

CH 2489/00

RESTRICTED - SPECIAL ADVISERS

cc. Mr McCusker w/o attachments
Mrs Moore o/r
Mr McCartney w/o attachments
Mr Trelford

FROM: DOROTHY ANGUS

DATE: 15 SEPTEMBER 2000

TO: SECRETARY

SPECIAL ADVISERS TO DUP MINISTERS - SEVERANCE PAY

1. DRD has raised with DFP the eligibility of special advisers to DUP Ministers to receive severance pay when their contract is terminated as a result of the DUP's policy of nominating Ministers for short-term appointments. While the special advisers to Mr Robinson and Mr Dodds were re-appointed to advise Mr Campbell and Mr Morrow respectively, Gregory Campbell has now indicated that he intends to appoint an adviser of his own choosing from next month.
2. I have been exploring with Denis McCartney how we might avoid paying severance pay where there is a continual turnover of special advisers to DUP Ministers. Since it is now clear that a policy of Ministerial substitution will have an impact on the employment of advisers, we have concluded that differential treatment of special advisers is justified in the circumstances. Denis has provided a draft amendment to paragraph 11.2 and a new paragraph 11.2A for insertion in the special advisers contract (Annex A).
3. I should explain that it is intended that the above amendments would apply only to the contracts of special advisers to DUP Ministers. We are seeking to avoid other special advisers, who have an expectation of a reasonable period of employment, being denied severance pay if their Minister leaves office on resignation. We are conscious, of course, that DUP Ministers may resign (or be dismissed) for reasons unconnected with the Party's policy on the nomination of Ministers, but we have taken the view that their advisers take up appointment with an expectation of only a few months employment in any case.
4. The reference to dismissal in paragraph 11.2A(a) is designed to avoid severance pay where the Minister rather than resign to implement the substitution policy could claim to have been dismissed by the nominating officer under section 18(9) of the Northern Ireland Act 1998. Similarly, paragraph 11.2A(b) seeks to cover re-appointment to a succeeding Minister

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for a period of time to qualify for severance pay after which the special adviser would be replaced.

5. DFP is responsible for the terms and conditions of special advisers as for those of other civil servants and provides to departments the model contract for special advisers. It is incumbent on us to ensure that the terms of the contract comply with audit principles on the proper use of public money. In view of the potential sensitivities, you may wish to take the views of the DFP Minister before we advise DRD (and DSD) of the proposed amendment to the contract for their Minister's incoming special adviser. A draft for that purpose is attached at Annex B.
6. I am copying this minute to Tony McCusker who may wish to alert the First Minister and Deputy First Minister to the issue, although the draft for the Minister also provides for him to advise them formally.

Dorothy Angus

DOROTHY ANGUS (MRS)

11. Notice

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.

Subject to subparagraph 11.2A, 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 Candidate) (Northern Ireland) Order 1990 as amended by the Civil Service (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.

11.2A You shall not be entitled to severance pay if the termination of your employment occurs because:

(a) ***your Appointing Authority resigns or is dismissed as a Minister,***
or

(b) ***on re-appointment as a Special Adviser following the resignation or dismissal of your Appointing Authority, your appointment terminates for any reason within six months of its commencement.***

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ANNEX B

DRAFT

cc. Mrs Moore o/r
Mrs Angus
Mr Trelford

FROM: PAT CARVILL

DATE: SEPTEMBER 2000

TO: PS/MR DURKAN

SPECIAL ADVISERS TO DUP MINISTERS - SEVERANCE PAY

Issue: The impact of the DUP's policy of Ministerial substitution on the employment of special advisers

Timescale: Week beginning 18 September to enable DFP to advise DRD in time for them to issue a contract to their Minister's incoming special adviser by the end of the month.

Recommendation: That the contract for new special advisers to DUP Ministers should be amended to exclude severance pay where termination of employment occurs because the Appointing Authority resigns or is dismissed.

1. The contract under which special advisers are employed entitles them to severance pay when their Appointing Authority ceases to be a Minister.

