

PREM 19/2726

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Sex Discrimination

HOME
AFFAIRS

August 1985

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PREM 19/2726

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

27 February 1989

FILE
SAW

FO DES

HO DIH

WO SO

MOD LPO

JIM CST

NIO CAN

CO OAL

M/Health

Dear Stuart

**PROPOSED NATIONAL STUDY ON SEXUAL
ATTITUDES AND BEHAVIOUR**

The Prime Minister has seen the minutes of H(A)'s meeting on 23 February. She has commented that she has considerable doubts about whether such a study could be accurate enough for the results to be reliable in terms of policy making. The key factor to which the Chief Medical Officer drew attention during the meeting was whether the reproductive rate of infection was "just above" or "just below" unity. She would be grateful for advice about the margin of error in the sort of study being proposed before it goes ahead.

I am sending a copy of this letter to the Private Secretaries to members of H(A) and Trevor Woolley (Cabinet Office).

*Yours sincerely
Dominic*

(D. C. B. MORRIS)

Stuart Lord, Esq.,
Department of Social Security.

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DL

PRIME MINISTER

PROPOSED NATIONAL STUDY ON SEXUAL ATTITUDES AND
BEHAVIOUR

When you saw the H(A) paper on this you expressed serious doubts about the need for such a survey and pointed out that there was a lot of information available from the USA which the Government could draw on to formulate policy and you were concerned about the severe criticism we had had in the past for some of the things that had been done on the AIDS programme.

I passed these comments to John Moore who Chairs H(A) and said that he should come back to you before publication if H(A) nonetheless decided that a study was necessary. He has now done so and his minute setting out the reasons is attached. You will see that it rests heavily on Sir Donald Acheson's view that AIDS is developing at different rates in different countries and in different parts of the population as between countries (so we cannot rest on USA experience).

You will see also that John Moore proposes that if a study goes ahead it should be much lower key than originally proposed and the Government should distance itself from it.

On this basis, content that the study should go ahead?

DM
DOMINIC MORRIS

23 February 1989

*Y - ~~the study~~ I have
frave doubts about
whether such a study would be
accurate enough to rely on the
result. It tends to depend on whether
the reproductive rate is "just above" or "just below" 1.
Please consult the MOH about the major*

of course is such a study

CC PLT



CONFIDENTIAL

Prime Minister

A NATIONAL STUDY OF SEXUAL ATTITUDES AND BEHAVIOUR

The Home and Social Affairs Committee, Sub-Committee on AIDS (H(A)) considered the Minister for Health's memorandum (H(A)(89)2) on this subject this morning and I am minuting you on the outcome, as requested in your Private Secretary's letter of 6 February.

When I first saw the Minister for Health's memorandum I felt many of the doubts that you subsequently expressed, and I did not feel that the scientific case for the study emerged at all clearly. Before the meeting was held, however, the Department of Health circulated some further material which at least established that there was no other study of this kind that was currently available, and also a short note by Sir Donald Acheson, which I attach to this minute. As you will see, Sir Donald emphasises that the extent of AIDS in the general population, and its possible rate of increase, depend crucially on the sexual behaviour of the promiscuous minority (paragraphs 3(iii) and 8 of the note). At the meeting Sir Donald brought out that AIDS was developing at different rates in different countries, and in different parts of the population as between countries.

At this morning's meeting H(A) had a discussion of very good quality. The meeting first considered whether any study should take place in this highly sensitive field. The way in which the results might be seized on outside the context of AIDS was fully brought out, and some members had some scepticism whether the findings were essential to an AIDS policy. Nevertheless, there was a clear majority in favour of the proposition that there was a clear lack of properly validated information here, and that this needed to be filled in order for us to judge whether it would be necessary to re-direct our AIDS campaign to the general population, and to enable us to justify such a policy.

H(A) were far more divided on the question of how such a survey should be conducted and, in particular, the Government's perceived relation to it. There was a strong feeling in the Sub-Committee that the Government should take the lowest possible profile, and leave the study to be carried out, probably by the ESRC, as a purely academic project. I strongly shared that feeling and I invited the Minister for Health to submit more detailed proposals on this, for the Sub-Committee's later consideration.

I myself believe that H(A) reached a well balanced interim view this morning, and I hope that you will be able to agree with it.

I am sending a copy of this minute to Sir Robin Butler.

23 February 1989



JM

Secretary of State (SS)

From: Chief Medical Officer

Date: 22 February 1989

Copies: S of S (DH)
MS(H)
PS(H)
Dr Walford A/U
Mr Barton A/U

HETEROSEXUALLY ACQUIRED HIV INFECTION

The attached brief leading article in last week's British Medical Journal is the clearest and most concise exposition of the situation and dilemma about heterosexual spread of HIV that I have seen. I commend it and ask whether, as Chairman of H(A), you would wish it to be circulated to members. I have prepared a very brief resume of the article, couched in non-technical terms, which you might feel would be helpful to members, if you decide to circulate the article to them.



E D ACHESON

HETEROSEXUALLY ACQUIRED HIV INFECTION

1. The article makes the point that the prevalence of HIV infection in heterosexuals in the UK is low, and is very largely confined to people who have had sexual contact in countries where HIV is common or who have had a partner who is infected or at high risk.

2. Whether HIV will spread widely in the United Kingdom through heterosexual transmission depends on what is known as the "basic reproductive rate". This is the average number of other people likely to be infected by one infected person. An infection is only likely to spread appreciably in a population if the "basic reproductive rate" is greater than 1.0. That is, if one individual is likely, on average, to infect more than one other person.

3. What determines the basic reproductive rate is a combination of three factors:

- i) how infectious infected people are to each partner;
- ii) how long they are infectious for;
- iii) and how often they change sexual partners (with a special weighting factor for the minority having many sexual partners).

4. The most recent estimate is that for the UK, the "reproductive rate" of HIV may be just above or just below 1.0.

5. If it is just above 1.0, the disease will eventually take off within the heterosexual population but with a very long doubling time (8-14 years), so that the catastrophic results will not begin to appear until early in the next century.

6. If the "reproductive rate" is just below 1.0, the infection will continue to spill over into the heterosexual population as at present but will not take off.

7. There is a further point, namely that the eventual outcome for the UK may be different from that in other developed countries even within Europe, depending on differences in sexual behaviour.

8. The dilemma now is: how to secure the essential change in sexual behaviour, particularly among the promiscuous, in order to ensure that we do not get a catastrophic epidemic in 10-20 years when currently the risk of infection is very low amongst heterosexuals! The article also underlines the fact that it is essential that we obtain accurate information about sexual behaviour urgently.

Donald Acheson

E D ACHESON

Heterosexually acquired HIV infection

Still hard to be sure about a future epidemic

After the British government launched its first publicity campaign on AIDS *Nature* commented that the government could not say openly "why it has (uncharacteristically) sanctioned all this spending: it believes (rightly) that it is squarely within the bounds of possibility that AIDS is a threat to the survival of whole populations, not just of individuals."¹ Nearly two years later public health officials in Britain and elsewhere are facing more questions from people who believe that they may have panicked needlessly. Few doubt the grim reality of the heterosexual epidemic of HIV infection in urban areas of central and east Africa,² but many argue that AIDS will be confined to specific risk groups in other places. Are heterosexuals in developed countries really at risk?

Of 1598 cases of AIDS reported in Britain by the end of June 1988, 60 (3.8%) were considered to be heterosexually acquired, and only six women and four men were presumed to have been so infected in Britain.³ Such statistics are of limited value, however, because they refer to transmission only a long time ago: the mean incubation period from infection with HIV to developing AIDS seems to be at least seven years.⁴ To monitor recent trends we need well designed serological surveys of the occurrence of HIV antibody in subgroups of the population. The four papers published in today's issue (p 411, p 415, p 419, and p 422) are important because they chart the progress of the epidemics of HIV infection among homosexual men and intravenous drug users, and three throw light on the emergence of heterosexually acquired HIV infection in Britain.

The results of these surveys cannot be compared directly because of differences in the criteria used for selecting subjects and assigning them to risk groups. Taken together they show that there is already a small occurrence of HIV infection in the heterosexual population—especially among people who have had sexual contacts in areas abroad where HIV infection is common or a partner known to be infected or at high risk. The two surveys that depend on voluntary testing must be interpreted with caution because of the evidence that people who consent to testing are unrepresentative. In a sexually transmitted disease clinic in the United States, for example, in the four fifths of patients who accepted HIV testing the prevalence of HIV antibody was 0.7%; that in the remaining patients, tested anonymously, was 3.8%.⁵ A similar discrepancy was found on testing homosexual and bisexual men in a London clinic.⁶ Loveday and colleagues have avoided this problem by anonymous testing (p 419). Among

those attending a sexually transmitted diseases clinic in London in late 1987, 0.8% of heterosexual men and 0.7% of heterosexual women (excluding intravenous drug users) were positive for HIV antibody. Although the six patients affected were not known to have other risk factors for HIV infection, the information was extracted from the case notes and could have been incomplete. In the United States direct questioning by skilled interviewers has often allowed other risk factors to be identified.^{7,8}

That many of the heterosexually infected people in Britain have had sexual contacts in Africa or partners at high risk should not be surprising in the early stages of the epidemic; by comparison, many of the homosexuals first affected in Britain and Australasia reported that they had had contacts in the United States. The question that remains to be answered, however, is whether HIV infection will propagate widely in countries such as Britain by heterosexual transmission alone. This will depend on the transmission dynamics of the infection.

May and Anderson have emphasised the importance of the "basic reproductive rate," which is the average number of secondary infections produced by one infected subject in the early stages of an epidemic.⁹ An infection will spread in a population only if this variable exceeds 1.0. For a sexually transmitted disease the basic reproductive rate depends on the product of three variables; (a) the average duration of infectiousness; (b) the average probability that the infection will be transmitted from an infected person to a susceptible partner (during each partnership); and (c) the effective average rate at which new sexual partners are acquired. The last variable is not simply the mean of the distribution of the number of new sexual partners each year but the mean plus the ratio of the variance to the mean. Because sexual behaviour varies widely the variance will be large and its inclusion reflects the fact that the behaviour of the minority having many partners will be more influential than the mean rate of sexual partnership in determining the rate of spread.

In the parts of Africa where HIV has been spreading rapidly the basic reproductive rate is high. But special explanations have been invoked to account for what is happening in those places: high rates of sexual partnership (with prostitution being important), a high prevalence of other sexually transmitted diseases (particularly those causing genital ulceration), and chronic activation of the immune system by other infectious diseases.^{2,10,11} Research in developed countries,

such as the European multicentre study reported in this issue (p 411), confirms that the probability that HIV infection will be transmitted is influenced by factors such as the presence of other sexually transmitted diseases.¹⁰

Anderson and May recently estimated that the reproductive rate for the general population may be just above or just below unity.¹² If it is below the infection will continue to spill over into the heterosexual community but will not propagate widely. If it is just above (say 1.1) the doubling time of the heterosexual epidemic during the early stages might be about 8-14 years. As the proportion of people infected with HIV is currently a fraction of 1% it will be extremely difficult to confirm such a slowly developing, but potentially catastrophic, epidemic. The need for careful epidemiological research is clear. We can look to the United States (where the epidemic is further advanced) for clues, but even there it is too early to discern what is happening. The prevalence of HIV infection in patients from a sexually transmitted disease clinic in Baltimore¹³ was higher than that in London reported in this issue, but still no evidence exists of an explosive heterosexual epidemic in the United States.^{14,15} If the rates of sexual partnership are different, of course, the reproductive rate could be just below unity in one developed country and just above in another.

Governments are therefore right to warn heterosexual populations that they face a serious threat. The task for health educators is monumental because for most people at present the risk of infection in a single sexual encounter is exceedingly small. The risk in one heterosexual encounter (without a condom) with a person infected with HIV has been estimated

at about one in 500, while the risk for one encounter with an American who is not in any high risk group might be of the order of one in 5 million.¹⁶ Yet if we fail to maintain public commitment to control measures a major heterosexual epidemic in the future is still a real possibility.

Professor of Preventive and Social Medicine,
University of Otago,
Dunedin,
New Zealand

D C G SKEGG

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Music and disability

Music will benefit disabled people

Rhythm and harmony, says Plato, sink into the depths of the soul.¹ Music is said to be anciently related to magic and the supernatural,² and its power is still apparent. People with physical disabilities need access to music as much as anyone else—perhaps more, because they often have empty hours to fill. Some may also benefit specifically, and the many ways in which music might help disabled people were explored recently in a seminar at the Royal Hospital and Home, Putney. One important source of information on the subject is the Disabled Living Foundation's music advisory service (380-4 Harrow Road, London W9 2HU). It has its own extensive resources and also refers inquirers to particular experts or to local education authority music advisers.³

Disabled people still face problems of physical access in attending concerts, and this is improving only slowly, though the provision of special projects for disabled people is increasing.⁴ Technology and simple ingenuity have made things better, and no one should lack the means of using hi fi or other equipment or of making music in some way. The most severely disabled may use the new Possum environmental and communication control system (PSU6) to control hi fi equipment extremely easily, and this system also allows access to computer music. Many adaptations and gadgets are available for equipment and instruments for those with less severe disabilities. People with hemiplegia, for instance, may play a range of instruments and also draw on a repertoire of piano music for one hand. Exciting developments with the computer as a musical instrument and medium for

composition for disabled people are in progress in the University of York's electronics department.

Many disabled people, however, benefit from having access to music in hospital, hospice, or residential home, or even from having it brought to their own home. The Council for Music in Hospitals arranges concerts by professional musicians chosen for their ability to relate sensitively to people⁵; the concerts may evoke enthusiastic and sometimes profound responses, even from withdrawn people. At St Joseph's Hospice, Hackney, musicians play at the bedside; and in the Chelmsford hospice service a local violinist visits patients at home—and one woman even had guitar lessons in her last days. General practices and hospital leagues of friends might find volunteer musicians to help in these ways. The use of personal stereos might be encouraged more, and staff could—and sometimes do—build music into daily life. In old people's homes, for instance, old time songs are both pleasurable and good reminiscence therapy. Simple and unusual ideas abound for music making in such settings, and the Manchester arts for health project is an important model in promoting all the arts in hospitals and elsewhere.⁷ Beyond immediate delight, music may provide a way of getting in touch with feelings and a bridge to communication, which may be especially important in terminal care.⁸

Music as specific therapy is the responsibility of qualified music therapists. Traditionally music therapy has been used mainly for children with mental or multiple handicaps and for adults with mental illness; yet music has specific physical

COVERING CONFIDENTIAL



Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 01-273 5803
Telex 915564 Fax 01-273 5803

Secretary of State

Prime Minister,

Very interesting

Women can, since

*last February, do night
work in factories.*

N.C.U.

29.11

29 November 1988

*Perhaps we should
let Parker know
not*

Nigel Wicks Esq
Principal Private Secretary
10 Downing Street
LONDON
SW1A 2AA

Dear Nigel

RESTRICTIONS ON WOMEN'S EMPLOYMENT

You asked me for a background note on restrictions on women's hours of work.

As you will see from the note, all restrictions on women's hours of work were repealed by the Sex Discrimination Act 1986. Our forthcoming Bill will abolish restrictions on young people's hours of work but will remove some other restrictions on women's employment. These are outlined in the note.

*which
come
into
effect
abolish
these
restrictions
on night work.*

Please contact me if you have any further queries.

*Yours sincerely
Liz Smith*

LIZ SMITH
Private Secretary



RESTRICTIONS ON WOMEN'S EMPLOYMENT

BACKGROUND

1. The Sex Discrimination Act 1975 (SDA) made most unjustifiable discrimination on grounds of sex or being married unlawful. However, Section 51 of the Act exempted actions required by earlier legislation.
2. All restrictions on women's hours of work were repealed by the Sex Discrimination Act 1986 (although the repeal of the ban on night work did not come into force until 26 February 1988).

Employment Bill

3. The Bill will remove the blanket protection of Section 51 so that in the field of employment and vocational training the SDA has priority over other legislation except in specific defensible circumstances. These are:
 - 1) the protection of women in relation to pregnancy and maternity and other risks specifically affecting them (in line with the EC Equal Treatment Directive). Restrictions on women working with lead, ionising radiations, in factories after childbirth and on board ships and aircraft when pregnant will therefore remain in force;
 - 11) single sex recruitment at Oxbridge women's colleges to redress continuing under-representation of women academics;
 - 111) some educational appointments closely connected with religion.
4. The Bill removes existing restrictions on women's employment
 - underground in mines
 - cleaning and operating certain machinery in factories, mines and quarries
 - lifting weights
 - in relation to the facilities available to them.

(It also raises the age at which women cease to be eligible for statutory redundancy pay to the same age as men).

From: THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

9 November 1988

Dear Dominic

WOMEN'S ISSUES

I attach some material which may be of help. The note of the 6th meeting has not yet been circulated and is a useful quarry for the latest thinking.

Yours sincerely

Nick

N C SANDERSON

Dominic Morris, Esq
Private Secretary
10 Downing Street

Draft

62 Mem.

MINISTERIAL GROUP ON WOMEN'S ISSUES

Note of a Meeting on Monday, 24 October 1988

Present:

Mr Patten (Chairman)	Home Office
Mrs Rumbold (Vice Chairman)	Dept of Education and Science
Mrs Currie	Dept of Health
Mr Nicholls	Dept of Employment
Mr Roberts	Welsh Office
Mr Viggers	Northern Ireland Office
Lord James Douglas-Hamilton	Scottish Office
Mr Luce	Office of the Minister for the Civil Service
Mr Eggar	Foreign and Commonwealth Office
Mr Lloyd	Dept of Social Security.

