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PART A

Part A

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Begins: 29/3/88.
Ends: 25/5/88.



Chancellor's (Lawson) Papers:

FAIR EMPLOYMENT IN
NORTHERN IRELAND

Disposal Directions: 25 Year

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PART A

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29 MAR 88
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OF 290325Z MARCH 88

AND TO DESKBY 301500Z NIO (LONDON), NIO (BELFAST), DED (BELFAST)

INFO IMMEDIATE DUBLIN

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MY TELNO 770 (NOT TO ALL): NORTHERN IRELAND: FAIR EMPLOYMENT

LEGISLATION

SUMMARY

1. ANNOUNCEMENT, LET ALONE IMPLEMENTATION, OF WHAT DONNELLY APPEARS TO HAVE IN MIND LIKELY TO BE VERY DAMAGING TO PRESENT AND POTENTIAL US INVESTMENTS IN NORTHERN IRELAND, AND TO WIDER BRITISH INTERESTS. BEST, AND PERHAPS ONLY, HOPE OF DISSUADING DONNELLY FROM MOVING AHEAD IS FOR IRISH GOVERNMENT TO INTERVENE WITH HIM SOON AT HIGH LEVEL ON OUR BEHALF. OTHER, LESS SATISFACTORY, OPTIONS ALSO NEED TO BE PURSUED URGENTLY. NO TIME TO BE LOST.

DETAIL

2. WE HAVE NOW CONSIDERED MORE FULLY THE IMPLICATIONS OF WHAT DONNELLY MAY HAVE IN MIND, AND OF THE STEPS WE MAY NEED TO TAKE TO STOP HIM.

3. ALTHOUGH WE HAVE NO MORE FIRM DETAILS OF PRECISELY WHAT DONNELLY IS PROPOSING, IT SEEMS CLEAR THAT HE IS MODELLING HIS PROPOSAL ON A MEASURE ALREADY IN EFFECT FOR US COMPANIES IN SOUTH AFRICA (S.901(J) (2C) OF THE REVENUE ACT 1987: COPIES ALREADY SENT BY FAX TO RID AND SIL DIVISION). SUCH A MEASURE WOULD REMOVE US COMPANIES IN NORTHERN IRELAND WHICH DO NOT CONFORM TO CERTAIN, UNSPECIFIED, FAIR EMPLOYMENT GUIDELINES FROM THE SCOPE OF UK/US DOUBLE TAXATION ARRANGEMENTS. THUS A US COMPANY FOUND NOT TO BE IN CONFORMITY WITH THE DONNELLY GUIDELINES WOULD BE LIABLE TO PAY BOTH UK AND US CORPORATION TAX ON ANY PROFITS MADE IN NORTHERN IRELAND AND REPATRIATED TO THE UNITED STATES.

4. WHATEVER THE PRECISE DETAILS OF THIS MEASURE, AND WHETHER OR NOT IT IS EVER PASSED INTO LAW, IT IS CLEAR THAT EVEN THE ANNOUNCEMENT OF SUCH A MEASURE WOULD BE VERY DAMAGING. THE CLOSE ATTENTION GIVEN TO THE WAYS AND MEANS COMMITTEE TAX PROPOSALS BY ALL THE TAX LOBBYISTS ON THE HILL WOULD MEAN THAT ANY ANNOUNCEMENT BY DONNELLY THAT US COMPANIES OPERATING IN NORTHERN IRELAND COULD BE LIABLE TO THE SAME TAX TREATMENT AS US COMPANIES OPERATING IN SOUTH AFRICA WOULD RECEIVE WIDESPREAD

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UNFAVOURABLE PUBLICITY IN CORPORATE AMERICA. THE ANNOUNCEMENT WOULD ITSELF FURTHER COMPLICATE THE ALREADY TRICKY TASK OF ATTRACTING NEW INVESTMENT IN NORTHERN IRELAND, AND WOULD HAVE A VERY NEGATIVE IMPACT ON THE OPIC INWARD INVESTMENT MISSION PLANNED FOR JUNE, WHICH NORTHERN IRELAND MINISTERS AND OFFICIALS HAVE WORKED SO HARD TO SET UP. IN ADDITION, ANY SUCH ANNOUNCEMENT WOULD MAKE EXISTING US INVESTORS IN NORTHERN IRELAND, PARTICULARLY THOSE WHOSE OPERATIONS WERE ONLY MARGINALLY PROFITABLE, RECONSIDER THEIR STAKE IN THE PROVINCE.

5. BEYOND THE DIRECT IMPACT ON INVESTOR CONFIDENCE IN NORTHERN IRELAND, DONNELLY'S PROPOSAL WOULD FURTHER DAMAGE NORTHERN IRELAND'S IMAGE HERE BY LIKENING IT TO SOUTH AFRICA: AND THE NEWS THAT DONNELLY WAS SEEKING TO OVERTRUMP THE MACBRIDE CAMPAIGN WITH FAIR EMPLOYMENT LEGISLATION ON THE HILL WOULD UNDERMINE OUR INCREASINGLY SUCCESSFUL EFFORTS TO PREVENT STATE LEGISLATURES FROM ENACTING LAWS ON FAIR EMPLOYMENT IN NORTHERN IRELAND.

6. AS MY TUR INDICATED, THE TIMING OF ANY MOVE BY DONNELLY IS UNCLEAR: BECAUSE OF THE SECRECY WITH WHICH THE TAX WRITING ACTIVITIES OF THE WAYS AND MEANS COMMITTEE ARE SURROUNDED, AS WELL AS THE FACT THAT OUR ONLY KNOWLEDGE OF THIS PROPOSAL HAS BEEN OBTAINED IN THE STRICTEST CONFIDENCE, IT IS ESPECIALLY DIFFICULT FOR US TO ESTABLISH EXACTLY WHAT IS LIKELY TO HAPPEN. BUT WE KNOW THAT THE RECONCILIATION BILL, IN WHICH DONNELLY WOULD PROBABLY SEEK TO HAVE SUCH A MEASURE INCORPORATED, COULD START BEING CONSIDERED BY THE WAYS AND MEANS COMMITTEE AS EARLY AS NEXT NEXT MONTH. WE SHOULD THEREFORE PLAN ON THE ASSUMPTION THAT AN ANNOUNCEMENT BY DONNELLY COULD COME ANY TIME AFTER CONGRESS RETURNS ON 11 APRIL FROM ITS EASTER RECESS.

7. AGAINST THAT RATHER SOMBRE BACKGROUND, WE HAVE CONSIDERED WHAT WE MIGHT DO TO PERSUADE DONNELLY NOT TO PROCEED, IDEALLY WITH NO PUBLICITY BEING GIVEN TO WHAT HE HAS IN MIND. SINCE ALL THE SIGNS ARE THAT THE IRISH EMBASSY HERE ARE AWARE OF A VERY GREAT DEAL OF WHAT DONNELLY IS PROPOSING, AND OUR OWN DIRECT ACCESS TO HIM IS BLOCKED (SEE T U R), AT LEAST FOR THE TIME BEING, I AM SURE THAT THE FIRST, URGENT, STEP MUST BE TO TAKE THE IRISH GOVERNMENT INTO OUR CONFIDENCE AND EXPLAIN TO THEM THE GRAVE CONSEQUENCES OF ALL THIS FOR THE NORTHERN IRELAND ECONOMY. (I UNDERSTAND THAT THE SECRETARY OF STATE FOR NORTHERN IRELAND HAD IT IN MIND TO RAISE THE SUBJECT WITH MR LENIHAN DURING THE MEETING OF THE INTERGOVERNMENTAL CONFERENCE ON 25 MARCH.) OUR OBJECTIVE MUST BE TO PERSUADE THE IRISH GOVERNMENT TO USE THEIR NOT INCONSIDERABLE INFLUENCE WITH DONNELLY TO REDIRECT HIS ENERGIES: SUBJECT TO MR FENN'S VIEWS, I SUSPECT THAT THIS COULD ONLY BE ACHIEVED THROUGH A HIGH LEVEL APPROACH TO THE TANAISTE. ALTHOUGH I HOPE MYSELF SHORTLY TO GO OVER THE GROUND

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PRIVATELY ON THIS AND OTHER NORTHERN IRELAND ISSUES WITH MY IRISH COLLEAGUE, I AM SURE THAT HE WOULD NOT BE PREPARED TO ACT ON OUR BEHALF WITHOUT CLEAR INSTRUCTIONS FROM DUBLIN.

8. IT FOLLOWS FROM THIS THAT I BELIEVE WE NEED AN URGENT APPROACH TO THE IRISH, POSSIBLY THROUGH THE INTERGOVERNMENTAL CONFERENCE, WITH A VIEW TO THEIR INSTRUCTING THEIR AMBASSADOR TO INTERVENE WITH DONNELLY AS SOON AS PRACTICABLE AFTER EASTER.

9. A SECOND, BUT PROBABLY LESS EFFECTIVE, POSSIBILITY (TO COMPLEMENT AN APPROACH TO DONNELLY THROUGH THE IRISH GOVERNMENT) WOULD BE TO ASK SOME OF THE MAJOR US CORPORATIONS IN NORTHERN IRELAND TO INTERVENE WITH THE CHAIRMAN AND OTHER MEMBERS OF THE WAYS AND MEANS COMMITTEE. BUT SUCH AN OPERATION WOULD NEED TO BE HANDLED VERY SENSITIVELY IF WE WERE TO AVOID STIFFENING DONNELLY'S UNHELPFUL ATTITUDE BY LEADING HIM TO BELIEVE THAT HMG WERE ORCHESTRATING A CAMPAIGN AGAINST HIS PROPOSAL. AND, UNLESS WE ARE ABLE SOON TO ESTABLISH THAT KNOWLEDGE OF WHAT DONNELLY HAS IN MIND IS MORE WIDESPREAD ON THE HILL THAN AT PRESENT SEEMS THE CASE, IT WOULD BE DIFFICULT OR IMPOSSIBLE TO MOUNT SUCH AN OPERATION WITHOUT COMPROMISING THE SOURCE OF OUR INFORMATION (WERNER BRANDT IN CONGRESSMAN FOLEY'S OFFICE) ON DONNELLY'S PROPOSAL. IT WOULD, HOWEVER, BE HELPFUL TO HAVE EARLY INSTRUCTIONS ON WHETHER WE SHOULD PURSUE THIS PROPOSAL, AND, IF SO, WITH WHICH FIRMS.

10. A THIRD, AND FAR LESS SATISFACTORY, OPTION WOULD BE TO ASK THE ADMINISTRATION TO INTERVENE WITH THE WAYS AND MEANS COMMITTEE ON OUR BEHALF. I AM HAVING THE DEPUTY SECRETARY OF STATE, JOHN WHITEHEAD TO A PRIVATE LUNCH, AND SHALL RAISE THIS IN GENERAL TERMS WITH HIM THEN, AND SEEK HIS ADVICE ON WHAT TACTICS WE MIGHT USE TO BLOCK THE PROPOSAL. BUT MY INSTINCT IS THAT AN EARLY INTERVENTION BY THE ADMINISTRATION WOULD ENCOUNTER MANY OF THE DIFFICULTIES DESCRIBED IN PARA 9 ABOVE, AND WOULD BE UNLIKELY TO PERSUADE ROSTENKOWSKI AND THE OTHER MEMBERS OF THE COMMITTEE TO HOLD OFF.

11. AN IMPORTANT ELEMENT IN PERSUADING DONNELLY NOT TO MOVE AHEAD WILL OF COURSE BE TO CONVINCE HIM THAT HMG IS MOVING AS FAR AND AS FAST AS POSSIBLE ON OUR OWN FAIR EMPLOYMENT PROPOSALS: ANYTHING WHICH CAN BE DONE IN THIS RESPECT, SUCH AS BRINGING FORWARD THE PUBLICATION OF THE WHITE PAPER, WOULD CLEARLY BE HELPFUL.

12. ALTHOUGH WE ARE DOING OUR BEST TO OBTAIN FURTHER DETAILS OF DONNELLY'S PROPOSAL, AND WHEN HE INTENDS TO ANNOUNCE IT, WE CANNOT COUNT ON SUCCEEDING. I THEREFORE HOPE THAT AN APPROACH TO THE IRISH GOVERNMENT ON THIS CAN BE MADE AS A MATTER OF URGENCY.

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ADDITIONAL 43

NORTHERN IRELAND

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TO DESKBY 070800Z FCO
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SINGAPORE FOR SECRETARY OF STATE'S PARTY

YOUR TELNO 603 : NORTHERN IRELAND : FAIR EMPLOYMENT :
CONGRESSMAN DONNELLY
SUMMARY

1. DONNELLY HAS CIRCULATED DRAFT PROPOSALS TO FELLOW MEMBERS OF
WAYS AND MEANS COMMITTEE. NEED FOR US TO SET IN HAND FURTHER
LOBBYING ACTIVITY, INCLUDING POSSIBLE APPROACHES TO DONNELLY BY
JOHN HUME AND TO CONGRESSMAN FOLEY BY ME. IRISH EMBASSY STILL
WITHOUT INSTRUCTIONS.

DETAIL

2. AS PLANNED, I RAISED CONGRESSMAN DONNELLY'S PROPOSED
INITIATIVE ON FAIR EMPLOYMENT OVER BREAKFAST WITH MY IRISH
COLLEAGUE ON 6 APRIL.

3. MACKERNAN WAS AWARE OF THE APPROACH TO MR LENIHAN BY THE
SECRETARY OF STATE FOR NORTHERN IRELAND, BUT HAD SO FAR BEEN
UNABLE TO OBTAIN INSTRUCTIONS FROM DUBLIN. HE REVEALED THAT
DONNELLY HAD CIRCULATED A LETTER TO HIS FELLOW MEMBERS OF THE
WAYS AND MEANS COMMITTEE EXPLAINING HIS INTENTION TO INTRODUCE
LEGISLATION ON FAIR EMPLOYMENT IN NORTHERN IRELAND, AND ATTACHING
AN OUTLINE OF IT. DONNELLY HAD ASKED FOR COMMENTS TO HIS
STAFF BY ABOUT 12 APRIL. MACKERNAN HAD SEEN DONNELLY'S
COVERING LETTER, BUT NOT THE OUTLINE OF THE PROPOSED LEGISLATION.
HE UNDERSTOOD THAT DONNELLY WAS PROPOSING A MIXTURE OF TAX
INCENTIVES FOR US CORPORATIONS IN NORTHERN IRELAND WHO ACHIEVED
A NON-DISCRIMINATORY EMPLOYMENT BALANCE, TOGETHER WITH SANCTIONS
FOR THOSE WHO DID NOT. (MACKERNAN'S POLITICAL COUNSELLOR
SUBSEQUENTLY TOLD US THAT DONNELLY'S PROPOSAL WOULD BE LINKED
TO AREA-BY-AREA UNEMPLOYMENT AND RELIGIOUS AFFILIATION
STATISTICS FOR NORTHERN IRELAND, BUT WAS UNABLE OR UNWILLING
TO GIVE US FURTHER DETAILS.) MACKERNAN'S UNDERSTANDING WAS

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THAT RECOMMENDATIONS FROM THE WAYS AND MEANS COMMITTEE COULD NOT BE AMENDED, BUT HAD TO BE VOTED ON AS THEY STOOD (NOT QUITE TRUE - SEE PARA 8 BELOW).

4. IN FURTHER DISCUSSION, MACKERNAN EMPHASISED THAT IT WOULD BE VERY DIFFICULT FOR THE IRISH GOVERNMENT TO STOP DONNELLY IN HIS TRACKS, PARTICULARLY AS HE BELIEVED THAT DONNELLY HAD UNDERTAKEN THIS VERY MUCH ON HIS OWN INITIATIVE AND NOT AS A RESULT OF CONSTITUENCY OR OTHER PRESSURES. MACKERNAN EMPHASISED THE IMPORTANCE OF MOVING AHEAD QUICKLY WITH OUR OWN LEGISLATIVE PROPOSALS, AND OF ENCOURAGING THE SDLP TO INTERVENE WITH DONNELLY.

5. IN REPLY, I STRESSED THE DISASTROUS EFFECT WHICH EVEN THE ANNOUNCEMENT OF SUCH AN INITIATIVE WOULD HAVE ON THE CONFIDENCE OF CURRENT AND POTENTIAL US INVESTORS IN NORTHERN IRELAND. I ALSO DESCRIBED OUR INTENTION TO LEGISLATE AS SOON AS POSSIBLE ON FAIR EMPLOYMENT, AND TO CONSULT THE IRISH GOVERNMENT BEFORE DOING SO. I ALSO EMPHASISED THE IMPORTANCE OF THE TAOISEACH NOT GIVING ANY ENCOURAGEMENT TO THE MACBRIDE CAMPAIGN DURING HIS FORTHCOMING VISIT TO NEW YORK AND BOSTON.

6. IN CONCLUSION MACKERNAN AGREED TO KEEP IN TOUCH ON THIS, AND TO LET ME KNOW WHAT HIS INSTRUCTIONS WERE.

7. ON 5 APRIL, WE WERE ALSO APPROACHED, QUITE SEPARATELY AND SPONTANEOUSLY, BY A BRITISH CITIZEN WORKING FOR A US OIL COMPANY, WHO HAD LEARNT IN CONFIDENCE FROM A SOURCE ON THE HILL THAT DONNELLY WAS PLANNING TO INTRODUCE QUOTE SANCTIONS UNQUOTE LEGISLATION WHICH WOULD HAVE THE EFFECT OF DISCOURAGING US INVESTMENT IN NORTHERN IRELAND. NONE OF WHAT HE TOLD US WAS CONTRADICTED BY WHAT I LEARNT FROM MACKERNAN ON 6 APRIL, ALTHOUGH OUR CONTACT EXPECTED DONNELLY TO MOVE WITHIN 2-3 WEEKS OF CONGRESS RETURNING FROM THE EASTER RECESS ON 11 APRIL. WE ARE NOW DOING ALL WE CAN, SHORT OF APPROACHING DONNELLY OR HIS CLOSE ASSOCIATES ON THE WAYS AND MEANS COMMITTEE DIRECT, TO OBTAIN A COPY OF HIS LETTER TO COLLEAGUES, TOGETHER WITH THE ENCLOSURE.

8. ALTHOUGH WE CANNOT BE ABSOLUTELY SURE ABOUT OUR TACTICS UNTIL WE KNOW PRECISELY WHAT DONNELLY HAS IN MIND, THERE IS CLEARLY NO TIME TO BE LOST : I SUSPECT THAT DONNELLY WILL WANT TO ANNOUNCE HIS INITIATIVE AS SOON AS POSSIBLE AFTER 12 APRIL, PARTICULARLY IF HE LEARNS THAT THE BRITISH GOVERNMENT ARE ON TO HIM. I ALSO JUDGE FROM MY CONVERSATION WITH MACKERNAN THAT ANY SUPPORT WHICH WE GET FROM THE IRISH EMBASSY HERE WILL BE SOMEWHAT HALFHEARTED. AND IT IS TRUE THAT THE HOUSE PASSES MOST WAYS AND MEANS MEASURES WITH FEW IF ANY CHANGES BEFORE THEY GO TO THE SENATE.

