

Northern Ireland Assembly Executive Committee

Ministerial Code

01/02/2000

MINISTERIAL CODE

NOTE: THIS CODE WILL BE REVIEWED AFTER 6 MONTHS

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SECTION 1: INTRODUCTION

The Belfast Agreement and the Northern Ireland Act 1998

- 1.1 The Belfast Agreement and the Northern Ireland Act 1998 (the Act) specify the duties and responsibilities of Ministers of the Northern Ireland Assembly. These notes set out in greater detail the ground rules and procedures for the exercise of those duties and responsibilities. They apply to all members of the Executive Committee and to junior Ministers. The notes should be read in conjunction with the duty of Ministers to comply with the law, to uphold the administration of justice and to protect the integrity of public life.

Pledge of Office

- 1.2 Under the Belfast Agreement and under sections 16, 18 and 19 of the Act, it is a condition of appointment that Ministers of the Northern Ireland Assembly, including the First Minister and the deputy First Minister and junior Ministers, affirm the terms of the following Pledge of Office.
- (a) to discharge in good faith all the duties of office;
 - (b) commitment to non-violence and exclusively peaceful and democratic means;
 - (c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;
 - (d) to participate with colleagues in the preparation of a programme for government;
 - (e) to operate within the framework of that programme when agreed within the Executive Committee and endorsed by the Assembly;
 - (f) to support, and to act in accordance with, all decisions of the Executive Committee and Assembly;
 - (g) to comply with the Ministerial Code of Conduct.

Ministerial Code of Conduct

1.3 The Ministerial Code of Conduct referred to at (g) above is as follows.

Ministers must at all times:

- (i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;
- (ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
- (iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;
- (iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;
- (v) comply with this code and with rules relating to the use of public funds;
- (vi) operate in a way conducive to promoting good community relations and equality of treatment;
- (vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
- (viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and
- (ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests.

The Seven Principles of Public Life

1.4 The seven principles of public life referred to at (iv) above are as follows:-

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

SECTION 2 : MINISTERS AND DEPARTMENTS

Determination of the number and functions of Ministers by the First Minister and the deputy First Minister

- 2.1 Under the Belfast Agreement and under section 17 of the Northern Ireland Act 1998 (the Act), it is for the First Minister and the deputy First Minister acting jointly and subject to a resolution of the Assembly passed with cross-community support to determine the number of Ministerial offices to be held by **Northern Ireland Ministers** (maximum number 10, or such greater number as provided for by the Secretary of State) and the functions exercisable by the holder of each such office. This may be done at any time; it must be done when a new department is established or an existing department is dissolved by an Act of the Assembly under section 21 of the Act.

Transfer of functions between NI Ministers

- 2.2 If Northern Ireland Ministers

- (i) wish to propose that functions should be transferred
 - a. between Northern Ireland Ministers; or
 - b. within the field of responsibility of one Minister, for example, by 'hiving off' the discharge of some functions to a Non-Departmental Public Body, where the change is likely to be politically sensitive or to raise wider issues of policy or organisation; or
 - c. between junior Ministers within a department;

- or (ii) wish to propose that new functions should be allocated to a particular Minister where the function does not fall wholly within the field of responsibilities of one Minister

a submission shall be made to the First Minister and the Deputy First Minister.

The submitting Minister shall be:

- the ceding Minister in the case of transfers of existing functions and
- the principal receiving Minister in the case of allocation of new functions.

Before a submission is sent to the First Minister and Deputy First Minister:

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- (a) the submitting Minister must notify all other Ministers who may be affected by or have an interest in the proposed transfer of functions or allocation of new functions of the proposed transfer or allocation. This may be done by a Minister's representative at the meeting of Ministerial representatives (see paragraph 3.10);
- (b) the Head of the Northern Ireland Civil Service must be consulted by the Permanent Secretary or Permanent Secretaries of the department(s) concerned following consultation with all interested Ministers.

2.3 The First Minister and the deputy First Minister may make Transfers of Functions Orders in accordance with Article 8 of the Departments (Northern Ireland) Order 1999.

Allocation of Ministerial offices

2.4 Ministerial offices shall be allocated as provided for in section 18 of the Act.

Exercise of Departmental Functions by the Northern Ireland Ministers

2.5 The Northern Ireland Ministers must act in accordance with the Pledge of Office. They shall exercise the functions assigned to the Ministerial office which they hold. In exercise of those functions, the Northern Ireland Ministers have full executive authority in that area of responsibility, subject to section 3 of this Code including any programme agreed by the Executive Committee, endorsed by the Assembly as a whole. Northern Ireland Ministers have a duty to the Northern Ireland Assembly to account, and be held to account, for the policies, decisions, expenditure and actions of their departments including their Next Steps Agencies and NDPBs.

