

Head of the Civil Service

Head of the Office of the First Minister & Deputy First Minister

Nigel Hamilton

Room F6, Stormont Castle, BELFAST BT4 3TT, NORTHERN IRELAND

Tel: 028 9037 8133 Fax: 028 9037 8205 Email: hocs@ofmdfmi.gov.uk

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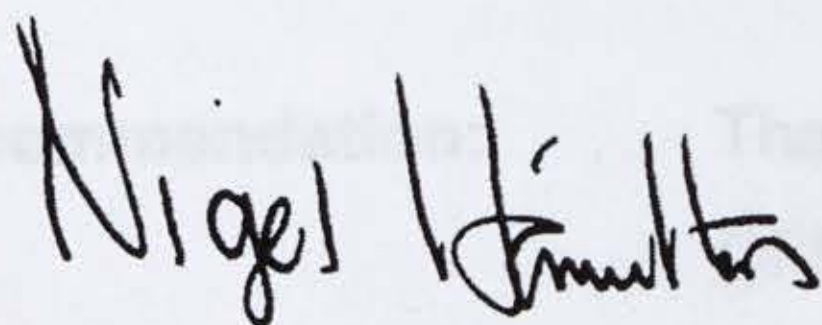
FROM: NIGEL HAMILTON
29 October 2002

cc: Joe Pilling (B&L)

TO: JONATHAN PHILLIPS
DAVID COOKE
ROSALIE FLANAGAN
DENIS McCARTNEY

SPECIAL ADVISERS AND PRIVATE OFFICES

1. Within OFMDFM we have been taking forward work on the question of Special Advisers and Private Offices. I am particularly grateful to Rosalie and Denis for their examination of all the earlier papers.
2. I attach a suggested note which I might send to the Secretary of State, to form the basis for a discussion with Senior colleagues. I would be grateful for any comments you might have by **Wednesday lunchtime**, so that I could submit the final paper to the Secretary of State by close of play on Wednesday.



NIGEL HAMILTON

DRAFT

FROM: NIGEL HAMILTON

October 2002

SECRETARY OF STATE (B&L)

SPECIAL ADVISERS AND PRIVATE OFFICERS

Issue: (i) Request from David Trimble and Mark Durkan for the re-appointment of Special Advisers as civil servants and support for them.

(ii) Which former Ministers should be allowed to re-appoint Advisers.

Timing: Decision required before meeting with Trimble and Durkan.

Presentational Issues: (i) Re-appointment of advisers will signal Government's willingness to help former Executive to return to devolution and will generally be welcomed.

(ii) Criticism possible from those who feel the parties should be providing this resource themselves and from any former Ministers and parties who do not benefit.

Recommendation: That you meet soon with officials in Northern Ireland Office and OFMDFM to consider and agree the most appropriate way to provide this support, and to whom it will be provided.

Introduction:

1. At a meeting with the former Secretary of State on 21 October, David Trimble and Mark Durkan requested Doctor Reid to re-appoint their Special Advisers to help support them during the period of Direct Rule. David Trimble, in particular, emphasised that he would want a repetition of the arrangements agreed by Peter Mandelson during the previous period of suspension in 2000. In his initial response, Dr Reid indicated that he would, in principle, allow each of them to retain 2 Special Advisers until the end of the year, at which point their Special Advisers would receive 3 months salary in lieu of notice. The letter at Annex 1 from Damien McAteer to Jonathan Phillips outlines Mark Durkan's support for the approach proposed by David Trimble. A copy of the letter sent by Peter Mandelson on 17 April 2000 is attached at Annex 2.
2. We understand from further discussions with the Special Advisers that there is also an expectation that Personal Secretary support for the Advisers should also be retained.

Background

3. The arrangements made in respect of Advisers during the shadow period up to November 1999 and also during the period of the Mallon Resignation are also described in Annex 3.