Officials:

Mr Pratt)	
Mr Hill)	Home Office
Mr Loughlin)	
Mrs Catchpole)	Women's National Commission
Miss Rolfe)	
Mr Mike)	Dept of Education and Science
Mr Harris)	
Ms Thorpe)	
Miss Hicks)	Dept of Social Security
Miss Richards)	
Mr Lansdown	Welsh Office
Mrs Newman	Northern Ireland Office
Mr Miller	Scottish Office
Miss Collins	Office of the Minister for the Civil Service
Miss Boulton	Dept of Employment
Mr Millett	Foreign and Commonwealth Office
Miss Baird	Dept of Health
Miss Hart	LCD
Mr Talbot	Dept of Trade and Industry
Mr Finnegan	Treasury
Mr Evershed	Inland Revenue

Item 1: Chairman's Introductory Remarks

1. The Chairman welcomed colleagues - particularly Mr Lloyd who was attending his first meeting of the Group. He noted that apologies for absence had been received from Mr Lilley and Mr Forth.
2. Mr Eggar had notified Mr Patten that he would need to leave the meeting early and it was therefore agreed that Item 10(2) of the Agenda would be taken immediately after Item 3 - Matters Arising.
3. The Chairman noted that it had become customary for Ministers to report on contacts with women's organisations. In future it was agreed that written reports of contacts should be circulated in advance of the meeting. He himself had had meetings with several women's organisations including the 300 Group, the Mother's Union and the UK Federation of Business and Professional Women. He had been in contact with the Women Into Public Life Campaign (for which he had agreed Home Office funding for the next year) and next week would be meeting Mrs Joanna Foster, the Chair of the Equal Opportunities Commission to discuss her first six months in post.
4. Mrs Currie reported that she had regular contact with women's organisations. The most important had been a full day debate on women's health on 10 June, a conference "Promoting Women's Health" on 22 June, a speech to the national conference of the National Union of Townswomen's Guilds on 29 June and on 7 July she had made a speech at the Women of the Year Association's Supper. She had just come from the Women of the Year lunch.
5. Mr Nicholls had chaired a meeting of the Advisory Council on Women's Employment on 13 July. Mr Luce reported that he had met Mrs Foster who had agreed to speak on the Civil Service Top Management Programme and he had also spoken at the Anglo-German Foundation Seminar on equal employment opportunities in the Civil Service and public appointments.
6. Mr Viggers explained that a tripartite meeting of the Equal Opportunities Commission for Northern Ireland, the Republic of Ireland and Great Britain was taking place that day in Northern Ireland. Mr Lloyd reported on a meeting with the Women's Aid Federation and Lord James Douglas Hamilton referred to a forthcoming engagement to celebrate the Golden Jubilee of the Scottish Federation of Business and Professional Women.

7. Mrs Rumbold in her role as Co-Chairman of the Women's National Commission was in constant touch with women's groups and drew particular attention to a meeting of the Women's Organisations Interest Group of NCVO addressed by Bronwen Cohen, the author of the British report for the European Childcare Network which had specifically asked women's organisations to lobby Ministers on this issue.

8. The Chairman was gratified to hear that the number and pace of meeting with women's organisations and about women's issues appeared to be increasing. In the light of this it was agreed that officials would review at the beginning of December, the number of ministerial meetings with a view to a possible Parliamentary Question at the turn of the year.

Item 2: Minutes of the 5th Meeting

9. These were agreed.

Item 3: Matters Arising

(i) Public Appointments

10. Mr Luce reported that he had written to all Ministers in charge of Departments in September asking that the guidelines on public appointments prepared by the EOC and PAU jointly be sent to Chairmen of NDPBs with a joint message. The Cabinet Office had nearly completed a review of Public Appointments and would shortly be reporting to the Prime Minister: the proportion of women holding public appointment now stood at 21%. Mr Luce suggested that the proportion could continue to increase if all Ministers ensured that women's names were always considered.

Item 10(2): CEDAW Report (MGWI 7/88)

11. Mr Eggar drew the attention of colleagues to his Department's paper which set out the reporting arrangements on CEDAW. The UK's report would be reviewed by a committee of experts in Vienna in February 1989. He emphasised that this should be taken seriously and dealt with by senior officials within Departments. There was a need to identify an appropriate official - preferably at Grade 3 or 5 level to lead the delegation. Presentationally it would be better if the official was a woman. The person need not have responsibility for the areas covered. Mrs Rumbold asked that the WNC should be involved in any briefing sessions with the delegation.

12. Mr Eggar informed the Group that following the UK's failure to get its nominee elected to the Commission on the Status of Women it was hoped to put forward a candidate for election to CEDAW. The Foreign and Commonwealth Office had identified one or two potential people and would shortly be canvassing Departments at official level asking for names of suitable candidates.

Item 4: Equal Opportunity Proofing (MGWI 4/88)

13. The Chairman introduced the Home Office paper which provided model instructions for Departments to use as a basis for guidance to their staff. The instructions had been prepared on the basis of the Department of Employment's paper which had been discussed at the last meeting. The opportunity had been taken to extend the model instructions to cover racial discrimination. Mr Patten made the point that, although the instructions necessarily mainly covered the legal aspects of discriminatory treatment, the aim should be for policy to be decided in the spirit of equal opportunities and not just within its legal constraints. He invited colleagues to comment on the guidelines.

14. Mrs Rumbold speaking both as WNC Co-Chairman and a Departmental Minister said that the guidelines were very good indeed and she fully endorsed them.

15. Mr Nicholls expressed concern that the guidance invited officials to consult the EOC and CRE which were not impartial organisations. The Chairman said it should be remembered that the EOC and CRE were statutory bodies with a lot of useful expertise. The guidelines stated that it would not always be appropriate to discuss proposals with them and advised officials to seek advice first from within their own departments, the Home Office or the Department of Employment. Mr Luce agreed that it would be useful to mention the two Commissions. Mr Nicholls said he was not asking for the reference to the Commissions to be removed but that the wording be more closely looked at.

16. The model instructions and checklist were agreed subject to Home Office and Department of Employment officials agreeing a suitable rewording of the reference to the EOC and CRE. The Chairman thanked officials concerned in the preparation of the model instructions which he considered were written very clearly and free of jargon.

17. Mr Luce reported that the Civil Service College at Sunningdale would be running a number of one day courses to cover the principles of equal opportunity proofing.

18. The Chairman thanked Ministers for welcoming the concept of equal opportunity proofing and it was agreed to issue the press notice at Item 7 of the agenda. He was grateful to Mrs Currie for the suggestion that a press release be issued after each Group meeting and that in future it would be appropriate for such notices to quote different members of the Group.

Item 5: Childcare (MGWI 5/88) and MGWI 8/88)

19. In introducing this item, the Chairman apologised that he would need to leave during the discussion and Mrs Rumbold would then take the Chair.

20. He did not think the Group was going to reach major conclusions on this subject at the meeting as it was a subject on which a lot more work was required. Colleagues were invited to consider the statement of Bronwen Cohen in the UK National Report to the European Childcare Network that "the cost of childbearing, which affects women but not men, is now probably the single greatest obstacle to equality of opportunity". Mr Patten thanked officials from the Department of Health and the Welsh Office for their preparation of good and thoughtful papers. After they had been introduced he would like colleagues to consider how far the Government should intervene in the provision of childcare or whether they should merely act to ensure that a reasonable range and quality of childcare was available. He appreciated that these problems would not be solved that afternoon but the subject would be a good test of the Group's ability to formulate policy rather than exchange views.

21. Mrs Currie introducing the Department of Health paper said that one of the main concerns of the Department was childcare standards. She drew particular attention to Appendix 5 of the paper which dealt with the problems the NHS was experiencing as a large employer of women and the recruitment problems demographic changes would cause. She had seen some examples of successful self-financing nurseries at some London hospitals - at reasonable cost. She considered that more could be done to publicise the tax concessions which were available to employers who provided childcare facilities but was reluctant to see the Government do much more because of expenditure constraints; although it had a role as an employer. Local

authority social services were already overburdened with other responsibilities. She saw the subject as very much one for the Department of Employment as a facilitator and encourager of employers. Schools could also be involved. Mrs Currie warned that it would be desirable to have a well prepared childcare policy otherwise the EC would be imposing unwelcome policies. Childcare provision had been the subject of debate at all the recent Party Conferences and was now very much a political issue in the USA.

22. Mr Patten agreed that Mrs Currie was right to mention the pitfalls of public expenditure problems and the EC implications. It was also true that childcare was rapidly climbing up the political agenda and likely to become a substantive issue.

23. Mr Roberts introduced the Welsh Office paper which had been prepared taking into account his Department's wide range of policy interests. He believed that schools played the major part in childcare and more could be done to develop services for children out of school hours through such bodies as the National Out of School Alliance. There was a cost problem for employers in providing services - many women worked in low profit industries where the costs of providing childcare facilities would be a major factor. This helped to keep childcare standards low. However public investment in childcare need not be regarded as negative as this could reduce dependence on benefits; help maintain economic growth and reduce juvenile crime and educational problems.

24. Mrs Rumbold (assuming the Chair on Mr Patten's departure) thanked Mr Roberts for the Welsh Office's thoughtful paper which was a very useful contribution to the debate.

25. Mr Nicholls believed that the Government needed to do something positive on childcare otherwise it might be forced to do something by the EC. He did sound a note of caution that some of the Government's supporters would not welcome Government involvement. Any Government initiative should be presented as enabling parents to fulfil their responsibilities rather than shedding them. He noted that the Welsh Office paper advocated Government intervention and he also believed this was not something which could be left to employers themselves.

26. Mr Luce agreed that both the papers were very useful. He thought the most powerful argument for the provision of childcare was the economic

argument on recruitment and retention and the forthcoming drop in the numbers of young people in the 16-19 age group in the early 1990s. He believed it essential that a working group of officials should be formed which should not ignore the question of tax relief and should look at the range of facilities available. Lord James Douglas-Hamilton and Mr Viggers also welcomed the papers.

27. Mr Lloyd believed it was not true to say that market forces had failed in this area - the problem was only just coming into focus and the Government should be wary of jumping in. His Department had a very specific interest in childcare costs in relation to childcare costs for lone parents being disregarded for calculation of income support. The system had been changed on the basis that the Exchequer should not be required to meet work related expenses. The Department had felt able to do this as the number of lone parents with significant childcare expenses was very low. However the effects of the change were being very carefully monitored.

28. Mrs Currie thanked colleagues for their comments on the paper. She believed that there was a serious problem of a shortage of labour approaching which previously had been met by inward migration. Whatever the philosophical arguments, provision of childcare to enable women with children to continue working might be a more pragmatic solution than large pay rises to retain staff - such as that recently paid to the nurses.

29. Mr Roberts also thanked colleagues for their contributions. He echoed Mr Luce's comments that the main arguments were economic. There was an identified need to provide the correct arrangements to encourage women with children to return to work.

30. The Vice-Chairman said it had been an interesting discussion and most colleagues seemed of one mind. There was a need to know more about what exists on the ground both in pre-school provision and provision for children of school age. This should be looked at in the positive light of ensuring that women in work could choose to remain in work when they had children.

31. It was agreed that a working group of officials should be set up from the relevant departments to look at the nature of the problem, the extent of current provision and consider the recommendations in the Department of Health and Welsh Office papers - taking into account the discussion at the

Ministerial Group and Ministers' reservations about direct Government intervention. So as not to lose momentum on the subject the Group would look at this subject again at a meeting in February with a view to making a public statement.

Item 6: Review of Women's National Commission (MGWI 6/88)

32. Mrs Rumbold hoped that all colleagues had had the opportunity of seeing the Report of the Review of the WNC by Valerie Hammond. She reported that she had written to Mr Patten to say that the WNC had accepted the recommendations of the report and she had sent a memorandum to the Prime Minister setting out the main conclusions of the report. A time limit of two years for the delivery of the recommendations had been set. This would be discussed with the Prime Minister in the near future.

33. Mr Roberts expressed interest in the report's recommendation that the four parts of the nation be distinctly represented. He suggested that the Secretary of State should be asked to nominate the body to represent Northern Ireland, Scotland and Wales. Mrs Rumbold said that the WNC were considering the question of nomination and this helpful suggestion would be discussed.

Item 7: Press Notice

34. This had been dealt with under Item 4.

Item 8: Future Business

35. The Vice-Chairman noted that childcare had already been identified as a major item of business for the next meeting. The ECC's proposals for changing the law published in their document "Equal Treatment for Men and Women - Strengthening the Acts" would also need to be considered at a future meeting. The Home Office had also identified Domestic Violence as a subject for future discussion - perhaps at the next meeting.

36. On a general point Mrs Currie said that it was important to ask what are women's issues? She believed it would be helpful if Departments gave some thought to this question. It was important for the Government to define its views on women's issues rather than be lead by outmoded pressure groups.

Item 9: Date of Next Meeting

37. It was agreed to meet again in February next.

Item 10: Any Other Business

(i) WNC Report - Stress and Addiction Amongst Women

38. Mrs Rumbold reported that the WNC's report on Stress and Addiction Amongst Women had been circulated to members of the Group and she would be interested to hear any views. Mrs Currie said that a large part of the report fell within her Department's responsibilities. Officials within the Department had spoken to the WNC team some three years previously and the view was now that much of what the report recommends was either being done or has been considered. The Department of Health would be responding formally to the report but this could not be expected quickly.



Women's National Commission

An Advisory Committee to Her Majesty's Government

Cabinet Office

Government Offices, Great George Street, London SW1P 3AQ
Telephone 01-270 5903

PRESS RELEASE

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HOURS

18 JULY 1988

STRESS AND ADDICTION A GROWING PROBLEM FOR WOMEN, SAYS REPORT

Stress and Addiction are a growing problem among women, says a report out today from the Women's National Commission. They urge greater emphasis on early recognition and prevention.

Among 100 recommendations in the report are:

- National policies on alcohol and smoking with collaboration among the 17 Government departments involved
- More child care facilities so women can attend treatment clinics
- Training and re-training for GPs in early recognition of stress and substance abuse, and in counselling skills
- Avoiding automatic prescription of tranquillisers. Manufacturers should produce drugs in diminishing doses to help withdrawal
- Emphasis in health education on the ill-effects of illegal drug addiction and the risk of AIDS through sharing needles. Parents dependent on drugs, in particular women, should be encouraged to seek early treatment
- Strict monitoring and enforcement of advertising codes on alcohol and tobacco; indirect advertising avoided
- Education management on the nature, causes and management of stress encouraged for all - and should begin at school.

Background note

The Women's National Commission set up a Working Group on 'Stress and Addiction Amongst Women,' to follow up an earlier report, 'Women and the Health Service.' The Working Group was asked to consider the relationship between stress and addiction. Stress, it was recognised, is of increasing concern, especially as it affects women, and often leads to long-term addiction. The group considered alternative ways of responding to the problem and why some react negatively to stress.

The Women's National Commission was set up in 1969 as an advisory committee to the Government. It has two women as the chairmen, one appointed by the Prime Minister and the other elected for two years by Commission members. Mrs Angela Rumbold, Minister of State, Department of Education and Science, was appointed the Government Co-chairman in October 1986. Mrs Janet Jones, Chairman of the British Association for Early Childhood Education, became the elected Co-Chairman in June 1987.

The Commission consists of 50 women elected or appointed by national organisations with large and active membership of women. It is funded by the Cabinet Office and its Secretariat staffed by Civil Servants. The Commission's terms of reference are:

"to ensure by all possible means that the informed opinion of women is given its due weight in the deliberations of Government."



Home Office

NEWS RELEASE

50 Queen Anne's Gate London SW1H 9AT
(Night line 01-273 4595)

Contact Number :

October 24, 1988

01-273-4600

EQUAL OPPORTUNITIES PROOFING OF LEGISLATION - JOHN PATTEN

Equal opportunities proofing of all government legislation is to be introduced following a meeting of the Ministerial Group on Women's Issues today.

"The Government is committed to promoting equality of opportunity and to eliminating discrimination on the grounds of sex and marriage. The new procedure agreed today is a significant step in reinforcing this commitment." said John Patten, Home Office Minister of State and Chairman of the Group.

The Ministerial Group on Women's Issues was established by the Home Secretary in May 1986 to provide a co-ordinated examination of policy issues of special concern to women.

Under the new proofing system, all legislative proposals will be considered against a guidance checklist so that they do not give rise to direct or indirect discrimination. The "proofing" checklist poses a series of questions designed to make sure that government policies take full account of relevant difficulties and issues that would specifically affect women.

"It is important that civil servants recognise the equal opportunity aspects of policy proposals. We have asked departments to issue guidance to staff to ensure that all proposals comply with the Government's legal obligations and commitments, and that their impact upon women is fully understood", Mr Patten added.

The Civil Service College will be hosting seminars for male and female senior managers to make them fully aware of the new initiative and encourage them to institute staff training in support of the guidance.