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9. AGAINST THAT BACKGROUND, I SUGGEST THAT WE NOW PROCEED AS FAST AS POSSIBLE WITH THE FOLLOWING STEPS TO TRY TO PREVENT DONNELLY ANNOUNCING HIS INITIATIVE :

(A) FIRST, I HOPE THAT, AS AGREED, MR FENN WILL BE ABLE TO DO ALL THAT HE CAN TO ENCOURAGE MR LENIHAN TO ISSUE ROBUST INSTRUCTIONS TO MY IRISH COLLEAGUE :

(B) I HOPE THAT NIO MINISTERS WILL AGREE THAT AN EARLY APPROACH SHOULD BE MADE TO JOHN HUME OR, VERY MUCH SECOND BEST, ANOTHER SENIOR MEMBER OF THE SDLP, TO INTERVENE WITH DONNELLY, WITHOUT SAYING THAT HE HAS BEEN ASKED TO DO SO BY THE BRITISH GOVERNMENT :

(C) I INTEND TO CALL ON CONGRESSMAN FOLEY AS SOON AS POSSIBLE AFTER HE RETURNS FROM JAPAN NEXT WEEK, TO ASK HIM TO INTERVENE WITH DONNELLY : FOLEY'S CHIEF OF STAFF HAS ALREADY TOLD US THAT HE THINKS THIS IS AN IDEA WELL WORTH PURSUING:

AND(D) SUBJECT TO THE VIEWS OF NIO MINISTERS, I SHOULD LIKE TO TAKE JOHN WHITEHEAD UP ON HIS OFFER (MY TELNO 883) TO HELP ME ENCOURAGE THE CHIEF EXECUTIVES OF DU PONT, GENERAL MOTORS AND FORD TO INTERVENE WITH DONNELLY ON OUR BEHALF. NOW THAT AT LEAST ONE CORPORATE LOBBYIST HAS LEARNT OF WHAT DONNELLY IS UP TO (PARA. 7 ABOVE) I DO NOT THINK THERE SHOULD BE ANY OBJECTION TO OUR ASKING EXISTING US INVESTORS IN NORTHERN IRELAND TO ASSIST. IT WOULD BE HELPFUL TO KNOW WHETHER THERE IS ANY OBJECTION TO THIS BY 081300Z.

10. THE FACT THAT A LETTER IS NOW CIRCULATING INCREASES THE CHANCES THAT DONNELLY'S PROPOSAL WILL SOON BECOME PUBLIC, POSSIBLY THROUGH THE IRISH PRESS HERE. IF ASKED ABOUT IT, WE PROPOSE TO SAY THAT, IN THE VIEW OF HMG, ANY SUCH LEGISLATION WOULD HARM THE VERY PEOPLE IT IS PRESUMABLY TRYING TO HELP. IT WOULD UNDERMINE THE CONFIDENCE OF EXISTING AND POTENTIAL US INVESTORS IN NORTHERN IRELAND AND WOULD THEREFORE DAMAGE THE PROSPECTS FOR CREATING THE JOBS WHICH THE PROVINCE SO BADLY NEEDS.

11. FINALLY, IT WAS VERY DISAPPOINTING TO LEARN IN PASSING FROM MR FENN'S TELNO 166 AND YOUR TELNO 163 THAT THE DATE FOR PUBLICATION FOR THE WHITE PAPER HAD SLIPPED TO JUNE FROM MARCH/ APRIL (WHICH IS THE TARGET DATE PREVIOUSLY USED WITH CONTACTS HERE). IT WOULD BE VERY HELPFUL TO HAVE FULL AND EARLY GUIDANCE ON THE TIMETABLE NOW ENVISAGED FOR THE FAIR EMPLOYMENT PROPOSALS.

12. FCO PLEASE ADVANCE TO NIO (L) : NIO (B) PLEASE ADVANCE TO DED (B).

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ADDITIONAL 43

NORTHERN IRELAND

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SPEAKING NOTE (HMA Dublin)

c. Mc Teach SL/D: M0
As/Chancellor of Exchequer
Rm 14/ 2nd Fl.
HM Treasury.
Mr Dawson

8/4/88

FAIR EMPLOYMENT IN NORTHERN IRELAND
POSSIBLE INITIATIVE BY CONGRESSMAN DONNELLY

1. The British authorities are concerned about an initiative on fair employment in Northern Ireland which, they have learned in confidence, US Congressman Donnelly intends to introduce within the next few days. The Secretary of State for Northern Ireland expressed his concern to the Tanaiste at the Inter-Governmental Conference on 25 March and again on the telephone on 31 March. Mr King asked for Irish help in persuading the Congressman not to proceed with his initiative. Mr Lenihan responded positively. The British Ambassador in Washington, Sir Anthony Acland, also expressed our concern to the Irish Ambassador on 6 April.

2. We understand that Congressman Donnelly proposes to remove from the scope of UK/US double taxation agreements all US companies in Northern Ireland which do not employ a specified proportion of Roman Catholics there, and to provide certain tax incentives for companies which do. A company found not to be conforming would be liable to pay both UK and US Corporation Tax on profits made in Northern Ireland and repatriated to the United States. A likely vehicle for this proposal is the Taxation Technical Corrections Bill on which the Ways and Means Committee is expected to hold hearings shortly.

3. It seems that Congressman Donnelly is modelling his proposals on a measure already in effect for US companies in South Africa (S.901 (J) (2c) of the Revenue Act 1987). Whether or not his proposal becomes law, the announcement of this initiative and the idea that US companies in Northern Ireland may be liable to the same tax treatment as those in South Africa, will damage the confidence of potential and existing investors in Northern Ireland and therefore the economic prospects for the Province. This will make it more difficult to achieve the objective of fair employment in Northern Ireland which the Irish and British Governments share with the Congressman.

4. Beyond the direct impact on investor confidence and profitability, there is the damaging effect of the analogy with

South Africa. The news that Congressman Donnelly was seeking to overtrump the MacBride campaign would encourage State legislatures to enact harmful laws on fair employment in Northern Ireland.

5. The initiative will cut across the proposals for fair employment legislation for Northern Ireland now under discussion between the Irish and British Governments. The Tanaiste and the Secretary of State had a valuable discussion at the Inter-Governmental Conference in Dublin on 24 February. A special meeting of the Conference is envisaged before the British White Paper in June and further consultation before legislation in the autumn. Congressman Donnelly's initiative would prejudice the outcome. He might at least be invited to hold off until he has had a chance to assess the tough legislation which we are preparing. His intervention now is ill-timed as well as damaging.
6. Conceivably Mr Donnelly's initiative may be intended to expedite British legislation. As the Irish authorities know, it cannot have that effect: our legislation already has top priority for the next parliamentary session and cannot be introduced before then.
7. On the contrary, the deterrent effect on potential and existing investors could well undo the benefits that British legislation is designed to achieve.
8. The Embassy is instructed by the Secretary of State for Foreign and Commonwealth Affairs and by the Secretary of State for Northern Ireland to express the hope that the Irish Embassy in Washington may now be instructed to dissuade Mr Donnelly from proceeding with his initiative.
9. Time is short. Congressman Donnelly has circulated draft proposals to fellow members of the Ways and Means Committee and may well intend to announce his initiative as soon as possible after 12 April.
10. It would not be helpful with Mr Donnelly if it appeared that the British authorities were stirring up a campaign against him. But Sir Anthony Acland is being asked to approach Congressman Foley about this initiative, and we would be happy to

coordinate tactics with the Irish Embassy in Washington.

British Embassy
Dublin

8 April 1988

0001 695211 230 P.04

1988-04-08 13:41 British Embassy, DUBLIN

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MIPT: FAIR EMPLOYMENT IN NORTHERN IRELAND: CONGRESSMAN DONNELLY.

1. FOLLOWING IS TEXT OF CONGRESSMAN DONNELLY'S LETTER TO HIS COLLEAGUES ON THE WAYS AND MEANS COMMITTEE, GIVEN TO ME IN STRICT CONFIDENCE BY SECRETARY DFA (PLEASE RESPECT).

BEGINS.

DEAR :

I AM WRITING TO ASK YOU TO JOIN ME AS AN ORIGINAL SPONSOR OF LEGISLATION I WILL INTRODUCE AFTER THE EASTER RECESS TO DEAL WITH THE PROBLEMS OF EMPLOYMENT DISCRIMINATION IN NORTHERN IRELAND.

LAST YEAR, OUR COMMITTEE ENDED TAX BENEFITS TO US FIRMS IN SOUTH AFRICA BECAUSE OF JUSTIFIABLE CONCERN OVER BLATANT DISCRIMINATION THERE. MY PROPOSAL IS SIMILAR WITH RESPECT TO US FIRMS DOING BUSINESS IN NORTHERN IRELAND. IT ESTABLISHES A SERIES OF REASONABLE EMPLOYMENT STANDARDS WHICH US FIRMS WOULD HAVE TO ABIDE BY AS A CONDITION OF RETAINING US TAX BENEFITS RELATING TO FOREIGN SOURCE INCOME. I HAVE DETAILED THESE STANDARDS AND THE SPECIFIC PROVISIONS OF MY BILL IN THE ENCLOSED SUMMARY.

IN ADDITION, TO ENCOURAGE THE EMPLOYMENT OF RELIGIOUS MINORITIES, MY BILL WOULD ALLOW US FIRMS AN ADDITIONAL TAX BENEFIT IF THEY INCREASED THEIR HIRING OF RELIGIOUS MINORITIES NORTHERN IRELAND. IN MANY AREAS OF IRELAND, THE UNEMPLOYMENT RATE AMONG CATHOLICS IS MORE THAN TWO AND ONE-HALF TIMES THE RATE FOR OTHERS. MY BILL WOULD PROVIDE AN ADDITIONAL INCENTIVE -- REPEAL OF THE FOREIGN TAX CREDIT LIMITATION -- TO FIRMS WHICH SIGNIFICANTLY INCREASED THEIR EMPLOYMENT OF RELIGIOUS MINORITIES.

THIS BILL IS STRONGLY SUPPORTED BY THE IRISH-AMERICAN COMMUNITY. LIKE THEM, I AM CONCERNED ABOUT THE RECENT OUTBREAK OF VIOLENCE IN NORTHERN IRELAND, OF WHICH I AM SURE YOU ARE AWARE. THIS BILL WOULD BE A CONSTRUCTIVE (UNDERLINED) RESPONSE TO THOSE PROBLEMS. IT'S TIME TO SEND A MESSAGE TO US FIRMS THAT WE WILL NOT TOLERATE OR SUBSIDIZE THROUGH THE TAX LAWS EMPLOYMENT PRACTICES ABROAD THAT WOULD BE BLATANTLY ILLEGAL HERE ON OUR SHORES. I WOULD APPRECIATE YOUR SPONSORSHIP OF THIS LEGISLATION, AND IF YOU WOULD LIKE TO DO SO, PLEASE LET ME, OR TOM BARKER OF MY STAFF, KNOW BY TUESDAY, APRIL, 12.

WITH WARM REGARDS

SINCERELY,

BRIAN DONNELLY.

ENDS

2. BIS NEW YORK PLEASE PASS SAVING BOSTON.

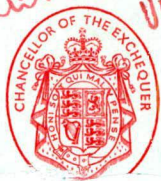
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DLLNAN 467B



News from
must now -
UP to
via w/ton (bureau)
to Centre Park
Donnelly's Bill
is called.



All this arrived late tonight.

Ch/ I don't know if you are aware at all of this latest piece of US meddling in Ulster affairs - earlier pp do not appear to have been copied to us. Congressman Donnelly introducing a Bill to give (US) tax incentives for US corporations pursuing fair employment policy in N. Ireland & tax penalties for non-conformers. Most unwelcome parallel with S. Africa, and we have legislative space for a Bill to clean up our act. But not clear that anything more can be done to avert this.

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8/4/88

WASHINGTON TELNO 9223 AND MY TELNO 169: FAIR EMPLOYMENT IN NORTHERN IRELAND: CONGRESSMAN DONNELLY

SUMMARY

1. TEXT OF DONNELLY'S LETTER IS IN MIFT. THE IRISH CONFIRM THEIR JUDGEMENT THAT IT WOULD BE COUNTERPRODUCTIVE TO SEEK TO DISSUADE DONNELLY AT THIS STAGE FROM INTRODUCING HIS BILL. THEY WILL CONTINUE TO ENCOURAGE HIM NOT TO PRESS IT FURTHER.



DETAIL

2. IN THE LIGHT OF WASHINGTON TUR I PRESSED NOEL DORR THIS EVENING FOR A COPY OF DONNELLY'S LETTER. HE HAS RELUCTANTLY GIVEN IT TO ME IN STRICT PERSONAL CONFIDENCE (PLEASE RESPECT).

3. FOLLOWING THE REPRESENTATIONS REPORTED IN MY TUR, DORR HAS DISCUSSED THIS FURTHER WITH THE TANAISTE AND ON HIS INSTRUCTIONS HAS SPOKEN AGAIN TO AMBASSADOR MACKERNAN. HE CONFIRMS TO ME THAT THE IRISH POSITION REMAINS AS FOLLOWS

A. THEY HAD NO HAND IN DONNELLY'S INITIATIVE (SEMI-COLON)

B. THEY SEE NO PROSPECT AT THIS STAGE OF PREVENTING HIM FROM INTRODUCING THE BILL ON TUESDAY 12 APRIL. THEY ARE UNWILLING TO TRY. DONNELLY WOULD REACT ADVERSELY, AND HE IS IMPORTANT TO THEM IN OTHER CONTEXTS, INCLUDING IMMIGRATION, AS WELL AS OVER FAIR EMPLOYMENT (SEMI-COLON)

C. ON THE OTHER HAND THERE IS GOOD PROSPECT OF DISSUADING DONNELLY FROM PRESSING HIS BILL ANY FURTHER IN THE LEGISLATIVE PROCESS. AMBASSADOR MACKERNAN ON INSTRUCTIONS WILL CONTINUE TO URGE THIS COURSE.

4. INCIDENTALLY DORR UNDERSTANDS THAT THE CARROT IN DONNELLY'S DRAFT BILL MAY HAVE TO BE REMOVED BECAUSE ADDITIONAL TAX BENEFITS FOR CONFORMING COMPANIES WOULD INFRINGE OTHER US ANTI-DISCRIMINATION LEGISLATION. THIS WOULD LEAVE ONLY THE STICK OF DOUBLE TAXATION FOR NON-CONFORMING COMPANIES.

5. NEW YORK PLEASE PASS SAVING TO BOSTON.

FENN

YYYY

ADVANCE 18	
NORTHERN IRELAND	1
PS	1
PS/MRS CHALKER	1
PS/PUS	1
MR BOYD	1
HD/RID	1
DEP. HD/PUSD	2
HD/NEWS	1
HD/INFO	1
PS/SEC OF THE CABINET, CAB OFF	1
MR BELL, NIO(L)	1
MR I BURNS NIO(L)	1
MR D CHESTERTON NIO(L)	1
PS/S OF S NIO(L)	1
PS/MR STANLEY NIO(L)	1
MR LEACH NIO(L)	1
RESIDENT CLERK	1
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INFO	15
NEWS	9
PUSD	25
SCD	5
RESEARCH	1
PLANNERS	3
NTD	1
ECD(E)	6
ECD(I)	6
LEGAL ADVISERS	6
POD	3
PS	7
PS/MRS CHALKER	1
PS/PUS	1
SIR J FRETWELL	1
CHIEF CLERK	1
MR BOYD	1
MISS PESTELL	1
ADDITIONAL 43	
NORTHERN IRELAND	43
[J ARCHER]	
DLLNAN 4677	



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11/4/88

MEETING BETWEEN THE CHANCELLOR OF THE EXCHEQUER AND MR BAKER, US SECRETARY TO THE TREASURY

FAIR EMPLOYMENT IN NORTHERN IRELAND

POINTS TO MAKE

- Grateful for your help in stopping Congressman Donnelly from introducing draft legislation, which would provide tax penalties for US companies established in Northern Ireland unless they comply with certain guidelines allegedly designed to produce fair employment.
- Legislation would appear incompatible with UK/US Double Taxation Agreement
- Would not achieve its ostensible effect of putting pressure on HMG to introduce effective legislation on fair employment. Such legislation is to be introduced as soon as possible ie at the start of the next session of the British parliament in November, on the basis of proposals already published. These have been discussed with the Irish Government who are favourably disposed. We intend to publish White Paper next month giving details.
- In practice the proposed legislation could only deter US investment, which is a key source of new jobs, and so make worse the problem it is ostensibly designed to help.
- Any parallel with South Africa is intolerable. Do not deny problems in Northern Ireland. But discrimination is illegal in Northern Ireland, not institutionalised.

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BACKGROUND

1. Congressman Donnelly has circulated to the Congress Ways and Means Committee proposals for legislation which, would aim to provide tax incentives for US companies in Northern Ireland who achieve a non-discriminatory employment balance, and (more prominently and certainly) sanctions against those who do not follow guidelines allegedly designed to produce fair employment (these appear to mandate reverse discrimination and would therefore probably be illegal in NI). These sanctions would involve removal of US companies in Northern Ireland from the scope of the UK/US Double Taxation Agreement, greatly increasing their tax bills. Congressman Donnelly hopes to announce legislation on or about 14 April.

2. There is little prospect of the tax law being considered immediately. The intention is rather to put pressure on the British Government to bring forward effective legislation on fair employment in Northern Ireland. It will not have this effect. The Government has already produced proposals which are expected to have priority in the next parliamentary session. The legislation will damage the confidence of potential and existing investors in Northern Ireland, and so harm the economic prospects of everyone, but particularly the unemployed, in the Province. We have asked the Irish Government to intervene with Congressman Donnelly (who is allergic to approaches from HMG), seeking to dissuade him from introducing the legislation. But the Congressman is unlikely to be deterred. The Ambassador is also contacting members of the Ways and Means Committee as well as chief executives of major companies investing in Northern Ireland to intervene with Congressman Donnelly on our behalf.

3. It seems that Congressman Donnelly is modelling his proposals on measures already in effect for US companies in South Africa. The parallel is entirely unjustifiable. Discrimination is illegal in Northern Ireland. It is institutionalised in South Africa. There

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is every sign that, the MacBride proposals having to some extent been trumped by the NIO's fair employment proposals (attached), the Irish lobby are seeking to overtrump the situation. Their motivation, in an election year, is at least as much domestic as a genuine concern for Northern Ireland welfare.

Republic of Ireland Department
FCO

11 April 1988

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FAIR EMPLOYMENT
IN NORTHERN IRELAND

ps3/9T

CONFIDENTIAL



FROM: J M G TAYLOR
DATE: 11 April 1988

SIR G LITTLER

cc Sir P Middleton
Mr Anson
Mr Lankester
Mr H P Evans
Miss Peirson
Mr A M White

**BILATERAL WITH SECRETARY BAKER:
FAIR EMPLOYMENT IN NORTHERN IRELAND**

Our Embassy in Washington is anxious that the Chancellor should raise with Secretary Baker our concern over a bill which US Congressman Donnelly proposes to introduce. This Bill would provide tax penalties for US companies established in Northern Ireland, unless they complied with certain guidelines allegedly designed to produce fair employment.

2. I asked the FCO to provide us with briefing on this, and this ... briefing is now attached.
3. You may like to discuss with the Chancellor on the way to Washington.

A handwritten signature in black ink, appearing to be 'JMG'.

