content/uploads/2015/09/nics_code_of_ethics.pdf (Accessed 31st January 2020)

⁴⁶ NICS Staff Handbook – 6.01 Standards of Conduct. Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Standards%20of%20Conduct%20-%20version%2018.0%20-%20June%202017.pdf> (Accessed 31st January 2020)

⁴⁷ Department of Finance – Code of Conduct for Special Advisers (2020).

⁴⁸ Civil Service Commissioners for Northern Ireland – NICS Code of Ethics.

- Fulfil duties responsibly, act professionally, use public money and other resources properly, deal fairly and efficiently with the public, handle information as openly as possible; and comply with the law.⁴⁹

Special Advisers must not:

- Misuse their official position, for example by using information acquired through their duties to further their private interests or those of others, accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement/ integrity; or disclose official information without authority.⁵⁰

In sum, behaving with honesty means Special Advisers must:

- Set out facts truthfully and correct errors promptly, and only use public resources for their authorised purpose⁵¹

Special Advisers must not:

- Deceive or mislead Ministers, the Assembly, or others, or be influenced by improper pressures from others for personal gain.⁵²

In sum, behaving with impartiality means Special Advisers must:

- Carry out responsibilities in a manner that is just and equitable, in line with the NICS commitment to equality and diversity and Section 75 of the Northern Ireland Act 1998 ⁵³

Special advisers must not:

- Act in a way that unjustifiably favours or discriminates against particular individuals or interests.⁵⁴

According to the Code of Conduct 2020, Special Advisers are exempt from the standards of objectivity and political impartiality.⁵⁵

Objectivity relates to the provision of advice, including to ministers, on the basis of evidence, accurate presentation of facts and options, taking decisions on merits of the case, taking account of expert advice, and not ignoring relevant considerations or frustrating the implementation of policy.⁵⁶

⁴⁹ As cited above.

⁵⁰ As cited above.

⁵¹ As cited above.

⁵² As cited above.

⁵³ Northern Ireland Act 1998. <http://www.legislation.gov.uk/ukpga/1998/47/contents>

⁵⁴ Civil Service Commissioners for Northern Ireland – NICS Code of Ethics.

⁵⁵ Department of Finance – Code of Conduct for Special Advisers (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/CODE%20OF%20CONDUCT%20FOR%20SPECIAL%20ADVISERS%20-%20FINAL%20-%202020%20JANUARY%202020.pdf> (Accessed 29th January 2020)

⁵⁶ Civil Service Commissioners for Northern Ireland – NICS Code of Ethics. Available from: https://www.nicscommissioners.org/wp-content/uploads/2015/09/nics_code_of_ethics.pdf (Accessed 31st January 2020)

Political impartiality relates to serving ministers regardless of their political persuasion, acting in a way which maintains the confidence of the minister while also maintaining the ability to serve ministers in the future, not allowing personal political views to determine any actions, or acting in a way determined by party political considerations.⁵⁷

Northern Ireland Civil Service Handbook: Standards of Conduct

Special Advisers are expected to follow the Standards of Conduct as laid out in the NICS Handbook⁵⁸, with certain exceptions as specified in the Code of Conduct 2020.⁵⁹ The Standards of Conduct lay out detailed rules for the behaviours of civil servants, for instance on the acceptance of gifts, hospitality, and rewards, rules on the acceptance of outside business appointments and employment after leaving NICS, and use of official information. Potential conflicts of interests that arise should be declared to the Establishment/Personnel Division who decide on how to proceed.⁶⁰

Letter of Appointment to be issued to Special Adviser, 2020

In January 2020, the Department of Finance also published a Letter of Appointment to be issued to Special Advisers, which confirms the terms of appointment.⁶¹ With regard to conduct, the letter states that Special Advisers are required to act in accordance with the NICS Code of Ethics, except for the principles of objectivity and impartiality, the NICS Handbook Standards of Conduct, except for the rules on political activities, and the Code of Conduct (2020). With regard to discipline, the letter states:

Disciplinary matters are dealt with in accordance with procedures, which are set out in HR Policy 6.03 Discipline.⁶² The management, conduct and discipline of Special Advisers is, however, the responsibility of the appointing Minister, and disciplinary powers are exercised by the Minister subject to any express

⁵⁷ As cited above.