NOTE TO EDITORS

The Ministerial Group on Women's Issues is chaired by John Patten MP, the Home Office Minister with special responsibility for equal opportunities. The following Ministers are members:

Angela Rumbold CBE MP
Minister of State
(Vice-Chairman)

Edwina Currie MP
Parliamentary Under
Secretary

Patrick Nicholls MP
Parliamentary Under
Secretary

Wyn Roberts MP
Minister of State

Peter Viggers MP
Parliamentary Under
Secretary

Lord James Douglas-
Hamilton MP
Parliamentary Under
Secretary

Rt Hon Richard Luce MP
Minister of State

Peter Lilley MP
Economic Secretary

Timothy Eggar MP
Parliamentary Under
Secretary

Eric Forth MP
Parliamentary Under
Secretary

Peter Lloyd MP
Parliamentary Under
Secretary

Department of Education and
Science; Co-Chairman of the
Women's National Commission

Department of Health

Department of Employment

Welsh Office

Northern Ireland Office

Scottish Office

Privy Council Office

Treasury

Foreign and Commonwealth
Office

Department of Trade and
Industry

Department of Social
Security

E=O=C

Equal Opportunities Commission

Overseas House, Quay Street, Manchester M3 3HN.
Tel. 061-833 9244

Regional Offices:

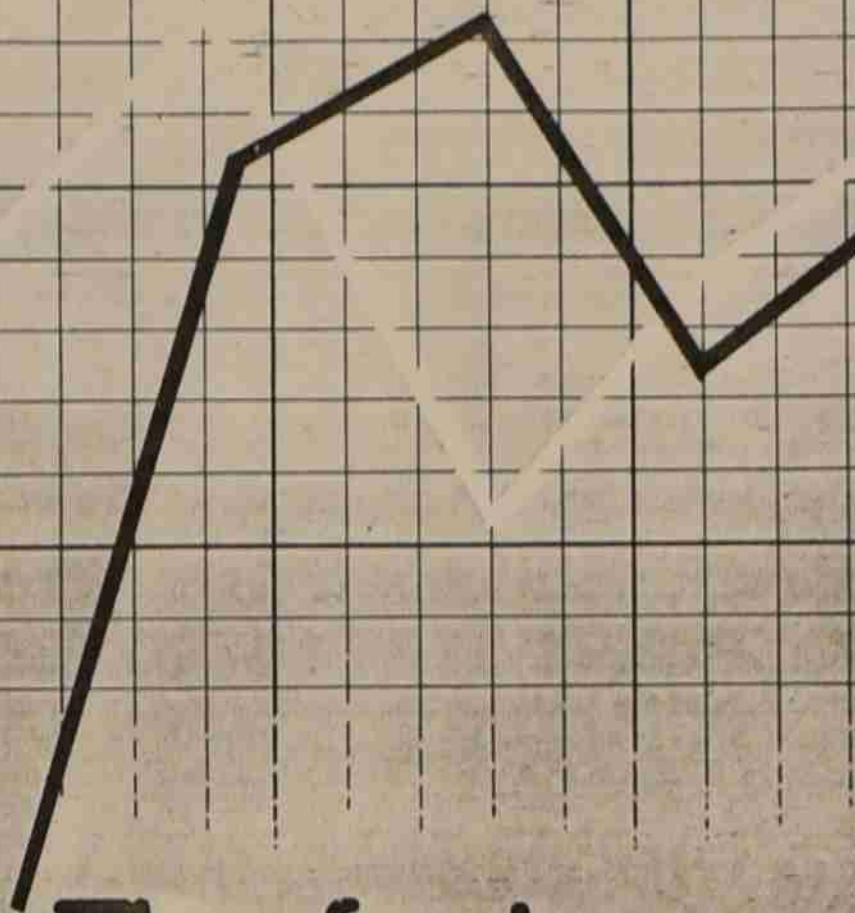
Caerwys House, Windsor Lane, Cardiff CF1 1LB.
Tel: 0222 343552

St Andrew House, 141 West Nile Street,
Glasgow G1 2RN
Tel: 041-332 8018

Press and Media enquiries only:

1 Bedford Street, London WC2E 9HD.
Tel: 01-379 6323

1988



**The fact
about
women is...**



STATISTICS UNIT, EQUAL OPPORTUNITIES COMMISSION

PLEASE READ THESE GENERAL NOTES

These figures are intended to give a broad picture of the relative position of males and females. More detailed statistics can be obtained from the publications of the departments quoted below each table.

For further information regarding any of the statistics used please contact the Commission's Research and Statistics Unit on 061-833-92

POPULATION

	1986	
	Millions	
TOTAL POPULATION: GREAT BRITAIN	55.2	
Expressed as a percentage of the total population those aged:	1986	
	Females %	Males %
under 15	9.2	9.7
15 to state pension age	30.0	32.9
over state pension age	12.1	6.1
All Ages	51.3	48.7

(Source: OPCS)

LIVE BIRTHS BY AGE OF MOTHER: ENGLAND AND WALES

Age of mother at birth	Total live births		
	Thousands		
	1971	1981	1986
Under 20	82.6	56.6	57.4
20-24	285.7	194.5	192.1
25-29	247.2	215.8	229.0
30-34	109.6	126.6	129.5
35-39	45.2	34.2	45.5
40 and over	12.7	6.9	7.6
All ages	783.2	634.5	661.0

(Source: OPCS Population Trends No. 50 Winter 1987)

ADULT POPULATION BY SEX AND MARITAL STATUS: GREAT BRITAIN

All aged 16 and over	1986	
	Females %	Males %
Single	22	30
Married (includes separated)	58	62
Widowed	14	4
Divorced	6	5

(Source: CSO Social Trends 1988)

ONE PARENT FAMILIES GREAT BRITAIN

	1984	
	Thousands	
	Females	Males
Estimated number of one parent families by sex of head of family	845	95
Expressed as a percentage of total one parent families	90	10

(Source: National Council for One Parent Families Annual Report, 1986).

EDUCATION

SCHOOL EXAMINATIONS: ENGLAND AND WALES 1984 - 1985

GCE O Level	Thousands			
	Girls		Boys	
	Entries	Awarded A-C	Entries	Awarded A-C
English language	290.1	160.7	252.3	122.5
Maths	167.9	89.4	203.1	124.9
Biology	141.5	66.9	79.1	43.9
French	92.1	55.7	60.6	35.7
History	69.1	38.9	65.4	37.7
Chemistry	67.8	39.4	91.4	56.0
Physics	53.6	31.4	138.2	79.0
Computer Science	20.4	10.9	48.1	29.5

GCE A Level	Thousands			
	Entries	Passes	Entries	Passes
English	43.9	32.8	18.4	13.5
Maths	27.5	19.4	63.5	44.3
Physics	11.6	8.3	42.3	30.6
Computer Science	1.8	1.1	8.1	5.9

(Source: Statistics of School Leavers CSE and GCE, England 1985, DES. Summer examination results 1985. Welsh Joint Education Committee).

DESTINATION OF SCHOOL LEAVERS: ENGLAND AND WALES 1985 - 1986

	Thousands	
	Girls	Boys
Degree courses	24.8	32.7
Teacher training courses	2.3	0.4
Other full-time further and higher education courses	97.5	63.1
Pupils leaving for employment/unemployment and destination not known	248.9	291.6
All leavers	373.5	387.9

(Source: Statistics of School Leavers, CSE and GCE, England 1986 DES. Statistics of Education in Wales, 1986 Welsh Office.)

YTS : Great Britain

	December 1986	
	Thousands	
	Females	Males
No of trainees	143.8	196.0

(Source: Manpower Services Commission)

FULL TIME UNDERGRADUATES AT GB UNIVERSITIES
(UK DOMICILED)

Degree subject	1985/86	
	Females	Males
Languages and related	18.5	7.8
Social sciences	14.3	16.7
Multi-disciplinary studies	12.9	14.7
Medicine and dentistry	9.9	12.2
Biological sciences	8.2	7.1
Humanities	6.6	7.3
Physical sciences	4.9	15.2
Studies allied to medicine	4.1	1.9
Mathematical sciences	3.5	10.1
Business and financial studies	3.1	5.1
Engineering and technology	2.5	24.1
Veterinary science, agriculture and related	2.1	2.5
Creative arts	1.9	1.4
Education	1.7	.5
Architecture and related	0.8	2.2
Librarianship and information science	0.1	0.1
ALL SUBJECTS	95.1	128.9

(Source: DES University Statistics Volume 1 Students and Staff 1985-1986)

UNEMPLOYMENT GREAT-BRITAIN

	January 1988	
	Females	Males
Registered unemployed	797.1	1803.3
Unemployment rate	7.1%	11.3%

(Source: Department of Employment Gazette)

	1987	
Estimated unregistered unemployed	670	220

(Source: Department of Employment)

APPRENTICES AND OTHER TRAINEES: GREAT BRITAIN

	1986	
	Females	Males
In manufacturing industries	4.0	59.7
Apprentices	14.2	24.1
Other trainees		

(Source: Department of Employment Gazette)

MAKE A NOTE OF IT...

EMPLOYMENT

EMPLOYEES IN EMPLOYMENT: GREAT BRITAIN

Industry	December 1986		
	Thousands		
	- All	Part-time	
	Females		Males
Agriculture	84	31	229
Manufacturing	1,515	295	3,590
Construction	192	67	1,287
Services, of which	7,829	3,844	6,498
Transport and communications	274	63	1,043
Distribution, hotels and catering	2,433	1,425	1,961
Banking, finance, insurance	1,095	295	1,135
Other services	4,026	2,062	2,359
All industries and services	9,620	4,237	11,604

(Source: Department of Employment Gazette)

ALL IN EMPLOYMENT, INCLUDING SELF-EMPLOYED: GREAT BRITAIN

	1986	
	Females	Males
- full-time	5,426	12,959
- part-time	4,459	569
Total	9,885	13,528

(Source: Department of Employment Gazette)

WOMEN ONLY

WORKING STATUS OF WOMEN AGED 16-59 : GREAT BRITAIN

Women aged 16-59 by marital status

The % of women who	1985		
	Work full-time	Work part-time	All economically active
Single	53	13	78
Widowed, divorced or separated	32	24	64
All non-married	47	16	74
Married	27	32	62
All women	33	27	66

(Source: General Household Survey 1985).

WORKING MOTHERS : GREAT BRITAIN

Mothers aged 16-59 by age of youngest child

The % of mothers whose youngest child is:	1985		
	Work full-time	Work part-time	All economically active
0-2 years	6	19	32
3-4 years	12	28	46
5-9 years	14	46	63
10 years and over	28	42	73
All with dependent children	17	35	56
All without dependent children	47	21	75

(Source: General Household Survey 1985).

THE LABOUR FORCE

	1986
	Millions
Total female labour force (excluding students)	11.1
Married	7.4
Non-married	3.8
Womens economic activity rates (excluding students)	%
All aged over 16	49.6
Married	53.0
Non-married	44.2
All aged 35-49 (age range with highest rate for married women)	72.5
Married	72.1
Non-married	74.5

(Source: Department of Employment Gazette)

TRENDS OVER TIME

EARNINGS: GREAT BRITAIN

Average gross hourly earnings, excluding the effects of over-time, full-time employees on adult rates:

	1971	1981	1986
	pence per hour	pence per hour	pence per hour
Women	47.2	241.2	360.7
Men	74.1	331.2	486.6
Differential	26.9	90.0	125.9
Womens' earnings as a % of mens'	63.7	72.8	74.1

(Source: Department of Employment Gazette).

WORKING HOURS : GREAT BRITAIN

Average number of hours worked in a week by full-time employees in all industries and services

	1971	1981	1986
	hours	hours	hours
Manual occupations:			
Women	38.6	38.4	38.1
Men	39.9	39.7	39.1
Non-manual occupations:			
Women	36.3	36.1	36.1
Men	37.3	37.1	37.1

(Source: Department of Employment Gazette)

ECONOMIC ACTIVITY : GREAT BRITAIN

Estimates of civilian labour force activity rates by sex for all ages 16 and over

%	1971	1981	1986
Women	43.9	47.6	49.7
Men	80.5	76.5	74.8

(Source: Department of Employment Gazette).

MARRIED WOMEN AS % OF THE LABOUR FORCE

1921	1951	1961	1971	1981	1986
3.8	11.8	16.3	23.1	25.9	27.2

(Source: Department of Employment Gazette).

Draft

6th Mem.

MINISTERIAL GROUP ON WOMEN'S ISSUES

Note of a Meeting on Monday, 24 October 1988

Present:

Mr Patten (Chairman)	Home Office
Mrs Rumbold (Vice Chairman)	Dept of Education and Science
Mrs Currie	Dept of Health
Mr Nicholls	Dept of Employment
Mr Roberts	Welsh Office
Mr Viggers	Northern Ireland Office
Lord James Douglas-Hamilton	Scottish Office
Mr Luce	Office of the Minister for the Civil Service
Mr Eggar	Foreign and Commonwealth Office
Mr Lloyd	Dept of Social Security.

Officials:

Mr Pratt)	
Mr Hill)	Home Office
Mr Loughlin)	
Mrs Catchpole)	Women's National Commission
Miss Rolfe)	
Mr Mike)	Dept of Education and Science
Mr Harris)	
Ms Thorpe)	
Miss Hicks)	Dept of Social Security
Miss Richards)	
Mr Lansdown	Welsh Office
Mrs Newman	Northern Ireland Office
Mr Miller	Scottish Office
Miss Collins	Office of the Minister for the Civil Service
Miss Boulton	Dept of Employment
Mr Millett	Foreign and Commonwealth Office
Miss Baird	Dept of Health
Miss Hart	LCD
Mr Talbot	Dept of Trade and Industry
Mr Finnegan	Treasury
Mr Evershed	Inland Revenue

Item 1: Chairman's Introductory Remarks

1. The Chairman welcomed colleagues - particularly Mr Lloyd who was attending his first meeting of the Group. He noted that apologies for absence had been received from Mr Lilley and Mr Forth.
2. Mr Eggar had notified Mr Patten that he would need to leave the meeting early and it was therefore agreed that Item 10(2) of the Agenda would be taken immediately after Item 3 - Matters Arising.
3. The Chairman noted that it had become customary for Ministers to report on contacts with women's organisations. In future it was agreed that written reports of contacts should be circulated in advance of the meeting. He himself had had meetings with several women's organisations including the 300 Group, the Mother's Union and the UK Federation of Business and Professional Women. He had been in contact with the Women Into Public Life Campaign (for which he had agreed Home Office funding for the next year) and next week would be meeting Mrs Joanna Foster, the Chair of the Equal Opportunities Commission to discuss her first six months in post.
4. Mrs Currie reported that she had regular contact with women's organisations. The most important had been a full day debate on women's health on 10 June, a conference "Promoting Women's Health" on 22 June, a speech to the national conference of the National Union of Townswomen's Guilds on 29 June and on 7 July she had made a speech at the Women of the Year Association's Supper. She had just come from the Women of the Year lunch.
5. Mr Nicholls had chaired a meeting of the Advisory Council on Women's Employment on 13 July. Mr Luce reported that he had met Mrs Foster who had agreed to speak on the Civil Service Top Management Programme and he had also spoken at the Anglo-German Foundation Seminar on equal employment opportunities in the Civil Service and public appointments.
6. Mr Viggers explained that a tripartite meeting of the Equal Opportunities Commission for Northern Ireland, the Republic of Ireland and Great Britain was taking place that day in Northern Ireland. Mr Lloyd reported on a meeting with the Women's Aid Federation and Lord James Douglas Hamilton referred to a forthcoming engagement to celebrate the Golden Jubilee of the Scottish Federation of Business and Professional Women.

7. Mrs Rumbold in her role as Co-Chairman of the Women's National Commission was in constant touch with women's groups and drew particular attention to a meeting of the Women's Organisations Interest Group of NCVO addressed by Bronwen Cohen, the author of the British report for the European Childcare Network which had specifically asked women's organisations to lobby Ministers on this issue.

8. The Chairman was gratified to hear that the number and pace of meeting with women's organisations and about women's issues appeared to be increasing. In the light of this it was agreed that officials would review at the beginning of December, the number of ministerial meetings with a view to a possible Parliamentary Question at the turn of the year.

Item 2: Minutes of the 5th Meeting

9. These were agreed.

Item 3: Matters Arising

(i) Public Appointments

10. Mr Luce reported that he had written to all Ministers in charge of Departments in September asking that the guidelines on public appointments prepared by the EOC and PAU jointly be sent to Chairmen of NDPBs with a joint message. The Cabinet Office had nearly completed a review of Public Appointments and would shortly be reporting to the Prime Minister: the proportion of women holding public appointment now stood at 21%. Mr Luce suggested that the proportion could continue to increase if all Ministers ensured that women's names were always considered.

Item 10(2): CEDAW Report (MGWI 7/88)

11. Mr Eggar drew the attention of colleagues to his Department's paper which set out the reporting arrangements on CEDAW. The UK's report would be reviewed by a committee of experts in Vienna in February 1989. He emphasised that this should be taken seriously and dealt with by senior officials within Departments. There was a need to identify an appropriate official - preferably at Grade 3 or 5 level to lead the delegation. Presentationally it would be better if the official was a woman. The person need not have responsibility for the areas covered. Mrs Rumbold asked that the WNC should be involved in any briefing sessions with the delegation.

10. Mr Eggar informed the Group that following the UK's failure to get its nominee elected to the Commission on the Status of Women it was hoped to put forward a candidate for election to CEDAW. The Foreign and Commonwealth Office had identified one or two potential people and would shortly be canvassing Departments at official level asking for names of suitable candidates.

