

TO: EXECUTIVE COMMITTEE

**SPECIAL ADVISERS – CODE OF PRACTICE ON APPOINTMENTS**

1. Attached is a draft Code of Practice on the Appointment of Special Advisers.
2. The Executive Committee is invited to agree that the Code of Practice should be adopted in relation to the appointments of Special Advisers to members of the Executive Committee.

**EXECUTIVE SECRETARIAT**

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## DRAFT

### 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. The appointment of Special Advisers is subject to Northern Ireland's employment legislation including anti-discrimination legislation. The Code should be read in conjunction with that part of the Ministerial Code which deals with Ministers and Special Advisers. Its 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. This Code of Practice also applies to the appointment of a Special Adviser to the Presiding Officer of the Northern Ireland Assembly where that appointment is made under the Civil Service Commissioners Order.
2. Special Advisers have the status of temporary 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 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 and the Presiding Officer of the Northern Ireland Assembly during a period terminating on or before the end of an administration. 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.

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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 and the Fair Employment and Treatment (NI) Order 1998. The last 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 element of this 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 meets fully 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 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.

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- (b) Ministers have a personal responsibility to ensure that selection is free from unlawful discrimination.
- (c) Ministers should ensure that they consider a wide field 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 Appendices A and B.

### 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

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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 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

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that 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. 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, including the signing of the contract of employment which sets out the conditions of service and remuneration package. A model contract is attached at Appendix A. Advice on the pay range for Special Advisers is set out at Appendix B.

## 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?

13. Officials can provide further advice and assistance, including legal advice.

Department of Finance and Personnel

\*November 1999

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**MODEL CONTRACT FOR SPECIAL ADVISERS**

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

Dear

**APPOINTMENT AS SPECIAL ADVISER TO**

I have pleasure in offering you an appointment as my Special Adviser with effect from

The details of your terms and conditions are set out in the Northern Ireland Civil Service (NICS) Pay and Conditions of Service Code, the NICS Staff Handbook and related Civil Service Circulars. Copies of these documents are available for inspection in the Personnel Division of the Department of

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

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Your basic salary is £ within the Special Adviser pay range of £26,728-£78,186 per annum. You will be paid monthly in arrears via Bankers Automatic Clearing Service. Your appointment is outside the civil service superannuation scheme. A contribution of up to 16% of your salary will be paid directly into your nominated pension scheme. You should advise Personnel Division of Department of immediately of your nominated pension scheme and the Bank or Building Society into which your salary should be paid.

Please indicate your acceptance of this offer and provide Personnel Division with Parts II and III of Income Tax Form P45 completed by your last employer and also your National Insurance Number.

Yours sincerely

## APPOINTING AUTHORITY

2.1 The details of your terms and conditions are set out in the Northern Ireland Civil Service (NICS) Pay and Conditions of Service Code, the NICS Staff Handbook (respectively the "Code" and the "Handbook") and related Civil Service Circulars. Copies of these documents are available for inspection in your Personnel Division.

## 2. Salary



## **SCHEDULE 1**

### **SPECIAL ADVISERS - MAIN TERMS AND CONDITIONS**

#### **1. Job Title**

- 1.1 You have been appointed in accordance with Article 3 paragraph 2(b) and 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 as a Special Adviser to the (Appointing Authority).
- 1.2 As a Special Adviser appointed to a situation in the Northern Ireland Civil Service by the Appointing Authority, you will be employed for the period of your service in the Department of
- 1.3 Your role (which is detailed in Schedule 2) is to provide advice to the Appointing Authority.

#### **2. Terms and Conditions**

- 2.1 The details of your terms and conditions are set out in the Northern Ireland Civil Service (NICS) Pay and Conditions of Service Code, the NICS Staff Handbook (respectively the "Code" and the "Handbook") and related Civil Service Circulars. Copies of these documents are available for inspection in your Personnel Division.

#### **3. Salary**



- 3.1 Your salary is set out in your letter of appointment. It will be reviewed annually from 1 April and you will be notified in writing of any change to your salary. You are not entitled to the payment of any overtime.