⁵⁸ NICS Staff Handbook – 6.01 Standards of Conduct. Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Standards%20of%20Conduct%20-%20version%2018.0%20-%20June%202017.pdf> (Accessed 31st January 2020)

⁵⁹ Department of Finance – Code of Conduct for Special Advisers (2020).

⁶⁰ NICS Staff Handbook – 6.01 Standards of Conduct. Available

⁶¹ Letter of Appointment to be Issued to Special Adviser (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/LETTER%20OF%20APPOINTMENT%20TO%20BE%20ISSUED%20TO%20SPECIAL%20ADVISER%20-%20FINAL%20-%202020%20JANUARY%202020.pdf>. (Accessed 31st January 2020)

⁶² NICS Staff Handbook – 6.03 Discipline. Available from <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/6.03%20Discipline%20policy%20V7.0%20final%20version.pdf> (Accessed 5th February 2020)

All special advisers must uphold their responsibility to the Government as a whole, not just to their appointing Minister. The responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment. Individual Ministers will be accountable to the Prime Minister, Parliament and the public for their actions and decisions in respect of their special advisers. It is, of course, also open to the Prime Minister to terminate employment by withdrawing her consent to an individual appointment.⁶⁸

The Scottish Ministerial Code states:

Under the terms of the Constitutional Reform and Governance Act 2010, the First Minister is responsible for all special adviser appointments. If the First Minister ceases to hold office, the appointments of all special advisers appointed by him or her also end. The First Minister is responsible for deciding on the distribution of all special adviser posts within the Scottish Government, whether in support of individual Ministers or as a collective resource.

All special advisers (paid or unpaid) will be appointed by the First Minister under the terms and conditions set out in the Model Contract for Special Advisers and the Code of Conduct for Special Advisers. Salaries for special advisers are determined either by a Special Advisers Remuneration Committee or by any alternative mechanism that may be put in place following discussion and agreement with the First Minister.

The responsibility for the management and conduct of all special advisers (paid or unpaid), including discipline, rests with the First Minister. It is open to the First Minister to terminate employment by withdrawing his or her consent to an individual appointment.⁶⁹

The Welsh ministerial code states:

All appointments are made by the First Minister. If the First Minister leaves office the Advisers appointed by him or her also leave. As all appointments are made by the First Minister no commitments to make such appointments can be entered into without the prior approval of the First Minister. All such appointments will be made, and all Special Advisers will operate, under the terms and conditions of the Model Contract for Special Advisers and the Code of Conduct for Special Advisers. The responsibility for the management and conduct of Special Advisers, including discipline, rests with the First Minister. The First Minister is responsible for deciding on the distribution of Special

⁶⁸ UK Cabinet Office Ministerial Code 2019. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf

⁶⁹ Scottish Government Ministerial Code 2018 edition. Available from:

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/02/scottish-ministerial-code-2018-edition/documents/00531094-pdf/00531094-pdf/govscot%3Adocument/00531094.pdf>

Adviser posts within the Welsh Government, whether in support of individual Ministers or as collective resource. The First Minister will be accountable to the Assembly and the public for his or her actions and decisions in respect of the Special Advisers.⁷⁰

Conduct

Code of Conduct for Special Advisers

Part 1 Section 8 of the Constitutional Reform and Governance Act 2010 issues a code of conduct for Special Advisers to the UK Government, the Scottish Executive and the Welsh Assembly Government.⁷¹ The codes of conduct are the same for each legislature and are largely comparable to that of the Northern Ireland Assembly, with the following differences.

