



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous Provisions) Bill: Mr David Sterling, Head of the Northern Ireland Civil Service; and Mr Neill Jackson, Executive Office

10 June 2020

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin
Mr Christopher Stalford

Witnesses:

Mr Neill Jackson	The Executive Office
Mr David Sterling	The Executive Office

The Chairperson (Mr McGrath): I welcome Mr David Sterling and Mr Neill Jackson from the Executive Office. The process for the meeting is that we will hand over to you to give us a short presentation, and then we will work our way around the room and the extended room, which includes members on the TV screens and some who are on StarLeaf by telephone. We will ask questions and seek some clarification on the Bill and your remarks, and, hopefully, we will have a better understanding of everything by the end of the process.

Mr David Sterling (The Executive Office): Thank you for the opportunity to give evidence to the Committee on the Functioning of Government (Miscellaneous Provisions) Bill. I will give you a little bit of background from an Executive Office point of view. Obviously, how Ministers, special advisers and the Civil Service operate in government has been a priority for the returning Executive. It was a focus for the renewable heat incentive (RHI) inquiry, which made a number of recommendations on the role of Ministers and special advisers. Those issues were also addressed by the parties as part of the talks that led to the New Decade, New Approach agreement in January.

The Executive have sought to address those issues through a revised ministerial code of conduct, a new code of conduct for special advisers and the newly produced guidance for Ministers. A new Northern Ireland Civil Service code of ethics has also been agreed, which is with the trade unions for consultation at the moment. The Executive worked very quickly back in January to put those documents in place once the institutions were restored, and, in particular, the agreement of the special adviser code was one of the first decisions that was taken by Ministers in January. I emphasise that there is a very clear desire amongst Ministers, advisers and the Civil Service to ensure that the standards to which Ministers, advisers and the Civil Service adhere are as high here as anywhere.

I will now turn to the Bill. The written evidence, which I submitted earlier to the Committee, focused on those provisions that relate specifically to the Executive Office. As I indicated, if the Bill is enacted, other provisions, such as those relating to the appointment, remuneration, discipline and record-keeping of special advisers would have to be implemented by this Department in line with all other Departments. While I do not want to constrain the — *[Interruption.]* It is fascinating not being able to see a screen at the moment.

The Chairperson (Mr McGrath): Martina is munching a biscuit that we all feel very much part of. *[Laughter.]* There might be a mute button. It looked like one of the best custard creams that I have seen in quite a while, but enjoy it.

I am sorry; go ahead, David.

Mr Sterling: This is a little less exciting than a custard cream, I have to say.

My focus today will be on those provisions that directly affect the First Minister and the deputy First Minister by either placing limits on their actions or placing certain obligations on them. There are a number of specific clauses that are of interest. Those are clauses 1 to 5 and clause 12. If you like, I can take you through each clause in turn. Are you happy enough to do that?

The Chairperson (Mr McGrath): Yes.

Mr Sterling: I will pause after each clause to take questions. Is that all right, or do you want me to go through the whole lot?

The Chairperson (Mr McGrath): It would probably be better if you went through the whole lot, and then we will go round the table. Members can make notes and ask questions in one go at the end. I will give each member five minutes or so with you to go through each question.

Mr Sterling: That is fine. This will take a few minutes.

The Chairperson (Mr McGrath): That is OK.

Mr Sterling: Clause 1 concerns the amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013. It includes a provision in the special adviser code of conduct to allow a special adviser in the Executive Office to exercise certain powers:

"in relation to another special adviser".

That is, presumably, intended to acknowledge the distinct characteristics of the Executive Office. However, its effect, if enacted, would be limited by subsequent provisions that propose a reduction in the number of special advisers to one each for the First Minister and the deputy First Minister. If clause 1 was enacted, realistically, such a power could be exercised only for those special advisers who were appointed by the junior Ministers. At the moment, no such appointments have been made.

Clause 2 relates to the amendment of the Civil Service Commissioners (Northern Ireland) Order 1999 and proposes to amend the order to reduce the maximum number of special advisers that the First Minister and the deputy First Minister can appoint from up to three each down to one each. Clearly, there is an understandable interest in special advisers, particularly in their recruitment, role, management and discipline. In recognition of that, the Executive have agreed and published revised codes for recruitment and conduct to address a range of issues that emerged during the RHI inquiry.

In our view, that clause raises two issues. First, we think that it would be inappropriate to seek to determine in law the level of support that Ministers should have with no possibility of review in the light of need without recourse to further legislation. Secondly, the proposed measure prompts the question of how many advisers are necessary to provide support to the First Minister and the deputy First Minister and on what basis that assessment can be made. I think that we would all recognise that the number of special advisers in the Executive Office has been the subject of comment. However, the very distinct roles of the First Minister and the deputy First Minister make their work, and, by extension, the work of their special advisers, wider and more complex than that of other Ministers. When you think about it, you will find that the First Minister and the deputy First Minister basically have to cover the whole remit of the Executive. Certainly, the First Minister and the deputy First Minister

believe that the current level of support that is available to them is necessary. They see that that proposal would impose an arbitrary limit that does not recognise the broad remit of their role and responsibilities.

In addition, our written evidence included some comparative figures that suggest that Northern Ireland is not significantly out of line with the position in other Administrations. The latest figures that we have advise that, in Scotland, they have a First Minister and 11 Cabinet Secretaries — a Cabinet Secretary is equivalent to a Minister — and 14 special advisers. In Wales, they have a First Minister, eight Ministers and 10 full-time equivalent special advisers. They actually have 12, but there are 10 full-time equivalents. Here we have the First Minister, the deputy First Minister, eight Ministers and 14 special advisers.