Item 4: Equal Opportunity Proofing (MGWI 4/88)

13. The Chairman introduced the Home Office paper which provided model instructions for Departments to use as a basis for guidance to their staff. The instructions had been prepared on the basis of the Department of Employment's paper which had been discussed at the last meeting. The opportunity had been taken to extend the model instructions to cover racial discrimination. Mr Patten made the point that, although the instructions necessarily mainly covered the legal aspects of discriminatory treatment, the aim should be for policy to be decided in the spirit of equal opportunities and not just within its legal constraints. He invited colleagues to comment on the guidelines.

14. Mrs Rumbold speaking both as WNC Co-Chairman and a Departmental Minister said that the guidelines were very good indeed and she fully endorsed them.

15. Mr Nicholls expressed concern that the guidance invited officials to consult the EOC and CRE which were not impartial organisations. The Chairman said it should be remembered that the EOC and CRE were statutory bodies with a lot of useful expertise. The guidelines stated that it would not always be appropriate to discuss proposals with them and advised officials to seek advice first from within their own departments, the Home Office or the Department of Employment. Mr Luce agreed that it would be useful to mention the two Commissions. Mr Nicholls said he was not asking for the reference to the Commissions to be removed but that the wording be more closely looked at.

16. The model instructions and checklist were agreed subject to Home Office and Department of Employment officials agreeing a suitable rewording of the reference to the EOC and CRE. The Chairman thanked officials concerned in the preparation of the model instructions which he considered were written very clearly and free of jargon.

17. Mr Luce reported that the Civil Service College at Sunningdale would be running a number of one day courses to cover the principles of equal opportunity proofing.

18. The Chairman thanked Ministers for welcoming the concept of equal opportunity proofing and it was agreed to issue the press notice at Item 7 of the agenda. He was grateful to Mrs Currie for the suggestion that a press release be issued after each Group meeting and that in future it would be appropriate for such notices to quote different members of the Group.

Item 5: Childcare (MGWI 5/88) and MGWI 8/88)

19. In introducing this item, the Chairman apologised that he would need to leave during the discussion and Mrs Rumbold would then take the Chair.

20. He did not think the Group was going to reach major conclusions on this subject at the meeting as it was a subject on which a lot more work was required. Colleagues were invited to consider the statement of Bronwen Cohen in the UK National Report to the European Childcare Network that "the cost of childbearing, which affects women but not men, is now probably the single greatest obstacle to equality of opportunity". Mr Patten thanked officials from the Department of Health and the Welsh Office for their preparation of good and thoughtful papers. After they had been introduced he would like colleagues to consider how far the Government should intervene in the provision of childcare or whether they should merely act to ensure that a reasonable range and quality of childcare was available. He appreciated that these problems would not be solved that afternoon but the subject would be a good test of the Group's ability to formulate policy rather than exchange views.

21. Mrs Currie introducing the Department of Health paper said that one of the main concerns of the Department was childcare standards. She drew particular attention to Appendix 5 of the paper which dealt with the problems the NHS was experiencing as a large employer of women and the recruitment problems demographic changes would cause. She had seen some examples of successful self-financing nurseries at some London hospitals - at reasonable cost. She considered that more could be done to publicise the tax concessions which were available to employers who provided childcare facilities but was reluctant to see the Government do much more because of expenditure constraints; although it had a role as an employer. Local

authority social services were already overburdened with other responsibilities. She saw the subject as very much one for the Department of Employment as a facilitator and encourager of employers. Schools could also be involved. Mrs Currie warned that it would be desirable to have a well prepared childcare policy otherwise the EC would be imposing unwelcome policies. Childcare provision had been the subject of debate at all the recent Party Conferences and was now very much a political issue in the USA.

22. Mr Patten agreed that Mrs Currie was right to mention the pitfalls of public expenditure problems and the EC implications. It was also true that childcare was rapidly climbing up the political agenda and likely to become a substantive issue.

23. Mr Roberts introduced the Welsh Office paper which had been prepared taking into account his Department's wide range of policy interests. He believed that schools played the major part in childcare and more could be done to develop services for children out of school hours through such bodies as the National Out of School Alliance. There was a cost problem for employers in providing services - many women worked in low profit industries where the costs of providing childcare facilities would be a major factor. This helped to keep childcare standards low. However public investment in childcare need not be regarded as negative as this could reduce dependence on benefits; help maintain economic growth and reduce juvenile crime and educational problems.

24. Mrs Rumbold (assuming the Chair on Mr Patten's departure) thanked Mr Roberts for the Welsh Office's thoughtful paper which was a very useful contribution to the debate.

25. Mr Nicholls believed that the Government needed to do something positive on childcare otherwise it might be forced to do something by the EC. He did sound a note of caution that some of the Government's supporters would not welcome Government involvement. Any Government initiative should be presented as enabling parents to fulfil their responsibilities rather than shedding them. He noted that the Welsh Office paper advocated Government intervention and he also believed this was not something which could be left to employers themselves.

26. Mr Luce agreed that both the papers were very useful. He thought the most powerful argument for the provision of childcare was the economic

argument on recruitment and retention and the forthcoming drop in the numbers of young people in the 16-19 age group in the early 1990s. He believed it essential that a working group of officials should be formed which should not ignore the question of tax relief and should look at the range of facilities available. Lord James Douglas-Hamilton and Mr Viggers also welcomed the papers.

27. Mr Lloyd believed it was not true to say that market forces had failed in this area - the problem was only just coming into focus and the Government should be wary of jumping in. His Department had a very specific interest in childcare costs in relation to childcare costs for lone parents being disregarded for calculation of income support. The system had been changed on the basis that the Exchequer should not be required to meet work related expenses. The Department had felt able to do this as the number of lone parents with significant childcare expenses was very low. However the effects of the change were being very carefully monitored.

28. Mrs Currie thanked colleagues for their comments on the paper. She believed that there was a serious problem of a shortage of labour approaching which previously had been met by inward migration. Whatever the philosophical arguments, provision of childcare to enable women with children to continue working might be a more pragmatic solution than large pay rises to retain staff - such as that recently paid to the nurses.

29. Mr Roberts also thanked colleagues for their contributions. He echoed Mr Luce's comments that the main arguments were economic. There was an identified need to provide the correct arrangements to encourage women with children to return to work.

30. The Vice-Chairman said it had been an interesting discussion and most colleagues seemed of one mind. There was a need to know more about what exists on the ground both in pre-school provision and provision for children of school age. This should be looked at in the positive light of ensuring that women in work could choose to remain in work when they had children.

31. It was agreed that a working group of officials should be set up from the relevant departments to look at the nature of the problem, the extent of current provision and consider the recommendations in the Department of Health and Welsh Office papers - taking into account the discussion at the

Ministerial Group and Ministers' reservations about direct Government intervention. So as not to lose momentum on the subject the Group would look at this subject again at a meeting in February with a view to making a public statement.

Item 6: Review of Women's National Commission (MGWI 6/88)

32. Mrs Rumbold hoped that all colleagues had had the opportunity of seeing the Report of the Review of the WNC by Valerie Hammond. She reported that she had written to Mr Patten to say that the WNC had accepted the recommendations of the report and she had sent a memorandum to the Prime Minister setting out the main conclusions of the report. A time limit of two years for the delivery of the recommendations had been set. This would be discussed with the Prime Minister in the near future.

33. Mr Roberts expressed interest in the report's recommendation that the four parts of the nation be distinctly represented. He suggested that the Secretary of State should be asked to nominate the body to represent Northern Ireland, Scotland and Wales. Mrs Rumbold said that the WNC were considering the question of nomination and this helpful suggestion would be discussed.

Item 7: Press Notice

34. This had been dealt with under Item 4.

Item 8: Future Business

35. The Vice-Chairman noted that childcare had already been identified as a major item of business for the next meeting. The ECC's proposals for changing the law published in their document "Equal Treatment for Men and Women - Strengthening the Acts" would also need to be considered at a future meeting. The Home Office had also identified Domestic Violence as a subject for future discussion - perhaps at the next meeting.

36. On a general point Mrs Currie said that it was important to ask what are women's issues? She believed it would be helpful if Departments gave some thought to this question. It was important for the Government to define its views on women's issues rather than be lead by outmoded pressure groups.

Item 9: Date of Next Meeting

37. It was agreed to meet again in February next.

Item 10: Any Other Business

(i) WNC Report - Stress and Addiction Amongst Women

38. Mrs Rumbold reported that the WNC's report on Stress and Addiction Amongst Women had been circulated to members of the Group and she would be interested to hear any views. Mrs Currie said that a large part of the report fell within her Department's responsibilities. Officials within the Department had spoken to the WNC team some three years previously and the view was now that much of what the report recommends was either being done or has been considered. The Department of Health would be responding formally to the report but this could not be expected quickly.



Women's National Commission

An Advisory Committee to Her Majesty's Government

Cabinet Office

Government Offices, Great George Street, London SW1P 3AQ
Telephone 01-270 5903

PRESS RELEASE

PLEASE NOTE EMBARGO
NOT FOR PUBLICATION OR
BROADCAST UNTIL
HOURS

18 JULY 1988

STRESS AND ADDICTION A GROWING PROBLEM FOR WOMEN, SAYS REPORT

Stress and Addiction are a growing problem among women, says a report out today from the Women's National Commission. They urge greater emphasis on early recognition and prevention.

Among 100 recommendations in the report are:

- National policies on alcohol and smoking with collaboration among the 17 Government departments involved
- More child care facilities so women can attend treatment clinics
- Training and re-training for GPs in early recognition of stress and substance abuse, and in counselling skills
- Avoiding automatic prescription of tranquillisers. Manufacturers should produce drugs in diminishing doses to help withdrawal
- Emphasis in health education on the ill-effects of illegal drug addiction and the risk of AIDS through sharing needles. Parents dependent on drugs, in particular women, should be encouraged to seek early treatment
- Strict monitoring and enforcement of advertising codes on alcohol and tobacco; indirect advertising avoided
- Education management on the nature, causes and management of stress encouraged for all - and should begin at school.

Background note

The Women's National Commission set up a Working Group on 'Stress and Addiction Amongst Women,' to follow up an earlier report, 'Women and the Health Service.' The Working Group was asked to consider the relationship between stress and addiction. Stress, it was recognised, is of increasing concern, especially as it affects women, and often leads to long-term addiction. The group considered alternative ways of responding to the problem and why some react negatively to stress.

The Women's National Commission was set up in 1969 as an advisory committee to the Government. It has two women as the chairmen, one appointed by the Prime Minister and the other elected for two years by Commission members. Mrs Angela Rumbold, Minister of State, Department of Education and Science, was appointed the Government Co-chairman in October 1986. Mrs Janet Jones, Chairman of the British Association for Early Childhood Education, became the elected Co-Chairman in June 1987.

The Commission consists of 50 women elected or appointed by national organisations with large and active membership of women. It is funded by the Cabinet Office and its Secretariat staffed by Civil Servants. The Commission's terms of reference are:

"to ensure by all possible means that the informed opinion of women is given its due weight in the deliberations of Government."



Home Office

NEWS RELEASE

50 Queen Anne's Gate London SW1H 9AT
(Night line 01-273 4595)

Contact Number:

October 24, 1988

01-273-4600

EQUAL OPPORTUNITIES PROOFING OF LEGISLATION - JOHN PATTEN

Equal opportunities proofing of all government legislation is to be introduced following a meeting of the Ministerial Group on Women's Issues today.

"The Government is committed to promoting equality of opportunity and to eliminating discrimination on the grounds of sex and marriage. The new procedure agreed today is a significant step in reinforcing this commitment." said John Patten, Home Office Minister of State and Chairman of the Group.

The Ministerial Group on Women's Issues was established by the Home Secretary in May 1986 to provide a co-ordinated examination of policy issues of special concern to women.

Under the new proofing system, all legislative proposals will be considered against a guidance checklist so that they do not give rise to direct or indirect discrimination. The "proofing" checklist poses a series of questions designed to make sure that government policies take full account of relevant difficulties and issues that would specifically affect women.

"It is important that civil servants recognise the equal opportunity aspects of policy proposals. We have asked departments to issue guidance to staff to ensure that all proposals comply with the Government's legal obligations and commitments, and that their impact upon women is fully understood", Mr Patten added.

The Civil Service College will be hosting seminars for male and female senior managers to make them fully aware of the new initiative and encourage them to institute staff training in support of the guidance.

NOTE TO EDITORS

The Ministerial Group on Women's Issues is chaired by John Patten MP, the Home Office Minister with special responsibility for equal opportunities. The following Ministers are members:

Angela Rumbold CBE MP
Minister of State
(Vice-Chairman)

Edwina Currie MP
Parliamentary Under
Secretary

Patrick Nicholls MP
Parliamentary Under
Secretary

Wyn Roberts MP
Minister of State

Peter Viggers MP
Parliamentary Under
Secretary

Lord James Douglas-
Hamilton MP
Parliamentary Under
Secretary

Rt Hon Richard Luce MP
Minister of State

Peter Lilley MP
Economic Secretary

Timothy Eggar MP
Parliamentary Under
Secretary

Eric Forth MP
Parliamentary Under
Secretary

Peter Lloyd MP
Parliamentary Under
Secretary

Department of Education and
Science; Co-Chairman of the
Women's National Commission

Department of Health

Department of Employment

Welsh Office

Northern Ireland Office

Scottish Office

Privy Council Office

Treasury

Foreign and Commonwealth
Office

Department of Trade and
Industry

Department of Social
Security

WOMEN ONLY

WORKING STATUS OF WOMEN AGED 16-59 : GREAT BRITAIN Women aged 16-59 by marital status

The % of women who	1985		All economically active
	Work full-time	Work part-time	
Single	53	13	78
Widowed, divorced or separated	32	24	64
All non-married	47	16	74
Married	27	32	62
All women	33	27	56

(Source: General Household Survey 1985).

WORKING MOTHERS : GREAT BRITAIN

Mothers aged 16-59 by age of youngest child

The % of mothers whose youngest child is:	1985		All economically active
	Work full-time	Work part-time	
0-2 years	6	19	32
3-4 years	12	28	46
5-9 years	14	46	63
10 years and over	28	42	73
All with dependent children	17	35	56
All without dependent children	47	21	75

(Source: General Household Survey 1985).

THE LABOUR FORCE

	1986
Total female labour force (excluding students)	Millions 11.1
Married	7.4
Non-married	3.8
Womens economic activity rates (excluding students)	%
All aged over 16	49.6
Married	53.0
Non-married	44.2
All aged 35-49 (age range with highest rate for married women)	72.5
Married	72.1
Non-married	74.5

(Source: Department of Employment Gazette)

TRENDS OVER TIME

EARNINGS : GREAT BRITAIN

Average gross hourly earnings, excluding the effects of full-time employees on adult rates.

	1971	1981	1986
Women	pence per hour 47.2	pence per hour 241.2	pence per hour 360.7
Men	74.1	331.2	486.6
Differential	26.9	90.0	125.9
Womens' earnings as a % of mens'	63.7	72.8	74.1

(Source: Department of Employment Gazette).

WORKING HOURS : GREAT BRITAIN

Average number of hours worked in a week by full-time employees in all industries and services

	1971	1981	1986
Manual occupations:	hours	hours	hours
Women	38.6	38.4	38.1
Men	39.9	39.7	39.1
Non-manual occupations:	hours	hours	hours
Women	36.3	36.1	36.1
Men	37.3	37.1	37.1

(Source: Department of Employment Gazette)

ECONOMIC ACTIVITY : GREAT BRITAIN

Estimates of civilian labour force activity rates by sex for all ages 16 and over

	1971	1981	1986
Women	% 43.9	% 47.6	% 49.7
Men	80.5	76.5	74.8

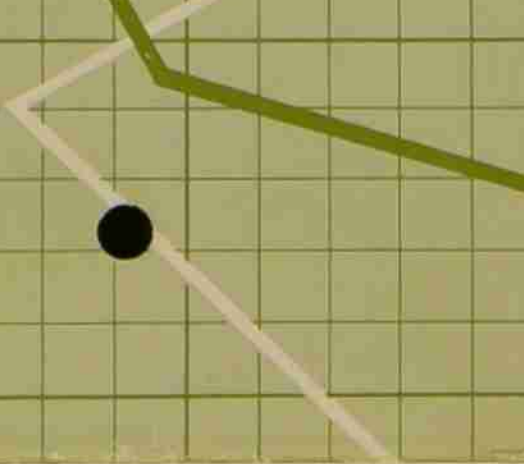
(Source: Department of Employment Gazette).

MARRIED WOMEN AS % OF THE LABOUR FORCE

	1921	1951	1961	1971	1981	1986
	3.8	11.8	16.3	23.1	25.9	27.2

(Source: Department of Employment Gazette).

1988



The fact about women is...



STATISTICS UNIT, EQUAL OPPORTUNITIES COMMISSION

EOC

Equal Opportunities Commission

Overseas House, Quay Street, Manchester M3 3HN.
Tel. 061-833 9244

Regional Offices:

Caerwys House, Windsor Lane, Cardiff CF1 1LB.