In contrast to the codes of conduct for governments of the UK (2016)⁷², Scotland (2017)⁷³, and Wales (2016)⁷⁴, the Northern Ireland Code of Conduct (2020)⁷⁵ states that:

- Special advisers must keep accurate records, including minutes of relevant meetings, handle information as openly and transparently as possible within the legal framework, and use official email systems for communications related to official business;
- Special advisers must at all times ensure that no conflict arises, or could be perceived to arise, between their public duties and their private interests;
- The annual report of Special Adviser costs should cover severance payments⁷⁶

In contrast to the Northern Ireland Code of Conduct (2020), the codes of conduct for governments of the UK (2016), Scotland (2017), and Wales (2016) state that:

⁷⁰ Welsh Government Ministerial Code 2019. Available from: <https://gov.wales/sites/default/files/publications/2019-11/ministerial-code-november-2019.pdf>

⁷¹ Constitutional Reform and Governance Act 2010. Available from: <http://www.legislation.gov.uk/ukpga/2010/25/contents> (Accessed 31st January 2020)

⁷² UK Code of Conduct for Special Advisers 2016. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf

⁷³ Scotland Code of Conduct for Special Advisers 2017. Available from: <https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2017/04/special-advisers-code-of-conduct-and-model-contract/documents/code-conduct-special-advisers-pdf/code-conduct-special-advisers-pdf/govscot%3Adocument/Code%2Bof%2Bconduct%2Bfor%2Bspecial%2Badvisers.pdf>

⁷⁴ Wales Code of Conduct for Special Advisers 2016. Available from: <https://www.cynulliad.cymru/laid%20documents/gen-ld10974/gen-ld10974-e.pdf>

⁷⁵ Department of Finance – Code of Conduct for Special Advisers (2020). Available from: <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/CODE%20OF%20CONDUCT%20FOR%20SPECIAL%20ADVISERS%20-%20FINAL%20-%202020%20JANUARY%202020.pdf> (Accessed 29th January 2020)

⁷⁶ As cited above.

- Special Advisers may hold meetings with officials to discuss the advice being put to ministers;
- Special Advisers must not have responsibility for budgets;
- Special Advisers should not brief the media on purely party political matters.⁷⁷

The codes of conduct for governments of the UK (2016), Scotland (2017) and Wales (2016) contain fewer requirements around involvement in national level politics.

Special Advisers may:

- With approval of the appointing authorities (the minister and Prime Minister in the UK, the respective First Minister in Scotland and Wales), a Special Adviser may be publically identified as a candidate or prospective candidate for parliament. They are expected to carry out these duties in their own time and to resign at the start of the short campaign period ahead of the election;
- With approval (of the Prime Minister in the UK and respective First Minister in Scotland and Wales), remain in post during the general election campaign period;
- Take part in an election, by-election, or referendum campaign;
- Attend party functions.⁷⁸

The conduct expected in regard to involvement in local politics is the same as in Northern Ireland.

Civil Service Code

Special Advisers for governments of the UK, Scotland and Wales are expected to conduct themselves in accordance with the Civil Service Code, though they are exempt from the requirement of being appointed on merit and acting with impartiality and objectivity.⁷⁹ The codes are largely the same across the legislatures, including Northern Ireland. Differences between the codes are highlighted below. Both relate to the principle of integrity:

⁷⁷ UK Code of Conduct for Special Advisers 2016. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf

Scotland Code of Conduct for Special Advisers 2017. Available from:

<https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2017/04/special-advisers-code-of-conduct-and-model-contract/documents/code-conduct-special-advisers-pdf/code-conduct-special-advisers-pdf/govscot%3Adocument/Code%2Bof%2Bconduct%2Bfor%2Bspecial%2Badvisers.pdf>

Wales Code of Conduct for Special Advisers 2016. Available from: <https://www.cynulliad.cymru/laid%20documents/gen-ld10974/gen-ld10974-e.pdf>

⁷⁸ As cited above.

⁷⁹ As cited above.

- The Civil Service Code for the UK⁸⁰ and Wales⁸¹ states that Special Advisers must have ministerial authorisation for contact with the media, while the Civil Service Code for Scotland⁸² and the Code of Ethics for Northern Ireland⁸³ do not;
- The Civil Service Code for the UK, Scotland and Wales states that Special Advisers must keep accurate official records, while the Code of Ethics for Northern Ireland does not.

Model Contracts

Further terms and conditions are set out in the Model Contract for Special Advisers, for instance covering disciplinary procedures and severance pay.