I will move on to clause 3, which would repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016. That would have two effects. First, it would repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016, which allows the First Minister and the deputy First Minister to appoint a person to provide specialist support to them outside the normal requirement for the appointment on merit on the basis of open and fair competition. If made, any such appointment is terminated on the date of the next Assembly election, so those are time-limited appointments. As far as I am aware, only one appointment has been made under the order. That was in 2016, and it ended in March 2017. No further appointments such as that have been made.

Clearly, the guiding principle for appointments to the Civil Service is that they should be on merit. The facility that is provided by the order is intended to apply only to specialist support that is needed urgently, that cannot be sourced from within the Civil Service, is temporary and in cases where it is considered that the individual should be subject to ministerial authority as a member of the Civil Service rather than being drawn, for example, from the consultancy sector. Therefore, the main question that arises is whether the facility provided to the First Minister and deputy First Minister by that order, with the limitations that I just described, compromises the merit principle to such an extent that it justifies its complete abolition.

The second effect of clause 3 would be to make the exercise of all the prerogative powers of the First Minister and deputy First Minister under section 23(3) of the Northern Ireland Act 1998 on the Northern Ireland Civil Service and the Commissioner for Public Appointments subject to the consent of the Assembly. Again, as with clause 2, that appears to seek to set aside some of the traditional boundaries that we would have seen between the legislature and the Executive on the management of the Administration, including appointments.

Clause 4 is about the number of special advisers in the Executive Office. This clause links back to the previous clauses, reducing the number of special advisers to be appointed by the First Minister and deputy First Minister from three each to one each. Its effect would be to make that reduction happen with effect from 31 March 2021. I outlined earlier our reservations about the justifications for such a reduction. However, on a practical point, if the Assembly were to agree such a reduction, it would, we believe, be detrimental to the efficient conduct and continuity of business to have that occur at a point well short of the end of the mandate, in 2022.

If we are to resume anything like normal business as we emerge from the COVID-19 pandemic, a considerable effort will be required on the part of all elements of this Administration across the full range of issues facing us. The sudden removal of the greater part of special adviser support from the First Minister and deputy First Minister would be unlikely to help in those circumstances.

Clause 5 is the amendment of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. This clause extends the remit of the Assembly Commissioner for Standards to include matters concerning ministerial conduct. Our written evidence, which I submitted to the Committee, sets out our view that any such extension should cover matters relevant to the Pledge of Office, including the ministerial code of conduct, and not the ministerial code in its entirety. In addition, as I indicated, the Executive have decided to adopt another approach to the enforcement of ministerial standards, the details and outworkings of which will be taken forward in the coming months. I am happy to answer any further questions that the Committee has on those aspects of the Bill.

The last clause of interest to the Executive Office is clause 12, which is the biennial report. We noted the proposal in clause 12 that the First Minister and deputy First Minister should, every two years, after consultation with a number of named bodies, lay in the Assembly a report on the functioning of government and bring forward proposals to improve it. We argue that performance against targets is

already provided in departmental reports, and any weaknesses in administration or accountability should already be in the public domain through, for example, the reports of the Northern Ireland Audit Office (NIAO) or through the ombudsman, and much more quickly and readily than at two-year intervals. It is also unlikely to be the case that a Department would wait for the publication of a biennial report to introduce measures to address weaknesses in its functioning by legislative or administrative means.

That concludes my rapid run through the relevant provisions of the Bill, and I am happy to take any questions that the Committee might have.

The Chairperson (Mr McGrath): Thank you very much. Given our approach, it is probably best that you went through each of the clauses. Each member now has a few minutes to raise any queries with you.

I will make a start. You touched on, in essence, the traction that there may be between being a departmental spad and the fact that the Executive Office has oversight across other Departments and all the work that cuts across them. It is fair to note that, in 2016, when the Office of the First Minister and deputy First Minister became the Executive Office, there was quite a substantial reduction in workload. Quite a number of responsibilities were passed on to other Departments. You were around in those days. Do you think that the same number of special advisers is needed, given that the responsibilities of the Department have reduced?

Mr Sterling: I was in the Department of Finance in 2016, which is when the Departments were restructured. I do not think that it is for me to comment on what the appropriate number is. At the moment, there is provision for the First Minister and deputy First Minister to have four spads. They have decided that three is a sufficient number at the moment. As a civil servant working alongside Ministers and advisers, I would say that the advisers are busy people and that reducing their number to one would put quite a considerable burden on that person. I will not comment on what the right number is, but I think that one would be just too low a number.

The Chairperson (Mr McGrath): That leads to my next question. From your observations, do you get the sense that there is a hierarchy of spads? If there is more than one spad in the Department, that can create a hierarchy, but what happens when you extend into other Departments? Is there a hierarchy within parties in that the chief special adviser to the First Minister trumps the special adviser to the Minister of x, y and z? How does that work in practice? How does that connection work between special advisers?

Mr Sterling: In the Executive Office, each of the three advisers to the First Minister and deputy First Minister has a specific role. We are aware of what those roles are. If a particular issue arises, we know which adviser to go to. In that sense, there is no hierarchy. On a day-to-day basis, I do not see how linkages and relationships operate among other Departments. I recognise that special advisers play an important role in liaising across departmental boundaries, exploring options and ideas with advisers who may be from the same party or a different party. I do not see any hierarchy being played out there.