J M G TAYLOR



py

From: R C Pratt
Date: 12 April 1988

Chancellor

c. Sir G Littler
Mr Cassell
Mr O'Donnell

FAIR EMPLOYMENT IN N. IRELAND

You have received briefing on the proposal by Congressman Donnelly to introduce tax penalties for US companies who fail to comply with certain fair employment guidelines in their Northern Ireland plants. If you raise this with Secretary Baker, you will wish to be aware of the following:

i) The US Treasury do not take the proposal very seriously and do not think it will get very far. They will brief Mr Baker accordingly. The vital point to stress to Mr Baker is that the mere introduction or announcement of such a proposal could be very damaging to existing or potential US investment in N. Ireland.

/ ii) The Ambassador has decided to approach Congressman Donnelly direct (see letter attached), and urge him to delay making any announcement until he has seen an emissary from N. Ireland with whom he could discuss the impact of his proposal. John Hume MP has also been asked to speak to Donnelly to urge him at least to delay announcing this proposal. It would be very helpful if Treasury staff (who we know are in touch with Donnelly's office), also stress the importance of delaying announcement.

Richard Pratt

Attached: Copy letter.



BRITISH EMBASSY,

WASHINGTON, D.C. 20008

TELEPHONE: (202) 462-1340

FROM THE AMBASSADOR

11 April 1988

The Honorable
Brian J Donnelly
Room 438
Cannon House Office Building
Washington DC 20515

Dear Congressman Donnelly,

I understand that you may be considering introducing legislation in the House Ways and Means Committee in the near future intended to promote fair employment in Northern Ireland.

If my information is correct, the Bill would penalise US companies which did not comply with certain fair employment guidelines, and might also offer tax incentives to encourage US investment in areas of high employment.

The British Government wholly shares the objective of ending job discrimination in Northern Ireland, and of creating more jobs for Catholics, particularly in areas of high employment. But all of us working for those ends, whether in Northern Ireland and London or in our investment promotion efforts across the United States, are convinced that even the announcement of an initiative of this kind would have a further, very damaging, effect on the confidence of existing and potential US investors in Northern Ireland. The media, and particularly the business press, would I think be tempted to report the proposal in terms of "South African type sanctions for Northern Ireland introduced in Congress".

I wanted therefore to write to you personally to say that the British Government hopes very much that you will be able to delay announcing any initiative at least until you have had an opportunity to discuss the whole issue and the employment implications with a senior official from Northern Ireland, who would be ready to fly out to Washington immediately at your convenience. If you would find it helpful, the Secretary of the Northern Ireland Department of Economic Development, Mr David Fell, would be glad to talk all this over with you personally.



I thought it best to write to you only at this stage and not to involve other members of the Ways and Means Committee.

If you would like to discuss this, or any other aspect of the Northern Ireland problem, further, I, or, if I were away, the Minister at the Embassy, Brian Fall, would be very glad to come to see you at your convenience at any time.

Yours sincerely

Antony Acland

Antony Acland

DESKBY

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FM WASHINGTON

TO DESKBY 150800Z FCO

TELNO 987

OF 150045Z APRIL 88

AND TO DESKBY 150800Z NIO (L), NIO (B), DED (B)
INFO IMMEDIATE DUBLIN, BTDO NEW YORK, BIS NEW YORK
INFO SAVING BOSTON

MY TELNO 976 : FAIR EMPLOYMENT IN NORTHERN IRELAND : CONGRESSMAN
DONNELLY

SUMMARY

1. DONNELLY INTENDS TO PRESS AHEAD WITH ANNOUNCING AN INITIATIVE INCLUDING BOTH INCENTIVES AND SANCTIONS FOR US COMPANIES IN NORTHERN IRELAND : BUT LIKELY TO MAKE SUBSTANTIAL DRAFTING CHANGES TO REFLECT HMG'S AND OTHERS' CONCERNS.

DETAIL

2. AS ARRANGED, FELL SAW DONNELLY ON 14 APRIL. DONNELLY WAS ACCOMPANIED BY CONGRESSMAN RAY MCGRATH (R-NEW YORK) AND BY THEIR RESPECTIVE STAFFERS : FELL BY COWPER-COLES. THE DISCUSSION WITH DONNELLY AND MCGRATH LASTED SOME 90 MINUTES, AND WAS FOLLOWED BY A FURTHER 30 MINUTES OF MORE DETAILED DISCUSSION WITH DONNELLY'S STAFFER RESPONSIBLE FOR DRAFTING THE LEGISLATION.

3. AFTER EXPRESSING GRATITUDE FOR FELL'S VISIT, DONNELLY AND MCGRATH MADE IT CLEAR THAT THERE WAS NO QUESTION OF THEIR NOT INTRODUCING LEGISLATION ON FAIR EMPLOYMENT IN NORTHERN IRELAND IN THE NEAR FUTURE. THEY ALSO INSISTED THAT SUCH LEGISLATION, IF IT WERE TO CARRY ANY CONVICTION WITH THEIR IRISH AMERICAN CONSTITUENCIES, WOULD HAVE TO INCLUDE BOTH AN INCENTIVE AND A SANCTIONS ELEMENT. THEY AND THEIR STAFF ALSO IMPLIED THAT THEY WERE MORE OR LESS SET ON MAKING AN ANNOUNCEMENT ON, OR VERY SOON AFTER, WEDNESDAY 20 APRIL. THEY EMPHASISED REPEATEDLY THAT THEIR OVER-RIDING OBJECTIVE WAS TO CREATE MORE JOBS FOR CATHOLICS IN NORTHERN IRELAND AND TO TRUMP MACBRIDE, BOTH ON THE HILL AND, TO A LESSER EXTENT, IN THE STATES. IF HMG WERE TO ACCEPT THE FIRST PREMISE, THEN THERE COULD BE A MEANINGFUL DISCUSSION ABOUT ENSURING THAT THE LEGISLATION DID NOT UNDERMINE OUR OWN EFFORTS TO DEAL WITH JOB DISCRIMINATION IN NORTHERN

/IRELAND

(SLCC/CHY)
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IRELAND. DONNELLY AND MCGRATH SEEMED ENCOURAGINGLY VAGUE ABOUT THE LEGISLATIVE VEHICLE WHICH THEY MIGHT USE ACTUALLY TO GET THE LEGISLATION PASSED.

4. AGAINST THAT BACKGROUND, DONNELLY AND MCGRATH REVEALED THAT THEY HAD ALREADY MADE A NUMBER OF PRESENTATIONAL IMPROVEMENTS IN THEIR DRAFT LEGISLATION. THE BILL WAS NOW ENTITLED QUOTE A BILL TO PROMOTE EMPLOYMENT IN NORTHERN IRELAND UNQUOTE, AND THE SANCTIONS ELEMENT HAD NOW BEEN DROPPED TO THE TAIL END OF THE BILL. THEY DID NOT, HOWEVER, ACCEPT OUR ARGUMENTS FOR RESTRICTING THEIR BILL TO INCENTIVES, MAKING IT CLEAR THAT A BILL WITHOUT SANCTIONS WOULD NOT SERVE THEIR DOMESTIC POLITICAL PURPOSES.

5. ON THE INCENTIVE SIDE OF THE BILL, THEY REVEALED THAT THEY WERE COMMITTED TO PROPOSING THE REMOVAL OF THE CEILING ON FOREIGN TAX CREDITS FOR US COMPANIES WHICH WERE ALREADY LOCATED, OR PLANNING TO LOCATE, IN HIGH UNEMPLOYMENT AREAS, AND EMPLOYED A MINIMUM OF 40 PER CENT CATHOLICS (THIS IS THE FIRST TIME WE HAD HEARD OF THIS PROVISION). WE EXPLAINED THAT THIS WAS ALMOST CERTAIN TO BRING US CORPORATIONS SEEKING TO ABIDE BY IT INTO CONFLICT WITH NORTHERN IRELAND LAW. AFTER SOME DISCUSSION, THEY CONCEDED THAT IT MIGHT BE POSSIBLE TO LOOK AT THIS AGAIN.

6. ON THE USE OF PARLIAMENTARY CONSTITUENCIES TO DEFINE AREAS OF UNEMPLOYMENT, WE WENT OVER THE GROUND WITH THEM IN SOME DETAIL, AND IT NOW SEEMS LIKELY THAT THEY WILL OPT FOR AN ALTERNATIVE FORMULA, PROBABLY AFTER CONSULTATION WITH THE SDLP. WE ALSO QUESTIONED WHETHER THE INCENTIVE THEY WERE PROPOSING WAS LIKELY TO BE SUBSTANTIAL ENOUGH TO OFFSET THE CONSIDERABLE HASSLE INVOLVED FOR US COMPANIES. AS THE DISCUSSION PROCEEDED, IT BECAME INCREASINGLY CLEAR THAT THEY HAD NOT REALLY BEGUN TO THINK THROUGH THE SORT AND SIZE OF TAX INCENTIVES WHICH WOULD BE NEEDED TO ACHIEVE THEIR OBJECTIVE.

7. ON THE SANCTIONS SIDE OF THE PACKAGE, THEY EMPHASISED REPEATEDLY THAT THEIR INTENTION NOW, EITHER IN THE BILL ITSELF OR IN THE EXPLANATORY COMMITTEE REPORT, WAS TO MAKE CLEAR THAT THE FAIR EMPLOYMENT STANDARDS PRESCRIBED IN THE US LEGISLATION WOULD BE THOSE IN HMG'S OWN NEW LEGISLATION, AND NOT SOME SEPARATE SET OF STANDARDS. THEY ALSO SEEMED SYMPATHETIC TO THE IDEA THAT THE FEA (OR ITS SUCCESSOR) SHOULD HAVE A ROLE IN MONITORING COMPLIANCE ON BEHALF OF THE US TREASURY SECRETARY. DONNELLY'S STAFFER ALSO AGREED TO DROP ANY REFERENCE TO QUOTE NATIONAL ORIGIN UNQUOTE.

8. IN LENGTHY FURTHER DISCUSSION, FELL EMPHASISED OUR OVER-
RIDING CONCERN THAT ANY SUCH LEGISLATION SHOULD NOT COMPLICATE
THE ALREADY VERY DIFFICULT TASK OF ATTRACTING AMERICAN AND OTHER
FOREIGN INVESTMENT TO NORTHERN IRELAND. WE HAD CONSIDERABLE
RESERVATIONS ABOUT THE WISDOM OF ANY SUCH US LEGISLATION IN THIS
FIELD, AND FELL WOULD NEED TO CONSULT HIS MINISTERS BEFORE
OFFERING A DEFINITIVE VIEW ON THE SORT OF PROPOSALS WHICH DONNELLY
AND MCGRATH NOW APPEARED TO HAVE IN MIND. IT FOLLOWED THAT HMG
COULD NOT BE SEEN TO CONNIVE AT LEGISLATION OF THIS KIND
(DONNELLY DID NOT DEMUR, POINTING TO THE DAMAGE WHICH WOULD
BE DONE TO HIS DOMESTIC CREDIBILITY IF WHAT HE WAS DOING WAS
SEEN TO HAVE A SEAL OF APPROVAL FROM HMG).

COMMENT

9. OVERALL, FELL SEEMED TO ESTABLISH A GOOD WORKING RAPPORT
WITH DONNELLY, WHO HAS NOW INSTRUCTED HIS STAFF TO RE-OPEN THEIR
LINES OF COMMUNICATION WITH US. ON THE LEGISLATION ITSELF, IT
IS CLEAR THAT DONNELLY AND MCGRATH WILL BE GOING BACK TO THE
DRAWING BOARD, AND THAT THE SUMMARY IN MY TELNO 935 IS TO ALL
INTENTS AND PURPOSES OVERTAKEN.

10. THE NEXT STEP WILL BE FOR DONNELLY'S STAFF TO PREPARE
A FURTHER DRAFT SUMMARY OF THE BILL, WHICH THEY WILL THEN
CIRCULATE TO THE MAIN INTERESTED PARTIES. IF WE CANNOT OURSELVES
OBTAIN A COPY FROM DONNELLY'S STAFF DIRECT, WE VERY MUCH
HOPE IT WILL BE POSSIBLE TO DO SO THROUGH THE SDLP OR THE IRISH
EMBASSY. IN THE LIGHT OF THAT FURTHER DRAFT, WE SHALL NEED TO
GIVE VERY CAREFUL CONSIDERATION TO HOW HMG MIGHT REACT TO THE
ANNOUNCEMENT ITSELF : OUR PRELIMINARY VIEW IS THAT, IF DONNELLY
STICKS TO THE LINE HE GAVE US TODAY, A FAIRLY HEAVILY QUALIFIED
WELCOME (AT LEAST FOR THE APPARENT OBJECTIVE OF THE BILL)
MAY BE THE BEST WAY OF LIMITING THE DAMAGE, PARTICULARLY
IN CORPORATE AMERICA. THAT RESULT - CONTAINING THE DAMAGE
WHICH DONNELLY'S BILL MIGHT OTHERWISE HAVE DONE - IS LIKELY TO
BE THE MAIN BENEFIT OF FELL'S FLYING VISIT, FOR WHICH ALL OF
US CONCERNED HERE ARE MOST GRATEFUL.

11. FCO PLEASE ADVANCE TO NIO (L) : NIO (B) PLEASE ADVANCE TO
SIR KENNETH BLOOMFIELD, AND MCCONNELL (POLITICAL AFFAIRS
DIVISION). AND TO FELL, GOWDY, WILSON AND JOHNSON (DED).

ACL AND

Mr Pratt to telegram

line to no two



M.
(AT to FAT to
FR)
to FP

Ch.

Congressman Donnelly's Bill.

I have passed on your views on the FCO's suggested line to both Sir G Howe's office and to Tom King's office. I have also spoken to Mr Pratt.

2. Mr Pratt tells me that the FCO's telegram compresses, somewhat unfortunately, the proposed line. What it should have said is that we would agree with the objective of securing fair employment, but that the route should be through our legislation, not through Congressman Donnelly's approach.

Thanks.
V. Cullen
19/4

psp



FROM: A C S ALLAN
DATE: 18 April 1988

Note.

MR A M WHITE

*I passed in the US's Budget
(as recorded below) to Tony Galbraith
in Sir G Howe's office. Also to Martin
Donnelly (Thinking Office) to 15/4*

cc Sir P Middleton
Sir G Littler
Mr Lankester
Mr H P Evans
Miss Peirson
Mr Pratt (Washington)

FAIR EMPLOYMENT IN NORTHERN IRELAND: CONGRESSMAN DONNELLY

The Chancellor has seen Washington telegram No.987 of 15 April, reporting on Fell's meeting with Donnelly. This says, in paragraph 10, "we shall need to give very careful consideration to how HMG might react to the announcement itself: our preliminary view is that, if Donnelly sticks to the line he gave us today, a fairly heavily qualified welcome (at least for the apparent objective of the Bill) may be the best way of limiting the damage, particularly in corporate America."

2. The Chancellor strongly disagrees with this view. Quite apart from the dubious proposition that we should welcome a measure which includes sanctions, it would make a nonsense of the strenuous lobbying which we have undertaken - including a personal approach from the Chancellor to Secretary Baker. The briefing for that meeting said that "the mere introduction or announcement of such a proposal could be very damaging", and this is hardly consistent with welcoming the objectives.

ACSA
A C S ALLAN

Passed on to
① Mr. Patti
② PS/FCO
③ PS/MID

*1 wd certain drop D, and
wd replace a
Donnelly's Bill
Ch. which unnecessary*

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113200
MDHIAN 6345

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FM WASHINGTON

TO DESKBY 200800Z FCO

TELNO 1033

OF 200100Z APRIL 88

AND TO DESKBY 200800Z NIO(L), NIO(B), DED(B)

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INFO SAVING BOSTON

unwarranted

2. You can also

New suggested line in para 10. More neutral than before. IR are happy with 10(L), which probably not position vis-a-vis US/UK tax treaty. Content? (or perhaps drop D (para 11), which seems a bit premature.)

Fell FCO that I take some things @ 4

MY TELNO 987: FAIR EMPLOYMENT IN NORTHERN IRELAND: CONGRESSMAN
DONNELLY

ON mistad by the way @ X.

SUMMARY

1. DONNELLY STILL INTENDING TO INTRODUCE HIS BILL, VERY MUCH ON THE LINES DISCUSSED WITH FELL, ON 20 APRIL. PRECISE DETAILS NOT AVAILABLE UNTIL THE MORNING OF 20 APRIL.

DETAIL

2. DONNELLY'S STAFF (BARKER) TOLD US LATE ON 19 APRIL THAT DONNELLY HAD DECIDED TO GO AHEAD AND ANNOUNCE HIS INITIATIVE ON 20 APRIL. HE WILL INTRODUCE HIS BILL ON THE FLOOR OF THE HOUSE, MAKING A SHORT STATEMENT UNDER SPECIAL ORDERS ONCE ORDINARY LEGISLATIVE BUSINESS IS OUT OF THE WAY. THIS IS NOT EXPECTED UNTIL 4PM EDT (2000Z) AT THE EARLIEST. BARKER PROMISED US THE FULL TEXT OF THE BILL AND EXPLANATORY STATEMENTS IN THE MORNING, BY WHEN HE CLAIMED HE WOULD HAVE FINISHED THE DRAFTING. ALTHOUGH THEY HAVE NOT YET SEEN THE FINAL TEXT, 11 CONGRESSMEN HAVE SO FAR AGREED TO CO-SPONSOR THE BILL.