Junior Ministers

2.6 Under section 19 of the Act, it is for the First Minister and the deputy First Minister acting jointly and subject to a resolution of the Assembly to determine the number of junior Ministers to be appointed, the procedures for those appointments and the functions exercisable by the holder of each such office.

2.7 Northern Ireland Ministers are directly answerable to the Northern Ireland Assembly for the exercise of the powers on which the administration of their functions depend. If a Minister wishes to propose that he or she would assign functions to a junior Minister, the proposal defining the range of departmental work for which the junior Minister would be responsible, together with any proposed "courtesy titles" descriptive of the duties, should be submitted in writing to the First Minister and the deputy First Minister, copied to the Head of the Northern Ireland Civil Service.

Arrangements during absences

- 2.8 Ministers must ensure that the Secretary of the Executive Committee is able to contact them at all times so that, if the need arises, he or she can inform the First Minister and deputy First Minister which Ministers are immediately available.
- 2.9 When a Minister will be unavailable for a considerable period because of absence or illness the nominating officer of the party of which the Minister is a member may nominate a person to hold the office in accordance with the provisions of section 18(9) and (10) of the Act.

Exclusion of Ministers from office

- 2.10 Under section 30 of the Act, if the Assembly resolves that a Minister or junior Minister no longer enjoys the confidence of the Assembly
- (a) because he or she is not committed to non-violence and exclusively peaceful and democratic means; or
 - (b) because of any failure of his or hers to observe any other terms of the pledge of office,

he or she shall be excluded from holding office as a Minister or junior Minister for a period of twelve months beginning with the date of the Assembly's resolution.

- 2.11 Similarly, if the Assembly resolves that a political party does not enjoy the confidence of the Assembly, members of that party shall be excluded from holding office as Ministers or junior Ministers for a period of twelve months from the date of the resolution.

Special Advisers

- 2.12 Special Advisers may be appointed under the Civil Service Commissioners (Northern Ireland) Order 1999. The First Minister and the deputy First Minister may each have up to 3 Special Advisers at any one time and other members of the Executive Committee may have one Special Adviser each at any one time.
- 2.13 Ministers are expected to observe the Code of Practice on the Appointment of Special Advisers. While Special Advisers are temporary civil servants they have a very different role from that of other civil servants and need to have a particularly close working relationship with their Ministers. The appointments of Special Advisers are made personally by Ministers, and are not subject to the requirements of the normal civil service recruitment process. Consideration of the suitability for appointment of any individual special adviser is entirely the responsibility of the appointing Ministers. Each Minister should therefore

be personally satisfied that any proposed appointee is in all respects suitable for appointment and has the ability, aptitudes and character needed for the duties of the post. Once satisfied the Minister should advise the Secretary to the Executive Committee in writing. It is for each Minister's own discretion as to what steps to take in order to make this assessment. Departments will however be able to offer guidance as to the criteria that would be applied to a normal civil service appointment and Ministers may wish to have regard to those criteria in making special adviser appointments.

Other Sources of Advice to Ministers

- 2.14 It is important to maintain the distinction between civil service advisers (including Special Advisers) and other advisers to Ministers in that capacity. As Civil Servants, Special Advisers are paid out of public funds and have access to official papers and information on the basis of high standards of confidentiality as already outlined above. Ministers may have arrangements for dialogue with Party members and workers, but any expenses so incurred must not be met from public funds. However it is important that in the discharge of public business, Ministers should act, and be seen to act, in a Ministerial capacity rather than with a Party political role. For this reason Party workers and representatives should not be permitted to attend Ministerial or departmental meetings nor should official papers and information be made available to Party workers.
- 2.15 A Minister, through his or her Department, may commission advice on a particular subject. Such advice must be obtained in a way which protects the confidentiality of official information. Civil Servants may only make official information available if the Minister gives express written direction for a particular purpose. In particular, it is important that arrangements are made to prevent a real or perceived conflict of interest between the private interests of advisers and the official information to which they will have access.

Appointments by Ministers

- 2.16 Guidance on Public Appointments is available in "The Commissioner for Public Appointments for Northern Ireland's Guidance on Appointments to Executive Non-Departmental Public Bodies and Health and Personal Social Services Bodies."