The Chairperson (Mr McGrath): In order not to identify a particular person, I will use the former system. Are you saying that, if the special adviser in OFMDFM went to the special adviser in DCAL and asked for something, there would be no hierarchy if they were from the same party? It would just be a request. There would be no sense that, "Hey, this is coming from the First Minister. I need to get this done" or, "I'm being advised in a particular way". Does everybody still remain independent in their Department?

Mr Sterling: I do not see that type of interaction at first hand. The First Minister and deputy First Minister have their specific role. How that plays out among Departments will depend on which Departments are talking to one another. All I can say at the moment is that we have a new Executive. They have had to deal with a crisis, the likes of which we probably have not seen in 100 years. In my experience, Ministers and advisers are working well together across departmental boundaries.

The Chairperson (Mr McGrath): Are there any gaps in discipline or accountability for special advisers?

Mr Sterling: Not in my view, no. As I said in my introductory remarks, the returning Executive placed a huge priority on addressing the issues that arose and were commented on in the RHI inquiry report. They prioritised the production of the new ministerial code, the special adviser code of conduct and all the rest. It has been clear to me that both sides of the office recognise the importance of ensuring that some of the criticisms that were levelled in the past cannot be levelled in the future. I have not seen any gaps at all. I am not aware of any particular problem.

The Chairperson (Mr McGrath): On a more general issue — this could be relevant to here, Wales, Scotland or Dublin — do you feel, from the perspective of our Civil Service, that there is space for an enhanced role for the involvement of more experts or expert panels from outside the Civil Service? The difficulty can be that, when decisions are taken, there may be no departmental expertise, so special advisers have to link with other places. Might it be better for that expertise to be drafted into the Civil Service, and there could be champions or experts in particular areas if that were a priority? It is well recognised that that would have been of great benefit in environmental and green schemes a number of years ago, which might have prevented what happened with RHI. Is there a space for that?

Mr Sterling: Yes, I think that there is. The general view in the Civil Service now, which I think is shared by Ministers, is that the Civil Service does not have a monopoly on wisdom. If we are looking at developing new policies, we should be doing so on the basis of co-design and co-production principles. We should be involving the widest range of interests. We should be looking to take advice not just from within the Civil Service but from all those who have particular expertise. That means working in different ways from how we worked in the past. It means looking to academia. It means looking to what has been done or learned in other jurisdictions. It means looking at special interest groups. It means widespread consultation.

Over the last 12 weeks, we have been preoccupied with dealing with the pandemic, but there has certainly been very good work done across boundaries, across the Civil Service and beyond. As we come to deal with the consequences of the pandemic, it will become more and more important that we continue to work in that way going forward; in other words, in a very collaborative way across Departments but also outside the Civil Service boundary. That is a long way of saying yes, there is a need for the Civil Service to engage expertise from a wide range of sources.

Mr Beattie: David, thank you for giving us those. It is interesting. You do not have long left, do you?

Mr Sterling: Pardon?

The Chairperson (Mr McGrath): In work.

Mr Sterling: The plan was the end of August, but we will see.

Mr Beattie: All right, OK. I was going to ask how the recruitment process for your replacement is going, but that says that it is probably not.

David, can I be really honest? From listening to your evidence, I did not get a sense of there being any merit to anything that is in front of us. You were very straight in saying, "That is what it says, but we do not think that". I got no merit from it whatsoever. I look at clause 2 and the reduction in the number of spads from three to one. The argument is that the First Minister and deputy First Minister are really busy and they need to have three spads because they need to be all over their brief. You are right: they do need to be all over their brief. However, surely the spads and the Ministers in the eight Departments are the ones who brief the First Minister and deputy First Minister to make sure that they are all over their brief, as opposed to their having to have their own three independent spads to get this information. Surely, there is merit in that. The merit does not have to be in going from three to one; maybe the merit is in going from three to two. Do you see where I am coming from? The information to get over the brief of certain Departments should come from that Department so that we are not working in a silo effect; that is what we are talking about. If we give the Minister three spads, she can work in a silo, and she does not have to worry about interacting and working with the other Departments. I look at the Health Minister. He has an incredible portfolio, and he manages with one spad. Do you see any merit in that at all?

Mr Sterling: I go back to my earlier comments that the First Minister and deputy First Minister need to have a clear understanding of what is going on across the Executive, and that means that they need to have people working at special adviser level who can engage across the Departments. As I said

earlier, my experience is that they are very busy people because there is a lot going on. You can argue about whether four, three or two is the right number, but the First Minister and deputy First Minister have decided that three is the number that is necessary for them. I do not think that it would be right for me to second-guess that. As I said, my observation is that it is working pretty well at the moment.

Mr Beattie: You are right, and I am not asking you to second-guess them. I am just asking whether you see the merit in looking at that number being two or just one, as opposed to their saying, "I need three". I am trying to look at this and see evidence that we need to have three, but what we are actually saying is that they want three because they have a lot to cover. I am not saying that three is wrong. I am not saying that one is right. I am not saying that two is what we should do because it is middle ground. What I am asking is this: is there no merit in finding out why they need to have the number that they feel that they need to have? Personally, I do not buy the fact that they have to cover all the Departments. That is why we have spads and civil servants in every Department. They are there to back-brief and brief, as and when required, to allow the Ministers to be over their brief.

David, you made your argument clear, and there is no point in us regurgitating it. Will you do me a favour, though? Will you give me an example, in general terms, of the "specialist support" that you mentioned when talking about clause 3?