3. ACCORDING TO BARKER, THE LEGISLATION WILL BE ENTITLED QUOTE A BILL TO PROMOTE FAIR EMPLOYMENT IN NORTHERN IRELAND UNQUOTE. AS DISCUSSED WITH FELL ON 14 APRIL, IT WILL CONSIST OF 2 MAIN ELEMENTS: (A) A SECTION REMOVING THE CEILING ON TAX CREDITS FOR US COMPANIES LOCATED IN AREAS OF HIGH UNEMPLOYMENT (PROBABLY TEN DISTRICT COUNCIL AREAS, TO BE SPECIFIED IN THE COMMITTEE REPORT) AND WITH A WORK FORCE AT LEAST 40 PER CENT OF WHOM ARE MEMBERS OF THE NORTHERN IRELAND MINORITY COMMUNITY, AND

(B) A SECTION DENYING TAX CREDITS OR DEFERRALS TO US COMPANIES IN NORTHERN IRELAND WHICH DO NOT COMPLY WITH THREE QUOTE FAIR EMPLOYMENT STANDARDS UNQUOTE OBLIGING THEM TO QUOTE

(1) TAKE STEPS TO ENSURE THAT NO DIRECT OR INDIRECT DISCRIMINATION ON RELIGIOUS OR POLITICAL GROUNDS EXISTS IN EMPLOYMENT:

(2) ACTIVELY PRACTISE EQUALITY OF OPPORTUNITY IN EMPLOYMENT AND:

(3) TAKE ADVANTAGE OF AFFIRMATIVE ACTION PROGRAMS DESIGNED TO GIVE UNDER-REPRESENTED GROUPS BETTER ACCESS TO EMPLOYMENT AND TRAINING OPPORTUNITIES. UNQUOTE

4. ON (A), BARKER SAID THAT, IN VIEW OF THE LIKELIHOOD THAT THE PROPOSED INCENTIVE WOULD NOT BE VERY SIGNIFICANT, DONNELLY WOULD PROBABLY MAKE CLEAR THAT HE WAS OPEN TO SUGGESTIONS FOR BETTER INCENTIVES.
5. ON (B), BARKER SAID THAT THE COMMITTEE REPORT WOULD MAKE CLEAR THAT AN ISOLATED INCIDENT OF DISCRIMINATION WOULD NOT BE ENOUGH TO PUT A COMPANY IN BREACH OF THE STANDARDS: A PATTERN OF DISCRIMINATION WOULD HAVE TO BE ESTABLISHED. EVEN MORE IMPORTANT, THE REPORT WOULD SAY THAT A CERTIFICATE OF GOOD EMPLOYMENT PRACTICE FROM THE FEA WOULD HAVE QUOTE STRONG EVIDENTIARY VALUE UNQUOTE IN PROVING THAT A COMPANY WAS COMPLYING WITH THE STANDARDS. EQUALLY, THE REFUSAL OF SUCH A CERTIFICATE WOULD LEAD TO A QUOTE CONCLUSIVE PRESUMPTION UNQUOTE OF NON-COMPLIANCE.
6. BARKER CLAIMED THAT HAUGHEY OF THE SDLP HAD INDICATED THAT HIS PARTY WERE CONTENT WITH WHAT WAS NOW PROPOSED.
7. THE NEXT STEP WILL BE FOR THE BILL TO BE CONSIDERED BY THE FULL WAYS AND MEANS COMMITTEE. GIVEN THE OTHER PRESSURES ON THE LEGISLATIVE PROGRAMME, AND THE ABSENCE OF ANY OBVIOUS VEHICLE ON TO WHICH DONNELLY'S PROPOSAL COULD BE TACKED, WE CONTINUE TO THINK IT MOST UNLIKELY THAT THE BILL WILL MAKE EARLY PROGRESS.. ITS CHANCES OF BEING PASSED INTO LAW WILL DEPEND IN LARGE PART ON REACTIONS FROM HMG AND OTHER INTERESTED PARTIES, INCLUDING THE ADMINISTRATION AND US COMPANIES.
8. AGAINST THAT BACKGROUND, WE SHALL CLEARLY NEED TO JUDGE OUR PUBLIC REACTION VERY CAREFULLY. MUCH WILL DEPEND ON THE DETAILS OF DONNELLY'S BILL, AND IN PARTICULAR ON HOW MUCH OF THE HELPFUL EXPLANATORY MATERIAL INTENDED FOR THE COMMITTEE REPORT IS REVEALED BY DONNELLY ON 20 APRIL, PERHAPS IN HIS STATEMENT ON THE FLOOR OF THE HOUSE. WE SHALL ALSO NEED TO TOUCH BASE WITH THE ADMINISTRATION.
9. WE OUGHT TO REACT PROMPTLY TO A PROPOSAL WHICH CLEARLY AFFECTS BRITISH INTERESTS. US COMPANIES WILL QUICKLY LEARN OF DONNELLY'S BILL, AND WILL BE EAGER TO KNOW HMG'S VIEW OF IT.
10. SUBJECT TO ANY FURTHER DETAILS WE OBTAIN ON 20 APRIL, MY PRELIMINARY VIEW IS THAT THE RIGHT APPROACH WOULD BE TO COMMENT IN BELFAST OR LONDON AS NECESSARY ON THE FOLLOWING LINES:
 - (A) THE BRITISH GOVERNMENT IS FIRMLY COMMITTED TO ERADICATING JOB DISCRIMINATION IN NORTHERN IRELAND AND HAS RECENTLY INTRODUCED PROPOSALS WHICH WILL GREATLY STRENGTHEN THE EXISTING LAW IN THIS AREA:
 - (B) THE GOVERNMENT WILL CAREFULLY EXAMINE MR DONNELLY'S BILL, WHICH SEEMS TO SHARE THE SAME OBJECTIVE AS HMG, IN THE LIGHT OF THE TWO VITAL CRITERIA OF DEALING EFFECTIVELY WITH JOB DISCRIMINATION AND OF STIMULATING NEW INVESTMENT, AND THEREFORE NEW JOBS. WITHOUT JOB

CREATION, EMPLOYMENT IMBALANCES CAN ONLY BE CORRECTED VERY SLOWLY:
AND

(C) THE GOVERNMENT WILL ALSO CONSIDER CAREFULLY THE COMPATIBILITY OF
MR DONNELLY'S BILL WITH EXISTING AND IMPENDING UK LEGISLATION.

11. IF MINISTERS WANTED TO OFFER A MEASURE OF IMMEDIATE
REASSURANCE TO EXISTING AND POTENTIAL US INVESTORS, AND VERY
MUCH SUBJECT TO WHAT WE LEARN ON 20 APRIL, IT MIGHT BE POSSIBLE
TO ADD:

(D) THE GOVERNMENT'S VERY PRELIMINARY VIEW IS THAT US COMPANIES
IN NORTHERN IRELAND, WHO ALREADY ENJOY A HIGH REPUTATION AS FAIR
EMPLOYERS, ARE LIKELY TO HAVE LITTLE TO FEAR FROM MR DONNELLY'S
PROPOSALS.

12. WE SHALL REPORT FURTHER DETAILS OF DONNELLY'S PROPOSALS AS
SOON AS AVAILABLE ON 20 APRIL.

13. FCO PLEASE ADVANCE TO PS/SECRETARY OF STATE FOR NORTHERN
IRELAND, PS/CHANCELLOR OF EXCHEQUER, NIO(L) AND HM TREASURY,
NIO(B) PLEASE ADVANCE TO SIR K BLOOMFIELD, AND TO FELL, GOWDY,
WILSON AND JOHNSTON (DED).

ACLAND

NIO BELFAST PSE PASS DESKBY 200800Z DED BELFAST

YYYY

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MISS PESTELL

ADDITIONAL

44

NIO(L)

NORTHERN IRELAND

PAGE 3

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NNNN

Psf Chancellor Exchequer
MR S. Taylor

2

SPARE



BRITISH EMBASSY

3100 Massachusetts Avenue NW Washington DC 20008
Telephone (202) 462-1340
Telex Domestic USA 89-2370/89-2384
Telex International 64224 (WUI)/44C015(ITT)

Jonathan Taylor Esq
Chancellor of the Exchequer's Office
HM Treasury

Your reference

Our reference

Date: 21 April 1988

Dear Jonathan

FAIR EMPLOYMENT IN NORTHERN IRELAND

/ I attach herewith a copy of the Donnelly Fair Employment Bill.

gpm
[Signature]

Richard Pratt

Attached: Copy bill

100th CONGRESS

2d
SESSION

H.R.

(Original signature of Member)

H.L.C.

Insert
title
here
☞

To amend the Internal Revenue Code of 1986 to create incentives for fair employment in Northern Ireland, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 20, 1988

Insert
sponsor's
names
here
☞

A BILL

- 1 *Be it enacted by the Senate and House of Representatives of the United*
- 2 *States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the Northern Ireland Fair
3 Employment Incentives Act of 1988."

4 SEC. 2. FOREIGN TAX CREDIT LIMITATIONS NOT TO APPLY TO TAXES
5 ON CERTAIN NORTHERN IRELAND MANUFACTURING INCOME.

6 Section 904 of the Internal Revenue Code of 1986 (relating
7 to limitation on foreign tax credit) is amended by redesignating
8 subsection (i) as subsection (j) and by inserting after
9 subsection (h) the following new subsection:

10 "(i) LIMITATIONS NOT TO APPLY TO TAXES ON CERTAIN NORTHERN
11 IRELAND MANUFACTURING INCOME.--

12 "(1) IN GENERAL.-- In the case of qualified Northern
13 Ireland taxes--

14 "(A) the limitations of the preceding provisions
15 of this section shall not apply, and

16 "(B) the total amount of the credit taken under
17 section 901(a) for qualified Northern Ireland taxes
18 shall not exceed the tax against which such credit
19 is taken.

20 Any excess of such taxes over the limitation of the preceding
21 sentence shall be allowed as a carryback or carryover under
22 the principles of subsection (c).

23 "(2) COORDINATION WITH LIMITATION ON OTHER TAXES.--

24 For purposes of applying this section to taxes other than
25 qualified Northern Ireland taxes--

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"(A) qualified Northern Ireland income shall not be taken into account in determining taxable income, and

"(B) the taxes against which the credit is taken shall be reduced by the amount of the credit for qualified Northern Ireland taxes.

"(3) DEFINITIONS.-- For purposes of this subsection--

"(A) QUALIFIED NORTHERN IRELAND TAXES.-- The term 'qualified Northern Ireland taxes' means any income, war profits, and excess profits taxes paid or accrued to any foreign country (or deemed to have been paid under sections 902 and 960) to the extent such taxes were imposed with respect to qualified Northern Ireland income. Such term does not include any taxes imposed with respect to qualified Northern Ireland income if the rate at which such taxes were imposed (or the way in which such taxes are structured) results in materially greater taxes imposed on such income than the amount generally imposed on other income.

"(B) QUALIFIED NORTHERN IRELAND INCOME.--

"(i) IN GENERAL.-- The term 'qualified Northern Ireland income' means any income, from sources without the United States, derived in connection with the active conduct of a trade or business at a manufacturing facility located

1 in Northern Ireland (as defined in subparagraph
2 (C))--

3 "(I) if 40 percent or more of the
4 individuals employed at such facility are
5 members of a religious minority in Northern
6 Ireland, and

7 "(II) such facility is located in
8 an area of Northern Ireland of high
9 unemployment.

10 For purposes of this subparagraph, income shall
11 not be considered 'qualified Northern Ireland
12 income' if, based on all the facts and
13 circumstances available in a taxable year, it
14 appears that the taxpayer met the level of
15 employment specified in clause (I) by engaging
16 in a pattern of activities which resulted in
17 the dismissal of employees who are not members
18 of a religious minority (within the meaning of
19 such clause).

20 "(ii) LOOK-THRU IN CASE OF CONTROLLED
21 FOREIGN CORPORATIONS.-- Any dividend, interest,
22 rent, or royalty received by the taxpayer from a
23 controlled foreign corporation in which the taxpayer
24 is a United States shareholder, and any amount
25 included in gross income under section 951(a)(1)(A),

1 shall be treated as qualified Northern Ireland
2 income of such controlled foreign corporation
3 as determined under rules similar to the rules
4 of subsection (d)(3).

5 "(C) NORTHERN IRELAND DEFINED.-- For purposes
6 of this subpart, the term 'Northern Ireland' means
7 the portion of the island of Ireland which is under
8 the control of the United Kingdom."

9 **SEC. 3. REDUCTION OF FOREIGN TAX CREDIT IN CERTAIN CASES.**

10 (a) **GENERAL RULE.**-- Subpart A of part III of subchapter N
11 of chapter 1 of the Internal Revenue Code of 1986 is amended
12 by adding at the end thereof the following new section:

13 **"SEC. 909. REDUCTION OF CREDIT FOR FAILURE TO COMPLY WITH**
14 **FAIR EMPLOYMENT STANDARDS IN NORTHERN IRELAND.**

15 "(a) **IN GENERAL.**-- If a person, or a member of a controlled
16 group (within the meaning of section 933(a)) which includes such
17 person, having operations in Northern Ireland is in violation of
18 a fair employment standard (within the meaning of subsection (b))
19 during the taxable year with respect to the employment of
20 employees in Northern Ireland (as determined by the Secretary
21 under subsection (c)), the amount of the credit allowable under
22 section 901 to such person or to United States shareholders of
23 such person (as provided in sections 902 and 960) for foreign
24 taxes paid during such taxable year shall be reduced by an
25 amount equal to the product of--

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"(1) the amount of the credit which, but for this section, would be allowed under section 901 for the taxable year, multiplied by

"(2) the fair employment factor (determined under subsection (d)).

"(b) **FAIR EMPLOYMENT STANDARDS.**-- For purposes of this section, a person shall be in violation of a fair employment standard if such person does not, with respect to its employees in Northern Ireland--

"(1) take steps to insure that no direct or indirect discrimination on religious or political grounds exists in employment,

"(2) actively practice equality of opportunity in employment, and

"(3) take advantage of affirmative action programs designed to give under-represented groups better access to employment and training opportunities.

"(c) **DETERMINATIONS BY THE SECRETARY.**-- The Secretary shall determine, not later than July 1 of each year, beginning with 1989, whether any person or member of a controlled group described in subsection (a) has been in violation of a fair employment standard during the year preceding such date. In the case of such a violation, the Secretary shall determine the time period during which the person or member was in violation.

1 "(d) **FAIR EMPLOYMENT FACTOR.**-- for purposes of subsection
 2 (a), the fair employment factor is a fraction, determined under
 3 regulations prescribed by the Secretary, the numerator of which
 4 reflects the operation of a person (or, in the case of a con-
 5 trolled group, within the meaning of section 993(a), which
 6 includes such person, of the group) in Northern Ireland which are
 7 operations in which a violation of a fair employment standard
 8 has occurred during the taxable year, and the denominator of
 9 which reflects the operations of such person or group in all
 10 countries other than the United States during the taxable year.

11 "(e) **REPORTS BY TAXPAYERS.**-- If a person, or a member of
 12 a controlled group (within the meaning of section 993(a)) which
 13 includes such person, has operations in Northern Ireland, such
 14 person shall make an annual report to the Secretary at such time
 15 and in such manner as the Secretary may prescribe, on the
 16 extent of its compliance with the fair employment standards set
 17 forth in subsection (b) as they apply to the employees of such
 18 person or member in Northern Ireland.

19 "(f) **WILLFUL FAILURE TO REPORT.**-- Any person (within the
 20 meaning of section 6671(b)) required to report under subsection
 21 (e) who willfully fails to make such report shall, in addition
 22 to other penalties provided by law, be fined not more than \$25,000,
 23 imprisoned for not more than one year, or both.

24 "(g) **NORTHERN IRELAND.**-- The term 'Northern Ireland' has
 25 the same meaning as defined in section 904(i)(3)(C).

"(h) COORDINATION WITH OTHER PROVISIONS.--

"(1) SECTION 908.--This section shall be applied after the application of section 908.

"(2) SECTION 275(A)(4).-- Sections 275(a)(4) and 78 shall not apply to any taxes denied credit under subsection (a)."

(b) CLERICAL AMENDMENT.-- The table of sections for subpart A of part III of subchapter N of chapter 1 of such Code is amended by inserting after the [redacted] item relating to section 908 the following new item:

"sec. 909. Reduction of credit for failure to comply with fair employment standards in Northern Ireland."

SEC. 3. REPEAL OF DEFERRAL WHERE FAILURE TO COMPLY WITH FAIR EMPLOYMENT STANDARDS.

Subsection (a) of section 952 of the Internal Revenue Code of 1986 (defining subpart F income) is amended--

(1) by striking "by reason of this paragraph" in paragraph (3)(A)(i) and inserting "by reason of this paragraph or paragraph (6)",

(2) by striking "and" at the end of paragraph (4),

(3) by striking the period at the end of paragraph (5) and inserting ",and", and

(4) by inserting after paragraph (5) the following new paragraph:

"(6) an amount equal to the product of--

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"(A) the income of such corporation other than income which--

"(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph or paragraph (3)), or

"(ii) is described in subsection (b), multiplied by

"(B) the fair employment factor (as determined under section 909(d))."

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxes paid or accrued, and income received or accrued, after December 31, 1988.



NORTHERN IRELAND OFFICE
 WHITEHALL
 LONDON SW1A 2AZ

pap

SECRETARY OF STATE
 FOR
 NORTHERN IRELAND

Rt Hon John Wakeham MP
 Lord President of the Council
 Privy Council Office
 68 Whitehall
 LONDON
 SW1A 2AT

16 May 1988

Dear Lord President

FAIR EMPLOYMENT IN NORTHERN IRELAND

CH/EXCHEQUER	
REC.	17 MAY 1988 ✓ 17/5
ACTION	MR AM WHITE * WITH COPY OF ATTACHMENT
COPIES TO	SIR I. MIDDLETON SURG. LITTLE MISS FEIRSON MR MACAUSLAN. MR FAUCETT I/R PS I/R.

You are already aware of our intention to introduce a Bill as early as possible in the next Session to implement a number of measures which will significantly strengthen the law relating to religious discrimination in employment in Northern Ireland.

'H' Committee have given their approval to the policy and on 2 March I announced the main features of our proposals by way of Written Answer in the Commons. That Written Answer indicated that the next step would be publication of a White Paper later in the Spring. The White Paper has now been prepared, and I attach a galley proof copy for your information and for that of colleagues. Although some further minor amendments to the text - which take into account comments from other Whitehall Departments - are in hand, this copy is close to the final text that I propose to publish.

I am most anxious to publish the White Paper, which amplifies the basic elements of our policy which I announced in March, before the Whitsun Recess. Expectation has been raised in Northern Ireland, the Irish Government is keen to see what our legislation will

contain, and the White Paper will be a further and significant aid to us in our efforts to counter the continuing McBride campaign in the USA where seven States have now passed McBride legislation and where two Congressmen have each introduced legislation in Congress relating to the issue of fair employment in Northern Ireland. Either, if successful, would create problems for us, and publication of the White Paper will strengthen our case in trying to persuade their supporters of their unhelpfulness.

Subject therefore to your agreement I propose to publish the White Paper on Wednesday 25 May and to announce this by an arranged Written Parliamentary Question.

Fair employment is a most important issue in Northern Ireland, and our legislative proposals represent a major step forward, though not one without its area of controversy. I anticipate that the White Paper will arouse quite considerable interest on all sides of the House and that pressure may be applied to find time for a debate. However, I do not believe that we need to give any prior commitment. Subject to your agreement and that of colleagues, I propose that we await the reaction of the House and then consider whether we need to allocate time for a debate after the Whitsun Recess.

I should be grateful therefore if you and the colleagues to whom I am copying this letter could agree that I might publish the Fair Employment White Paper on Wednesday 25 May, which I would announce by means of an arranged written PQ.