Tel: 0222 343552

St Andrew House, 141 West Nile Street,

Glasgow G1 2RN

Tel: 041-332 8018

Press and Media enquiries only:

1 Bedford Street, London WC2E 9HD.

Tel: 01-379 6323

PLEASE READ THESE GENERAL NOTES

These figures are intended to give a broad picture of the relative position of males and females. More detailed statistics can be obtained from the publications of the departments quoted below each table.

For further information regarding any of the statistics used please contact the Commission's Research and Statistics Unit on 061-833-9244.

POPULATION

TOTAL POPULATION: GREAT BRITAIN

Expressed as a percentage of the total population those aged:

	1986	
	Females	Males
	%	%
under 15	9.2	9.7
15 to state pension age	30.0	32.9
over state pension age	12.1	6.1
All Ages	51.3	48.7

(Source: OPCS)

LIVE BIRTHS BY AGE OF MOTHER: ENGLAND AND WALES

Age of mother at birth	Total live births		1986
	1971	1981	
Under 20	82.6	56.6	57.4
20-24	285.7	194.5	192.1
25-29	247.2	215.8	229.0
30-34	109.6	126.6	129.5
35-39	45.2	34.2	45.5
40 and over	12.7	6.9	7.6
All ages	783.2	634.5	661.0

(Source: OPCS Population Trends No. 50 Winter 1987)

ADULT POPULATION BY SEX AND MARITAL STATUS: GREAT BRITAIN

All aged 16 and over	1986	
	Females	Males
	%	%
Single	22	30
Married (includes separated)	58	62
Widowed	14	4
Divorced	6	5

(Source: CSO Social Trends 1988)

ONE PARENT FAMILIES: GREAT BRITAIN

	1984	
	Females	Males
	Thousands	Thousands
Estimated number of one parent families by sex of head of family	845	95
Expressed as a percentage of total one parent families	%	%
	90	10

(Source: National Council for One Parent Families Annual Report, 1986).

EDUCATION

SCHOOL EXAMINATIONS: ENGLAND AND WALES

1984 - 1985

GCE O Level	Girls		Boys	
	Entries	Awarded A-C	Entries	Awarded A-C
English language	290.1	160.7	252.3	122.5
Maths	167.9	89.4	203.1	124.9
Biology	141.5	66.9	79.1	43.9
French	92.1	55.7	60.6	35.7
History	69.1	38.9	65.4	37.7
Chemistry	67.8	39.4	91.4	56.0
Physics	53.6	31.4	138.2	79.0
Computer Science	20.4	10.9	48.1	29.5

GCE A Level	Entries		Passes	
	English	Maths	Physics	Computer Science
English	43.9	32.8	18.4	13.5
Maths	27.5	19.4	63.5	44.3
Physics	11.6	8.3	42.3	30.6
Computer Science	1.8	1.1	8.1	5.9

(Source: Statistics of School Leavers CSE and GCE, England 1985, DES. Summer examination results 1985, Welsh Joint Education Committee).

DESTINATION OF SCHOOL LEAVERS: ENGLAND AND WALES

1985 - 1986

	Thousands	
	Girls	Boys
Degree courses	24.8	32.7
Teacher training courses	2.3	0.4
Other full-time further and higher education courses	97.5	63.1

	Thousands	
	Females	Males
Pupils leaving for employment/unemployment and destination not known	248.9	291.6
All leavers	373.5	387.9

(Source: Statistics of School Leavers, CSE and GCE, England 1986, DES. Statistics of Education in Wales, 1986 Welsh Office.)

YTS : Great Britain

No of trainees	December 1986	
	Females	Males
	Thousands	Thousands
	143.8	196.0

(Source: Manpower Services Commission)

FULL TIME UNDERGRADUATES AT GB UNIVERSITIES (UK DOMICILED)

Degree subject	1985/86	
	Females	Males
	Thousands	Thousands
Languages and related	18.5	7.8
Social sciences	14.3	16.7
Multi-disciplinary studies	12.9	14.7
Medicine and dentistry	9.9	12.2
Biological sciences	8.2	7.1
Humanities	6.6	7.3
Physical sciences	4.9	15.2
Studies allied to medicine	4.1	1.9
Mathematical sciences	3.5	10.1
Business and financial studies	3.1	5.1
Engineering and technology	2.5	24.1
Veterinary science, agriculture and related	2.1	2.5
Creative arts	1.9	1.4
Education	1.7	1.4
Architecture and related	1.9	0.5
Librarianship and information science	0.8	2.2
ALL SUBJECTS	95.1	128.9

(Source: DES University Statistics Volume 1 Students and Staff 1985-1986)

EMPLOYMENT

EMPLOYEES IN EMPLOYMENT: GREAT BRITAIN

	December 1986	
	Females	Males
	Thousands	Thousands
Industry	All	Part-time
Agriculture	84	31
Manufacturing	1,515	295
Construction	192	67
Services, of which	7,829	3,844
Transport and communications	274	63
Distribution, hotels and catering	2,433	1,425
Banking, finance, insurance	1,095	295
Other services	4,026	2,062
All industries and services	9,620	4,237

(Source: Department of Employment Gazette).

ALL IN EMPLOYMENT, INCLUDING SELF-EMPLOYED: GREAT BRITAIN

	1986	
	Females	Males
	Thousands	Thousands
- full-time	5,426	12,959
- part-time	4,459	569
	9,885	13,528

(Source: Department of Employment Gazette).

UNEMPLOYMENT: GREAT BRITAIN

	January 1988	
	Females	Males
	Thousands	Thousands
Registered unemployed	797.1	1803.3
Unemployment rate	7.1%	11.3%

(Source: Department of Employment Gazette).

	1987	
	Females	Males
	Thousands	Thousands
Estimated unregistered unemployed	670	220

(Source: Department of Employment).

APPRENTICES AND OTHER TRAINEES: GREAT BRITAIN

	1986	
	Females	Males
	Thousands	Thousands
In manufacturing industries	4.0	59.7
Apprentices	14.2	24.1
Other trainees		

(Source: Department of Employment Gazette).

MAKE A NOTE OF IT...


CABINET OFFICE
OFFICE of the MINISTER
for the CIVIL SERVICE

CCPO
23/9/88

The Minister of State
Privy Council Office
The Rt. Hon. Richard Luce MP

DL

Horse Guards Road
London SW1P 3AL
Telephone: 01-270 5929

C88/4630

Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
11 Downing Street
LONDON SW1

26 September 1988

Dear Nigel,

WOMEN AND PUBLIC APPOINTMENTS

You may recall that in February Lady Platt, then the Chairman of the Equal Opportunities Commission, wrote to Ministers in charge of Departments enclosing a copy of "Guidelines for Government Departments" which had been published jointly by the EOC and the Public Appointments Unit (PAU) here in the Cabinet Office. She asked all Ministers to give active support to the Guidelines and I understand that she was greatly encouraged by the replies from colleagues.

Lady Platt suggested subsequently that the Guidelines might be circulated to the Chairmen of all government sponsored bodies, an idea which I support. I am therefore attaching a covering note in the form of a Joint Message which my office has prepared with the help of the EOC. I would be most grateful if you were to pass this Message and a copy of the Guidelines (perhaps with a personal endorsement) to each of your sponsored bodies.

If Departments require additional copies of the Joint Message and the Guidelines, they are available from the Public Appointments Unit (telephone GTN 270 6217).

I am copying this letter to all Ministers in charge of Departments.

*Yours
Rich L*

RICHARD LUCE



WOMEN AND PUBLIC APPOINTMENTS

JOINT MESSAGE FROM THE CABINET OFFICE AND THE EQUAL OPPORTUNITIES COMMISSION

Earlier this year the Public Appointments Unit and the Equal Opportunities Commission issued guidance to government departments aimed at improving the procedures to ensure that there is equality of opportunity between men and women in identifying and considering candidates for public appointments. The guidelines (copy attached) have been circulated widely within departments and are now being sent to all Chairmen of public bodies for information. We hope you will find them helpful.

We are concerned that only 19% of places on public bodies are currently filled by women and there are still too many boards and committees which are entirely male.

We regard equality of opportunity as a worthwhile objective in itself and also consider that the appointment of more women will be beneficial to the processes of decision making undertaken by public bodies. Women's under-representation in public life means that there is a considerable loss of potential talent, experience and expertise.

We should, therefore, like to ask all of you to do what you can to ensure that more women's names are considered. We are not, of course, asking you to discriminate in favour of women, but rather to consider whether there are ways in which women who have the necessary potential can be encouraged to come forward. You may find the practical suggestions in the joint report helpful in making recommendations to Ministers for appointment or indeed in making appointments to any sub-committee whose members are not appointed by Ministers. The following ideas may also be useful:-

- 1) Consult any women members of your committee.
- 2) Consult professional associations (the proportion of women members of institutions such as the Institute of Actuaries, Chartered Accountants, Bankers, Town Planning, Marketing, etc. has increased significantly in the last few years).
- 3) Examine the qualifications and personal qualities required to see if women are inadvertently excluded. An example is the requirement for appointees to be Managing Directors or Heads of large enterprises. Past discrimination and the effect of women's dual role at home and work means that able women may be found at a different level than men of similar ability.
- 4) Alert the nominating bodies: additional copies of the report are available from the Public Appointments Unit for this if required.

As a chairman of a public body, you will be aware of the important role which such bodies play in society. You will also be aware of the difficulties of finding high calibre candidates who are willing to undertake this valuable work.

In seeking a greater proportion of women's names among the nominations, we wish not only to promote equality of opportunity but also to make maximum use of human resources which may be available for public service.

September 1988

Public Appointments Unit
Horse Guards Road
LONDON
SW1P 3AL

Women and Public Appointments:

Guidelines for
Government Departments



**Equal
Opportunities
Commission**

AND

PUBLIC APPOINTMENTS UNIT

Women and Public Appointments:
Guidelines for Government Departments

Equal Opportunities Commission/Public Appointments Unit

January 1988

WOMEN AND PUBLIC APPOINTMENTS:

Guidelines for Government Departments

This document is issued jointly by the Public Appointments Unit and the Equal Opportunities Commission:

- * for the promotion of equality of opportunity between men and women in public life
- * for the elimination of sex discrimination in public appointments
- * to give guidance as to what steps it is reasonably practicable for government departments to take to ensure that public appointments are not discriminatory

S.86 of the Sex Discrimination Act (S.D.A.) imposes on a government department an obligation not to discriminate in the way in which an appointment or arrangements for determining who should be offered an appointment are made, and covers cases where there is no contract of employment. The S.D.A. requires arrangements for public appointments to be made in the same way as if the appointment did constitute employment for the purposes of S.6 of the Sex Discrimination Act.

Introduction

There are just under 45,000 places to be filled on public bodies. More than half of these posts are nominated and appointed by government departments. The remainder of the places are filled by government appointment from names put forward by outside bodies such as trades unions, industry and local authorities.

Ten years ago female appointments to public bodies were not monitored. From 1977 to 1982, the Equal Opportunities Commission conducted annual surveys of government departments to ascertain the number of women appointed to public bodies for which Ministers are responsible. Because of this initiative, the task of collecting these statistics was taken on by the Cabinet Office.

In 1983, the Cabinet Office's annual publication Public Bodies showed for the first time men's and women's appointments separately. This information shows that women increased as a proportion of appointees from 17.4% in 1983 to 19% in 1987.

In 1986 the Women's National Commission (WNC) took a further initiative, consulting ministers and women's organisations. The WNC recommended that Ministers provide further information to open up the public appointments system to help more women to come forward and be considered. Government departments responded positively to help produce a manual, the WNC Information Pack, and to nominate a contact official for each department. The WNC also produced an Action Plan for Women's Organisations and a revised nomination form more suited to women with broken career patterns.

Although there has been an increase in women's representation overall, the general underlying pattern is that women remain unrepresented in many areas and under-represented in others. Where women are represented on public bodies, they are in almost every instance outnumbered by men¹.

¹The exceptions are those bodies where women would be expected to be well represented: Central Council for Nursing, Midwifery and Health Visiting 19 men 24 women; Equal Opportunities Commission 4 men 10 women; Advisory Committee on Women's Employment 4 men 17 women. It is interesting to note that in all these cases men maintain reasonable representation.

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The cause for Concern

Women are at least equally affected with men by the decisions which public bodies make. Clearly women should not be excluded from public life - yet the statistics show that they are.

The overall proportion of women on public bodies of nearly 20%² does not look too bad, but the largest proportion of women are found in local and regional bodies such as district health authorities, prison visitors and social security appeals tribunals. There are fewer women on central bodies which have executive functions or advise government.

51% of the population of this country are women. Increasingly women possess the requisite qualifications in equal measure as do men. Women are well educated. They comprise about 40% of University and polytechnic undergraduates and 32% of postgraduates in universities.

Women constitute 44% of the UK workforce and current research into women's employment patterns demonstrates the strength of women's commitment to the labour market.

In industry and commerce, women's potential is now well recognised. As this potential is developed and more women achieve senior positions there will be a growing reservoir of talent from which public appointments can be drawn.

Women in the public sector have begun to make considerable progress. Many local authorities have proactive policies in equal opportunities and the growing numbers of women chief officers in local government is an encouraging trend. Such experience is relevant to the work of many public bodies.

² Cabinet Office, Public Bodies 1987 H.M.S.O. 1987.

Over the last twenty years women have played an increasing role in local government. In 1964 the Maud Committee estimated that women made up approximately 12% of local councillors in England and Wales. In 1986 that figure was approximately 20%. The skills that women have gained as councillors in local government can and should be transferred to regional and national public bodies.

In their traditional role, women are major consumers of public services. They are major purchasers of domestic equipment, food and clothing. They are now substantial purchasers of homes and cars. Their experiences, good and bad, as consumers are extensive and very relevant to public life.

Successive governments have voiced their commitment to achieving equality of opportunity between the sexes. Public bodies play a significant part in the decision-making which shapes society. For example, public bodies have extensive influence in employment³ where progress towards equality has been made, but where there is still a considerable distance to go.

We regard equality of opportunity in public appointments not only as a worthwhile objective in itself, but also a means of promoting equal opportunities in all spheres of life.

These guidance notes are intended to be helpful to responsible ministers and civil servants within government departments who are required to assist in the process of bringing forward names of individuals to serve on public bodies and who wish to locate suitable female nominees in recognition of the under-representation of women.

3

Examples:

Industrial Training Boards 134 men 7 women Wages Councils
544 men 114 women Advisory Committee on Homeworking 9 men 3
women.

STRATEGIES TO AVOID DISCRIMINATION

There is widespread acknowledgement on the part of those involved in public appointments of the need for balance on each public body. In the recent past, it may have been considered that a gender 'balance' was achieved provided at least one woman served on each body. Such tokenism is completely unacceptable.

Balance is usually seen in the context of finding, for any particular appointment, the right mix of skills, expertise, background and experience to complement other members of the committee. While it is legitimate to consider gender as one such factor, and to aim for an equitable proportion of women overall, any given woman can be expected to offer a range of skills and experience. A recent real-life request, which the Women into Public life campaign was able to meet, was for a woman who was based outside London, was in her mid-forties and who had been in engineering or the manufacturing industry.

Locating suitable individuals for public appointments is a process parallel to recruitment and selection for employment. Good practice in employment suggests that a clear job description and person specification should be drawn up, and that inadvertent discrimination is thus reduced. In the same way, an objective statement, for any particular appointment, of the desirable requirements can help to clear the way for seeking men or women;

1. Some qualifications or requirements applied to a public appointment can effectively inhibit applications from women, and should be considered and retained only if they are justifiable. An example here is the requirement that appointees should have reached a high level of occupational status. Women are less well represented in the higher echelons of industry, academic institutions and public sector employment for a number of reasons, not least of which is past discrimination. Women will be found at a lower level in the hierarchy for some years to come, but a great many of them will still possess the appropriate abilities to merit a public appointment.

* Able women may be found at a different level than men of similar ability.

2. It is sometimes assumed that women as a group have

particular interests: in children or in health, for example, and those considered for appointment are thus channelled into traditional areas such as the health and caring services, even when their expertise and interest lie entirely elsewhere, for instance in small business enterprises or in broad economic or environmental issues.

* Each individual should be assessed according to his or her personal capacity to carry out a particular public appointment. Assumptions that only men or only women will be able to perform certain kinds of work need to be avoided.

3. The uneven impact of family responsibilities on some women's careers can mean that they follow a different pattern from men's. They may have had a career break and in consequence had to return to work at a lower level than their ability would merit. Yet their activities during that break can have had great value applicable to public life: controlling budgets, dealing with people, managing time; and in their traditional role, women are major users of public services including transport and health services.

It is important in reading the outline of a woman's life provided by the curriculum vitae, that requirements which apply to men, but with which many women cannot comply, are avoided. For example, the experience and skills of women in their thirties, forties and fifties can differ considerably from those of men in the same age groups.

Moreover women's experience is often overlooked. For example, women's contribution in the voluntary sector has long been recognised, but the considerable management expertise this experience gives them is consistently undervalued.

* When reading a curriculum vitae, the whole of an applicant's life experience should be taken into account.

ACTION PLAN

Finding suitable women candidates will require serious commitment not only for those civil servants directly concerned with the administration of public appointments, but also from colleagues and senior staff in each department. There is now clear evidence of the political will to redress the imbalance. It is a question of translating this strategy into action.