Mr Sterling: It is a provision that was used only once, and I have had no indication that Ministers are inclined, at the moment, to use it again. It is there, and it could prove to be useful at a particular point. Neill, I do not know whether your memory of the Department is longer than mine. I do not think that it was used other than that one time.

Mr Neill Jackson (The Executive Office): The provision was introduced specifically for that purpose and used only once. It goes back to the Chairman's questions about the need to bring in particular expertise to inform the Civil Service. It is couched as "specialist support", which is very general. That could be support of any type. In normal circumstances, anybody who comes to work in the Civil Service has to go through the recruitment procedure, which takes some time, and the individual may not be needed for a long time. It is a mechanism to provide such support in various areas, as the Chairman was suggesting, be that science or whatever. It is a facility that is there to be used.

Mr Sterling: It provides a flexibility to Ministers, but it is one that they have chosen to use on only one occasion. I have had no indication that they will use it again.

Mr Beattie: Can you remember what that one occasion was? I do not know.

Mr Sterling: It was a media post — David Gordon.

Mr Beattie: What was it for?

Mr Sterling: I cannot remember the exact title, but it was for communications and media support or advice.

Mr Beattie: I remember that. It felt like an abuse. So many communications people were working for the Executive at the time that David Gordon was brought in to be the top communications guy. I am not saying that it was an abuse.

I go back to the point that you do not see any merit in it. I see merit in it. There is merit in saying, "They don't need that". There needs to be another mechanism when they need to bring somebody in. There needs to be scrutiny of who they are bringing in and why. I am not saying that it was wrong to bring in David Gordon, but there should have been a scrutiny process before he was brought in. This stops that scrutiny process, because he can come in simply because somebody says, "I want him". Therefore, I see merit in the measure.

I am trying to get a sense of where we can see some merit in the Bill as opposed to saying, "Let's throw this away". Why do you not think the Assembly Commissioner for Standards is a good person to look at issues with the ministerial code?

Mr Sterling: The concern is that the ministerial code has three sections. The first covers the Pledge of Office, the ministerial code of conduct and the seven principles of public life. We have said that there

is a legitimate interest for the commissioner in that area. The second section relates to the workings of the Executive Committee, and the third relates to the North/South Ministerial Council (NSMC) and the British-Irish Council (BIC). If you were to extend the remit of the commissioner to the ministerial code in its entirety, it could involve him or her in functional matters relating to the operation of the Executive Committee, the NSMC or the BIC, which, in themselves, would not normally be regarded as issues or matters of conduct. That is why we say that there are legitimate roles in relation to section 1 but that there are no conduct issues in relation to sections 2 and 3. Is that broadly it?

Mr Jackson: That is right.

Mr Beattie: A function of the commissioner is:

"To give advice on any matter of general principle relating to standards of conduct of Members of the Assembly."

That includes Ministers. Is there worth in having the commissioner involved? We could ask him to look at why the Department of Finance is withholding emails relating to personal protective equipment (PPE) on 30 and 31 March. He could be looking at that for us because that is of general interest. It is a general interest point. I could get a commissioner to say that, because that is a matter of general interest, we could look into that. In this world of transparency, I could ask why DOF was withholding these emails about PPE.

Mr Sterling: I will not get into specific issues, but you would need to look at the existing arrangements to deal with any concerns that are expressed. For example, if you are talking about data and the release of data, we have an information commissioner. If you are looking at issues around value for money, we have the Comptroller and Auditor General. If you are looking at issues around potential maladministration, we have the ombudsman. There is a range of people in place to look at this sort of thing. Ultimately, it will be for the Assembly to decide what it wants to do about the Bill. I am just pointing out some of the issues that we recognise in the Executive Office.

Mr Beattie: Of course, David. All that I am trying to do is find merit in the Bill, because we have overlooked the merit. The sense that I got from your evidence, David, was that nobody seemed to be looking at where the merit is in this. I am trying to do that here.

I just want to say to the Chair that I am a member of the Standards and Privileges Committee, which has links to the commissioner, just in case there is a conflict of interest.

David, thank you. If I got into the weeds a bit, I am sorry, but I was just trying to pick at that a little.

The Chairperson (Mr McGrath): Your being a member of that Committee explains your deep knowledge of those questions.

Mr Lunn: I go back to the David Gordon situation. It is my recollection that David was brought in to beef up the communication output of OFMDFM at the time. He was, perhaps, intended to be more public-facing than a back-room individual. Whether that worked is open to question, but he was not there for very long. That is just an observation.

Looking at all the various crises that we have undergone, and are still undergoing, I certainly see virtue in allowing the Executive Office to bring in specialist support and, if it is urgent, to do so without going through the normal appointment procedure, which can take an awfully long time. What do you think about that? I should not be asking you for an opinion, but there is, it seems to me, some merit in allowing the Executive Office some latitude in particularly extreme circumstances. It could apply to other Departments as well, particularly the Health Department at the moment.

Mr Sterling: As I said before, the current provision provides flexibility to Ministers. The Bill, if enacted in the way that it is drafted, would remove that flexibility.

Mr Lunn: Yes. I disagree with the Bill on that.

Mr Sterling: It would not be right for me to comment on specific issues relating to the occasion on which it was used.

Mr Lunn: OK. I go back to the general number of advisers. The suggestion is moving from three to one. Doug's provisional suggestion that it should go down to two might be the obvious way forward. I do not know what number of advisers TEO will need. In other jurisdictions, do junior Ministers qualify to have a special adviser of their own? Has that been the case in our history?