For the Government of the UK, the responsibility for disciplinary matters rests with the appointing minister and the Prime Minister's Chief of Staff.⁸⁴ For the governments of Scotland⁸⁵ and Wales⁸⁶ it rests with the respective First Minister.

Across the governments of the UK, Scotland and Wales, if not terminated earlier, the appointment of a Special Adviser terminates either:

- a. When the appointing minister ceases to hold office, or
- b. If earlier, the day after the general election following the appointment.⁸⁷

As in Northern Ireland, severance pay following termination of the appointment due to the above reasons will be based on period of and gaps in service, capping at six months' pay for one reckonable period of service.⁸⁸

⁸⁰ The Civil Service Code UK. Available from: <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

⁸¹ The Civil Service Code Wales. Available from: <https://gov.wales/civil-service-code-html>

⁸² The Civil Service Code Scotland. Available from: <https://www.gov.scot/publications/civil-service-code/>

⁸³ Civil Service Commissioners for Northern Ireland – NICS Code of Ethics. Available from: https://www.nicscommissioners.org/wp-content/uploads/2015/09/nics_code_of_ethics.pdf (Accessed 31st January 2020)

⁸⁴ Model Contract for Special Advisers 2019 UK. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832908/20190919_-_gov.uk_version_-_FINAL_VERSION_Special_Adviser_Model_Contract.pdf

⁸⁵ Model Contract for Special Advisers 2018 Scotland. Available from: <https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2017/04/special-advisers-code-of-conduct-and-model-contract/documents/model-contract-special-advisers-pdf/model-contract-special-advisers-pdf/govscot%3Adocument/Model%2Bcontract%2Bfor%2Bspecial%2Badvisers.pdf>

⁸⁶ Model Contract for Special Advisers Wales 2016. Available from: <https://gov.wales/sites/default/files/publications/2019-01/160823atn10612doc1.pdf>

⁸⁷ As cited above (model contracts of UK, Scotland and Wales)

⁸⁸ As cited above.

4 Republic of Ireland

Appointment

In the Republic of Ireland, a minister or minister of state may request approval from the government for the appointment of a Special Adviser in accordance with Section 11 of the Public Service Management Act 1997⁸⁹. Special Advisers are temporary civil servants⁹⁰ but are exempt from being appointed by Civil Service Commissioners following a competitive procedure.⁹¹ If the proposed individual comes from outside the civil service, the appointment further requires approval by the Taoiseach.⁹²

In regard to number of Special Adviser appointments, the Public Service Management Act 1997 states⁹³:

11.—(1) The Government may, by order, on the request of a Minister of the Government having charge of a Department... appoint Special Advisers to the Minister or to a Minister of State who is assigned to that Department or to a Scheduled Office...:

Provided that the number of Special Advisers shall not—

(a) in the case of a Minister (other than the Taoiseach or the Tánaiste or the leader of a political party registered in the Register of Political Parties), be greater than 2,

(b) in the case of a Minister of State who regularly attends meetings of the Government, be greater than 2, and

(c) in the case of any other Minister of State, be greater than one.

Under Section 19 Subsection 3 of the Ethics in Public Office Act 1995⁹⁴, when the Special Adviser's remuneration exceeds a prescribed amount (for the 32nd Dáil, the second Long Service Increment point of the Higher Executive Officer)⁹⁵, the Special Adviser must:

Undertake not to engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be

⁸⁹ Section 11 Public Service Management Act, 1997. Available from:

<http://www.irishstatutebook.ie/eli/1997/act/27/section/11/enacted/en/html#sec11>

⁹⁰ Instructions to Personnel Officers - Ministerial Appointments for the 32nd Dáil: Appendices 8 - Model Contract of Employment for the post of Special Adviser. Available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/7915/4e02a0251f144e20b34c4042e7e7aa62.pdf#page=1>

⁹¹ Section 19 Ethics in Public Office Act, 1995. Available from:

<http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/print#sec19>

⁹² Instructions to Personnel Officers - Ministerial Appointments for the 32nd Dáil. Available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/7915/4e02a0251f144e20b34c4042e7e7aa62.pdf#page=1>

⁹³ Section 11 Public Service Management Act, 1997. Available from:

<http://www.irishstatutebook.ie/eli/1997/act/27/section/11/enacted/en/html#sec11>

⁹⁴ Section 19 Ethics in Public Office Act, 1995.