I am copying this letter to Cabinet colleagues, Sir Robin Butler and Bernard Ingham.

yours sincerely

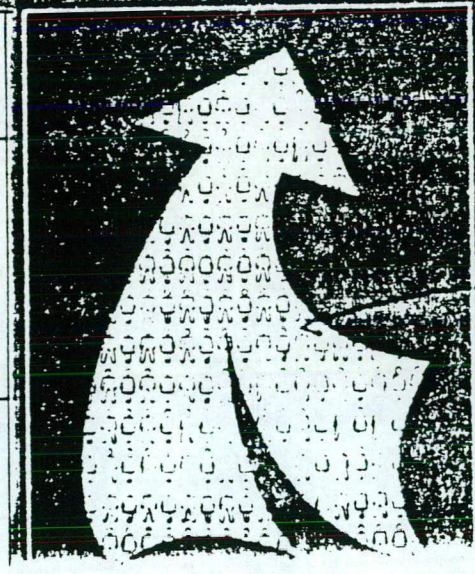
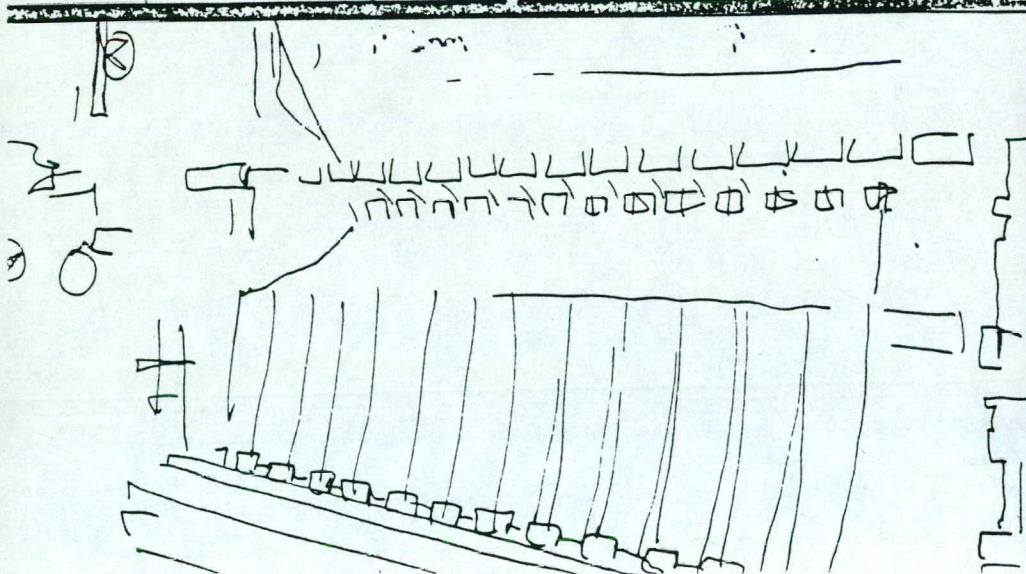
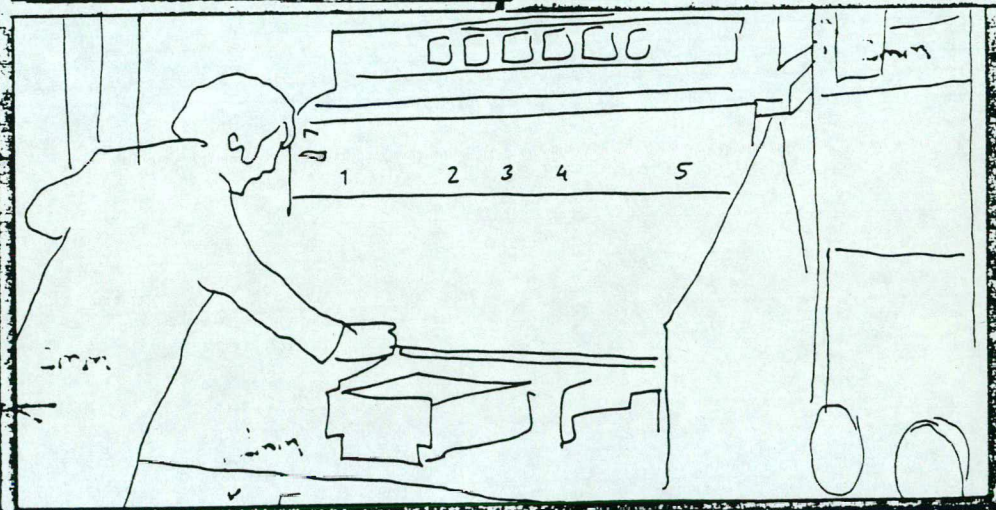
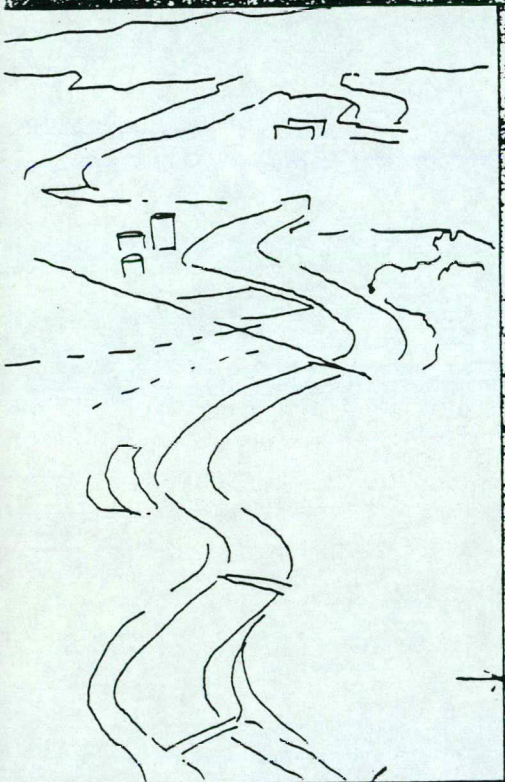
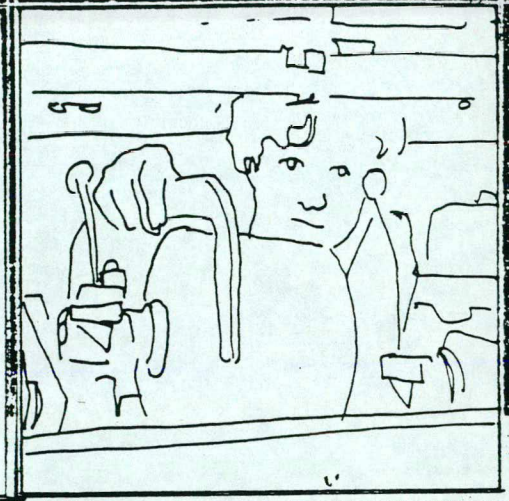
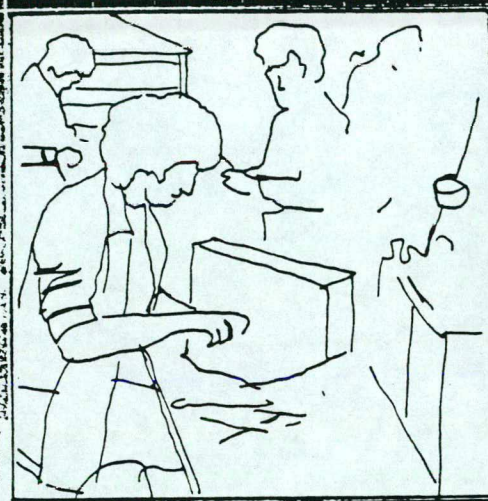
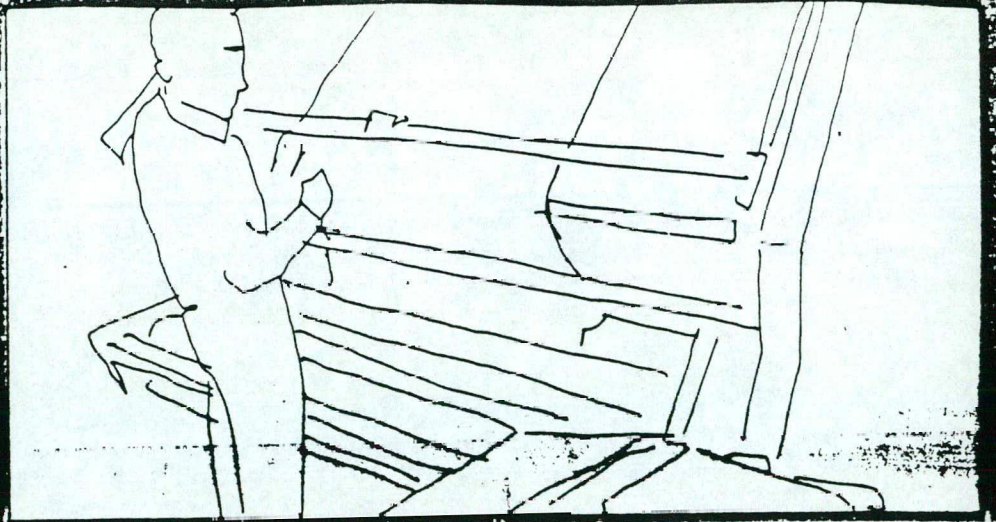
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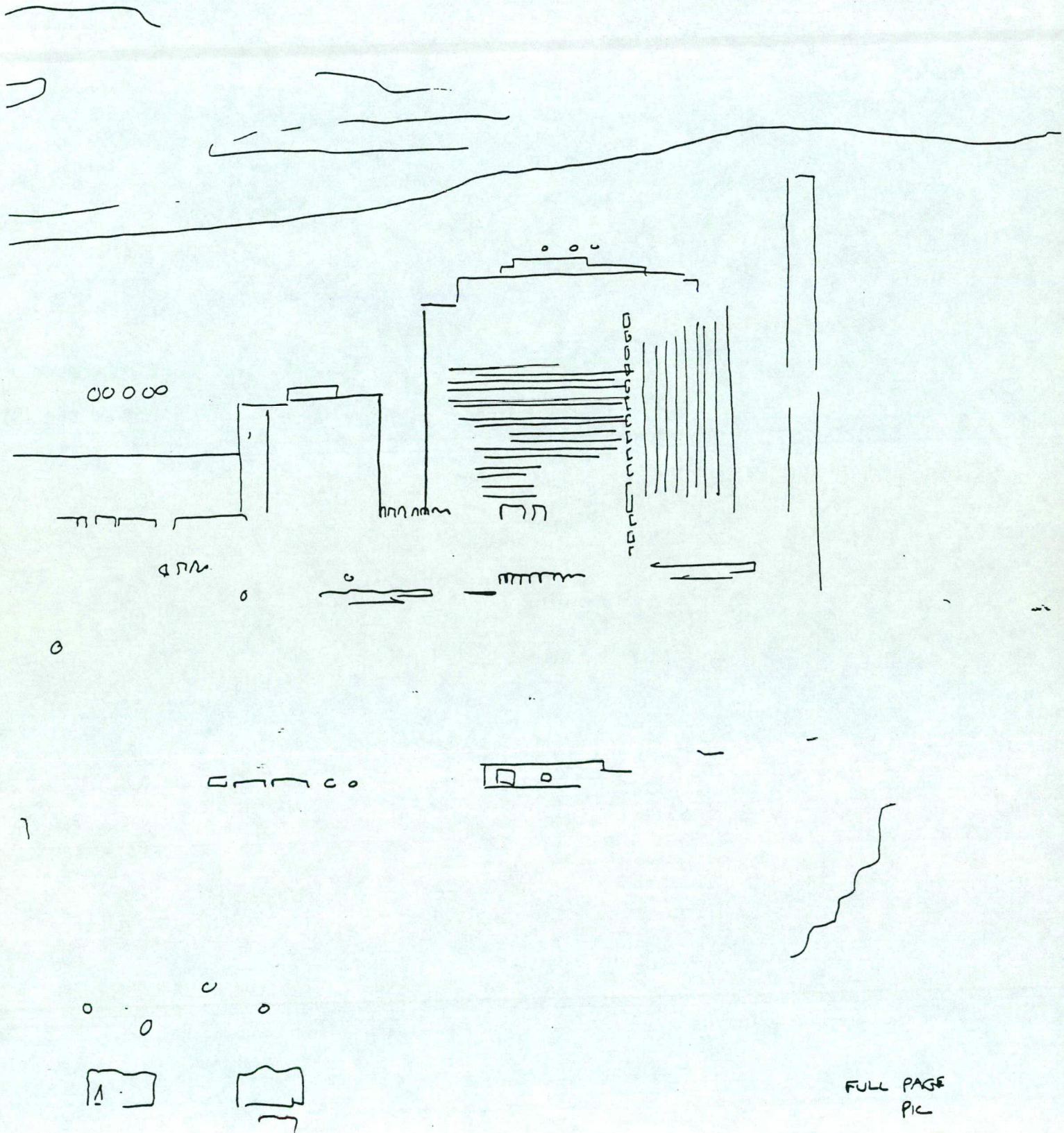
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(Approved by the Secretary of State
and signed in his absence)



FAIR EMPLOYMENT IN NORTHERN IRELAND





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Preface

This White Paper sets out the Government's proposals for legislation to strengthen fair employment law, administration, and practice in Northern Ireland. It fulfils the Government's commitment to bring forward such legislation and the Prime Minister's personal assurance that her Government would take whatever further steps were required to work for the elimination of discrimination and the promotion of real equality of opportunity.

The legislative measures detailed in this White Paper are strong; they are also fair. They require best employment equality practice from employers, including compulsory monitoring and affirmative action measures where necessary; they provide for strengthened enforcement powers through the criminal and the civil law; and they use the Government's economic strength to support good practice. They are even-handed. They recognise that discrimination, whatever its form and motivation, is unfair; that good practice must provide equal opportunity for all; and they complement the Government's general emphasis on better community relations as the foundation of a fairer and more prosperous society.

To be fully successful this new legislation will require positive support from all sections of the community. The most direct responsibilities fall on employers; but the Government all those with an interest in employment equality — the trade unions, the churches, community groups and individual employees — to co-operate fully with employers in their implementation of best employment equality practice. The drive to promote a fairer society deserves that support, both for its own sake and as a means of reinforcing the considerable attractions of Northern Ireland as a location for increased investment and job creation. The Government's sustained efforts to promote investment and jobs in Northern Ireland are a natural complement to, and, will themselves be assisted by, the proposals in this White paper for the more effective practice of equality of opportunity in employment.



Rt Hon Tom King MP,
Secretary of State
for Northern Ireland.

Peter Viggers MP,
Minister for Industry
in Northern Ireland.

Foreword

1. This White Paper sets out detailed proposals for the Fair Employment Bill which the Government proposes to introduce at the earliest opportunity.

2. The basic objective is to strengthen and broaden the existing legislation which already outlaws discrimination on the grounds of religious belief and political opinion. The keynotes of the new legislation will be:

- the more effective practice of employment equality procedures in both the public and private sectors of employment;
- strong legal and economic enforcement measures;
- continued educational and promotional efforts; and
- a strengthening of the institutional framework.

These proposals follow an extensive consultation process in which the views of a wide range of local interest groups, including those with practical experience of the existing arrangements, have been carefully considered. They involve radical changes in some key areas, while preserving continuity and expertise in others. The aim is to build on the solid framework of existing legislation and institutions, while responding to the need for improvement and increased effectiveness.

3. That need was first recognised by the Government itself. In 1985 it completed a statistical review which indicated that, despite almost ten years of anti-discrimination legislation and enforcement, the Catholic community remained at a serious disadvantage in employment in both quantitative and qualitative terms; that this obtained throughout the Province (even in areas of relatively high employment); and that it persisted despite progressive convergence of educational attainment between the Protestant and Catholic communities.

4. Such statistics were disappointing, not least because of the history of the steps which had been taken to tackle the problem of discrimination and disadvantage. Thus the Northern Ireland Constitution Act 1973 had prohibited discriminatory executive action. Secondly, that Act established the Standing Advisory Commission on Human Rights ("SACHR") to advise the Secretary of State on the adequacy and effectiveness of anti-discrimination law. Thirdly, the report of the Van Straubenzee Working Party¹ led to the outlawing of religious and political discrimination in employment by virtue of the Fair Employment (Northern Ireland) Act 1976, 1976, and to the establishment of the Fair Employment Agency ("the Agency"). The Agency was given extensive investigative, quasi-judicial, conciliation and enforcement functions. In particular, it was given power to investigate practices and patterns of employment and to issue legally enforceable directions. In addition a Guide to Manpower Policy and Practice was published by the Government².

5. When the Government's statistical review revealed that the differential employment experience of the two communities was

enduring, despite these extensive statutory provisions and the solid work of the Agency, a succession of initiatives was set in train.

6. An urgent report was commissioned from senior officials, and a Consultative Paper on Equality of Opportunity in Employment in Northern Ireland was published in which a number of policy options was put forward for public discussion³. The responses to the Consultative Paper revealed widespread support for new legislation on religious equality; and the Government indicated that such legislation would be prepared. In the interim, the Department of Economic Development produced a new and more comprehensive Guide to the Effective Practice of Religious Equality of Opportunity in Employment, designed to assist employers to improve their employment practices so as to avoid unintentional or indirect discrimination⁴. The Prime Minister personally endorsed that Guide and indicated that the Government would take whatever further steps were required to work for the elimination of discrimination and the promotion of real equality of opportunity. The resources of the Agency were significantly increased, and a series of educational initiatives was undertaken, in both the public and private sectors, to promote the best practice recommended in the Guide. In addition, the Government agreed to consider a report on fair employment being prepared by the S.A.C.H.R. before finally deciding on the detail of its own legislation. The S.A.C.H.R.'s comprehensive and very detailed report was published in October 1987⁵.

7. In March 1988 the Government, having considered that report and the comments of the Agency and others, published outline policy proposals and indicated that they would be detailed in a White Paper which would be brought forward as soon as possible⁶. The Government also launched a new Fair Employment Support Scheme for private sector employers with 25 or more employees. That scheme allows employers to receive free professional advice on how to implement the best practice recommended in the Government's Guide. It also offers free training in objectively based selection techniques, together with financial assistance towards the costs of introducing best practice⁷. A number of employers' representative bodies and the trade union movement have separately organised educational seminars to promote best practice; as has the Department of Economic Development, with the support and involvement of the Fair Employment Agency.

8. The Government is fully committed to the policy of equality of opportunity in relation to its own employees and those who seek employment in Government service. A policy statement was issued on 4 December 1984. An Equal Opportunities Unit has been established for the Northern Ireland Civil Service (within the Department of Finance and Personnel) and comprehensive monitoring arrangements have been introduced. The work of the Unit is described in detail in reports published in July 1986 and December 1987⁸.

9. The Equal Opportunities Unit has put its experience at the disposal of other bodies in the public sector. This has enabled progress there to be accelerated. It is expected that, by the end of the year, the bulk of the public sector will be operating, or be well on the way to introducing, monitoring systems in support of an equal opportunity policy.

10. One effect of this series of initiatives has been to raise public awareness and appreciation of the importance of fair employment. This has contributed to the process of attitudinal change which must complement the new legislation if it is to have maximum effect. Secondly, it has spread an understanding of the fact that the better practice of equality of opportunity in employment is a matter for the whole community: it cannot be left to employers alone. Employers may have the primary responsibility, but a complementary response is necessary from trade unionists, employees and job applicants and from the wider community.

11. The Government is pleased that many employers in both the public and private sectors have taken the opportunity of reacting to these initiatives and measures by implementing the sort of good practice that will be required in the new legislation in advance of its coming into effect. Their success to date in doing so is a good augury for the future of the Government's fair employment initiative. The Government is grateful to all of those who have participated in these processes by their actions or by their contribution to the consultations which have led up to the present legislative proposals.

¹*Report and Recommendations of the Working Party on Discrimination in the Private Sector of Employment (HMSO May 1973).*

²*Guide to Manpower Policy and Practice (Department of Manpower Services July 1978).*

³*Equality of Opportunity in Employment in Northern Ireland: Future Strategy Options: A Consultative Paper (HMSO September 1986). Appendices I-X outlined the employment differential between both communities in statistical terms.*

⁴*Religious Equality of Opportunity in Employment: Guide to Effective Practice (Department of Economic Development September 1987).*

⁵*Religious and Political Discrimination and Equality of Opportunity in Northern Ireland: Report on Fair Employment (HMSO October 1987).*

⁶*Religious Equality of Opportunity in Employment: New Government Proposals (Department of Economic Development March 1988).*

⁷*Religious Equality of Opportunity in Employment: Fair Employment Support Scheme (Department of Economic Development March 1988).*

⁸*Northern Ireland Civil Service: Equal Opportunities Unit: First Report (HMSO July 1986). Northern Ireland Civil Service: Equal Opportunities Unit: Second Report (HMSO December 1987).*

Chapter I Introduction and General Principles

INTRODUCTION

1.1 There are clear and long-standing differences between the employment experiences of the Catholic and the Protestant sections of the community in Northern Ireland. In particular, unemployment rates are significantly higher among Catholics and they hold relatively fewer senior positions.