4. **Pensions**

- 4.1 Your appointment is outside the civil service superannuation scheme. A contribution of up to 16% of your salary will be paid directly into your nominated pension scheme.
- 4.2 You are covered by the injury benefit provisions of Section 11 of the Principal Civil Service Pension Scheme NI (PCSPS(NI)). If you suffer an impairment of earnings capacity as the result of a qualifying injury, any benefits payable by your own pension arrangements will be taken into account in determining the amount of the PCSPS(NI) injury allowances.
- 4.3 The normal civil service retirement age is 60 years.



5. **Performance Management and Appraisal**

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

6. **Hours of Work**

- 6.1 You are required to work a minimum (over a 5 day week) of 42 hours, including meal breaks of one hour.
- 6.2 You will be required to work additional hours as may from time to time be reasonable and necessary for the efficient performance of your duties.

7. **Annual Leave**

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

8. **Public and Privilege Holidays**

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

9. **Sickness**

- 9.† The rules relating to sickness and injury are to be found in paragraphs 451 to 609 of the Code. These provide for absence on full pay and on half pay



depending on the length of absence and subject to a ceiling on total paid absence within a given period.

10. **Maternity Leave**

- 10.1 You are entitled to 3 months and one week's paid maternity leave on each relevant occasion provided that, when your maternity leave begins, you intend to return to work, are in paid service and have one year's employment in the Civil Service. Detailed provisions relating to maternity leave are set out in Chapter 6 of the "Leave and Attendance" part of the Handbook.

OR

10.2. **Paternity Leave**

You are entitled to 2 days paid paternity leave on each relevant occasion.

11. **Notice**

- 11.1 As a civil servant you are not entitled to a period of notice terminating your employment. However, unless your appointment is terminated by agreement or results from disciplinary proceedings, inefficiency or grounds justifying summary dismissal at common law, you will in practice normally be given not less than 3 months' notice in writing terminating your employment. On the expiration of such notice your employment will terminate.
- 11.2 Unless terminated earlier, your employment will terminate on the day on which your Appointing Authority, for any reason, ceases to be a Minister.



When the termination of your employment results from any of the circumstances set out in this sub paragraph, or if you resign:

- (a) in order to comply with the Civil Service (Parliamentary, and Assembly Candidature) (Northern Ireland) Order 1990 as amended by the CivilService (Parliamentary and Assembly Candidature) (Amendment) Order (Northern Ireland) 1998, on becoming publicly identified as a candidate or prospective candidate for election; or
- (b) in order to take part in a General, European or By-Election campaign or to help in a Party headquarters or research unit during such a campaign

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

#### 11.3 Severance pay will be calculated as follows:

If you are aged under 34 on termination of appointment you will receive 3months' pay.

If you are aged 35 or over, you will receive 3 months' pay if termination occurs at any time during the first year of service, and thereafter an extra



onemonth's pay for each completed year of service after the first subject to a maximum of 6 months' pay.

If you are aged 34 on termination of appointment, you will receive a severance payment at a rate half-way between 3 months' pay and the appropriate over-35 rate.

But if you resign in the circumstances identified in 11.2 above within 6 months of the commencement of your employment, you will only be entitled to onemonth's severance pay regardless of your age.

11.4 You are not entitled to any other pay in lieu of notice if you are in receipt of severance pay.

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

## 12. **Conduct**

12.1 As a civil servant high standards of confidentiality must be observed. You are required to exercise care in the use of official information acquired in the course of official duties and not to disclose, without the authorisation of your Appointing Authority, information which is held in confidence. The rules governing the use of confidentiality and official information are set out in the Code.

12.2 You are also subject to the Official Secrets Acts 1911-1989. An explanatory leaflet summarising the provisions of the Acts as they affect civil servants will be provided to you.



- 12.3 You are required to abide by the conduct provisions of the Code with the exception of the rules on political activities. The rules which apply to you are set out in parts 1 and 2 of Schedule 2.
- 12.4 You are required to conduct yourself in accordance with all the provisions of the NICS Code of Ethics except for those aspects of paragraphs 1 and 5 which relate to the impartiality and objectivity of the Civil Service and of civilservants and those in paragraph 9 which relate to a future Administration or future Ministers. A copy of the Code of Ethics will be provided to you by your Department.
- 12.5 If you wish to take part in any outside activity where information or experience gained in the course of your work is likely to be relevant, you must first seek permission from the Official Head of the Department.
- 12.6 You will not have access to papers relating to civil servants personally. You will also be subject to the rules which apply to Ministers as regards access to papers of a previous Administration. Subject to these exceptions and to Paragraph 14 below, you may, at the discretion of your Appointing Authority have access to all papers submitted to Ministers.
- 12.7 You must comply with the rules on the publication of personal memoirs and books based on official experience set out in the Code.