⁹⁵ Instructions to Personnel Officers - Ministerial Appointments for the 32nd Dáil

capable of interfering or being incompatible with the performance by the person of his or her functions as a special adviser.⁹⁶

Special Advisers whose remuneration exceeds the prescribed amount must prepare and furnish a statement of their own registerable interests which could reasonably be seen as interfering or being incompatible with their official duties, to be submitted to the minister/minister of state and the Oireachtas.⁹⁷ In total, the minister/minister of state should submit the following documents before the Houses of the Oireachtas not later than 60 days after the person's appointment to Special Adviser:⁹⁸

1. A copy of the contract, or a statement in writing of the terms and conditions, under which the person acts or acted as a special adviser,
2. A copy of any statement under subsection (3) (a) (i) of the interests of the person furnished to the office holder,
3. A statement as to whether the person is a relative of the office holder, and
4. If subsection (3) applies to the person, a statement of the qualifications of the person relevant to his or her functions as a special adviser.⁹⁹

Special Advisers should also prepare a statement of interests of their spouse/civil partner, children, or children of their spouse/civil partner, which could reasonably be seen as interfering with their official duties. This, alongside the statement of own interests, should be submitted to their appointing minister/minister of state and the Standards in Public Office Commission on an annual basis.¹⁰⁰

There are no further guidelines for the selection of Special Advisers.

If appointed to a minister of government, the term ceases on the date in which the minister ceases to be a minister of government. If appointed to a minister of state, the term of office ceases on the date of expiration of the assignment of the minister of state to the relevant department or office.¹⁰¹

⁹⁶ As cited above.

⁹⁷ As cited above.

⁹⁸ Section 19 Ethics in Public Office Act, 1995.

⁹⁹ As cited above.

¹⁰⁰ Instructions to Personnel Officers - Ministerial Appointments for the 32nd Dáil. Available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/7915/4e02a0251f144e20b34c4042e7e7aa62.pdf#page=1>

¹⁰¹ As cited above.

Conduct

Section 11 of the Public Service Management Act 1997¹⁰² lays out the responsibilities that a Special Adviser can undertake for their minister or minister of state:

1. Providing advice;
2. Monitoring, facilitating and securing the achievement of Government objectives that relate to the Department, as requested by the Minister or the Minister of State, as the case may be, and
3. Performing such other functions as may be directed by the Minister or the Minister of State, as the case may be, that are not otherwise provided for in this Act and do not involve the exercise of any specific powers conferred on the Minister or the Minister of State, as the case may be, or any other office holder by or under any other Act.¹⁰³

Under the Public Service Management Act 1997, Special Advisers are accountable to their minister or minister of state when performing these responsibilities.¹⁰⁴

Civil Service Code of Standards for Behaviour

Special Advisers are obliged to follow the Civil Service Code of Standards for Behaviour,¹⁰⁵ in accordance with Section 10 of the Standards of Public Office Act 2001¹⁰⁶. The Code of Standards includes:

1. Standards underpinning service delivery;
2. Behaviour at work;
3. Standards of integrity.¹⁰⁷

Key points in relation to the conduct of Special Advisers are summarised below:

1. Civil servants are expected to advise and implement policy impartially;
2. Special Advisers are exempt from the restrictions placed on civil servants with regard to involvement in politics, for instance a Special Adviser is permitted to

¹⁰² Section 11 Public Service Management Act, 1997. Available from:
<http://www.irishstatutebook.ie/eli/1997/act/27/section/11/enacted/en/html#sec11>

¹⁰³ As cited above.

¹⁰⁴ As cited above.

¹⁰⁵ Instructions to Personnel Officers - Ministerial Appointments for the 32nd Dáil.