1. Give more time and thought to the procedure.
2. Examine the qualifications required and eliminate any which are unnecessary.
3. Identify sources of suitable candidates. (See Sources of New Names p9)
4. Identify the size of the pool available.
5. Check that the application form, where used, is designed to allow applicants to demonstrate all their relevant experience, not simply their experience in paid employment.
6. Check that any literature for intending applicants is free from sex bias, and does not assume that the applicant is male.
7. Evaluate curriculum vitae alongside any other relevant information.
8. Ensure that unconventional experience is valued.
9. Ensure that clear and full details accompany an invitation to serve on a public body. Time commitment and information on day allowances payable (e.g. child care payments) should be included, particularly when the initial informal contact is made by telephone.
10. Use the Public Appointments Unit, especially if there is particular difficulty in finding women candidates to ensure that all possible sources have been tried.

SOURCES OF NEW NAMES

It is widely acknowledged that government departments have difficulty in finding suitable women to shortlist. In order to increase the number of women's names coming forward, reliance cannot exclusively be placed on the procedures which have been used in the past. New sources of recruitment to public life need to be opened up:

11. Activate the nominating bodies

To increase the supply of women's names it is vital to enlist the practical support of the nominating bodies. Some government departments have already written to their nominating bodies, asking for "a reasonable proportion of women's names" to be put forward. For this to happen, nominating bodies will need to be given practical advice on the qualifications and qualities necessary. The support of the chairperson will be significant.

Government departments should consider widening the sources of nominations. In these cases where specialist qualifications are essential, professional associations can be approached to see if there are any similarly qualified women members.

Local government can provide a valuable pool of able women who have the potential to transfer and develop their skills gained in the local arena to the national stage.

12. Focus on women already appointed to public bodies

Regular feedback from existing women members of public bodies would provide a useful base on which to build. Information could be gathered via seminars or questionnaires. Evaluating their experience would facilitate a realistic assessment of the current qualifications and person qualities required. Women already serving on public bodies may well be able to suggest names of other suitable nominees - thereby creating a network.

13. Tap into the Voluntary Sector

Voluntary organisations provide a useful training ground for the skills required in public life. To encourage women to consider participating in public life, it is necessary to raise awareness on this issue. Government departments can establish contacts with the women's voluntary organisations via the Equal Opportunities Commission (Voluntary Organisations Liaison Unit)* Women's National Commission*, and the National Council for Voluntary Organisations*. Initially it would be practical to liaise with those organisations linked with professional and specialist areas of interest. e.g. Women in Banking, Women in Medicine, Women in Management. The objective here would be to seek out individual nomination.

However, there is certainly considerable scope for women's organisations in general to be encouraged to promote women candidates for public appointments by highlighting the issue through publicity, workshops and training programmes. The Women into Public Life Campaign* has considerable expertise to offer in this area. The Campaign has encouraged self-nomination with referees and is currently developing its work in this area.

14. Selective Publicity

It has never been the convention to advertise public appointments. However advertising in selective areas has been shown to bring in a higher percentage of women's names. Correctly targetted advertising should prove cost-effective. Government departments might consider using the media to raise the profile of women already holding public appointments - thus creating role-models and stimulating wider interest in public appointments.

* See Address list page 11

ADDRESS LIST

Details of women's voluntary organisations can be obtained from:-

Equal Opportunities Commission,
Voluntary Organisations Liaison Unit,
Overseas House,
Quay Street,
Manchester M3 3HN.

Tel: 061-833 9244

Women's National Commission,
Government Offices,
Great George Street,
London,
SW1P 3AQ.

Tel: 01-270 5903

National Council for Voluntary Organisations,
26 Bedford Square,
London,
WC1B 3HU.

Tel: 01-636 4066

Women and Public Life Campaign maintain a data bank of women who are willing to be considered for public appointment. Their address is:

Women into Public Life Campaign,
9 Poland Street,
London,
W1V 3DG.

Tel: 01-437 2728



**Equal
Opportunities
Commission**

Overseas House, Quay Street, Manchester M3 3HN.

Welsh Regional Office: Caerwys House, Windsor Lane, Cardiff CF1 1LB.

Scottish Regional Office: St. Andrew House, 141 West Nile Street, Glasgow G1 2RU.

Press Office: 1 Bedford Street, London WC2E 9HD.



ccbc

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

4 July 1988

NBM

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4577

Dear Norman

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

You wrote to Douglas Hurd on 29 March seeking colleagues' agreement to your proposals to ease restrictions on the employment of young people and to remove certain sex discriminatory measures in employment legislation.

Geoffrey Howe, Douglas Hurd, Tom King, Kenneth Baker, Malcolm Rifkind, John Moore and Cecil Parkinson wrote indicating that they were content with your proposals. Kenneth Clarke and John Major were broadly content but both expressed reservations about the proposal to extend to all work areas the ban which currently prohibits women from returning to work in factories within four weeks of child birth. You and Kenneth agreed in subsequent correspondence that we should simply retain the status quo and I understand that John was also content to accept that compromise.

No other colleague has commented and you may take it that, subject to letting stand the current rule preventing women from returning to work in factories within four weeks of child birth, you have H Committee's agreement to the proposals for legislation set out in the attachment to your letter of 29 March.

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

John Wakeham

JOHN WAKEHAM

The Rt Hon Norman Fowler MP
Secretary of State for Employment

dti

the department for Enterprise

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RESTRICTED

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Norman Fowler MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 23 June 1988

NBPM
RR LG
23/6

Dear Norman,

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF
SEX DISCRIMINATION IN LEGISLATION

Thank you for your letter of 1 June proposing that there should
be no change to the rule preventing women from returning to work
four weeks after giving birth. Though I still feel that there is
a case to be made in favour of ending this requirement I am
prepared to accept this compromise.

I am copying this to the Prime Minister, to Douglas Hurd and
other H Committee and Cabinet colleagues and to
Sir Robin Butler.

KENNETH CLARKE

CD9ACJ

RESTRICTED

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-273.....5803.....
 Switchboard 01-273 3000 GTN Code 273
 Facsimile 01-273 5465 Telex 915564

cebg

Prime Minister²

The Rt Hon Kenneth Clarke QC MP
 Chancellor of the Duchy of Lancaster
 and Minister of Trade and Industry
 1-19 Victoria Street
 LONDON
 SW1H 0ET

1 June 1988

Dear Chancellor,

**RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF
 SEX DISCRIMINATION IN LEGISLATION**

ATFCAP

Thank you for your letter of 11 April on this subject and your support for the majority of our proposals. I will write to you separately on the subject of a statement in the deregulation White Paper about the repeals.

I think that your proposal to allow women to return to work within four weeks of childbirth would create problems. First it would be seen as undermining present safety standards contrary to the Health and Safety Commission's advice, which we have otherwise been careful to accept, and secondly it would make it harder to resist the calls from the EOC and others for more protection for women under the Employment Protection (Consolidation) Act 1978.

This issue was included in the Consultative Document only for completeness; there were no complaints from industry that the present provisions were a burden. Neither is there any pressure for change from the EC, because the present provisions can be justified under the Equal Treatment Directive. However, the consultation provoked a range of contradictory, strongly-held views which if reflected during the passage of the Bill would lead to emotional and protracted debate. In my view this one item is not sufficiently significant to risk such a distraction from the more positive aspects of our proposals.

RESTRICTED

RESTRICTED



There is also the danger, pointed out in John Major's letter of 14 April, of giving incorrect signals on parental leave. I propose therefore that we leave the law as it stands on this item and make no changes of any kind.

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

Yours sincerely,

Angela Wilkins

NORMAN FOWLER

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

RESTRICTED



Home Affairs

Sex Discrimination

A0985

ABG
nbpm

From: THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

4 May 1988

Dear Peter

DENUNCIATION OF ILO CONVENTION 45:
UNDERGROUND WORK (WOMEN) 1935

Thank you for letting me see a copy of
your letter of 22 April to Lyn Parker. The
Home Secretary is content for Convention 45 to
be denounced before 29 May.

ATKAP

Yours sincerely
Catherine Bannister

MISS C J BANNISTER

Peter Baldwinson, Esq

Har Affairs Sex Discrimination AUG 85

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FCS/88/084

SECRETARY OF STATE FOR EMPLOYMENT

Restrictions on Employment of Young People and
Removal of Sex Discrimination in Legislation

- Flap*
1. Thank you for sending me a copy of your letter of 29 March to Douglas Hurd. I have also seen the letter of 22 April from your Private Secretary to mine.
 2. I am content with the measures you propose including the proposed denunciation of ILO Convention 45 and Article 8(4)(B) of the European Social Charter. I have no comments to make on the draft letter to the Director General of the ILO.
 3. I am copying this minute to the Prime Minister, to members of H Committee and other members of the Cabinet, and to Sir Robin Butler.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
27 April 1988



CCBG
nbpm

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-273 5803
Switchboard 01-273 3000 Telex 915564
GTN Code 273 Facsimile 01-273 5124

Lyn Parker Esq
Private Secretary
Foreign and Commonwealth Office
Downing Street
LONDON
SW1A 2AL

22 April 1988

Dear Lyn,

DENUNCIATION OF ILO CONVENTION 45: UNDERGROUND WORK (WOMEN) 1935.

You may be aware that Cabinet colleagues are considering a package of measures proposed by DE Ministers concerning restrictions on the employment of young people and the removal of sex discrimination in legislation.

Urgent action is required in respect of the denunciation of International Labour Convention No.45: Underground Work (Women), which at present prevents us from lifting restrictions on the employment of women in mines. The terms of the Convention provide that the denunciation must be registered with the Director General of The International Labour Office before 29 May 1988. A further opportunity to denounce will not occur till 1997. In recent years Canada, New Zealand and Sweden have denounced this Convention as being no longer appropriate in modern circumstances.

We are not at present aware of any dissent regarding the Government's proposal to denounce Convention 45. My Secretary of State would be glad of confirmation of this, so that we may proceed with the formal registration of the denunciation with the ILO.

If agreement is confirmed, my Secretary of State will be asking the Foreign Secretary to arrange registration of the denunciation with the ILO. This is usually done by means of a letter from the UK Ambassador in Geneva to the Director



General of the ILO. I attach a draft letter to the Director General. The references in that letter to consultation carried out (with the TUC and CBI) are in accordance with ILO Convention 144: Tripartite Consultation, and the explanatory note attached to the letter, provides the information the Director General will need when he formally brings the denunciation to the notice of the Governing Body of the ILO.

I am copying this letter to Private Secretaries the the Prime Minister and Members of the Cabinet. In view of the tight timetable, I should be glad if comments on the proposed denunciation of ILO Convention 45 could reach me by 28 April.

yours sincerely

A handwritten signature in cursive script, which appears to read "Peter Baldwinson".

PETER BALDWINSON
Private Secretary

DRAFT

Mr. F Blanchard
Director General
International Labour Office
CH 1211
GENEVA

Sir

Following the consultations required by International Labour Convention No. 144, I am directed by the Secretary of State for Foreign and Commonwealth Affairs to notify you in accordance with the provisions of Article 7 of International Labour Convention No.45 (concerning Underground Work (Women) 1935) that the United Kingdom of Great Britain and Northern Ireland hereby denounces the said Convention.

I am also directed to enclose a note indicating the reasons for the decision of the Government of the United Kingdom in relation to this Convention.

I have the honour to be, Sir, Your Obedient Servant.

J A SANKEY
Permanent Representative of the
United Kingdom of Great Britain
and Northern Ireland.

DRAFT

INTERNATIONAL LABOUR CONVENTION NO. 45 (CONCERNING THE EMPLOYMENT OF
WOMEN ON UNDERGROUND WORK IN MINES OF ALL KINDS)

The United Kingdom Government is committed to the principle of equal treatment for men and women, to flexibility in industry and to maximising opportunities for employment.

The provisions in United Kingdom law which enable the United Kingdom to observe Convention No.45, prohibiting females from being employed on underground work in any mine, have recently come under review as being an unnecessary barrier to women's employment. The Government considers that the Convention is no longer appropriate in modern circumstances and that it should accordingly be denounced before the expiry of the current period enabling denunciations to be registered.

RESTRICTED

CCB
nbpm

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

14th April 1988*Dear Norman,*

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE
REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

Thank you for sending me a copy of your letter of 29 March to Douglas Hurd. I have also seen Kenneth Clarke's letter of 11 April.

I agree that the outcome of your consultation exercise has produced a worthwhile selection of repeals of unnecessary and/or burdensome legislation. But, like Kenneth Clarke, I do not see the need to extend to all employment the prohibition on women returning to work within four weeks of childbirth. I have seen no evidence of need for such an extension and it seems an odd response to an initiative which set out to repeal the existing prohibition.

This proposal might also be seen as being inconsistent with our view that the Government should stand back from legislation in connection with parental leave generally. If we were to legislate as you propose on the timing of return to work I fear it would give an incorrect signal that our resolve not to legislate for parental leave was beginning to weaken.

Subject to the deletion of item 5 on page 5 of your memorandum therefore I would be happy to sign up on your proposed package.

RESTRICTED

I am copying this letter to the Prime Minister, members of
H Committee and other members of the Cabinet and Sir Robin Butler.

Yours Ever,
John

JOHN MAJOR

Home Affairs:

Sex Discrimination

Aug 85



CCB/A



DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 01-210 3000

From the Secretary of State for Social Services

N-BPM

ALCO

14/4

The Rt Hon Norman Fowler MP
 Secretary of State for Employment
 Department of Employment
 Caxton House
 Tothill Street
 LONDON
 SW1H 9NF

14 April 1988

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

Thank you for sending me a copy of your letter of 29th March to Douglas Hurd enclosing a note and covering memorandum on these subjects.

I am content with this document and agree to your recommendations.

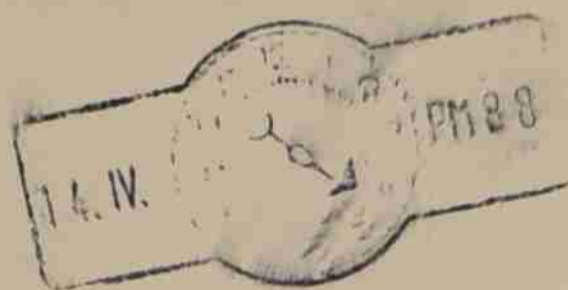
As you know, I have responsibility for legislation regulating the employment of 16 year olds in street trading. I agree with the recommendation to lift the restrictions from this group.

I am copying this letter to the Prime Minister, members of H Committee and other members of the Cabinet and Sir Robin Butler.

JOHN MOORE

HOMB AFFAIRS : Sex Discrimination

Aug



PS/PM

cc BG



NORTHERN IRELAND OFFICE

WHITEHALL

LONDON SW1A 2AZ

nbpm

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON
SW18 9NF

13 April 1988

Dear Secretary of State

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

You wrote to members of H Committee, and others, on 29 March seeking agreement to a range of legislative proposals to ease restrictions on the employment of young people and to remove sex discrimination in legislation. You also sought agreement to the denunciation of ILO Convention 45 and Article 8(4)(b) of the European Social Charter.

While I have no objections to the action you propose, you should know that there is separate NI legislation in these areas and I am presently consulting publicly in Northern Ireland on the same issues. Our officials have also been in discussion about the possibility of the proposed GB legislation including a provision which would permit any equivalent NI changes to be introduced by Order-in-Council subject to negative resolution.

Given the time constraints it is clear that denunciation of the ILO Convention will have to take place before the end of the present NI consultation (closing date 3 June). However, I imagine that any denunciation is likely to be in fairly general terms and that the specific legislative changes in GB are unlikely to become public before the legislation is introduced next Session. This latter

aspect is important since NI legislation is generally closely aligned to that in GB and an announcement of the GB changes before mid-June could very easily be taken as a signal that the current NI consultations are largely irrelevant. Clearly, I would prefer to avoid such an impression if at all possible.

Copies of this letter go to the Prime Minister, to Members of H Committee and other Members of the Cabinet and Sir Robin Butler.

Yours sincerely

Martin Donnelly

pp TK

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

RESTRICTED



cc BG

ELIZABETH HOUSE
YORK ROAD
LONDON SE1 7PH
01-934 9000

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON SW1H 9NF

*N BPM
frcg
13/4
13 April 1988*

In Memoriam

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

Thank you for sending me a copy of your letter of 29 March to Douglas Hurd. *flav*

I can accept your proposals as they affect my Department's interest in s51 of the Sex Discrimination Act 1975, on the understanding that there will be further discussion between your and my officials about the Oxford Chairs of Divinity and, more generally, about the form any legislation might take.

I am sending copies of this letter to the Prime Minister, Douglas Hurd and other members of H Committee and of the Cabinet and to Sir Robin Butler.

[Handwritten signature]
[Handwritten signature]

CCB/G

MBPM

PRC

13/4



QUEEN ANNE'S GATE
LONDON SW1H 9AT

12 April 1988

Dear Norman,

**RESTRICTIONS ON EMPLOYMENT OF YOUNG
PEOPLE AND THE REMOVAL OF THE SEX
DISCRIMINATION IN LEGISLATION**

Thank you for your letter setting out proposals for change to legislation. I am content with the provisions set out in your memorandum and see no need for discussion at a meeting of H Committee.

Copies of this letter go to the Prime Minister, to members of H Committee and other members of the Cabinet and Sir Robin Butler.