The "Mandelson" Arrangement

4. Advisers' employment was terminated when their Ministers fell from office on suspension in February 2000. Only the 3 First Minister, 3 Deputy First Minister, 2 Sinn Fein and one DUP advisers were in place at that time. The then Secretary of State Peter Mandelson wrote to all eligible Ministers agreeing that Advisers could be retained to "primarily deal with work relevant to the restoration of the Executive and also support former Ministers in preparation for the restoration of the Executive". Advisers would be re-appointed as temporary civil servants with the re-appointments to be reviewed "in the light of political

progress towards the restoration of devolution". It took over 3 months to resolve the issue and to make the Civil Service Commissioners (Temporary Provisions) (Northern Ireland) Order in Council 2000 (the Order), copy attached at Annex 4 not least because of strong opposition from the Cabinet Office. By then the former advisers had already received the maximum three months severance pay. The provisions of the Order were not actually used because, in the event, restoration took place at around the same time as the Order took effect. Nevertheless, the principle had been established and would have resulted in all UUP, SDLP and SF Ministers being eligible to be reappointed. Mark Durkan has signalled, however, that, in addition to the 2 First Minister and 2 Deputy First Minister Advisers, he would support the re-appointment of one each for UUP, SDLP and SF parties. David Trimble's view is not known.

5. The 2 DUP Ministers resigned before suspension and would not therefore be eligible under the terms of the 2000 Order to appoint advisers. That could be changed by a Modification Order made by the Secretary of State. Mark Durkan has signalled his view that they should not be offered that arrangement and David Trimble is likely to agree.

The Case

6. Officials in both NIO and OFMDFM agree with the principle that the former First and Deputy First Ministers should have continued support, at least for the next few months, to help during the period of Direct Rule, and to help towards restoration of devolution. The situation could be reviewed again at end of December in light of circumstances at that time.

The Issues

7. The two main issues now to be resolved are:
 - (a) the number and range of former Advisers to be re-appointed; and
 - (b) the method by which such appointments should be made.

Number and Range of Appointments

8. The possibilities, in terms of number and range, are:-

- (a) 2 Advisers each, only for the former First and Deputy First Minister;
- (b) Option (a), together with 1 adviser each for the Ulster Unionist Party, SDLP, and Sinn Fein; or
- (c) Option (b), together with 1 adviser also for the DUP.

You will want to consider the wider political implications of each option, including the issue of equity between the parties formerly in the Executive. Those issues could be discussed at the proposed meeting with officials.

9. The Options for Appointing

There are three possible options for achieving the objective of providing additional support:

- (a) Appointment under Civil Service Commissioners (Temporary Provisions) (Northern Ireland) Order in Council 2000

There are difficulties about the appointment under the Order by former Ministers of former advisers to situations in the Civil Service. There is virtually no work within the administration (of which their former Ministers are in any case no longer part) for them to do and the Order provides for them to provide advice only to their former Minister. They would be civil servants working almost entirely in party political mode and this could be considered to be in direct conflict with the Northern Ireland Civil Service side. Despite similar difficulties having been raised in 2000, the new Order was made and the same issues of principle still obtain. Our protection would have to be through the terms and conditions of employment which are for OFMDFM, with the approval of DFP, to

determine, and would have to be appropriately worded to control their access to official papers, to specify their use of support staff and to limit their access to reimbursement of travel and subsistence costs.

(b) Use of Party Allowances

Another approach which could be adopted would be to fund the Special Advisers through Party Allowances. Neither David Trimble nor Mark Durkan supports that option and David Trimble strongly resisted it in 2000 on the basis that he could not be assured that his party would appoint his former Special Advisers. It could be done by making the provision of such funding specifically for the purpose of the employment (by the party) of former advisers, perhaps on the basis of monthly payments to meet approved expenditure on salaries and expenses. This arrangement might more properly reflect the role of advisers during suspension. It would have the merit of keeping the advisers outside the Civil Service, and no special provisions denying them access to official papers would be required. It also has the benefit of allowing the former Special Advisers greater freedom, as non – civil servants.

(c) Appointment to Assembly Staff

For the reasons briefly outlined in the attached legal advice, it does not seem feasible to deal with the matter through the Assembly Commission.