¹⁰⁶ Section 10, Standards of Public Office, 2001. Available from:
<http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/print#sec10>

¹⁰⁷ Standards in Public Office Commission - Civil Service Code of Standards and Behaviour. Available from:
<https://www.sipo.ie/acts-and-codes/codes-of-conduct/civil-servants/Civil-Service-Code-of-Standards.pdf>

seek nomination or stand for election in either house of the Oireachtas or to the European Parliament;

3. A civil servant that has been convicted of a criminal offence or given the benefit of the Probation Act must report it to their Personnel Officer, and it may have implications for their position;
4. Civil servants should endeavour to ensure the proper, effective and efficient use of public money;
5. Civil servants should not use their official positions to benefit themselves or others with whom they have ties with, or to seek to influence matters related to their official positions;
6. Civil servants must never use knowledge acquired as part of their official duties, to benefit themselves or others with whom they have ties;
7. Civil servants should not accept any benefits (gifts or hospitality) that could reasonably be seen to compromise their integrity.¹⁰⁸

5 Number and Annual Cost of Special Advisers

Section 6 of the Special Advisers Act 2013 stipulates that a report on the number and cost of Special Advisers should be laid before the Northern Ireland Assembly at the end of each financial year.¹⁰⁹ Part 1 Section 16 of the Constitutional Reform and Governance Act 2010 stipulates that the UK, Scottish and Welsh governments should prepare annual reports for their respective parliaments, with information on numbers and costs of Special Advisers.¹¹⁰

Recent trends in the number and annual cost of Special Advisers are summarised below, though please note that:

1. Number of advisers have been summed at the point in time where Special Advisers data is released by in the different jurisdictions. For instance, the end of the financial year for Northern Ireland and Wales, end of the calendar year for the UK, at varying times for Scotland as data is released following Freedom of Information requests, and mid-year for the Republic of Ireland.
2. The amount of detail on full-time versus part-time advisers varies across legislatures and years. For instance, Northern Ireland reports combine both part-time and full-time, the UK and Wales reports split the two, and Scotland

¹⁰⁸ As cited above.

¹⁰⁹ Civil Service (Special Advisers) Act (Northern Ireland) 2013. Available from: <http://www.legislation.gov.uk/nia/2013/8/section/8> (Accessed 29th January 2020)

¹¹⁰ Constitutional Reform and Governance Act 2010. Available from: <http://www.legislation.gov.uk/ukpga/2010/25/contents> (Accessed 31st January 2020)

and the Republic of Ireland provide no information regarding this. When possible, full-time and part-time have been provided separately;

- When covering a period where the appointing authority ceases to hold office, the cost additionally includes severance costs for Special Advisers.¹¹¹

Table 1: Number and annual cost of special advisers to the governments of Northern Ireland, the UK, Scotland, Wales, and the Republic of Ireland (2013-14 to 2018-19)

Number (Annual cost - million)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Northern Ireland	18 (£1.97m)	18 (£2.02m)	18 (£2.03m)	-	-	-
UK	103 (£8.4m)	89 + 3 ¹¹² (£11.1m)	86 + 3 ¹¹² (£10.9m)	86 + 2 ¹¹² (£8.8m)	99.2 ¹¹³ (£8.9m)	108.4 (£9.8m)
Wales	7 + 2 ¹¹² (£0.47m)	8 + 1 ¹¹² (£0.63m)	No data	7 + 2 ¹¹² (£0.72m)	8 + 2 ¹¹² (£0.67m)	4 + 5 ¹¹² (£0.93m)
Scotland	14 (£1.02m)	14 (£0.95m)	12 (£1.14m)	13 (£0.96m)	14 (£1.05m)	14 (£1.11m)
Republic of Ireland	No data					59

¹¹¹ Northern Ireland: <https://www.finance-ni.gov.uk/publications/special-advisers-documents>

UK: <https://www.gov.uk/government/publications/special-adviser-data-releases-numbers-and-costs-december-2019>

Scotland: <https://www.gov.scot/publications/foi-18-01745/>

Wales: <https://gov.wales/search?global-keywords=%22special+advisers%22+written+statement>

Republic of Ireland: <https://www.gov.ie/en/publication/9ad159-special-advisers-pay/?referrer=/en/special-advisers-pay/>

¹¹² [No. of Full-time] + [No. of Part-time]

¹¹³ Full-time equivalent