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From: Jill Minne

Date: 30 January 2025

To:

- 1. Neil Gibson, DoF Permanent Secretary**
- 2. Jayne Brady, Head of the Civil Service**

**SGM-1215-2024: RULES FOR NICS STAFF UNDERTAKING SECONDARY ROLES
WITHIN THE PUBLIC SECTOR**

Issue: Dame Brenda King, Attorney General, has written to HOCS (Annex A) to set out concerns in relation to guidance available to NICS staff undertaking secondary roles within the public sector and the equitable application and management of the rules on this matter.

Timescale: Routine

FOI Implications: In the event of a request for disclosure of information contained in this submission under the FOI Act, the request would be considered in the context of the relevant provisions of the legislation, including any relevant exemptions that may be applicable.

Presentational Issues: None

Equality implications: None

Legislative Implications: None

Recommendation:

You are asked to: (i) note the advice; and (ii) issue the draft response at Annex B.

Background

1. Dame Brenda King, Attorney General, has written to HOCS (**Annex A**) to express concern about the level of knowledge in the Civil Service on the rules on undertaking private occupations in other public sector bodies and the potential for inequitable application and management of the rules.
2. There are a number of publications that outline the rules for undertaking private occupations while employed by NICS. The general guiding principle of avoiding “double payment” from the public purse has an agreed exception within the Standards of Conduct policy which allows a certain proportion of annual and flexi leave to be used for such work.
3. This concession, supported by Permanent Secretaries Group (PSG) and legal advice at the time, was introduced in 2015 to provide a pragmatic balance between the double payment issue and the perceived difficulties of recruiting people for certain types of public sector work and negatively impacting on, for example, the operation of public boards and election arrangements.
4. People & Organisational Development fully appreciates the concerns raised in Dame Brenda’s letter and is currently reviewing the provisions of the Standards of Conduct policy in relation to private occupations to provide clarity around the rules.
5. It is hoped that draft policy revisions, along with a recommendation to issue regular reminders to staff on the rules, will be presented to the Finance and HR Advisory Group in February 2025.
6. In the meantime, a proposed response to Dame Brenda’s correspondence providing an update on the matters she raised is attached at **Annex B**.

Recommendation

You are asked to (i) note the advice; and (ii) issue the draft response at **Annex B**.

Copy Distribution

Catherine Shannon
Aisling Quinn
Joan Fleetham

Annex A

Jayne Brady

Head of the Northern Ireland Civil Service

Stormont Castle

Stormont Estate

BELFAST

BT4 3TT

23 October 2024

Dear Jayne,

STAFF IN CONFIDENCE

Rules pertaining to NICS staff undertaking secondary roles within the public sector

1. Further to our conversation I undertook to set out my concerns on seeking assurance in relation to the provision of unequivocal guidance for staff and managers in relation to NICS staff undertaking secondary roles within the public sector. The aim of this is to avoid potential double payment from the public purse and to ensure strict adherence to NICS and other requirements.
2. You will be aware that I currently have two senior staff who undertake secondary roles as employment tribunal judges with the Northern Ireland Courts and Tribunal Service. It is important that NICS staff with appropriate skills can support other areas of the public service with their expertise and I am pleased to support this within my own team. However, I have had to invest considerable time and effort with a wide range of stakeholders including NICSHR, NIJAC and DE (Tribunal employer) and other government legal partners such as DSO, CSO and the PPS in order to obtain clarity on the correct rules and procedures in order to ensure regularity on this issue.

3. I believe the guidance within the NICS Handbook (Standards of Conduct, Annex 10, section 3.1 6.01 Standards of Conduct v19 (policy) (23).pdf) on the undertaking of paid work in another public sector post is clear. In the case of my own staff, and in line with this guidance, they are required to take **unpaid leave** in order to undertake Tribunal work which currently attracts a fee of £542 per day. Training in order to be able to undertake these roles also attracts payment. NIJAC and NICS policy is clear that there can be no double-payment from the public purse for **public sector work undertaken concurrently**. (i.e. the taking of annual leave (which is paid leave) would create a 'double payment' from the public purse for that day if a fee was claimed in addition.) NIJAC policy states that "public servants paid by central government will receive no remuneration for any fee-paid offices held concurrently".
4. While this example relates to fee paid judges whose primary role is within the NICS, similar scenarios may arise for other NICS staff in relation to positions such as board/committee/audit appointments in a variety of public sector roles.
5. While I have regularised the position within my office which I discovered to exist at the time I took up office so that it accords with advice I sought and received from NICS HR and legal advisers, staff continue to debate this issue. I remain entirely open to further clarity or evolving policy which may emerge. However, the difficulties we have faced in arriving at what we consider to be the settled and agreed position continues to trouble me. The level of wider NICS knowledge of this matter for both managers and staff appears to be both limited and inconsistent, which poses potential risks for the equitable application of the rules and proper management of the position across the NICS.
6. The need for scrupulous propriety on this matter is obvious and Accounting Officers will wish to be assured in this regard.
7. I would welcome your views on how best to provide clarity and assurances of strict and equitable application of the NICS rules in relation to staff undertaking secondary roles within the public sector.

Yours sincerely

Dame Brenda King

Attorney General for Northern Ireland

Annex B



Jayne Brady
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Tel [REDACTED]

Dame Brenda King
Attorney General for Northern Ireland
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Our Ref: SGM 1215-2024

xx January 2025

Dear Dame Brenda,

Rules pertaining to NICS staff undertaking secondary roles within the public sector

Thank you for your letter received 23 October 2024. Please accept my apologies for not updating you sooner on progress regarding this matter.

I passed your concerns about knowledge of the rules on private occupations within the Civil Service, and the potential risks for their equitable application and proper management, to the Department of Finance (DoF) for consideration, given its responsibility for Civil Service people policies.

I am advised that the provisions of the Standards of Conduct policy are currently being reviewed to seek to ensure clarity on the rules relating to private occupations in the public sector to ensure that double payment from the public purse is avoided.

In addition, regular communication to all staff about the rules and need for compliance with same, similar to the six-monthly reminders about the Code of Ethics, is planned.

Thank you for raising this issue with me and I hope this update has been helpful.

Yours sincerely,

JAYNE BRADY

Head of the Northern Ireland Civil Service

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We invest in people Silver

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