Mr Sterling: I think that I am right in saying that, previously, each junior Minister had a special adviser, but the current junior Ministers do not.

Mr Lunn: You would think that, if junior Ministers were worth their salt, they would need the same facilities as their political masters. In other words, they would need their own special adviser or to share two advisers with their Minister. One adviser seems to be very tight. As Doug said, or perhaps it was the Chair, when you look at the current health situation and the size and responsibility of the Health Department, having one adviser there would seem particularly mean. Other Departments might get away with one quite happily. It is up for discussion. It is not straightforward. You referred to the number of advisers in other jurisdictions, but it depends how you compare them, does it not? If you go by the number of Departments, that is fair enough. However, you could go by the population size or the responsibilities that the other jurisdictions have that we do not, such as tax-raising powers. I still think that the overall number here, 14 at present, stands out as being excessive compared with the number in Wales and Scotland, particularly. How do you justify —?

Mr Sterling: That is a judgement, obviously.

Mr Lunn: Yes, I know, but you have tried to justify it. I think that you said that, in your opinion, there are no standout differences between the three jurisdictions and that they are pretty much in balance with regard to their number of personnel against their amount of responsibility. I would tend to query that.

Mr Sterling: I was just making the point that, if you look at 14 as, broadly, the number that all three jurisdictions have — sorry: it is 12 in Wales, is it not?

Mr Lunn: No, it is 10.

Mr Jackson: It is 12 full-time equivalents.

Mr Sterling: It is 12 full-time equivalents. Look, there are all sorts of ways in which you can make comparisons, including by population size. I could argue that the Welsh Government actually have fewer powers devolved to them from the Westminster Government than we have here. There are all sorts of issues that mean that strict, precise comparisons can be a little invidious.

Mr Lunn: I think that, originally, you said that Wales has 10 full-time equivalents. Is that right?

Mr Jackson: I think that that was the previous figure, David. It is 12.

Mr Sterling: Yes. Sorry.

Mr Lunn: I wrote it down here. I thought that it was 10.

Mr Sterling: Yes. Scotland has 14. Wales has 12 full-time equivalents.

Mr Lunn: It is 12, OK.

Mr Sterling: Northern Ireland has 14.

Mr Lunn: Well, fair enough. I have not really asked you questions. I have poked suggestions at you. I will leave it at that, because we have to discuss that, obviously.

Mr Stalford: Does similar legislation to this pertain anywhere else in the United Kingdom or in the Republic?

Mr Sterling: Not to my knowledge.

Mr Jackson: No. The so-called Home Civil Service is set up in statute. It has a separate statutory identity, with its own legislation, so, to our knowledge, there would be nothing equivalent to this legislation.

Mr Stalford: With regard to its content — I am picking up from the point that was made by the Deputy Chair — what positive impacts do you see from the implementation of the legislation for the smooth governance of Northern Ireland?

Mr Sterling: Again, that is a difficult question for me to answer because, clearly, what I feel that I can do here is point to some issues that would arise if the legislation were enacted as currently drafted. I have not sat down and looked at what its overall impact would be, positively and negatively. Therefore, it is a difficult question for me to answer.

Mr Stalford: It is a profoundly political piece of legislation that emerged out of a profoundly political situation. I understand that. You are a civil servant, not a politician. However, strictly from a Civil Service perspective — I do not intend to get into the number of spads or any of the stuff that has made headlines in the past — do you see anything that stands out that would fix a previous problem or address a situation that has caused difficulty, and is a good element of that legislation? Do you see anything being legislated for and included in that legislation that is of particular advantage?

Mr Sterling: It will sound as though I am ducking the question, but I would need to go back and look at it in full. My focus —

Mr Stalford: If the answer is no, the answer is no. Do not worry about it.

Mr Sterling: There is nothing that I could point to now that would address a particular problem that is not being addressed at the moment with the current regulations, guidance, and all the rest.

Mr Jackson: I also think that it does not materially change the situation in terms of what exists. There will still be special advisers. Appointments will still be made. What the legislation is looking to do is to place controls on the exercise of special advisers' functions and to restrict their number, but, overall, it would not change how the system operates at the moment.

Mr Stalford: Your everyday life would not alter as a consequence. OK.

Mr Sterling: Other than that, under some other provisions, certain things would be criminalised, which, again, we are not aware of happening in any other jurisdiction. That would create real practical difficulties for the operation of government.

Mr Stalford: Will you speak to that for me?

Mr Sterling: I knew you were going to ask that. I did not prepare for that today, because the clauses are not directly relevant to this discussion. Neill, do you want to comment?

Mr Jackson: Sorry?

Mr Sterling: On the provisions that would introduce criminal sanctions for certain breaches.

Mr Jackson: This is around prison sentences etc for not taking or filing a record of meetings and not keeping proper records management systems, which is possibly unduly punitive.

Mr Sterling: The Department of Justice submitted evidence to the Finance Committee that suggested that some of those provisions would be excessive.

Mr Stalford: I asked about the positive aspects of how this place is governed. What would be the negative practical, day-to-day effects of the clauses that we are considering? If you are trying to run a Department, as a Minister or a civil servant, and this Bill becomes law, what are the impediments that it may create for you in your day-to-day existence?

Mr Sterling: The most obvious impediment would be a reduction in the number of special advisers, which would take effect from 2021. That would potentially reduce the effectiveness of the

Administration. I think that that would be the view of Ministers, and it is not a view that I would dissent from at all. That would probably be the most immediate impact.