*Yours,
Dylin*

The Rt Hon Norman Fowler, MP

CCBS

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SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

MBM
RACB
12/4

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

12 April 1988

Dear Norman,

RESTRICTIONS ON THE EMPLOYMENT OF YOUNG PEOPLE AND THE
REMOVAL OF SEX DISCRIMINATION IN LEGISLATION

I have seen your recent ^{has} letter to Douglas Hurd enclosing a note by officials and a covering memorandum. For my interests I agree with the conclusions reached in your memorandum, and am content with what you propose.

Copies of this letter go to the Prime Minister, members of the Cabinet, Richard Luce and Sir Robin Butler.

Yours over,
Malcolm Rifkind

MALCOLM RIFKIND

RESTRICTED

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the department for Enterprise

AGS

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

**Department of
Trade and Industry**

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

*NBM will be
respond.
PRCC only*

Direct line 215 5147
Our ref
Your ref
Date

11 April 1988

Dear Norman,

**RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF
SEX DISCRIMINATION IN LEGISLATION**

Your letter of 29 March to Douglas Hurd on this subject was
copied to H Committee and Cabinet colleagues.

As I said in my letter of 30 November, it is the maintenance
rather than the removal of restrictions in this area which needs
to be justified; and I think you are right to go ahead with the
majority of the changes canvassed in the consultation document,
despite the kneejerk reactions of some union and other
consultees. In particular I think the proposed removal of
controls on young people's hours of work will at once extend
employment opportunities and remove a burden on some employers,
notably the Post Office. From the deregulation point of view
the large number of repeals is especially to be welcomed, and I
hope we will be able to include a suitable statement claiming
credit for this in the White Paper.

I was however surprised to see - in the light of your general
approach - that you propose to extend to all sectors of
employment the ban which applies at present only in factories on
women returning to work within 4 weeks of childbirth. It may be
that employment in some offices and shops would be as
prejudicial to the health and overall welfare of mothers and

EC4AKK



the department for Enterprise

babies as employment in factories. But I see no merit in pursuing consistency for consistency's sake, when to do so would deny all women - regardless of their wishes and their medical and other circumstances - the freedom to return to work within 4 weeks of childbirth, and would also carry unnecessary cost implications for employers.

Before we adopt such a proposal, we ought to be sure of the facts; have you, for example, an estimate of the numbers of women who currently do choose to exercise that right - or of the compliance cost implications for employers of removing it? But I believe it would in any case be more consistent with the Government's deregulation stance to go in the opposite direction, introducing the right for women to return earlier than 4 weeks provided they have their doctor's permission, and extending the 4-week rule, if at all, only to workplaces (underground in mines?) where a clear need can be shown.

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

KENNETH CLARKE

EC4AKK



SECRETARY OF STATE FOR ENERGY
THAMES HOUSE SOUTH
MILLBANK LONDON SW1P 4QJ

01 211 6402

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

NBFM

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11/4

11th April 1988

Dear Norman,

RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF
SEX DISCRIMINATION IN LEGISLATION *at flap*

Thank you for copying me your letter and enclosures of 20 March to
Douglas Hurd. *29?*

I was pleased to see that you have no objection to the retention of
age restriction in the Offshore Installations (Operational Safety,
Health and Welfare) Regulations.

I see that you are proposing to repeal the current restrictions on
the employment of women below ground in mines and to denounce the
two relevant international agreements. I hope that these changes
can be implemented as smoothly as possible and will give the coal
industry time to make the necessary adjustments. No doubt your
officials will be in touch with mine over the preparation of
legislation.

Copies of this reply go to the Prime Minister, members of
H Committee, other members of the Cabinet and Sir Robin Butler.

Yours Es,
Cecil

CECIL PARKINSON

RESTRICTED

RESTRICTED



cc BGF

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213.....

Switchboard 01-213 3000 GTN Code 213

Facsimile 01-213 5465 Telex 915564

Philip Mawer Esq
Home Secretary's Office
Home Office
50 Queen Anne's Gate
London
SW1

31 March 1988

Dear Philip,

**RESTRICTIONS ON THE EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF
SEX DISCRIMINATION IN LEGISLATION**

I am writing to let you of a correction that should be made to the attachment to my Secretary of State's letter of 29 March to yours on the above.

I should be grateful if you could arrange for the following amendment to be made on page 23 of the attachment: at top of the page, first line, after "absolute" insert "prohibition".

I am copying this to the Private Secretaries of the Prime Minister, members of 'H' committee and other members of the Cabinet and to Sir Robin Butler.

Yours sincerely

Peter Baldwin

Peter Baldwinson
Private Secretary

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CCP
nbpm



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The Rt Hon Douglas Hurd CBE MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9HT

Mark W.

Dear Douglas,

Restrictions on Employment of Young People
and the Removal of Sex Discrimination in
Legislation

... I enclose a note by officials and a covering memorandum on these subjects.

I would like to clear this matter by correspondence, although of course if this is not possible I would be happy to discuss at a meeting of H Committee.

I would be grateful for your comments by 12 April.

Copies of this letter go to the Prime Minister, to members of H Committee and other members of the Cabinet and Sir Robin Butler.

Norman Fowler

NORMAN FOWLER

MEMORANDUM BY THE SECRETARY OF STATE FOR EMPLOYMENT

Restrictions on Employment of Young People and the Removal of Sex Discrimination in Legislation

1. This memorandum covers a note by officials on the result of the consultation exercise on young people's employment restrictions and sex discrimination legislation in Great Britain. (The NI consultative document will be issued shortly.)

2. The Government has already announced, as a result of a 'reasoned opinion' from the European Commission, that it intends to repeal section 51 of the Sex Discrimination Act 1975 (so far as it applies to employment). This will make a range of discriminatory actions taken in accordance with other legislation unlawful unless specific new protection is provided.

3. The note covers (in paras 41-60) the protective legislation which discriminates between men and women. Article 2(3) of the Equal Treatment Directive allows provisions concerning the protection of women, particularly as regards pregnancy and maternity. However, the European Court of Justice said in *Johnson v Chief Constable RUC* that this Article must be interpreted strictly.

The contentious issues are:-

3.1 Women in mines (para 49 of officials' note)

It is difficult to see how maintaining the present virtual ban on women working underground could be justifiable under the Equal Treatment Directive. We need to take a decision on this urgently, as the UK has ratified ILO Convention 45 and the European Social Charter Article 8(4)(b) which ban women working underground. Denunciation 'windows' for ILO 45 only occur every 10 years and the current window closes on 29 May this year. Further information is annexed to this memorandum. Although denunciation would not commit us to lifting the ban in UK law, it would clear the way for us to do so. I would prefer a decision to be taken at this stage on the principle of lifting the ban as well as on whether to denounce.

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Proponents of maintaining the present virtual ban on women working underground do so principally on the grounds that

- 1) the work is arduous
- 2) sanitary conditions are inadequate

These have not been acceptable arguments in the past for denying women equal access to jobs if they choose to apply. It is often assumed that the provision of lavatories which women could use in privacy is a prerequisite for allowing females underground; this is not so. Present legal provisions for sanitary and washing facilities could be made non-discriminatory without imposing conditions for females underground (see para 58) and thus without imposing compliance costs upon the mining industry.

At present underground sanitary facilities often consist of little more than buckets. The industry may wish to improve these conditions for all miners before February 1990 (by which date the UK could be free of all international obligations to ban women) but it is proposed that it should not be compelled by legislation to do so.

I recommend that the restrictions on women working underground (contained in section 124(1) of the Mines and Quarries Act 1954) be repealed, that sanitary regulations be made non-discriminatory as outlined in the note, and that the UK denounce ILO Convention 45 and European Social Charter Article 8(4)(b).

3.2 Lifting (paras 30-32 of officials' note)

Four legal provisions discriminate between males and females in regard to lifting loads. The HSC would have preferred to await their proposed comprehensive manual handling regulations before tackling the discrimination, but these will not be ready for some years. Three existing sets of regulations fix maximum weight limits in certain industries for women, young males and young females; these are additional to a prohibition under the Factories Act on any person lifting loads so heavy as to be likely to cause injury.

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Equalising the limits at the lower end of the range would inhibit industry, while the upper end would cease to protect young people anyway. Therefore while it may provoke some controversy in the absence of new non-discriminatory guidance, I recommend repeal of the regulations.

Furthermore I recommend that the fourth legal provision, section 93 of the Mines and Quarries Act, be extended to apply to men. It is a generally-worded provision similar to the Factories Act, should not add to the industry's costs, and will enable the Government to point to an instance where it proposes to remove discrimination by extending the protection. (See para 31).

3.3 Return to work after childbirth

At present women are prohibited from returning to work in factories (but not shops, offices etc) for 4 weeks after childbirth. The options are:

- 1) retain as now
- 2) repeal
- 3) extend to 6 weeks (with or without option to return earlier with doctor's permission)
- 4) extend to all sectors of employment.

Every possible permutation of options 3 and 4 received some support in the consultation exercise, and a number of responses mentioned that Statutory Maternity Pay is payable for 6 weeks after the birth (in all sectors). Retention of this ban in its present or an extended form could be justified under the Equal Treatment Directive. Only one respondent (a company) was in favour of straightforward repeal and only 2 - both Trade Unions - favoured retaining the status quo. Repeal was widely considered to risk placing women under pressure to return too early. It may also be considered that allowing an earlier return with her doctor's permission would place a woman under pressure to obtain that permission. The CBI, TUC and EOC proposed extending the ban to all sectors of employment. HSC agreed that further consideration could be given to this. The CBI and EOC also proposed extending the time period to six weeks (as in the past has HSC) but with the option to return earlier with a doctor's permission.

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There is no logical position. Consistency would imply either repeal - which virtually no-one supports - or extension to all sectors, and I recommend the latter.

Young People

4. Last year colleagues indicated that they wished to lift the restrictions on young people's hours of work and, with some exceptions, other restrictions on their employment. The majority of responses acknowledged that the hours of work restrictions were excessively complex but advocated rationalisation rather than total repeal - without, however, suggesting what a rationalised framework might consist of. Further consultation would be lengthy and unlikely to produce a consensus. While recognising that there is a widespread concern for young people's welfare, I consider that the present regime (which includes some discriminatory provisions) places burdens upon business and restricts employment opportunities for young people and I therefore recommend that, as previously agreed, we should lift all the restrictions on young people's hours of work.

5. The other restrictions on young people lie mainly in the health and safety field, and we have not until now had the Health and Safety Commission's advice on these. I consider that acting on their advice would simplify matters for industry as far as is presently possible; this advice is often to repeal, and sometimes to retain subject to the removal of any sex discrimination. I therefore recommend that the provisions in this category be dealt with as in paras 26-40 of the officials' note.

SDA

6. There is broad acceptance of our proposals for amendment of the Sex Discrimination Act to meet European Community obligations including our proposal that the Oxbridge women's colleges which reserve certain appointments for women should be allowed to continue this practice. The Equal Opportunities Commission and some other respondents however argue that more wide-ranging amendments should be made to sex discrimination legislation. The EOC has submitted a report on these matters to the Home Secretary.

Conclusions

I invite colleagues to agree to

- 1) Immediate denunciation of ILO Underground Work (Women) Convention (no 45).
- 2) Denunciation at the appropriate time of European Social Charter Article 8(4)(b)

and, as soon as Parliamentary time permits,

- 3) Repeal of restrictions as set out above, on
 - a) young people's hours of work
 - b) women's underground work
 - c) lifting specific weights
- 4) Extension of Mines and Quarries Act s93 to men
- 5) Amendment of childbirth provisions as in para 3.3. above
- 6) Other repeals, retentions and amendment as advised by HSC and listed in the officials' note.
- and 7) Retention of lawfulness under the Sex Discrimination Act of reserving certain Oxbridge posts for women and single-sex headships in religious schools.

THE UNITED KINGDOM GOVERNMENT'S POSITION ON THE DENUNCIATION OF
INTERNATIONAL LABOUR CONVENTIONS

1 Since the International Labour Organisation (ILO) was set up in 1919, the Organisation has adopted 166 Conventions. The United Kingdom is currently bound by 70 of these. ILO Conventions have the binding status of international treaties, and it has always been the Government's policy to ensure that Conventions are only ratified when UK law and practice conform strictly to the terms of the Convention.

2 However, from time to time the Government may take the view that because of changes in economic and social conditions or in Government policy it would be right to change UK law and practice in ways which are not fully consonant with the ratified Convention concerned. In such cases the Government is bound by ILO Convention 144 (Tripartite Consultation) to undertake full consultation with the CBI and TUC on the proposed changes. If in the light of this consultation the Government considers that it is right to introduce changes in UK law and practice which are not in conformity with the requirements of the Convention concerned, action is taken, in accordance with ILO procedures, to denounce the Convention concerned. It would be inconsistent with the policy of strictly observing ratified Conventions to maintain ratification when changes not in conformity with its terms are to be introduced.

3 There is nothing in any way improper or unconstitutional about denouncing an ILO Convention provided this is done in full accordance with ILO procedures and after full consideration and consultation. The ILO itself recognises that some Conventions, particularly those adopted a number of years ago, are now out of date, and a recent ILO study has suggested that Convention 45 is ripe for revision. The opportunity to denounce occurs only periodically, the time being determined by the terms of the Convention itself. The next opportunity to denounce Convention 45 will not arise until 1997. Other facts about Convention 45 are attached at (A).

4 The UK has denounced 8 Conventions. The attached chart (B) gives details including dates and reasons.

5 Considerable pressure has in the past attended Government decisions to denounce ILO Conventions, and it is important to bear in mind that the Government continues to support the aims of the ILO, and to ratify new Conventions where current law and practice enable it to do so. Convention 160, concerning Statistics, was ratified in 1987.

(A)

CONVENTION 45 : FACTS

- (1) The Underground Work (Women) Convention (No. 45) was adopted by the ILO in 1935.
- (2) 84 member States (out of a total of 151) have ratified and are currently bound by Convention 45 (including all EC States except Denmark).
- (3) 4 member States have ratified and have subsequently denounced Convention 45 (Canada, New Zealand, Sweden and Uruguay).

ILO CONVENTIONS DENOUNCED BY SUCCESSIVE UNITED KINGDOM POST WAR GOVERNMENTS **

CONVENTION NO.	TITLE	DATE DENUNCIATION REGISTERED	ADMINISTRATION	REASONS FOR DENUNCIATION
6	Night Work of Young Persons (Industry)	4 October 1947	Labour	Not sufficiently flexible for present day conditions.
18	Workmen's Compensation (Occupational Diseases)	29 April 1946	"	Result of UK having ratified or being about to ratify a revising convention
41	Night work (Women) (Revised)	4 October 1947	"	Not sufficiently flexible for present day conditions
43	Sheet Glass Work	4 December 1958	Conservative	Found to be unworkable on the limited scale it applied at workplaces.
88	Employment Services	5 August 1971	"	The setting up of Professional & Executive Register, a service charging employers, was against the requirement for the maintenance of a free public employment of service.
94	Labour Clauses (Public Contracts)	20 September 1982	"	Changes in law (Fair Wages Resolution) and practice and effect on compliance-Convention therefore lost relevance to UK
95	Protection of Wages	16 September 1983	"	Changes in law, (Truck Acts) and practice and effect on compliance - Convention therefore lost relevance to UK

NO. CONVENTION	TITLE	DATE DENUNCIATION REGISTERED	ADMINISTRATION	REASON FOR DENUNCIATION
26	Minimum Wage Fixing	25 July 1985	Conservative	Terms of Convention restrict flexibility over maximisation of employment opportunities for young people.

** There was one pre-war denunciation namely Convention 4, Night Work (Women) which was denounced on 25 January 1937 as a result of the UK having ratified a revising Convention (Convention 41) on that date.

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RESTRICTIONS ON EMPLOYMENT OF YOUNG PEOPLE AND THE REMOVAL OF SEX
DISCRIMINATION IN LEGISLATION

NOTE BY THE DEPARTMENT OF EMPLOYMENT

INTRODUCTION

1. The Department of Employment issued a Consultative Document on "Restrictions on employment of young people and the removal of sex discrimination in Legislation" in December 1987. This note reports on the responses, identifies the issues requiring decisions, and makes recommendations.

BACKGROUND

2. A major aim of the proposals in the Consultative Document is to ensure compliance with EC Directive 76/207/EEC (the Equal Treatment Directive) which deals with sex discrimination in employment and vocational training. Inter alia the Directive requires national legislation which conflicts with the principle of equal treatment to be revised or abolished. The EC Commission takes the view that section 51 of the Sex Discrimination Act 1975 is contrary to the Directive.
3. The Sex Discrimination Act 1975 makes sex discrimination unlawful in a range of matters including employment and vocational training. However, section 51 of the Act provides that it is not unlawful to discriminate if this is required by existing legislation. The UK Government has undertaken to revise section 51 to ensure compliance with the Directive, and has announced this intention in reply to a Parliamentary Question. In addition, the Consultative Document proposes to repeal section 7(2)(f) of the Act. This provision relieves an employer of liability under the SDA for certain acts of discrimination if these are required by legislation (whenever enacted). This seems to be open to the same objections as section 51. The Consultative Document proposes to amend section 51 insofar as it relates to matters covered by the Directive and to repeal section 7(2)(f) entirely as all the matters it deals with are subject to the Directive.