### 13. Disciplinary and Grievance Procedures

- 13.1 Disciplinary matters are dealt with in accordance with the Department's disciplinary procedures, which are set out in the Code. The inefficiency procedures set out in the Code do not apply to you.
- 13.2 If you have any grievances relating to your employment, or if you wish to appeal against any decisions or actions which affect you adversely, you must bring this in writing to the attention of your Appointing Authority or the Official Head of your Department.

### 14. Acceptance of Outside Appointments

- 14.1 In certain circumstances you are required to obtain the agreement of the NICS before accepting any offer of employment outside the Civil Service which would start within 2 years of leaving this employment. The rules on the acceptance of outside appointments, and the circumstances in which they apply, are set out in the Code. To avoid possible conflicts of interest, however, you will not have access to the kind of information (eg about individual companies), or be involved in the kind of business (eg contracts), which would be likely to create perceptions of impropriety in relation to subsequent employment.



## APPENDIX B

### REMUNERATION OF SPECIAL ADVISERS

#### 1. Salary

Special Advisers are paid on the scale £26,728-£78,186 (effective from 1 April 1999). The range will be uprated annually in line with changes to the Senior Civil Service pay bands. They are not entitled to the payment of any overtime.

#### 2. Starting Salary on Appointment

When considering the remuneration package applicable to Special Advisers the overriding principle is that they should neither significantly gain nor lose financially by their appointment. They will enter at the minimum of the scale or at a rate to be determined on the basis of the individual's previous remuneration. In calculating the relevant level of remuneration, basic salary in previous employment should be taken into account along with other quantifiable benefits, such as, for example, a company car or private health care payments. Documentary evidence should be provided where appropriate. Employer's pension contributions should not be included (*see paragraph 5 below*). If necessary, advice may be sought from the Pay and Grading Unit of the Department of Finance and Personnel about evaluating any non-pay remuneration.

#### 3. Review Date

The pay settlement date will be 1 April each year.

#### 4. Progression/Performance

The pay progression of Special Advisers will be based, not on performance, but linked to the Senior Civil Service (SCS) average increase. DFP will supply the appropriate percentage to be applied each year. Increased salary will be subject to the relevant Minister being content that performance has not slipped below acceptable levels; it will therefore be necessary for Departments to write to Ministers each year seeking confirmation that the services of their Special Advisers have been satisfactory.

#### 5. Pension

Special Adviser appointments are outside the Civil Service Superannuation Scheme. Their pay range does not include any element of pension contribution. Pension contributions up to a maximum of 16% of salary may be paid into an existing or new occupational or personal pension scheme. The level of contribution made will depend on each individual's existing pension



arrangements. Where an Adviser had been in receipt of an employer's contribution, an equivalent rate, within the maximum, will be paid. Departments should be aware that an employer's contribution for any particular year may not be typical of the normal contribution level, for example, the performance of the fund may have necessitated extra payments or allowed for a payment holiday. The scheme booklet may provide further details. Where an adviser has not been in receipt of an employer's contribution, the rate will be that which applies to the appropriate pay level in the Civil Service.

*{See also paragraph 4 of Schedule 1 to the Letter of Appointment issued to Special Advisers by their appointing authority.}*

#### **6. Hours of Attendance/Overtime**

Special Advisers are required to work a minimum (over a 5-day week) of 42 hours, including meal breaks of one hour. They will be required to work additional hours as may from time to time be reasonable and necessary for the efficient performance of their duties. Prospective Special Advisers should be made aware that long and sometimes unsocial hours may be required.

**NB:** Departments should note that the terms of the EU Working Time Directive apply to Special Adviser posts. Advisers should be asked whether they wish to waive certain rights. CSC 19/99 gives full details and should be brought to the attention of Special Adviser staff.

#### **7. Payment of Pay**

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

*{For other conditions of service see Schedule 1 to the Letter of Appointment at Appendix A.}*