Consideration

10. Of the options available, the party funding route is more attractive and defensible from the civil service viewpoint, although this would cause difficulties for David Trimble and Mark Durkan for the reasons outlined above. Similarly, given the provision in the Order, whereby each former Minister could seek to re-appoint an adviser, it will be difficult to resist requests for one additional adviser each for the UUP, SDLP and Sinn Féin. Because of the resignation before suspension of the DUP Ministers, a request

from them could more easily be denied if the Order route is being used. However, politically, there may be more benefits from including them, which would mean that Option (b) would be the most appropriate route.

Access to Ministerial Offices in Parliament Buildings

11. David Trimble has also raised the issue of access to his former office (Room 3) in Parliament Buildings for meetings, possibly with the retention of some Private Office presence there for presentational purposes. During the 2000 suspension, he wished to have the use of a Private Office essentially to manage his diary. That was not agreed. An arrangement to keep say 2 former Private Office staff in each office (i.e. First Minister and Deputy First Minister) does not raise any difficult issues, certainly in the short/medium term. A smaller number of staff will be given other work by OFMDFM, which could be done sitting in their present offices. It could however lead to calls for similar concessions from the other former Ministers, although all other Departmental Ministers will continue to have Private Offices at Departmental Headquarters. It so happens that David Trimble and Mark Durkan used their offices in Parliament Buildings as their Departmental Headquarters and never moved to Stormont Castle offices.

Recommendation

12. These are important, and sensitive issues and so, before coming to any decisions, you might find it helpful to discuss with senior NIO and OFMDFM officials in the first instance.

NIGEL HAMILTON

24 October 2002

cc: Mark Durkan

Mr Phillips

POSITION OF ADVISERS

1. This memorandum is further to our discussions on Monday regarding the position of advisers, during which it was suggested that two advisers could be retained from the teams of the suspended First Minister and Deputy First Minister respectively. I thought that it might be useful if I set out the views of our side on this in writing.
2. First, may I say that I am grateful that you are considering this matter. As you may know, during the last suspension the Civil Service Commissioners Order was amended to allow the employment of advisers to suspended ministers. It would be helpful to use this provision again, which we believe to be clearly preferable both administratively and politically to other alternatives such as engagement as consultants and payment through direct funding to political parties.
3. At the same time, we believe that it would be important to ensure fairness and inclusivity in any arrangements for the retention of advisers. For that reason, bearing in mind your desire to limit costs, we suggest that as well as retaining two advisers from the teams of the suspended First Minister and Deputy First Minister, each of the parties represented on the Executive should be entitled to retain one adviser each.
4. On the question of the DUP, we do not believe that they should be offered an adviser since their Ministers resigned their posts before suspension. Indeed, this would not be possible under the Civil Service Commissioners Order.
5. Regarding the work that would be undertaken by advisers, we would see their role as being to continue to advise suspended Ministers on devolved

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cc: Mark Durkan

Mr Philips

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5. Regarding the work that would be undertaken by advisers, we would see their role as being to continue to advise suspended Ministers on devolved

policy issues. Again, this would be consistent with the use of the Civil Service Commissioners Order.

[Signed]

DAMIAN MCATEER

The Rt Hon David Trimble, MP MLA
Parliament Buildings
Stormont
BELFAST BT4 3XX

April 2000

Dear David,

SPECIAL ADVISERS

Following representations on the issue, I have been giving some thought to the position of former Special Advisers to Executive Ministers. As you know the contracts of Special Advisers ended when the Northern Ireland Act 2000 came into force and it has been suggested to me that we should take steps to ensure that these Advisers remain available to support their former Ministers on the restoration of the Executive, should this be desired by the individuals themselves.

I have some sympathy for the views that in the exceptional circumstances of suspension support should be available to enable Advisers to be retained so that they might be able to support former Ministers in preparation for the reactivation of the Executive. I propose to do this by asking the Privy Council to make a Prerogative Order which would enable former Ministers to re-appoint those Special Advisers who were in office prior to suspension, who would thereby assume the status of temporary Civil Servants. Such re-appointments would not be permanent and I would have discretion to review the re-appointments in the light of political



SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon David Trimble, MP MLA
Parliament Buildings
Stormont
BELFAST BT4 3XX

~~XXXXXX~~
ANNEX 2
NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4PN

April 2000

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INVESTOR IN PEOPLE



progress towards the restoration of the Executive. I do not propose that the Order should enable those Ministers who had not made appointments of Special Advisers prior to suspension to do so now, nor will there be provision for Ministers to appoint new Advisers should a former Adviser decide not to take up a new contract or to terminate a new contract at some time in the future.