The other issues are as I described. The legislation would limit the discretion of Ministers in certain areas and put certain obligations on them. The concerns that I articulated about the first five clauses and clause 12 would be the concerns that we would have in the Executive Office.

Mr Sheehan: Thanks for the information that you have given us, David. My question is not a hard one. The institutions here are unique on these islands, in that we have a multiparty coalition Executive that have to deal with issues such as the legacy of the conflict and so on. I will pick up on Trevor's commentary about the criteria that should be used to pick the number of special advisers. Is it population or other criteria that should be used? Do you agree that our situation is much more complex than that in, say, Scotland or Wales? In that respect, there may be a need for more special advisers than in Wales or Scotland. That argument could be made.

Mr Sterling: I certainly see that. In a coalition with five parties, it is almost inherently more difficult to get things agreed. Special advisers can play a very important role in helping to broker political agreements between parties behind the scenes. I do not want to get into a debate from a Civil Service point of view on what the right number is, but the fewer that you have, the less ability that you have to perform important functions.

Mr Sheehan: Yes. Staying on that theme, I do not suppose that, for example, Robin Swann has any less work to do than Matt Hancock. Do you agree with that?

Mr Sterling: That is a very neat way of summing up the challenge that we face here. Dealing with the development of a policy for 1.9 million people can be just as challenging as developing a policy for 55 million or 60 million people. The Belfast Trust is the largest health trust on these islands, so the Health Minister has a very big portfolio and a very challenging role. He has to cover all the areas that Health Ministers in the other jurisdictions have to cover. The difference is scale, but scale sometimes does not lessen the challenge when you have a broad remit.

Mr Sheehan: You make the point well. It does not matter whether you have to make a policy for 100,000 people or 50 million people, because you still have to make the policy. The same amount of work and expertise is still required. In looking at all our Ministers, I have to ask whether Arlene and Michelle are any less busy than Nicola Sturgeon or the First Minister in Wales. They are clearly not. In the current context, they are definitely not. We have spoken about our context and the unique difficulties that we face here, never mind the fact that we will have a land border with the EU after we leave it. All those issues are sometimes ignored by many of the institutions' detractors. I will not ask you to comment on this, but the sponsor of the Bill is one of the biggest detractors of all, often talking about a toytown Parliament and so on. He has quite often used that phrase on the record, I think. The people with responsibility here do as much work as Ministers in any other institution anywhere on these islands, but I will leave that for a minute.

I have another general question. You have been around for a long time, David. In your experience, do you feel that, in general, special advisers play a positive role in the Administration in the North?

Mr Sterling: Yes. I have always been on record as saying that special advisers have a very important role to play in helping the Administration work smoothly. I will repeat a point that we both agreed on earlier. If you have a five-party coalition, it is inherently more challenging to get agreement on difficult issues, and that is an area in which special advisers have a very important role to play. My experience of the current Executive is that people are generally working very well together. They have faced up to the challenge of the pandemic and, I think, have achieved quite a lot in very difficult circumstances.

Mr Sheehan: It is good to hear that parties are working together, but I suppose that if it were one party in government, as it is, for example, in Scotland, with all the Ministers coming from the one party and all the special advisers coming from the one party, that would make the working of government much smoother and much easier. I am sure that you will agree with that.

Mr Sterling: That is right. In my experience of looking at jurisdictions where you have a group of politicians with a strong mandate, a strong sense of common purpose and a clear manifesto, it is easier to get things done. That is absolutely right.

The Chairperson (Mr McGrath): We will move on to Martina, who is joining us via StarLeaf. I will start with an apology, as I see that it was not a custard cream but something else. It was something much more elaborate than that. Martina, please go ahead.

Ms Anderson: Thank you very much. I am getting used to this yoke. Part of the problem is that I do not know how to mute this. I still do not know, so I got one bite out of my lunch. *[Laughter.]* Thank you, David, for the presentation and for walking us through all the clauses. I concur with everything that Pat has just said. It should come as no surprise to anyone to find out that you have been able to demonstrate how effective the spads are, how they work very well, and how they are working well currently. For instance, if there were to be a reduction in the number of spads, the sole purpose of this Bill would be to reduce the effectiveness of the Administration. That is your quote, and that is the purpose of those who are uttering concerns about spads. Way back in the day, many, many moons ago, when there were two different parties in OFMDFM, we never heard any utterance relating to the number of spads. The important point, as you said, on policy development, is what they do to develop policies and how they demonstrate that they are making a difference to people's lives.

To familiarise myself for today, I looked at the work that Michelle and Arlene are undertaking to coordinate: COVID-19, Brexit — no-good Brexit — the all-Ireland Ministerial Council, strategic policy, equality and race relations, the Strategic Investment Board and the Urban Villages initiative, with 40 community-led projects. The scale is absolutely breathtaking. Reducing the number of spads would be detrimental to the effectiveness of the Administration. Some people do not want to the Administration to be as effective as it has been and can continue to be.

Spads have been working to take a number of matters forward. I realise that you may not be able to answer me now, but, because the clock is ticking, I would appreciate it if you could come back to me with an answer. The Executive Office recently took on the issue of the graduate entry medical school at Magee, with the first intake of 70 students by September 2021. I would like to find out what work is under way by the relevant Departments, because I know that the clock is ticking. So, I would appreciate an update, Chair, at a different time, because I appreciate that this is not what we are here to discuss. My understanding is that the Executive Office is coordinating that. I just want to demonstrate that this is another bit of work that has landed into the joint First Ministers' office that they are taking forward. I believe that a paper is to come before the Executive on Friday.