Other duties and responsibilities of Ministers

- 2.17 Ministers must comply with any order made by a Minister of the Crown in accordance with section 27 of the Act which provides for the achievement by the Minister in exercise of his or her functions of an element of a wider UK result required under international obligation or Community law.

- 2.18 Northern Ireland Ministers must comply with any requirement of the Treasury for the provision of information, in accordance with section 67 of the Act.

Ministers and Statutory Committees of the Assembly

- 2.19 The Assembly statutory committees will have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and will have a role in the initiation of legislation. A Minister or a junior Minister may not be the chairman or deputy chairman of a statutory committee of the Assembly. Ministers must co-operate and liaise regularly with the statutory committees in the exercise of their powers under the Act ie, to

- Consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate enquiries and make reports;
- Consider and advise on matters brought to the Committee by its Minister

Civil servants

- 2.20 Ministers will give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Northern Ireland Civil Service Code of Ethics; they will ensure that influence over appointments is not abused for partisan purposes; and they will not impede their departments in observing the obligations of a good employer with regard to the terms and conditions of those who serve them. Civil servants will not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.
- 2.21 Ministers should require civil servants who give evidence before Committees of the Assembly on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Northern Ireland Civil Service Code of Ethics.

Civil servants and party conferences

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- 2.22 Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of policy or subject groups of any of the Assembly parties. Civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. The situation is, of course, different when Ministers require officials to be in attendance at party political events in order to enable the Minister to carry out urgent departmental business.
- 2.23 If a Minister wishes to have a brief for a party political occasion to explain departmental policies or actions, this may be provided. However, civil servants should not be asked to draft party political material for speeches, press releases, etc.

The role of the Accounting Officer

- 2.24 Permanent Secretaries and the chief executives of executive agencies are appointed as Accounting Officers. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Public Accounts Committee on these matters, within the framework of Ministerial accountability to the Assembly for the policies, actions and conduct of their departments.
- 2.25 Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question and send the relevant papers to the Comptroller and Auditor General. The papers will also be copied to the First Minister and the Deputy First Minister through the Head of the NICS. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Public Accounts Committee to see that the Accounting Officer does not bear personal responsibility for the actions concerned.
- 2.26 The role of Accounting Officers is described in detail in the Department of Finance and Personnel memorandum, *The Responsibilities of an Accounting Officer*. Further guidance is contained in the Treasury handbook, *Regularity and Propriety*.

Handling Correspondence which is the Departmental Responsibility of Another Minister

- 2.27 Correspondence received by a Minister which is outside his/her departmental responsibility should be sent directly to the Minister who is responsible for the particular issue. An acknowledgement should be sent to the author of the correspondence advising the name of the Minister to whom the correspondence has been transferred. This acknowledgement should also be copied to the Minister with responsibility for the issue.

Access to papers of a previous Administration

- 2.28 Departments will provide Ministers with all the information which they require to carry out their functions. However, Ministers should not seek access to documents which were created before devolution; nor should they seek access to documents created by, or for Northern Ireland Ministers of different political parties to themselves. This is intended to provide a mutual assurance that official documents will not be exploited for political gain.
- 2.29 Accordingly, a Minister should not seek access to any minutes, notes or documents created under a predecessor of a different Party other than those which were made public by that predecessor; nor should a Minister seek to ascertain – whether directly from officials or by access to departmental paper which would provide the information – the views of previous Ministers of a different political party or the advice given by officials to such Ministers. However, a Minister may seek access, for example, to a report on which action has not yet been taken or documents which were made available outside Government during the term of office of a previous Minister.
- 2.30 If a Minister wishes to see a document which the Permanent Secretary believes should be withheld under this general principle, the Minister will be so advised in writing. If the Minister is not satisfied with the advice, the Permanent Secretary should be asked to copy the advice to the Secretary to the Executive Committee with a request that the matter be brought immediately to the attention of the Executive Committee for its decision. Ministers and officials will act in accordance with any decision of the Executive Committee.
- 2.31 Special Advisers are required to comply with this general principle in the same way as Ministers. Special Advisers may not seek access to documents created prior to the appointment of the Minister who appointed them.

Former Ministers

- 2.32 Former Ministers may see, but not retain, official documents which they saw in their capacity as Ministers. Such access will be dealt with on a case by case basis and access may be made conditional. Requests should be made to the Secretary to the Executive Committee.