All Advisers will come under the employment and management of the Office of the First Minister and Deputy First Minister and will primarily deal with work relevant to the restoration of the Executive and also support former Ministers in their preparation for the restoration of the Executive. The contracts offered to advisers will reflect these arrangements. The Advisers will be based in Parliament Buildings. Day-to-day management arrangements will be the responsibility of Tony McCusker.

I propose to seek the agreement of the Privy Council to make a Prerogative Order on 17 May and move fairly quickly thereafter to facilitate re-appointments where these are desired. I understand that there will be a short gap between the period of time that severance payments would have been expected to cover and the beginning of new contracts and I shall give further consideration to that issue on the basis of whether it can be addressed through additional party funding or by some form of ex-gratia arrangement. I will write to you on this point later.





Annex 3

Arrangements for Advisors during shadow period (July 1998-December 1999)

1. The arrangements in relation to Special Advisors prior to

I intend if necessary to review these arrangements at the end of June and in doing so will take account of the political circumstances prevailing at that time.

If you have any particular comments to make about these proposals I should be glad to hear about them and if you require any further information about the arrangements either John Semple or Tony McCusker will be happy to meet you and explore any issues.

PETER MANDELSON MP

2. In terms of justification for this arrangement, it is fairly clear from the papers that the tradition in employing Special Advisors in the Shadow period was to facilitate the move to a devolved administration, and reflected the mistrust in the Civil Service by the shadow Ministers.

Mallon Resignation (July-December 1999)

3. After Seamus Mallon resigned as DFM (designate) in July 1999, Brian Barrington was retained in OFMDFM to do some work on human rights for HOCS. The other two DFM advisors being on secondment to OFMDFM from the European Commission were simply retained on that basis.



Arrangements for Advisers during shadow period (July 1998-December 1999)

1. The arrangements in relation to Special Advisers prior to November 1999 evolved in the course of negotiation with Messrs Trimble and Mallon. On 6 July 1998, the Central Personnel Group (DFP) opening position was that Special Advisers should be provided to Ministers only after devolution and not during the shadow period. That evolved rapidly through recommendations that the First and Deputy First Ministers (designate) only be permitted a single Adviser each and only during the shadow period, to a final position where there was agreement to there being three Special Advisers each for the First and Deputy First Ministers and one each for the Speaker and the other Ministers, during the Shadow period and thereafter. In the event no other 'shadow' Ministers were appointed.
2. In terms of justification for this arrangement, it is fairly clear from the papers that the intention in employing Special Advisers in the Shadow period was to facilitate the move to a devolved administration, and reflected the mistrust in the Civil Service by the shadow Ministers.

Mallon Resignation (July-December 1999)

3. After Seamus Mallon resigned as DFM (designate) in July 1999, Brian Barrington was retained in OFMDFM to do some work on human rights for HOCS. The other two DFM advisers being on secondment to OFMDFM from the European Commission were simply retained on that basis.



At the Court at Buckingham Palace

THE 17th DAY OF MAY 2000

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS by the Civil Service Commissioners (Northern Ireland) Order 1999 (a) provision was made relating to the functions of the Civil Service Commissioners for Northern Ireland and the appointment of persons to situations in the Northern Ireland Civil Service:

AND WHEREAS it is expedient to make further provision for the Northern Ireland Civil Service in relation to those matters:

NOW, THEREFORE, Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Title and commencement

1. This Order may be cited as the Civil Service Commissioners (Temporary Provisions) (Northern Ireland) Order in Council 2000 and shall come into operation forthwith.

Interpretation

2. (1) The Interpretation Act (Northern Ireland) 1954(b) shall apply to this Order as if it were an enactment within the meaning of section 1(b) of that Act.