That is why, with your indulgence, Chair, I wanted to raise that issue, even though I do not expect an answer today. I concur with everything that Pat and the others have said about the sterling work that spads do. As has been suggested here, enacting this Bill would be to reduce the effectiveness of the Administration, and we do not want that.

The Chairperson (Mr McGrath): The first indulgence was a biscuit; the second was stretching, beyond any means, the capacity to ask a question.

What I will do, David, is ask you to come in at the end to answer the question about Magee. Maybe we will just progress if anyone else has a question on the Bill. We will then come in at the end if you are happy with that, David.

Emma, I am afraid that the system has broken down, and I cannot see anything on the screen in front of me. I do not know whether Emma had her hand up. Emma, would you like to ask a question?

Ms Sheerin: Hi, can you hear me?

The Chairperson (Mr McGrath): Yes, we can hear you.

Ms Sheerin: For some reason, it broke; I do not know what happened. When I logged back in it would not let me mute, but I see that the mute button is active again.

Following on from some of the questions from the room, it is important to note that David, coming from the position that he does and with the expertise that he has, does not see the merit in some of the Bill's clauses. That is interesting. It is important to note that if we are to take the Bill on its merits. Speaking to the experts, and those who work with spads and who know the caseload that they have, if they are saying that there is no need to reduce the numbers, as proposed by the Bill, that should be taken on board. That is all.

The Chairperson (Mr McGrath): OK. Thank you. Finally, we will go to George, who is on the phone. George, do you have any questions or things that you want to clarify?

Mr Robinson: I have an issue for clarification and observation, Chair. I thank David for coming. I am one of those people who believe that, if it is not broke, do not fix it. The two people in question — the First Minister and the deputy First Minister — should, surely to goodness, know who they need and how many spads they need. In my opinion — others have said the same — they are doing a fabulous job at present with the COVID-19 situation, as are the whole Executive. I do feel sorry, to a certain extent, for the other Ministers. As David said, the Health Minister has just the one spad, and he has an enormous amount of work to do on a daily and weekly basis. As far as everything is going, I am of a mind to leave things as they are, particularly at the present time, because of the tremendous workload of all the Ministers in the Executive. Again, I will repeat that I think they are all doing a fabulous job. Leave well enough alone, particularly at the present time. Anyway, that is my observation.

The Chairperson (Mr McGrath): Thank you, George.

Following on from that, I want to be careful that this does not become a party political issue insofar as saying "If other parties were in". We are nearly 25 years down the line from when we first put in the spad system, and, in essence, we are reviewing that. In that vein, and following on from what George and others have referenced, what if the same number of spads was spread in a different way across Departments to reflect some of the changes? It was certainly discussed during the New Decade, New Approach talks, Programme for Government conversations and others. As George has said, the Department of Health is so big and has nearly half the Budget, but it has one spad. Yet another Department that maybe has £59 million as a starting budget in the year has, potentially, eight spads, even though they reach across other Departments. Is there an opportunity for a review of how the spads are spread out — not a change in the number, but a change in the way that they are spread around?

Mr Sterling: Obviously, that is a matter for Ministers to discuss amongst themselves. I might offer the thought that, if the Health Minister is listening in today, I will be fully expecting him to be making a case for more spads for the Department of Health.

Mr Stalford: And a junior Minister. *[Laughter.]*

The Chairperson (Mr McGrath): I am sure that we all need to change the infrastructure, and you can guess where I am coming from in that. No, I am only joking.

We do have a little time left, and there are some more clarifications. I will pass on to Doug and Trevor and anybody else who wants to indicate.

Mr Beattie: This has been really useful and good. I appreciate everyone's comments. You are extremely loyal, and I get that because everything is working really well, and what is not broken does not need to be fixed. However, are we forgetting what we just came from? It was broken, and that is the whole point of this. That is why I am looking for merit. You have to agree — and this is a question to you — that there was confidence damage over the last three years, and there is still confidence damage to what we have now. There are issues about transparency and accountability. So when Christopher asked you about the benefits of Jim Allister's Bill, well, maybe some of the benefits are that it will put confidence, transparency and accountability back into politics in Northern Ireland. Is that a fair thing to say? I get what you are saying, "Look, the Executive are working really well now". Yes, and I remember the really good, positive statement in December 2016 that said that they were working really well, and, in January 2017, everything collapsed. Can you not see that one of the benefits of the legislation could be confidence, transparency and accountability?

Mr Sterling: I fully recognise that there were issues around confidence, transparency and accountability. However, what I have seen is Ministers very determined to address those concerns. A point that I made when I was discussing the draft Bill at the Finance Committee is that the most important thing for a smoothly functioning Administration is trust between the various players. If you are purely reliant on legal sanctions to make something work, you are in trouble. If you have an Administration where people have confidence and trust in each other and are happy to be transparent, not just when things are going well but when things are going badly, that is the ideal. That is the sweet spot that you want.

At the moment, all I am saying is that, six months into a new Administration, with five parties working together and several Ministers who have not had ministerial portfolios before, I think that their performance has been pretty good, particularly when you look at the scale of the challenge that has been faced. I was careful not to say that the Bill has no merits or the Bill has lots of benefits. All I wanted to do today was to highlight the implications or the impacts that we would foresee if clauses 1 to 5 and 12 were enacted in the way that they are currently drafted.

Mr Beattie: All I will say is that the issue about sanctions is not what I am referring to here. I am referring to what we are talking about today.