1.2 There are many reasons for these differentials which arise from a range of social, geographical and historical influences. The phenomenon of a cycle of disadvantage is an experience common to parts of every industrial society and Northern Ireland is by no means unique in demonstrating that such a cycle can be very difficult to break.

1.3 No society can afford the waste of talent or the sense of unfairness that such persistent disadvantage entails. In Northern Ireland social and economic influences have interacted with political and security issues to produce the intractable and well-known problems which have caused so much suffering in recent years. This makes it all the more important that no aspect of this whole complex of problems should be neglected.

A. THE SOCIAL AND ECONOMIC SCENE

1.4 The specific problem of the Catholic/Protestant differential in employment experience needs to be seen in the context of the overall economic situation in Northern Ireland. The scale of the current economic difficulties is well known.

The unemployment rate in Northern Ireland is almost double that in Great Britain, with a much higher incidence of long term unemployment. This is reflected in output in Northern Ireland per head of population which is around two-thirds that in Great Britain. For those in work earnings tend to be lower. Higher levels of unemployment are reflected in higher dependency on social security benefits (23.8% of the population of Northern Ireland compared with 15% in Great Britain).

1.5 Unemployment and disadvantage affect Protestants as well as Catholics. For example 1 in 5 Protestant families depends on supplementary benefit and over a quarter are in receipt of housing benefit. However, the most severe disadvantage is undoubtedly concentrated among Catholics. Of Catholic families more than 1 in 3 depends on supplementary benefit and over 2 in 5 receive housing benefit.

Religion and disadvantage

1.6 Discrimination — in the sense of adverse treatment on grounds of religion — is undoubtedly one element which contributes to the relatively high disadvantage in employment which affects many Catholics. But while it is very difficult to quantify its impact, it is clear that it is by no means the sole nor

even the main explanation. The situation is much more complex. The S.A.C.H.R. in its Report on Fair Employment issued in 1987, looked at ten possible factors — other than religion — which might be felt to influence the differential employment experience of Catholics and Protestants. These included demography, educational attainment and a range of social and economic factors. The report found some evidence for the view that each of these factors contributed to the greater disadvantage experienced by Catholics; but found that it was impossible to quantify the overall importance of these various factors with any confidence. They concluded:

"it is reasonable to suppose that religion is the most likely explanatory factor which accounts for at least some if not most of the residual element"

(i.e., religion is)

"a residual factor which may account for some or all of the overall difference . . . which cannot be explained by other factors".

1.7 While allegations of discrimination against Protestants are less frequently heard, it would be wrong to imagine that it is something which affects only the Catholic section of the community as a number of cases determined by the Agency indicates. (FEA evidence). Legal protection against discrimination is, of course, already available to Protestants in exactly the same way as to Catholics: discrimination is unlawful and intolerable no matter where it arises in Northern Ireland.

1.8 It is also important to recognise that discrimination, in the sense of the creation of disadvantage, is very often unintentional. It is quite possible for employment practices and policies to produce a differential impact in practice even though they are not designed with any discriminatory intent. Indeed such unconscious discrimination can be particularly difficult to eliminate precisely because an employer may not be aware of what is happening. In tackling disadvantage the best starting point is therefore to establish what is happening on the ground. If this shows an unjustifiable adverse impact on a particular group, the factors which are producing that impact can be identified and tackled. In one sense it does not matter whether the effect is intended or not: the important thing is to put it right. It is one of the chief aims of the new legislation which the Government is now proposing that effective methods be available for tackling unintentional discrimination as well as deliberate discrimination.

AIMS OF POLICY

1.9 The overall objective of the Government's policy in this field is therefore:

to have equality in employment for all sections of the community.

employment in such areas will continue to be vigorously supported by the Government, but unemployment problems as severe as those found in some particularly disadvantaged areas will not necessarily, in the short term at any rate, be solved purely by employment based in the immediate locality. It is therefore important that people living in these areas should have a full opportunity to apply and be considered on fair and equal terms for employment outside their immediate locality, and that they should not be hindered — or feel themselves inhibited or discriminated against — in doing so.

(e) **Fair employment will help to encourage inward investment**

Northern Ireland competes for inward investment with many other areas of Europe and more widely. It will not be assisted in this if it has the reputation and image — whether deserved or not — of being an area where sectarian discrimination is practised or tolerated.

BASIC PRINCIPLES

1.11 In pursuing its objectives, the Government regards it as axiomatic that:

(a) **Fairness in employment should be pursued through methods which are themselves fair to all**

It would be unacceptable if the effect of action in this field were to be simply to transfer disadvantage from one group to another. Measures to promote fairness must themselves give fair treatment to all who are affected by them, or else they will fail by their own test.

(b) **Policy and practice must be forward-looking: they must be capable of sustaining their own momentum**

The aim must be to create procedures and foster attitudes which pre-empt any unfairness and which make equality of opportunity a natural outcome.

(c) **Fair employment should contribute to the healing of divisions in the community**

One of the causes of discrimination is discord in the community and the feelings of insecurity that this engenders. Fair employment is more likely to be achieved in practice if it is pursued in ways which tend to unite the community rather than to divide it along sectarian lines.

Appointment on merit

1.12 The Government believes that it is the direct corollary of these basic principles that appointment to jobs should always be solely on merit, without regard to religious affiliation or belief and in accordance with the obligation not to discriminate.

1.13 This is the premise upon which successive Governments have built their approach to fair employment in Northern Ireland. It is also fundamental to anti-discriminatory legislation in cognate fields throughout the United Kingdom. To set merit aside and to make appointments or promotions on the basis of favouring one religious group over another would be grossly unfair to the individuals thus excluded. It would also institutionalise bad practice rather than good and it would tend to exacerbate sectarian divisions rather than heal them. The fact that some would see it as being done from a good motive, e.g. to counter-balance historical disadvantage, would make it no less inequitable or unsatisfactory.

1.14 The Government is therefore convinced that appointment on merit is the only basis on which fair employment can properly be promoted. But it is a necessary corollary that this must be done in the context of a genuine determination to promote equality of opportunity, in which case appointments on merit will contribute to this outcome and will advance the cause of fair employment. In practice this means that in selecting the best person for the job or for promotion, employers must be careful to assess merit according to:

- (a) the actual requirements of the job — not irrelevant ones
- (b) structured and job-related personnel criteria — not subjective and random ones
- (c) potential ability as well as past experience.

It also requires the development of a wider framework of employment practices which give every individual a genuinely equal opportunity to apply and compete for employment. In other words, appointment on merit must operate in the context of an overall programme of affirmative action; it must not be used as a rationale for a sectarian personnel policy, or as a cloak behind which unfair practice can be hidden.

1.15 The meaning and content of affirmative action programmes is considered further in Chapters III to V. These explain the details of the new statutory duties which will be placed on employers, and set out how they will work in practice and the guidance and help that will be available to employers in discharging their responsibilities. Chapter II deals first with the institutional changes that are proposed, and sets out the role and structure of the new Fair Employment Commission and of the new Fair Employment Tribunal.

Ireland well. It has to be recognised, however, that there are potential tensions between different aspects of its responsibilities, and in particular between its its responsibility for individual cases and for pattern and practice cases. It would be unrealistic to deny that the perceptions fostered by these tensions have sometimes obstructed the Agency in gaining the confidence and support of employers and of the community generally. It has been argued that:

- (a) The current arrangements oblige the Agency simultaneously to discharge an educational and promotional role and an investigatory and adjudicatory role. It is important for the success of its educational and promotional role that the Agency should be seen by employers to be a ready source of advice and support in the promotion of good practice. But there is an incompatibility between this supportive role and the requirement that the Agency must fully investigate and adjudicate on any individual case of alleged discrimination which an employee may wish to make against an employer. This has made it more difficult for the Agency to win the trust of employers, whose support is vital.
- (b) The combination of both pattern and practice cases and individual cases within one body has created other problems for the natures of these two types of case differ significantly. Individual cases tend to be discrete and almost inevitably adversarial. Pattern and practice cases extend over a longer period and involve the development of a dialogue and a relationship between the employer and the Agency. The educational and promotional roles therefore sit more easily with pattern and practice cases than with individual cases.
- (c) The determination of individual cases is a quasi-judicial function and it is arguable that this would be more appropriate to a body with formal and institutionalised legal expertise. The fact that the Agency is required both to investigate and to adjudicate individual cases has also attracted criticism.
- (d) The statutory obligation on the Agency to deal in full and in detail with all individual cases has perhaps tended to obscure its general promotional role.

2.6 It was these considerations that led the Government to suggest (in the Consultative Document issued in September 1986) that the determination of individual cases should be separated from the promotional, educational, and pattern and practice role of the Agency. This view was reinforced by the S.A.C.H.R. Report on Fair Employment which also concluded that the existing arrangements were unhelpful to the overall aims of the Agency. S.A.C.H.R.'s recommendations — which the Government accepted — went further than the Government's original proposal by suggesting that the hearing of individual

2.10 The Commission will have all of the Agency's existing functions and powers, except those relating to individual cases. It will continue to undertake investigations, to review patterns and practices in employment and where necessary to issue Directions which it will be enforceable on employers.

2.11 The Commission will operate within a significantly stronger statutory framework; the main legal and institutional changes are detailed in subsequent chapters, but may usefully be summarised here:

- (a) The Commission will have much more definite and more comprehensive information about the religious composition of the workforce — in total and in individual firms — than ever before, as it will receive annual monitoring returns from all important employers (see paras 3.4 to 3.13 and para 5.10).
- (b) The Commission will have the primary responsibility in relation to the contents of the Code of Practice, which it will be able to revise and up-date periodically (see Chapter IV).
- (c) It will operate in a new statutory context which will make indirect discrimination unlawful and which in total will serve to make it clear that employers must actively practise equality of opportunity and not simply avoid discrimination (see paras 3.1 and 3.2).
- (d) The provisions of the Code of Practice will serve as a basis for programmes of affirmative action if monitoring reveals this to be necessary (see paras 3.14 to 3.22).
- (e) The new legislation will give specific authority for outreach measures designed to give under-represented groups better access to employment and training opportunities (see para 3.21).
- (f) The Commission will have power to award Certificates to employers who are co-operating with it in the discharge of their statutory obligations, and to withdraw those Certificates for breach of these obligations (see paras 5.11 to 5.17).
- (g) The arrangements for enforcement of Directions will be timely and straightforward while allowing a fair hearing to employers who may disagree with the Commission. Ultimately breach of a Direction would be liable to the same unlimited penalties as contempt of the High Court (see paras 2.26 to 2.28).
- (h) The Commission will be able to publicise the outcome of important individual cases of religious discrimination — including cases which the Commission itself may have supported — so that any general principles emerging can be made known to employers and employees alike (see paras 2.15 and 2.24(b)).

The Government is confident that these changes, coupled with the increased resources that will be made available to the

Commission, will greatly increase the effectiveness of the fair employment machinery.

2.12 The bulk of the Commission's powers and energies will thus be directed at improving overall employment practices, whether with reference to individual firms or sectors, or more generally. The Government believes that the combination of a much stronger statutory base for these functions (complemented by the new statutory obligations on employers) and the more single-minded concentration on educational and promotional work (which will be the hallmark of the new Commission) is the best way to achieve the across-the-board improvements that are called for.

Assistance to individual complainants

2.13 As explained in paras, 2.7 and 2.8 above, the Commission will not have responsibility for adjudicating on individual cases of alleged discrimination. These will be dealt with by the Fair Employment Tribunal (see paras 2.20 to 2.24 below). The Commission will however have a role in advising, and in some cases supporting, individual complaints. The Commission's role in this respect will be very similar to that of the Equal Opportunities Commission in cases of alleged discrimination on grounds of sex.

2.14 The Commission will be able to give general advice to any individual about anti-discrimination law and about how the individual can pursue a case. The Commission will also be able to give direct support, including if necessary providing legal representation for a complainant, if it thinks that there are special reasons to do so. The main grounds for such support would be:

- (a) if the case raises a question of principle, eg if the Commission feels that it might constitute a test case; or
- (b) if the Commission feels that it would be unreasonable for the complainant to deal with the case himself, eg because of its complexity.

The Commission would therefore be able to give support in any case where it feels that special considerations apply.

INDIVIDUAL CASES OF DISCRIMINATION

2.15 Discrimination in employment against an individual on grounds of religion is already illegal in Northern Ireland under the terms of the Fair Employment (Northern Ireland) Act 1976 and it will remain so. The Government believes that the basic provisions of that Act in this respect have stood the test of time, and it is not proposed to make any substantive change in the nature of the protection which that Act gives to individuals. It is however proposed to extend the prohibition against direct discrimination so as also to cover indirect discrimination (see Chapter III). The main change that is proposed in respect of individual cases is in the machinery for their adjudication.

The views of SACHR

2.16 The main reasons for seeking to separate individual cases from pattern and practice cases have been set out above, and reference was made earlier to the analysis and recommendations of SACHR. In brief, SACHR pointed out that:

- (a) In the interests of natural justice, any institutional arrangements for individual cases should ensure that:
 - (i) both complainant and respondent should have adequate opportunity to make their respective cases; **and**
 - (ii) the adjudicating body should be — and be seen to be — sufficiently expert and independent to deserve confidence in its judgements.
- (b) The procedures actually adopted by the Agency preclude any form of cross-examination: they comprise separate discussions and investigations between the Agency and the employers and the Agency and the aggrieved employee. While the Agency believes that these procedures are to the best advantage of the complainant and also most compatible with the role of the Agency as an independent arbiter, SACHR points out that they give no guarantee that all aspects relevant to a case have been covered.
- (c) The obligation on the Agency to hear all genuine individual complaints gave rise to a fluctuating and unpredictable workload, and this had to some extent distracted it from its broader strategic role.
- (d) There is a potential conflict inherent in the role of the Agency as an active campaigner against discrimination and its role as impartial adjudicator. If the investigative and adjudicatory roles were separated the Agency would be free to publicise the implications of individual cases without the risk of being perceived as less than totally impartial in reaching those decisions in the first place.

2.17 The Government accepts the main thrust of the advice which SACHR submitted on foot of this analysis. This was to the effect that:

- (a) The institution for the hearing of individual cases should be quite separate from that for general investigations and promotional work.
- (b) The most appropriate institutional model for the hearing of individual cases is that of the industrial tribunals, which would provide the right blend of legal expertise and practical industrial relations experience.
- (c) The role of the fair employment body should be to assist individual complainants where there are particular reasons why the complainant cannot or should not pursue the case himself.

In particular, the Government agrees that the experience of sex discrimination cases in Northern Ireland and in Great Britain

2.20 The conclusion which the Government has reached is therefore that there should be a close association between the handling of religious discrimination cases and the handling of the existing work of the industrial tribunals, but that this needs to be achieved in a way which will clearly be appropriate to the sensitivity and importance of religious discrimination

2.21 The Government proposes that this should be achieved by creating a new dual structure for the industrial tribunals system. A separate division of the industrial tribunals would thus be established to hear religious discrimination cases. The existing office of the President of Industrial Tribunals would be reconstituted as the office of "President of Industrial Tribunals and of the Fair Employment Tribunal". This in effect would entail two sets of tribunals under a single President. The Presidency would thus continue to be a single post, but with the additional responsibility for religious discrimination cases.

2.22 The Government will discuss with the interests directly concerned the precise basis and mechanisms by which such a separate division of the industrial tribunals system might best be established and operated, but the general basis which the Government envisages is as follows:

- (a) The Fair Employment Tribunal would be appointed by DED and would consist of the President and two members from a panel.
- (b) There would be provision for any of the full-time chairmen of industrial tribunals to be designated by DED to substitute for the President in the Tribunal if workload or occasion demanded.
- (c) The panel members would be appointed specifically to a Fair Employment Tribunal panel. In making appointments, the aims would be to secure the services of a relatively small group of individuals of known standing in the community, i.e. a panel of perhaps 12 members. Some of them might be drawn from the existing panel members appointed to the existing industrial tribunals, but there would be no necessary overlap between the two.
- (d) The Tribunal would be competent to hear any other case normally heard by an industrial tribunal. This would allow it to deal comprehensively with cases of overlapping jurisdiction, but the intention would be that the Tribunal would not normally hear anything other than religious discrimination cases.
- (e) The Tribunal would be intended as the normal forum in which religious discrimination cases would be heard, but in the interests of feasibility (e.g. if the workload proved excessive or, if experience suggests that it would be feasible and desirable to do so in any event), there should be provision for the President to designate that any particular individual case should be referred to an industrial tribunal other than the Tribunal, if the President considered it appropriate to do so.

2.23 The procedures and general approach of the Fair Employment Tribunal would thus be very much the same as those of the industrial tribunals generally. In regard to individual cases of alleged religious discrimination, which will be the main element in the Tribunal's workload, the general arrangements would be very much akin to those used by industrial tribunals in sex discrimination cases. In particular:

- (a) There will be statutory provision for a pre-hearing questionnaire procedure which will assist complainants in gathering the information they need to have in order to decide whether or not to bring a case to the Tribunal, and, if so, to present their case in the most effective way. The information obtained by means of the questionnaire will be admissible in proceedings. While there will be no obligation on an employer to provide information, if he fails to do so — or replies evasively — the Tribunal will be able to draw whatever inference it thinks fit.
- (b) The Tribunal will issue reasoned judgments, explaining why it has reached its conclusion in each case. This will help establish a body of case law and thus give greater certainty for the complainants who find themselves in similar situations. In addition, the Commission will be able to give publicity to significant cases where it feels that a point of principle has been established.
- (c) The Tribunal will have a discretion in particular circumstances to conduct a hearing in private if the Tribunal thinks it appropriate. Support will be available to individual complaints from the Commission along similar lines to that given by the Equal Opportunities Commission in sex discrimination cases (see paras 2.14 and 2.15 above) but legal aid will not be available (again this role is on a par with the practice for sex discrimination cases).

The Government is confident that these procedures and arrangements will operate as successfully and effectively in their future application to religious discrimination as they do already in relation to sex discrimination; and that they will provide a timely, accessible and appropriate mechanism for resolving individual complaints.

APPEALS

Appeals in individual cases

2.24 At present appeals from the Agency on individual cases lie to the County Court. In the light of the proposed transfer of responsibility for individual cases from the Agency to the Tribunal, the Government believes that it would be appropriate for the Tribunal, like the existing industrial tribunals, to be the final arbiter on questions of fact. Appeals from the Tribunal would therefore be allowed only on points of law and would go to the Court of Appeal.

Appeals in pattern and practice cases

2.25 Under the present arrangements appeals in pattern and practice cases go to the Fair Employment Appeals Board, which was set up specifically for this purpose and has no other function. The Government believes that in the new structure it would no longer be necessary or appropriate to continue with the Fair Employment Appeals Board. Instead it is proposed that the appellate function in pattern and practice cases should be exercised by the Fair Employment Tribunal. This will have the advantage of allowing the experience and expertise gained by the Tribunal in hearing individual cases to be drawn on in the consideration of pattern and practice cases. By the same token, it will also help to ensure consistency of approach and of findings in both individual and pattern and practice cases.

2.26 The Tribunal will have two main functions in respect of pattern and practice cases:

- (a) It will be the forum to which employers will be able to appeal if they wish to appeal against Directions issued by the Commission following a pattern and practice investigation (in which respect the Tribunal will replace the Fair Employment Appeals Board).
- (b) It will have the power to issue Orders of Compliance on the application of the Commission if a Direction is not complied with (in which respect it will exercise a function similar to that of the County Court in the existing system).