Thus, while advisers could have an expectation that they will be employed until at least the next election, the contract recognises that their employment could end abruptly.

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2. The DUP's policy of nominating Ministers for short-term appointments has raised the issue of whether it is justified to pay severance pay to a possible succession of special advisers on short-term appointments, especially against the circumstances where the advisers take that appointment knowing that it is likely to last only a few months. When Gregory Campbell and Maurice Morrow replaced Peter Robinson and Nigel Dodds respectively, both appointed their predecessors' advisers, but Gregory Campbell has now indicated that he wishes to appoint a candidate of his own choosing. The outgoing adviser will be entitled to severance pay although only in post for a few months and the same would apply to the incoming adviser if Gregory Campbell's successor should appoint his own candidate.
DRD and DSD should be advised that the contract for the incoming
3. Since it is now clear that the DUP policy of Ministerial substitution will have an impact on the employment of special advisers and may result in a continual turnover of appointees, DFP believes that severance pay is not justified, especially as Ministers are not eligible for allowances on leaving office until they have served for six months. It is proposed, therefore, to amend the contracts for special advisers to DUP Ministers to deny severance pay to an adviser whose employment terminates when the appointing Minister resigns or is dismissed by the nominating officer under section 18(9) of the Northern Ireland Act 1998. Furthermore, to cover the circumstances in which the adviser is re-appointed and then replaced after a short period, the amendment also precludes severance pay if the appointment lasts for less than six months.

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4. DFP is responsible for the conditions of service of special advisers as for those of other civil servants and provides to departments the model contract under which the advisers are appointed. It is incumbent on the Department, therefore, to ensure the contracts comply with audit principles on the use of public money. I believe that differential treatment in this case is justified because the advisers are aware that they are likely to be in post for only a few months unlike other advisers who have an expectation of a reasonable period of employment.
5. I should be grateful to know whether the Minister is content that we advise DRD (and DSD should the situation arise) that the contract for the incoming special adviser to their Minister should include the amendment outlined in paragraph 3 above. In that event, the Minister will wish to alert the First Minister and Deputy First Minister of this issue and the proposed action. A draft for that purpose is provided as an Appendix.

PAT CARVILL

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APPENDIX

DRAFT

cc. Mr Carvill
Mrs Angus

FROM: PS/MR DURKAN
DATE: SEPTEMBER 2000
TO: PS/FIRST MINISTER
PS/DEPUTY FIRST MINISTER

SPECIAL ADVISERS TO DUP MINISTERS - SEVERANCE PAY

1. The DUP's policy of nominating Ministers for short-term appointments has raised the issue of whether it is justified to pay severance pay to a possible succession of special advisers on short-term appointments, especially against the circumstances where the adviser accepts the appointment knowing that it is likely to last only a few months. It is understood that Gregory Campbell, having initially appointed his predecessor's special adviser, intends to replace him with a candidate of his own choosing. The outgoing adviser will be entitled to severance pay as would the incoming adviser, if Mr Campbell's successor should appoint his own candidate.
2. Since it is now clear that the DUP policy of Ministerial substitution may result in a continual turnover of special adviser appointments, my Minister believes that differential treatment in relation to severance pay is justified in this case because the advisers to DUP Ministers are aware that they are likely to be in post for only a few months unlike other advisers who have an expectation of a

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reasonable period of employment. Furthermore, Ministers are not eligible for allowances on leaving office until they have served for six months.

3. He intends, therefore, that DFP which is responsible for the terms and conditions of special advisers will advise DRD (and DSD should the situation arise) to amend the contracts for special advisers to their Ministers to ensure that the contracts comply with audit principles on the use of public money. The effect will be to deny severance pay to an adviser whose employment terminates when the appointing Minister resigns or is dismissed by the nominating officer under section 18(9) of the Northern Ireland Act 1998. Furthermore, to cover the circumstances in which the adviser is re-appointed and then replaced after a short period, the amendment also precludes severance pay if the appointment lasts for less than six months. .
4. The First Minister and Deputy First Minister will wish to be aware of this issue and the action proposed.

ALISON ROSS
PS/MR DURKAN