Lastly, the quote from today is Martina Anderson saying that she does not know how to mute, which I think is just absolutely perfect. *[Laughter.]*

The Chairperson (Mr McGrath): You are very brave to have brought that back up again, Deputy Chair.

Moving quickly, Trevor, would you like to make a final point? Then we will bring ourselves to a close.

Mr Lunn: Going back to the number of special advisers, am I right in thinking that the current situation is that they are allowed to appoint up to three special advisers at once, but no more than that?

Mr Sheehan: Is it not up to four?

Mr Lunn: Sorry, four.

The Chairperson (Mr McGrath): Each junior Minister could have one.

Mr Lunn: OK, I am with it here now. They have agreed to go down to three. That is fair enough, but there is no provision for them to increase the number of special advisers at the moment. I do not know if three, two, one or four is the right figure. It really is for Ministers to decide what level of input they need, but perhaps it would find more favour if the figure was set at two, but with the provision that, if the Executive Office wanted to appoint another special adviser, it could do so with the consent of the House. It would have to bring it to the House. What is in the Bill at the moment is very firm. It is three down to one, with no concessions. One would not work out, but two might. It is quite possible that either Minister might not be able to work with two and might need three, but with a draft order through the House, effectively, to allow it to happen.

Mr Sterling: I think that Ministers might say in such circumstances that that was the legislature interfering in the smooth running of the Administration or the Executive.

Mr Lunn: Somebody mentioned confidence a few minutes ago. It would perhaps give the rest of us confidence that, frankly, they could not get away with increasing the size of their empires without consultation with the House and an explanation as to why they might need another person.

Mr Sterling: The record shows that, when Ministers came back in January, the First Minister and deputy First Minister thought very carefully about it and concluded that reducing it to three was the right thing to do. I think that you have to give them some discretion when it comes to dealing with the very difficult portfolios that they have.

Mr Lunn: Absolutely. There might have been a degree of pressure or outrage at the suggestion that they needed four each, which might have contributed in some way to the reassessment that perhaps they could make do with three.

Mr Sterling: Interesting observation.

Mr Stalford: I think that a provision like that for appointing an additional special adviser would cause an unholy row on the Floor of the Assembly about the appointment of another spad, rather than enhancing the confidence of the public in these institutions. I do not think that would work. Also, there are probably employment law issues around sourcing the person. Does the House get the name of the person? Do you then end up with a debate about the character of the person? I would be very nervous about going down that sort of a road.

Mr Lunn: Such a debate would be based on the principle of whether or not they could justify needing another special adviser. The name, character or personality would have nothing to do with it.

Mr Stalford: So you are suggesting a mechanism whereby the House approves the creation of a post rather than the appointment of a person?

Mr Lunn: Yes.

Mr Stalford: Right, OK.

Mr Lunn: The other thing about special circumstances is that you might be looking at a particular person — obviously, you would — but that is outside the normal appointments process anyway.

The Chairperson (Mr McGrath): I am not detecting very many questions of our guests, so I suspect that we have strayed into the conversations that we will be having at some point when discussing these clauses. In the absence of any other questions, I will bring us to a close on that point. Thank you both for coming along. Oh, Martina is looking in.

Ms Anderson: I have a question on Magee. Can we get an indication of where we are with that?

Just to let Doug know, it is my computer that I cannot mute. Sure, he would not want me muted.
[Laughter.]

The Chairperson (Mr McGrath): We have a letter in our correspondence packs from the Economy Committee, which has written to ask for an update on Magee. That issue has moved from Health and Economy to the Executive Office. Can you give us an update on where we are? There are some impending cliff-edge dates that need to be addressed.

Mr Sterling: It is a matter of public record that the Executive recently reaffirmed their commitment to establishing a graduate entry medical school at Magee in line with New Decade, New Approach. There is work being done across a number of Departments, and that work is progressing well. We will provide an update to the Executive shortly.

The Chairperson (Mr McGrath): Is that work progressing well enough that you are likely to meet the deadlines that would be required to have it up and running by this September or October?

Mr Sterling: It will not be this September; it will be 2021. That is certainly the intention.

The Chairperson (Mr McGrath): Martina, are you happy enough?

Ms Anderson: I am happy enough that I at least know that the work is being progressed. Part of that work needs to involve some indication to the Executive by 12 June, which is Friday. There is an Executive meeting on Thursday, so it would be good to get a handle on whether the Departments have been coordinated in a way that allows that report to go to the Executive so that it is all going towards that date for the 70-student intake for next year. Time is required so that students know that that offering is in place. It is crucial to know that something may be going to the Executive tomorrow, because there is a deadline of Friday.

The Chairperson (Mr McGrath): Are you at liberty to tell us in advance what is on the agenda? I am sure that the former junior Minister knows that that cannot be done, but we will try.

Mr Sterling: I would need to check, but I think that things are on track.

The Chairperson (Mr McGrath): We will take you on your word that it is on track.

David and Neill, thank you very much for coming along today. It could be an interesting litmus test, if the retirement does happen in August, to bring you back and ask you the same questions in September when you have the freedom to answer, because I feel that a lot of the answers were exceptionally positive. I do not think that you will have any kitchens that you will be getting the rounds of when you go back down to the Executive Office — not from spads, anyway. Thank you very much for your attendance today; it has been much appreciated.

Mr Sterling: You will have to find me in September.

Mr Stalford: Recruit you as an adviser.

The Chairperson (Mr McGrath): We could get you back up again.

Mr Sterling: All the best.