The Tribunal would be the final arbiter of these issues with appeal only on points of law to the Court of Appeal. The Order of Compliance issued by the Tribunal would be enforceable (at the instigation of the Commission) by an application to the High Court to exercise its contempt jurisdiction, which could involve committal penalties, or unlimited fines, or both (see paragraphs 6.5 and 6.6).

2.27 The Government believes that the Tribunal, composed of a legally qualified President supported by two lay members with practical industrial relations experience and reinforced by its experience of hearing individual cases, will have the right mixture of skills to qualify it for the roles proposed for it in pattern and practice cases. The Government did give consideration to the suggestion, made by the SACHR and others, that appeals might go direct to and be heard by the High Court. It concluded that this would be inappropriate. Hearings in the High Court are almost inevitably attended by more formality and expense which would be an unfair burden to impose, particularly on smaller employers. And the weight of business in the High Court is such that considerable delays could be entailed. The Tribunal will provide a more flexible and convenient forum. Most importantly, it is by no means clear that appeals in pattern and practice cases would mainly involve issues that would be readily justiciable. Appeals will in most cases centre on the question of whether Directions were reasonable and appropriate in all the

circumstances of the case and the appellate body will be required to take a view at least as much on practicalities and on policy as on questions of fact or law. These are not issues of the type that are ideally suitable for the High Court: instead they call for the sort of practical wisdom that the lay members of the Tribunal will be able to bring to bear alongside the legal expertise of the President.

CONCLUSION

2.28 The Government believes that the Tribunal and the Commission will between them provide an institutional framework which will allow each of the main strands of fair employment policy — the protection of individuals and the general promotion of good practice — to be carried on more effectively than at present. Coupled with the proposed changes in the statutory duties of employers — set out in detail in Chapters III to V — they will represent a significant strengthening of the existing provisions.

A WIDER CONCEPT OF EQUALITY OF OPPORTUNITY

3.1 One of the lessons that has been drawn from the experience of working the existing fair employment legislation is that while it is necessary to prevent direct discrimination, this in itself is not enough to ensure equality of opportunity and a fair spread of jobs. It is not sufficient simply to avoid discrimination: a more positive approach is necessary. In the widest sense of the term, equality of opportunity is something which must be worked for by educationalists and community leaders as well as by employers. Young people from all sections of the community must be properly prepared for the world of work, and communal barriers to equal access to opportunities for employment must be broken down. But employers have a particularly important role, and this Chapter focuses on their contribution to the process. Essentially this is that employers must take positive steps to ensure that their practices open out their employment opportunities to the widest possible range of applicants.

3.2 The Government will therefore take steps to ensure — through its proposed legislation and through the strengthening of the resources of the Commission — that all employers, in both the public and private sectors, actively practise and discharge their obligation to afford religious equality of opportunity in employment. Reflecting also the importance of indirect discrimination, the Government proposes that indirect discrimination on grounds of religion should become illegal in the same way as is direct discrimination at present.

3.3 The implications of these new statutory duties, in terms of what they entail for employers and how they can be discharged in practice, are considered further in paras 3.14 to 3.26 below. Firstly however, it is necessary to consider another direct implication of these general duties, which is the need for employers to take steps to inform themselves about the religious composition of their workforce.

MONITORING: THE NEED FOR INFORMATION

3.4 Employers cannot effectively discharge their responsibility to afford equality of opportunity unless they know what is actually happening in their workforce and can evaluate the impact of personnel practices on the composition of their workforce. They may also need statistical information about the extent to which they are attracting as wide a range of applicants as might reasonably be expected; they also need to know whether the appointments and promotions that are made, properly reflect the field of eligible candidates.

3.5 This need for knowledge can only be met if employers monitor the religious composition of their workforce and the trends that develop within it, through recruitment, promotions and departures. Monitoring is therefore central to the effective implementation of equal opportunity practices.

The purpose of monitoring

3.6 It is natural that any suggestion of identifying and recording religious affiliation should give rise to questions about the right of privacy of conscience. And against a background where queries — direct or indirect — about religious affiliation have traditionally been perceived as indicative of a pre-disposition to discriminate, the gathering of the information that is needed for monitoring purposes is open to misinterpretation. It is therefore important that these anxieties should be squarely faced.

3.7 Information, in itself, is neutral. It is the use that is intended to be made of it that gives rise to issues of principle. For monitoring purposes, the use is to give a picture of overall statistical patterns and trends. This overall picture must necessarily be the sum of a series of individual returns, but it is the total pattern that is of real interest, not the individual record. Individuals have a right to privacy of conscience, which should be respected. The Government agrees with those who argue that any system which required religious labels to be attached to individuals and which treated those individuals differently by virtue of those labels would be wrong in itself. But it is by no means inconsistent with this to insist that, in the particular circumstances of Northern Ireland, employers have a need and a legitimate right to know the overall religious composition of their workforce.

3.8 These different concerns can best be reconciled if it is recognised from the outset that there should be nothing covert about monitoring. It should be done openly, with the knowledge and full involvement of the employees concerned. It must also be confidential, in the sense that information about any named individual should be strictly confined to those who have a proper professional requirement for that information. The monitoring returns made to the Commission will not, of course, include information about named individuals.

3.9 It is also important to be clear about what exactly it is that is being monitored. "Religious affiliation" is, in this context, a shorthand for a complex of social, political and religious factors. The focus of discrimination — and thus the focus of fair employment measures — is, in general, not so much on actual and current religious belief, but on a perception of an individual's social and political as well as religious background. The 1976 Act made it clear that it was perceived religious and political belief that was in question, at least as much as actual belief. In the circumstances of Northern Ireland the historical divisions in the community have tended to cleave along a common line of religion and politics, reflecting two broadly different cultures. Promoting religious equality of opportunity therefore means opening up employment opportunities fully and equally to each of these two main groupings in the community, and indeed to those who belong to neither. It means recognising that the conventional nomenclature of Catholic and Protestant must be interpreted in social as well as in political and religious terms. In

this context, as in others, the religious tag is only one aspect of, but is used as a shorthand for, the wider communal background from which an individual has sprung. It is this wider concept of communal background — one which in Northern Ireland has endured from generation to generation — that is really at issue, and is therefore really being monitored, under the heading of religion.

The uses for monitoring information

3.10 The possible methods by which monitoring can be conducted are considered in Chapter V, which deals with the detail of the system for collecting monitoring information and making it available to the Commission. The remainder of this Chapter looks at the uses to which monitoring information will be put, and the affirmative action programmes which can be based on its results.

3.11 The information that is produced by monitoring will have two main purposes:

(a) **Internal audit**

The employer will be able to see for himself the current situation in his workforce and, over time, the trends that are developing in it. This will give him a basis for:

- (i) considering whether changes in his practices may be necessary so as better to afford equality of opportunity; and
- (ii) assessing periodically what impact those measures are having.

In this sense, monitoring personnel information should be as much a natural part of an employers' normal management information system as is data on financial or other business aspects of his enterprise and it is increasingly being recognised as such.

(b) **External audit**

The information produced by monitoring will be of vital importance for the work of the Commission. It will:

- (i) allow the Commission to carry out a desk audit of any individual firm or business sector. This in turn will help the Commission to decide whether more detailed investigation of a firm or sector is called for;
- (ii) in aggregate, give the Commission a better means than has ever been available in the past of assessing patterns and trends in the employed workforce as a whole.

Statutory obligation to monitor

3.12 Because of the crucial importance of monitoring both to employers and to the Commission, the Government proposes that:

- (a) employers should be placed under an obligation to monitor the composition of their workforce annually;

3.17 Haphazard word of mouth recruitment procedures; casual reliance on the use of "employment books" in which existing employees enter the name of potential employees; habitual contacts only with certain schools or colleges; traditional preferences for certain types of experience which are not job related, are all examples of practices which could have the effect — though not necessarily the intent — of discrimination. As such they could involve employers in indirectly discriminatory practices because, regardless of intention, they effectively limit job opportunities and even knowledge of such opportunities, to a restricted group of people.

3.18 Because such practices are not consciously discriminatory it will often be the case that employers are not aware of the effect that they are having and one of the reasons for monitoring is to bring such unintended effects to light. It is one of the main purposes of promoting a wider concept of equality of opportunity — as explained in paras 3.1 and 3.2 above — that all employers should take steps to ensure that they are affording equality of opportunity.

3.19 In order to discharge that duty employers will need to consider programmes of **affirmative action**. Such programmes could be initiated and designed by an employer on his own initiative; or with the assistance of the Commission; or, if necessary, they could be made compulsory by the Commission issuing a Direction to an employer as to specific affirmative action measures which he must take (see Chapter IV). It is important to be clear what affirmative action programmes are and what they are not.

Affirmative action

3.20 Affirmative action means:

special measures taken to promote a more representative distribution of employment in the workforce and designed to give all sections of the community full and equal access to employment opportunities.

Affirmative action programmes are therefore proactive measures taken by employers to promote equality of opportunity by broadening the geographical and social catchment area from which they draw and by removing any unnecessary obstacles which are preventing a wider range of applicants from coming forward.

3.21 In addition to the cessation of casual, haphazard and informal recruitment procedures, affirmative action measures should open up job opportunities to the widest possible pool of applicants. This could be done in a variety of ways. Employers could introduce special or "outreach" training designed to facilitate the access of an under-represented section of the community (whether Protestant or Catholic) to employment or promotion opportunities. Similarly, employers could end the display of flags and emblems likely to give offence; broaden their

as belonging to one religious grouping or another and that his prospects of being appointed would be significantly affected by that identification. This would be divisive in two main ways:

(a) **It would institutionalise and personalise religious divisions**

Unlike monitoring — which preserves the confidentiality of individual records and is a statistical exercise aimed at establishing the overall pattern of each major section of the community in the workforce — this individual identification would be an invasion of privacy. It would make religion a public label rather than a matter of private conscience. As such it could legitimately be resisted on grounds of conscience; it could also in some circumstances give genuine cause for concern over personal security.

(b) **It would exacerbate community divisions**

By transferring the burden of disadvantage, quotas would inevitably give rise to a feeling of grievance. This would be a recipe for worsening relationships in the community as a whole, not for improving them. In practice quotas would therefore be likely to be counter-productive: whatever impact they might have in one context would be liable to be off set by their ill effects elsewhere.

Quotas would therefore run contrary to and tend to undermine the whole moral basis of the Government's approach to fair employment.

3.27 The use of goals (or targets and timetables) is a better and more acceptable way of quantifying and measuring the progress which employers might be expected to achieve in given circumstances. They might be adopted on an employers's own initiative or following investigation by the Commission. In either event, they serve as check-points against which progress can be assessed and for this reason they need to be expressed in quantified terms. The crucial difference between goals and quotas is that goals are not rigid and therefore do not involve or imply discrimination. Quotas, on the other hand, are fixed targets that must be achieved and the only way of guaranteeing to be able to meet a quota is by reverse discrimination. Provided this difference is understood, the use of goals is to be encouraged

3.28 Goals are legal under existing legislation and will remain so for the future. They can be applied either to applications or to appointments. On the advice of the Agency, which was concerned that goals for appointments might be misinterpreted in practice as quotas, the existing Guide to Effective Practice recommends that goals should be used to applications rather than appointments, even though they are legally permissible in either context. As familiarity with goals increases through more common usage, the clearer will be the public perception and understanding of what goals actually entail and how they differ from quotas. It is to be expected therefore that it will become appropriate for them to be used more widely in relation to

appointments, both by employers of their own volition and as part of affirmative action programmes initiated by the Commission; and the Government will expect the Commission to keep this under review.

CONCLUSION

3.29 The new statutory duties to be placed on employers thus centre around the need to take whatever steps may be necessary in practice in order to identify and to remove any unnecessary factors which may be causing an imbalance in the workforce. This is in essence what affirmative action and affording equality of opportunity really means. Employers will be entitled to look for further guidance and assistance as to how this can be achieved in practice and one of the main sources from which they will receive such guidance is the Code of Practice which it will be the responsibility of the Commission to issue and to update as necessary. The Code of Practice is dealt with in Chapter IV.

THE ROLE OF THE CODE

4.1 One of the duties of the Commission will be to assist employers to improve their employment practices so as better to afford equality of opportunity. The Commission will thus have a broad educational, advisory and promotional role. One of the most important ways in which advice on good practice will be promulgated will be by means of the **Code of Practice**, which will be the responsibility of the Commission. The Code will in fact occupy a central position in the new system:

- (a) it will be a source of advice to all employers; and
- (b) it will be a compendium of measures on which the Commission will be able to draw in securing voluntary undertakings from employers and — where necessary — in imposing Directions as to the specific affirmative action programmes which they must undertake.

LEGAL STATUS OF THE CODE

4.2 It is important to be clear about the legal status of the Code and about its relationship with the legislation.

4.3 One reason for having a Code is to bring together a comprehensive set of examples of ways in which good practice can be achieved. The new Code will have an important role in a number of respects:

- (a) It will be the standard by which employers' practice will be judged.
- (b) The Commission will have regard to it in assessing employment procedures in any investigation of pattern and practice cases.
- (c) The Code will contain measures on which the Commission will be able to draw in formulating Directions.
- (d) The Fair Employment Tribunal will have regard to the Code in considering whether employers may have discriminated against any individual who may complain to them.
- (e) The Fair Employment Tribunal will also be required to have regard to the provisions of the Code in considering any appeals against Directions or in considering a request from the Commission for an Order of Compliance.

4.4 The Code will therefore be taken into account in legal and other proceedings at various points in the workings of the new arrangements. This is not inconsistent with it being used on a voluntary basis, in that it will in the first instance be for employers to decide which parts of it best fit their particular circumstances. But it will also be possible for any of its provisions to be made compulsory if this is found to be necessary, in any particular case, if they are incorporated in a Direction issued by the Commission. In that event the measures selected by the Commission will become binding on the employer to whom the Direction is issued. In effect they will then comprise

a mandatory affirmative action programme which the employer will be obliged to carry out.

4.5 The Code is thus a flexible instrument. As a free-standing document, separate from the Act, it will be possible for it to contain a much wider range of measures than if its provisions were to be part of the Act itself: anything of a mandatory nature in the Act must be appropriate for all those to whom the Act applies, whereas the Code will be able to include provisions which may not be suitable for all but could be valuable for some employers. It will thus elaborate on the standards of conduct to be expected of employers in the light of their new statutory obligations. It will also provide a menu from which employers — and the Commission — can select those particular items which fit the particular circumstances of any specific case. And it will be an important element in the evidential assessment of any disputed matters.

Legislative Scrutiny of the Code

4.6 Because of the importance of the Code, it is right that its provisions should be brought to the attention of the legislature. There will therefore be provision for the Code to be considered by Parliament in draft.

AUTHORSHIP OF THE CODE

4.7 The statutory responsibility for preparing the Code and any revision to it which may be necessary in the light of experience will be placed on the Commission. Since the Commission will be the main repository of experience and knowledge in this field and, since the Code will be crucial to the Commission's successful operations, it seems right that the Commission should also be responsible for its contents.

Transitional arrangements

4.8 However, there will be a transitional problem in the period immediately following the new legislation coming into effect, in that there would inevitably be a time lag (perhaps 6 to 12 months) before the Commission could carry out the necessary consultations and drafting which the preparation of the Code will require. At an earlier stage it had been thought that this problem could be overcome by providing for the Commission to draw on the existing Guide pending the preparation of the Code. But the Guide, while it contains much that would still be useful and relevant, was drafted in an entirely different statutory context and it would lack the specific relevance and authority which the Code is to be given under the new legislation. The Government therefore thinks it best to provide for the first Code to be issued by the DED, at the same time as the new legislation comes into effect. A substantive Code will therefore be in existence and be available to the Commission from the outset. The Commission would subsequently be able to bring forward whatever amendments or revision of the first Code it might consider appropriate but it would do so free of the pressure of time which would be imposed if it were starting from scratch.

4.9 The early issue of a substantive Code by the DED has two other advantages:

- (a) It provides employers and others concerned with the certainty and reassurance that would be lacking in the absence of the Code.
- (b) It will make it possible for Members of Parliament to see and comment on a draft of the Code at the same time as the primary legislation is being considered. (This of course would be for the information of Members: it would not be a substitute for the formal Parliamentary scrutiny which would subsequently be given to the actual Code.)

SCOPE AND CONTENT OF THE CODE

4.10 The Government envisages that the Code will build on and develop the material in the existing Guide. While it will modify and strengthen the Guide's contents as necessary in the light of the new legislation, it can be expected to incorporate much of the basic content of the existing Guide.

4.11 It will ultimately be for the Commission to consider what further revision of the Code may be necessary, but the Government sees advantages in having compatibility and continuity in the transition from the Guide to the Code. The existing Guide has been widely circulated, employers are increasingly familiar with it and it has been promoted by the Agency and the DED in a series of educational initiatives and seminars. It has also been the basis of much of the valuable work already done in the public sector in this field, and has been used by employers organisations and trade unions in seminars for their members. The philosophy underlying the Guide is entirely consistent with the philosophy of the proposed new legislation, so there will be a great deal in common in their approaches to the problem. There is therefore every reason why the momentum already built up should and could be sustained in the transition to the new system and the initial Code will have a part to play in achieving this.

4.12 It is therefore anticipated that the first Code will cover the following ground:

- (a) It will explain the aims and philosophy of fair employment and of the new legislation.
- (b) It will give guidance on the meaning and practical implementation of key concepts such as:
 - equality of opportunity
 - monitoring
 - affirmative action
 - appointments on merit
- (c) It will summarise the responsibilities of employers.
- (d) It will give detailed examples of good practice in recruitment and promotion procedures.

- (e) It will show how indirect discrimination can be avoided.
- (f) It will explain the purpose and nature of monitoring and the various approaches that can be taken to the collection of data, including the posing of questions to employees.
- (g) It will set out a range of affirmative action procedures which employers can adopt if monitoring reveals a need for them, including the appropriate usage of:
 - outreach training
 - goals and timetables
 - the encouragement of a non-sectarian and neutral political atmosphere in the workplace.
- (h) It will deal with the role and responsibilities of trade unions and the ways in which they can contribute to the promotion of equality of opportunity.
- (i) It will explain the contribution that employees themselves can make to the process.
- (j) It will explain how employment agencies can also contribute to equal opportunity practices.

4.13 The Code will thus act as a comprehensive guide to the relevant legislation and will show how statutory duties can best be discharged by a range of measures from which employers will be able to choose — or the Commission will be able to direct — those which are most appropriate to the specific circumstances of any particular case.

5.1 Preceding chapters have explained the reasons for the proposed obligation to monitor the religious composition of the workforce and the sort of action that may need to be taken in the light of the information that monitoring may reveal. This chapter looks in more detail at two important aspects of the monitoring system:

- (a) the mechanisms by which monitoring can be conducted;
- (b) the relationship that will exist between employers and the Commission arising out of the statutory duty to register and to submit monitoring returns.

MECHANISMS FOR MONITORING

5.2 It was explained in Chapter III that monitoring the religious composition of the workforce is essentially concerned with two things:

- (a) The overall statistical patterns and trends in each employer's workforce — not the individual record.
- (b) The wider communal background of the workforce — not the personal religious beliefs of any individuals.