(2) In this Order expressions which are also used in the Civil Service Commissioners (Northern Ireland) Order 1999 ("the principal Order") shall have the same meaning as in that Order.

(3) In this Order -

"the Act" means the Northern Ireland Act 2000(c);

"former adviser" in relation to any former Minister means a person who was appointed by that former Minister under Article 3(2)(b) of the principal Order before the coming into force of section 1 of the Act;

~~_____~~
"former Minister" means any person who ceased to hold office as a Minister in pursuance of section 1(4) of the Act but who remains eligible to hold office for the purposes of section 3 of the Act;

"Minister" has the same meaning as in the Act;

"principal Order" shall be construed in accordance with paragraph (2);

"restoration order" has the same meaning as in the Act; and

"suspension period" means the period during which section 1 of the Act is in force.

Appointment by Former Ministers

3. (1) A former Minister may appoint a former adviser to a situation in the Civil Service for the purpose only of providing advice to that former Minister during the suspension period.
- (2) Any appointment made under paragraph (1) shall be in accordance with such arrangements as to remuneration and other terms and conditions as may be determined by the Office of the First Minister and deputy First Minister with the approval of the Department of Finance and Personnel.
- (3) Article 3(1) of the principal order shall not apply to any appointment made under paragraph (1).

(4) Any appointment made under paragraph (1) shall cease to have effect when the former Minister who made it ceases to be eligible to hold office for the purposes of section 3 of the Act.

(5) The Secretary of State may revoke any appointment made under paragraph (1).

Application of Order

4. This Order shall cease to have effect on the date when the restoration order comes into force.

A.K. Galloway

(a) printed in the Belfast Gazette on 12 March 1999

(b) 1954 c.33 (NI)

(c) 2000 c 1

Annex 5

To: Stewart Johnston

cc: Rosalie Flanagan
Caroline Webb

Date: 25 October 2002

From: Denis McCartney

EMPLOYMENT OF FORMER ADVISERS THROUGH PARTY FUNDING

1. This note addresses the issue of whether assistance through party funding is a realistic alternative to the appointment of special advisers during suspension. Also considered is the question of whether the advisers could be employed by the Assembly Commission.

Party Funding

2. By section 1 of the Financial Assistance for Political Parties Act (NI) 2000 the Assembly Commission may, in accordance with a scheme approved by the Assembly, make payments to political parties for the purpose of assisting their members of the Assembly "to perform their Assembly duties".
3. Arguably, because section 1(3) of the Northern Ireland Act 2000 provides that neither the Assembly nor its committees is to hold a meeting or conduct any business, the members have no Assembly duties to perform. Its members do however retain their membership of the Assembly and continue politically to represent their constituents.
4. The nature and focus of members' Assembly duties is different in suspension; this is reflected in the fact that, as I understand it, party funding to assist members to carry out their duties is to be both continued and reduced. For former UUP, SDLP and SF Ministers, their eligibility to resume office on the restoration of devolution adds a further dimension to their Assembly duties in suspension. That could be taken into account, and the scheme could be revised (by the Secretary of State) appropriately to give financial assistance to the parties (or some of them) to enable them to fund the employment of special advisers for the purpose of assisting former Ministers. It is for consideration whether means should also be found to enable former DUP Ministers, who are not eligible for restoration, to appoint advisers.
5. Under the Financial Assistance for Political Parties Act a scheme, or revision of it requires to be approved by resolution of the Assembly.

Under suspension it is simply a matter for the Secretary of State to sign a new scheme.

6. It has to be said, however, that the use of the scheme for these purposes, like the continued use of the scheme itself in suspension, is not without question, but there is substance in the argument that it could be lawfully adapted in the circumstances of the duties of Assembly members in suspension.

Employment by the Assembly Commission

7. Section 40(4) of the 1998 Act requires the Assembly Commission, the functions of which are now exercisable by the Secretary of State, to provide the Assembly with the property, staff and service required for the Assembly purposes. It is stretching the interpretation of "Assembly powers" to use the Assembly Commission to employ advisers to former Ministers for the purpose of advice to them during suspension.

Denis McCartney

DENIS McCARTNEY