5.3 This understanding of the objectives of monitoring has implications for the manner in which it can best be conducted:

- (a) To be useful for statistical purposes information should be objective and capable of being checked.
- (b) The information should reflect communal background, for which religion is only one conventional indicator among several.

The direct question

5.4 Taken together, these considerations tend to tell against the use of what might, *prima facie*, seem the most obvious way of monitoring religious composition, i.e. posing a direct question to each individual about his religious denomination. This is a method which it may sometimes be necessary or appropriate to use, but it has its drawbacks. The answers may well prove ambiguous or misleading. This might be because of genuine difficulties of definition — some individuals will not feel that they can in conscience declare themselves to be of any specific denomination; or they may opt for a generic description such as "Christian"; or they may resent the question as an unwarranted intrusion on privacy of conscience. And responses would also be capable of deliberate distortion if a significant number of disgruntled individuals made a concerted effort to give false or misleading responses. In a matter of essentially private belief there is no way of systematically checking the validity of such responses. While the Government hopes and believes that the great majority of individual citizens will see the value of monitoring and will co-operate with it, there would be obvious grounds for reluctance to contemplate making it compulsory to answer questions on as sensitive a matter as religious belief and the Government does not intend to do so.

The question of schooling

5.5 The approach which the Government prefers and recommends as the norm (particularly for larger employers), is classification by the employer on the basis of a statement by the job applicant or employee of the name and address of primary school he or she attended (or if this is not available, the secondary school attended). The employer can then determine the category of school by reference to a schools list booklet which is officially published. While not all schools in the Province can be neatly categorised, and there is a growing (though still small) number of integrated schools which have both Protestant and Catholic pupils, most schools in practice are attended mainly by Protestant pupils or mainly by Catholic pupils. Given parental choice in education and the nature of the educational system in the Province, data on the primary or secondary school attended can be regarded as an acceptable and objective method of establishing perceived religious affiliation in respect of the vast majority of employees.

5.6 This method thus has a number of advantages:

- (a) It matches the need to obtain an indication of perceived religious affiliation and of communal background, rather than actual religious belief.
- (b) It provides factual and objective information which can be checked.
- (c) As such, it provides information in which the employer can repose reasonable confidence.
- (d) It uses information already to hand and likely to be divulged as a matter of routine on most job application forms in any case.

Monitoring on the basis of school attended does not give, and does not pretend to be able to give, factually accurate information in every case about actual religion or even about communal background. But statistical monitoring, being concerned with patterns rather than with individuals, does not need this sort of absolute accuracy. All that is necessary is a general indication of what the patterns and trends in the workforce are, and data on school attended will undoubtedly give sufficient accuracy for that purpose. Some misallocations will be cancelled out by others in the other direction, and the extent of the statistical fit between the religious and communal backgrounds of individuals and the school attended is more than adequate to allow accurate conclusions to be drawn in the aggregate.

The choice of methods

5.7 While experience suggests that monitoring on the basis of schooling is generally the most useful approach, it is not necessarily of universal application. Self-classification by the job applicant or employee may, given careful preparation and explanation, be used effectively, especially in smaller

undertakings where working relationships are intimate. But it suffers from the disadvantage that the employer is dependent on the individual for the supply of accurate information and that there is no objective way of checking the accuracy of that information. That is why the schooling question is preferred.

5.8 It is possible, of course, that individuals might decline to answer any of these questions, regardless of how they are presented. In that eventuality the employer may have to resort to more subjective methods, or may have to enter the employee into an "unclassified" category. But experience to date in the wide range of circumstances in which monitoring has already been implemented in Northern Ireland in both the public and private sectors, suggests that this will rarely be necessary in practice.

The need for openness

5.9 Irrespective of which method is used, it is important — for the sake of confidence in the system and in line with the importance of a healthy openness about monitoring — that each individual should be able to ask to be told in confidence into what statistical classification he is being entered and be given an opportunity to dispute or correct this if he or she so wishes. It is also important that employers should prepare carefully for monitoring by explaining to their workforce the purpose and nature of what is proposed to be done. An open approach, prior consultation with the workforce and with trade unions, a full explanation of what it is intended to do and why it is being done; these represent the essentials of the preparation and communication that is necessary if monitoring — on whatever basis it is conducted — is to be successfully implemented. All indications are that when monitoring is properly explained and understood employees are happy to co-operate in the process.

The content of monitoring

5.10 The nature and scope of the information to be collected must reflect the uses to which it will be put. This means that it must be sufficiently detailed to show the workforce (and trends within it) broken down into its key groupings, locations and categories. At the same time, it must not be so detailed as to impose impractical or unreasonable requirements on employers. The best balance may be to keep the statutory annual monitoring returns to basic minimum consistent with giving an adequate picture of the main features of the workforce, but also to ensure that the Commission has the power to request further information from particular employers, either on an annual or ad hoc basis. Such additional information might be required in order to supplement the data available for a desk audit, or in considering the need for (or in conducting) a pattern and practice enquiry. It will also be important that information should be available to show the range of applicants that an employer is attracting for jobs and whether that range is fairly constant or is changing over time. In some cases it will be appropriate for employers to monitor applications in the same way as they will

5.14 Failure to register will be a criminal offence, as will failure to submit monitoring returns and to update them annually. Falsification of returns will also be a criminal offence.

Certification

5.15 In the first instance, possession of a Certificate will therefore be an indication that an employer has entered into the statutory process. Provided he continues to discharge his statutory obligations, he will be entitled to retain the Certificate, but there will be provision for it to be withdrawn by the Commission if he is in breach of those obligations.

5.16 The Government intends that major public contracts should not be available to employers who have failed to comply with their obligations under the Act (see Chapter VI). Loss of a Certificate would therefore result in the exclusion of the employer from such tenders and grants until and unless the Certificate were returned to him in consequence of his having come back into co-operation with the Commission. The withdrawal of a certificate would thus be a powerful sanction against a recalcitrant employer, over and above any statutory penalties to which he might be liable (see Chapter VI).

Withdrawal of Certificates

5.17 It is envisaged that there should be two circumstances in which a Certificate would be withdrawn.

(a) **Failure to submit or update monitoring returns**

Any registered employer who failed to submit or update his monitoring returns would be in clear breach of his obligations under the Act, and it would then be for the Commission to decide whether he should be prosecuted. Following a successful prosecution the Commission would be empowered to withdraw the Certificate. Its return would be dependent on the submission of the requisite returns.

(b) **Failure to comply with Directions of the Commission**

Any registered employer who failed to comply with a Direction of the Commission would also be in clear breach of his statutory obligations. Disregard of a Direction would ultimately lead to the employer being taken to the High Court (See paragraphs 6.5 and 6.6). Exercise by the High Court of its contempt jurisdiction would be the ground on which the Commission would be empowered to withdraw its Certificate. Its restoration would be dependent on the Commission being satisfied that the employer was actively taking steps to fulfil the Direction. It will be a criminal offence to make a false claim to be a holder of a valid Certificate, or to fail to surrender it if it is withdrawn by the Commission.

INTRODUCTION

6.1 The main thrust of the Government's policy initiative on fair employment is to improve employment practices and to change attitudes. It is designed to help employers and others concerned become more aware of what is happening to the composition of their workforce and the factors that are producing that result; to help them assess whether that result is satisfactory in terms of affording equality of opportunity; and to help them in deciding what changes it may be necessary to make in their employment practices so as better to afford equality of opportunity.

6.2 This is essentially an educational process and this is one reason why particular emphasis has been placed on the Commission's educational and promotional role. The Government is confident that the vast majority of employers will respond positively to the new policy and will welcome the assistance which the Commission will be able to give them. In a very real sense it would be a sign of failure of the educational aspect of the initiative if, in any particular case, it were necessary to resort to enforcement of change by means of due process of law or by the application of sanctions. Nevertheless, it is clearly right that there should be an enforcement mechanism built into the new legislation so that its aims may not be frustrated by either lack of energy or lack of goodwill on the part of any particular employer.

SANCTIONS FOR BREACHES OF DUTY

6.3 The sanctions that will be available under the new legislation will fall into three main categories:

- (a) Specific penalties for breach of certain specific duties.
- (b) Enforcement of Directions issued by the Commission in pattern and practice cases.
- (c) Exclusion from a range of government grants and from public sector tenders of employers who are in serious breach of their duties under the Act.

These sanctions relate to the enforcement of the duties to be imposed on employers in respect of registration and monitoring and to practise equality of opportunity. As such, they will be additional to the penalties that will apply in respect of individual cases of discrimination. The redress to individuals who are found to have suffered from unlawful discrimination will continue to be by way of monetary awards of compensation.

Specific duties

6.4 Under the new legislation a number of specific duties will be imposed on employers. The most important of such duties will be:

- (a) To register with the Commission (see para 5.12).
- (b) To monitor the workforce (see paras 3.12 and para 5.13(b)).

(c). To submit annual monitoring returns to the Commission (see para 3.12 and para 5.13(c)).

(d) To surrender a Certificate if it is withdrawn (see para 5.17).

Failure to comply with any of these specific duties will be a summary criminal offence which may be prosecuted by the Commission in the magistrates' courts and could lead to an initial scale 5 fine (current maximum £2,000) with a power for the magistrate to impose a per diem fine for each further day during which the employer is in breach of his statutory obligations. The offences of falsification of returns and falsely claiming to be a holder of a valid certificate are not of a continuing nature and greater discretion may be required by magistrates in order to make the penalty commensurate with the offence. An exceptional discretionary fine up to a maximum of £10,000 would enable magistrates to distinguish between employers with workforces of greatly differing size, and to match the penalty to the offender's ability to pay.

Enforcement of Directions

6.5 A Direction issued by the Commission will be binding on the employer concerned. If a Direction is not complied with, the Commission will be able to apply to the Tribunal for an Order of Compliance and the Tribunal will have power to make such an Order in the terms applied for by the Commission or in different terms. If the Order is not complied with to the satisfaction of the Commission, then (the Commission) will be able to apply to the High Court for the exercise of its contempt jurisdiction.

6.6 The Tribunal's Order of Compliance will represent the final decision as to the precise steps which the employer must take. If the Order is disobeyed, the Commission may refer the matter to the High Court where the Commission will need only to demonstrate that the Order has not been complied with. If the High Court is satisfied that the employer has disobeyed the Orders of Compliance it may punish the employer as if the Order was an Order of the High Court as this will involve the contempt jurisdiction of the High Court, the employer would be liable to unlimited fines or to committal or both, at the discretion of the High Court. The onus would then be on the employer to purge his contempt by discharging his obligations under the Order.

Public sector

6.7 The specific and general duties imposed by the new legislation will apply as much to the public sector as to the private sector. The consequences for breach of these duties will also apply to both the public and private sectors, with whatever modifications of detail may be appropriate to reflect the different circumstances and responsibilities which prevail in each case.

Grants and tenders

6.8 The Government's aim is to use the force of public expenditure on goods and services and the availability of government grants as:

- (a) a further inducement and encouragement to employers to comply with their statutory obligations;
- (b) conversely, to use the exclusion from grants and tenders of offending employers as a mark of Government's disfavour.

6.9 At present, tenders for significant items or works are not accepted by Government departments unless the contractor has signed the Declaration of Principle and Intent. This policy applies only to main contractors. It is operated by all Government departments but only a limited number of public bodies. And it is linked to the Declaration of Principle and Intent, which has been criticised as ineffectual. For the future the Government intends to base this policy on the statutory obligations that suppliers and contractors will have, by linking it to Certification. Suppliers and contractors who are in breach of these obligations will not normally be eligible to tender for any significant government business (although occasional exceptions may be necessary on grounds of security or public interest, or where the work or goods could not otherwise be secured without disproportionate expense). The Government will also consider further the extent to which tenders policy should be applied to sub-contractors and to the wider public sector.

6.10 Eligibility for government grants will also be linked to Certification and to the discharge of statutory obligations. The precise range of grants which it would be appropriate to attach in this way is for consideration, but the Government intends that as a minimum grants linked to the creation or maintenance of employment will be denied to employers who are in breach of their statutory obligations.

Security considerations

6.11 In the light of the continuing threat from terrorism in Northern Ireland, it is vitally important that the present safeguards for national security should continue to be available in the new legislation. Section 42 of the 1976 Act provides that the legislation shall not apply to actions done for the purpose of safeguarding national security or protecting public safety or public order. There is provision for the Secretary of State to issue a certificate which is then conclusive evidence that an act was done for that purpose. The Agency is therefore precluded from pursuing an investigation into a complaint in respect of which such a certificate has been issued. The Government considers

that it would be irresponsible to dispense with this provision. Regrettably, terrorist violence still plagues Northern Ireland and the Government has a paramount duty to protect national security, public safety and public order. The Government notes that SACHR was also satisfied that a national security exception should remain. The Government is therefore convinced that Section 42 must remain in force, and that it should apply to the provisions of the new legislation.

B. POLICY EVALUATION

6.12 Policy measures on fair employment need to be evaluated periodically to assess whether they are achieving their original objectives. Such evaluation is a standard procedure in all new policy initiatives. The Government intends that there will be a formal review of the effectiveness of the new legislation after five years, but evaluation of the effects of the new legislation will be a continuous process.

6.13 It is important that evaluation should focus on those matters that are directly affected by the policy measures in question. In the case of fair employment policy, the aim is to achieve a fair distribution of jobs throughout the community, and this will be done by measures which impact on the recruitment of people into employment and on promotions within employment. To assess the effectiveness of these measures, information will be needed on:

- (a) patterns and trends in the employed workforce;
- (b) improvements in employment and recruitment practices;
- (c) better opportunities for under-represented groups to have access to employment opportunities.

6.14 The Government intends that the Commission should be fully involved with it in the evaluation of this policy initiative. The Government will also liaise with and have regard to the views of SACHR on such evaluation, reflecting SACHR's statutory duty to advise on the effectiveness of the law in preventing discrimination. The Government will consult with the Commission as to the specific indicators and criteria which should be used, but believes that on any reckoning the following indicators will be relevant:

- (a) Current employment situation: The database that will be built up through the annual submission of monitoring returns to the Commission will in itself be a major source of information. It will give — for the first time — a reliable and comprehensive indication of the patterns of representation and under-representation in the workforces of all sizeable employers.
- (b) Trends in employment: Over time, comparison of successive monitoring returns will indicate the trends which are taking place in these patterns of representation and

this database and its availability to those with a genuine professional interest in its contents. Any such arrangement would of course have to protect the confidentiality of any individuals concerned, but they could properly and usefully cast light on trends in a wide range of employment-related issues.

Employment and unemployment

6.18 The Government believes that criteria and indicators of the sort set out above provide a more reliable basis for evaluating the effectiveness of fair employment policy than would be SACHR's recommendation, that a target should be set in terms of a reduction in the differential between the rates of male unemployment among Catholics and among Protestants. To set a target in terms of levels of unemployment would be to ignore the importance of the many variable and unpredictable factors which determine the overall level of unemployment in the community. In addition, it would leave out of the reckoning the fact that the unemployment differential between Catholics and Protestants will be at least as strongly influenced by social, geographical and economic factors as by fair employment policies. The latter have a vital role to play in ensuring fair and equal access for all to the employment opportunities which exist at any given time; but the former — coupled with the overall level of economic activity — will have a major bearing on the way in which employment and unemployment is actually distributed in the community.

6.19 This is why the Government has always insisted that there must be realism as well as determination in the application and development of fair employment policies. These are a fundamental and necessary part of the drive for a fairer society in Northern Ireland, but by themselves they are not and cannot be a sufficient guarantee of a prosperous economic future for all sections of the community. That will only be achieved if we are also successful in the promotion of overall economic development. The Government therefore continues to emphasise that the drive to promote more investment and more jobs in Northern Ireland is an essential complement to the drive to promote fair employment. All who are genuinely interested in employment equality should also support the promotion of more jobs in Northern Ireland. The more healthy the economy the better the prospects for promoting fair employment.

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Dear Tom,

FAIR EMPLOYMENT IN NORTHERN IRELAND

Thank you for copying to me your letter of 16 May to John Wakeham.

I am content with the White Paper and that it should be published on 25 May and announced by means of an arranged Written Parliamentary Question.

Copies of this letter go to Cabinet colleagues, Sir Robin Butler and Bernard Ingham.

[Handwritten signature]

KENNETH CLARKE

MY3ACU



PRIVY COUNCIL OFFICE
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mp

Dear Tom

FAIR EMPLOYMENT IN NORTHERN IRELAND

Thank you for your letter of 16 May.

For my part, I am entirely content for you to publish the Fair Employment White Paper on Wednesday 25 May, and to announce this by means of an arranged Question.

I am copying this letter to the Prime Minister, other Cabinet colleagues and Sir Robin Butler.

John Wakeham
[Signature]

JOHN WAKEHAM

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My ref:

Your ref:

MP

20 May 1988

Dear Lord President,

FAIR EMPLOYMENT IN NORTHERN IRELAND

Tom King sent me a copy of his letter of 16 May to you covering a White Paper on this topic which he wants to issue on 25 May.

As you know my main interest in this is the proposals that Government should use its contractual muscle to force contractors to comply. I have reluctantly gone along with that proposal because of the general view of colleagues.

The apparent inconsistency between the Northern Ireland proposals and our legislation on non-commercial conditions in local authority contracts was much quoted during the passage of the Local Government Bill. We used the fact that the Northern Ireland proposals would only apply to central Government contracts to good effect in rebutting those criticisms.

Tom King said in his letter of 29 February to you that he was considering extending tender refusal to public bodies outside central Government. I would oppose such an extension, but I did not comment on that as he was not making a firm proposal to do so. Until we have discussed such a proposal collectively it would be premature to float it in the White Paper.

I would therefore ask that the words "and to the wider public sector" be deleted at the end of paragraph 6.9, and that the references to public sector contracts and tenders elsewhere in the Paper - for example paragraphs 5.16 and 6.3(c) - be amended to refer only to Government contracts. I do not think that these changes would significantly weaken the impact of the White Paper.

I am copying this letter to Tom King, Cabinet colleagues, Sir Robin Butler and Bernard Ingham.

Yours sincerely
pp *Nicholas Ridley*

NICHOLAS RIDLEY

(Approved by the Secretary of State
and signed in his absence)





MP

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-218 2111/3

MO 5/24V

24th May 1988

EXCHEQUER	
25 MAY 1988	25/5
CST	

Dear David,

FAIR EMPLOYMENT IN NORTHERN IRELAND

My Secretary of State was grateful to yours for sending him a copy of his letter of 16th May to the Lord President. He has no objection to the publication of the White Paper as proposed on 25th May.

I am sending copies of this letter to the Private Secretaries to other members of the Cabinet and to Trevor Woolley.

[Handwritten signature]

[Handwritten signature]

(I C F. ANDREWS)
Private Secretary

David Watkins Esq
Northern Ireland Office



NORTHERN IRELAND OFFICE

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MP
25 May 1988

Dear Ms Smith,

My Secretary of State wrote to Cabinet colleagues on 16 May enclosing a draft of our White Paper on Fair Employment in Northern Ireland. The publication of the final version of the White Paper is being announced this afternoon by means of a written Parliamentary Answer. A copy is attached which you might wish to bring to your Secretary of State's attention.

Copies of this letter and of the White Paper go to the Private Secretaries of other Cabinet Ministers, to Charles Powell and to Trevor Wooley.

Yours sincerely,

Brian Blackwell

B A BLACKWELL
Policy Development Unit

Enc