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4. When these changes take place, actions currently protected by section 7(2)(f) and those within the scope of the Directive currently protected by section 51 will cease to be lawful under the SDA unless they are protected by some other provision of the Act or unless specific new protection (compatible with Community law) is provided for them in the amending legislation. In preparing the Consultative Document Departments have carried out an extensive review of existing legislation to identify discriminatory requirements and assess whether they are still justified.
5. Another aim of the proposals in the Consultative Document is to remove unnecessary restrictions on the hours and other conditions of work of young people. Department of Employment officials conducted a desk review of the complex legislation governing young people's working hours and their report, which included provisions governing other conditions of work of young people, was circulated to Cabinet Ministers in August 1987. Ministers' responses indicated a wish to lift as many restrictions as possible, with certain exceptions such as employment at sea, and where moral considerations obtained, eg in gambling, gaming and licensed premises.
6. Some of the provisions regulating the employment of young people also treat young males and young females differently. It was therefore decided that the consultation document would cover the 3 related areas of:
- (i) young people's hours of work
 - (ii) other employment conditions of young people, and
 - (iii) sex discrimination

The Health and Safety Commission were consulted on (i) and (iii) but not (ii) above before the consultative document was issued. This is therefore the first time that Ministers have had HSC's advice on legislative restrictions which were introduced to protect young people's health and safety.

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YOUNG PEOPLE - HOURS OF WORK

7. Complex detailed legislation restricts young people's hours of work in factories, shops, mines and quarries, but not other sectors, eg offices, which are unregulated. It governs their hours and times of work, places limits on overtime, weekend work, shiftwork and nightwork, and also sets minimum meal and rest breaks and holidays.
8. The proposal in the document to remove all restrictions from young people's hours of work is supported by 11 employers organisations and 4 local authority careers services. Any immediate amendment to the restrictions without further research is opposed by 4 non-employer organisations. The TUC and two other organisations recommend extending the protection to adults.
9. The majority of responses (25) whilst recognising that the restrictions are excessively complex, advocate rationalisation and simplification rather than total repeal. This course of action is recommended by the Health and Safety Commission (HSC), the Trades Union Congress (TUC) and the Equal Opportunities Commission (EOC). The Confederation of British Industry (CBI), whilst urging the Government to remove the principal restrictions on young people's hours, would also accept some form of broad restraint on maximum working hours and simplified guidelines on other hours related conditions of employment such as breaks and holidays. However few organisations have offered views as to what these simplified restrictions should be.
10. In general the majority of organisations advocating the retention of some restrictions on hours of work consider that young people have special characteristics distinguishing them from adults. Amongst those cited are their immaturity and probable inexperience and therefore their increased vulnerability to accident and exploitation, their status as minors and society's duty to protect them as such, the problems they experience in the transition from school to work and the need to ensure they have adequate opportunity for educational and social development outside working hours.

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11. The overriding concern appears to be young people's vulnerability to exploitation. The CBI cite this as the reason for their willingness to accept some controls. The TUC and a number of other unions allege that there are examples of young people being required to work excessively long hours, even with the current restrictions, and state that young people are ill-equipped to resist unreasonable demands because of their inexperience and immaturity. A number of responses also point out that employers will be tempted to exploit young people as cheap labour, particularly in those industries without Wages Council protection, and that the problem will be especially bad in small firms. HSC cite welfare and educational and social development, not exploitation. It is also alleged that young people will be more likely to take unsuitable jobs because of the removal of their entitlement to state benefit and the point is made that their loss of status in this respect contradicts the document's proposal to treat young people as adults.

12. Shiftwork/Nightwork

The majority of responses indicate some reservations about allowing young people to work unsocial hours. A few organisations including the TUC disputed the document's assertion that there is no medical evidence that young people's health would be more adversely affected than adults by shiftwork and call for further research. It has also been suggested that young people are more likely to suffer from fatigue due to the problems of acclimatising to working hours and that this in turn can lead to accidents.

13. Most of the responses however expressed concern over social and welfare issues. Many organisations, including the HSC are concerned that young people should have adequate opportunities for educational and social development outside normal working hours and a number including the TUC and the EOC recommend that if the restrictions are removed some provision should be made to require employers to provide transport outside the hours when reliable public transport is available in view of the high levels of public violence. The CBI would also be prepared to accept some broad restrictions on night work on social grounds.

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14. Special Exemption Orders

Section 117 of the Factories Act 1961 empowers the Health and Safety Executive to issue Special Exemption Orders (SEOs) exempting young people in a factory from all the restrictions on their hours in the 1961 Act and from the prohibition on nightwork in the Employment of Women, Young Persons and Children Act 1920. The document proposes to repeal s117 if all restrictions on working hours in the Factories Act are removed. The Union responses argue that s117 should be retained as an important safeguard for young people since the SEO application procedure enables HSE to review working arrangements and stipulate conditions; normally the employer would have to ensure that transport was available. A few responses assert that the majority of employers do not feel the need to use SEOs and that they cannot be classed as a heavy administrative burden.

15. The EOC point out that the removal of all restrictions on hours could lead to greater discrimination between boys and girls since it is common for employers to believe that late-night working, long or variable hours are more suitable and acceptable to males than females. They state that, in factories that belief has been tempered by the issue of SEOs which do not distinguish between boys and girls.

16. The CBI welcome the proposal to repeal s117 but would accept that repeal should be accompanied by a statement on the employer's duty of care, particularly with regard to young people who may be more at risk in view of their inexperience.

17. Youth Training Scheme

A number of careers service and union responses have drawn attention to the recognition in YTS that young people need to have adequate training and a "protected" introduction into the world of work (the YTS contract currently stipulates that trainees should work a minimum of 30 and a maximum of 40 hours per week) and the apparent contradiction in the Government's philosophy. One county council has recommended that young people's training needs should be legislated for if restrictions on hours of work are removed.

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18. Burden on Business

The CBI and those employers organisations in favour of total repeal have welcomed the removal of unnecessary, bureaucratic administrative procedures and the intention to promote increased flexibility in the labour market. The TUC, individual unions and a number other non-employer organisations have disputed that the hours of work restrictions, the requirements to keep records and display notices and the SEO procedures do place any significant burden on industry and point to the lack of evidence of such restrictions limiting young people's employment opportunities.

19. Removal of distinction between under 16s and over 16s

Four organisations support the proposal to remove the distinction between those over minimum school leaving age but under 16 and those aged 16 or over. Two are against on the grounds that the minimum school leaving age may change. A couple of responses have also drawn attention to the implications of the proposals for children engaged in work experience under the Education (Work Experience) Act 1973.

20. Health and Safety at Work etc Act 1974

Several organisations have suggested that the 1974 Act should be amended to place a specific duty of care on employers in relation to the young people they employ. It has also been suggested that employers' general duties under S.2 of the Act would not provide sufficient protection against an employee being required to work excessive hours.

21. Street trading

Three organisations have commented on the proposed removal of restrictions on young people in street trading in the Children and Young Persons Act 1933 (and its Scottish equivalent). Two were in favour and one against.

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22. Options

Ministers could decide either to:

- 1) repeal all restrictions on hours of work
- 2) replace with a simplified regime
- 3) retain

Repeal of all Restrictions on hours of work

23 There is clearly considerable opposition to wholesale repeal of the restrictions on young people's hours as proposed in the document, mainly on the grounds that young people need protection against exploitation. However Ministers indicated in response to the department's review on young people's hours of work in 1986 that they would wish to see these restrictions removed and on the evidence available there is no reason to retain them on health and safety grounds alone.

Replace with a Simplified Regime

24 This option is favoured by the majority of those who have commented and would be acceptable to the CBI. It would however present several problems.

- 1) The Form of Replacement - Most organisations have not indicated what the current legislation should be replaced by, either in terms of the restrictions themselves or the appropriate vehicle. The CBI are as yet unable to say whether the replacement they would be prepared to accept should be legally enforceable, either in terms of new regulations or a code of practice, or whether it should simply be in the form of guidelines.

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It is generally recommended that the replacement should apply to all young people in all sectors of employment. This would however restrict young people in sectors, such as office work, who are currently unrestricted.

- 2) Method of Replacement - It has been suggested that the HSC should draft new guidelines in consultation with other interested departments and organisations. Alternatively, as HSC have suggested, the Department of Employment could prepare replacement legislation, again in consultation with interested organisations. The problem with either of these options is the time factor. The period for consultation and research would necessarily be strictly limited by the constraints of timing for the Bill.

A third alternative would be for Ministers to formulate a simplified regime - for example retaining some restriction on unsocial hours - without outside consultation. This might however prove difficult to do without expert advice and would moreover necessitate the retention of the exemption system.

Retain - there is little disagreement that the current legislation needs reforming. Some of the restrictions on young people's hours are discriminatory and will need to be at least amended when the protection of section 51 of the Sex Discrimination Act 1975 is removed.

Recommendation

25. Although there might be presentational advantages in keeping some (non-discriminatory) restrictions on unsocial working hours, and thus allaying fears for young people travelling at night, this course would necessitate retaining the exemptions from those restrictions which exist for certain industries, and the Special Exemption Order procedure. It might also be necessary to add to the exemptions. Repeal of all hours of work legislation listed in the annex to this note and denunciation of European Social Charter Article 7(8) which bans under-18s from working at night are therefore recommended.

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YOUNG PEOPLE - OTHER RESTRICTIONS

26. These are the provisions on which the Health and Safety Commission had not been previously consulted, and consequently the ones on which the Government's commitment is strongest to look primarily to HSC for advice.

General

- 27 Only 4 responses take the view that no provisions additional to the general health and safety provisions for all workers are necessary for young people and 3 of these are subject to some conditions or reservations. All the others feel that extra protection is required, ranging from those who want the existing provisions retained (and in some cases extended to older workers) to those who think they should be replaced by a duty to train and supervise all under-18 year olds. Many express concern about accident rates and exploitation of this age group. HSC in particular point out that research carried out for the 1972 Robens enquiry concluded that both youth, and inexperience, contribute independently to accidents; more recent figures, published in "Health and Safety Statistics 1984-85", confirm the above-average injury rate for 16-24 year olds. The majority would welcome a range of sensible protections, tidied up into new regulations or a code of practice. HSC has made a summary of its response available to the press. Any departure from its advice would need careful justification.

Dangerous Machinery

28. A number of provisions prohibit young people working at dangerous machinery - either absolutely or unless trained/supervised. In line with the advice from HSC we recommend that they be dealt with as follows:-

Retain

Factories Act 1961, sections 15 and 21. Factories Act 1961, section 20 (but lift the restriction on adult women also contained in s20). Operations at Unfenced Machinery Regs 1938. Dangerous Machines (Training of Young Persons) Order 1954. Woodworking Machines Regs

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1974. Agriculture (Circular Saws) Regs 1959 (but amend '16' to 'minimum school leaving age' in this and the next 3 Regs). Agriculture (Stationary Machinery) Regs 1959. Agriculture (Field Machinery) Regs 1962. Agriculture (Threshers and Balers) Regs 1960. Offices, Shops and Railway Premises Act 1963, section 18.

Repeal

Spinning by Self-Acting Mules Regs 1905, Reg 4(b) . Offices, Shops and Railway Premises Act 1963, section 17(5). (This is an enabling provision superseded by the Health and Safety at Work Act 1974).

Lead

29. Three sections of the Factories Act and 5 sets of Regulations prohibit women and young persons working with lead. This subject is discussed at paras 43-46 below. Retention is recommended.

Lifting

30. Section 72 of the Factories Act 1961 requires that no person shall be employed to lift, carry or move any load so heavy as to be likely to cause injury. In addition for some industries, 3 sets of regulations specify different maximum weight limits for loads which can be lifted by women, young males and young females. HSC say they would have preferred to await the proposed comprehensive manual handling regulations, but concede that specific limits by age or sex are not consistent with medical advice. Since the sex discrimination must be removed, repeal of the following is recommended.

Pottery (Health and Welfare) Special Regulations 1950, Reg 6 (part). Woollen and Worsted Textiles (Lifting of Heavy Weights) Regulations 1926. Jute (Safety, Health and Welfare) Regulations 1948, Reg 4.

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31. There is a similar provision to Section 72 of the Factories Act in section 93 of the Mines and Quarries Act 1954 which applies to women and young persons but not to men. Retention for young persons is recommended, as is extension to men to abolish the discrimination between men and women. Since men should not be asked to lift loads so heavy as to risk injury in any case, under the general duties imposed by the Health and Safety at Work Act, this will make no real difference to the industry, and will enable Ministers to point to an instance where they propose to remove discrimination by equalising up.
32. Young people are protected by the Agriculture (Safety, Health and Welfare Provisions) Act 1956 from being employed in agriculture to lift, carry or move loads so heavy they are likely to injure them. Retention of this provision, but not extension to adults, is recommended.

Locomotives etc

33. There are several provisions which impose minimum age requirements for driving locomotives or operating haulage machinery. They exist for the protection of colleagues and the public and may be regarded as analogous to the Heavy Goods Vehicle restrictions, which are not under review. It is therefore recommended, in line with HSC advice, to retain:-

Locomotives and Waggons (used on Lines and Sidings) Regulations 1906, Regs 20 and 21. Mines and Quarries Act 1954, sections 42(1), 43 and 44. The Quarries (Ropeways and Vehicles) Regulations 1958, Reg 13(1). Construction (General Provisions) Regulations 1961, Reg 32. Construction (Lifting Operations) Regulations 1961, Reg 26.

The provisions above relating to mines and quarries state that the driver or operator should be male, and removal of this unnecessary discrimination in wording is recommended.

Hazardous Substances

34. Five regulations (one of which is also discriminatory) prohibit young people working with various hazardous substances. They are proposed for repeal under the forthcoming Control of Substances Hazardous to Health (COSHH) Regulations. There is a good chance that COSHH will be in place before our Bill, but in case of unforeseen delays, it is recommended that the following should be listed for repeal:

Chemical Works Regulations 1922, Reg 24. Chromium Plating Regulations 1931, Reg 9. Indiarubber Regulations 1922, Reg 2. Pottery (Health and Welfare) Special Regulations 1950, Reg 6 (1)(vii)-(xi) (which is also sex discriminatory).

However, the Poisonous Substances in Agriculture Regulations 1984, Reg 14. should be retained until an Approved Code of Practice under COSHH can be issued; this is because simple repeal would put children from the age of 13 at risk.

Other Hazards

35. Views were sought on a range of other restrictions and prohibitions. In line with HSC advice, some are now recommended for retention because the protection is still necessary and others are now recommended for repeal, because the processes are either obsolete or covered by more modern legislation. Some of these repeals also remove discrimination.

Retain

Shipbuilding and Ship-repairing Regulations 1960 Reg 80 (but lift extra restrictions imposed on under-16s). Electricity Regulations 1908 Reg 28. Electricity Regulations 1968 (Competent Persons Exemption) Order 1968. Ionising Radiations Regulations 1985. Offshore Installations (Operational Safety, Health and Welfare) Regulations 1976.

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Repeal

Factories Act 1961, section 73. Vitreous Enamelling Regulations 1908, Reg 7. Yarn (Dyed by Lead Compounds) Heading Regulations 1907, Reg 2. Horsehair Regulations 1907, Reg 12. Blasting (Castings and other Articles) Special Regulations 1949, Reg 17. Certification of Exemption F2004, February 1951, para 4. Tinning of Metal, Hollow-ware, Iron Drums and Harness Furniture Regulations 1909, Reg 2. Shipbuilding and Ship-repairing Regulations 1960, Reg 77. Pottery (Health and Welfare) Special Regulations 1950, Reg 6 (part), 18(3)(c), 18(7), and 29(1)(c)(i).

(The Asbestos Regulations 1969, Reg 20 was included in the consultative document but has been repealed by the Control of Asbestos at Work Regulations - March 1988).

Miscellaneous Provisions36. Medical Provisions

We recommend retention of section 119 of the Factories Act 1961 which empowers a Health and Safety Executive inspector, if he thinks that a young person's work in a factory puts his own or others' health at risk, to stop the young person's employment until he has been medically examined; and the Mines Medical Examination Regulations 1964 which require the medical examination of young persons and implement ILO Convention 124 which the UK has ratified. We recommend repeal of section 11(a)(iii) of the Factories Act 1961 which enables orders or regulations to be made requiring medical supervision; other provisions now provide adequate powers.

37. Underground Work

Section 124(2) of the Mines and Quarries Act 1954 and the Coal Mines (Training) Regulations 1967, Regs 15, 16 and 22(2) are recommended for repeal.

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They regulate the employment and training of males under 16 underground. HSC and British Coal agree that they are no longer necessary; and repeal will remove the discrimination.

38. Administrative provisions

a) An employer must notify details of any young person he employs (including YTS trainees) to the local careers office. The purpose is to allow careers offices to check that work obtained by disabled young people is appropriate. Ministers have already announced their proposal to repeal this requirement (section 119A of Factories Act) and set up alternative administrative arrangements.

b) We recommend retaining section 60 of the Health and Safety at Work etc Act 1974 which requires Area Health Authorities to provide employment medical advisers on request with details of the school medical record of a young person.

c) Two provisions making the parents of a young person liable to a fine if they knew or consented to his/her illegal employment were proposed for repeal in the consultative document, if all restrictions on young people were to be removed. As that is not the case, they should be retained. (Factories Act s158 and Mines and quarries Act s160).

d) We recommend repeal of section 131 of the Mines and Quarries Act 1954, which requires records to be kept of all young persons employed, and in the case of males, which of them are to be employed below ground. This is both discriminatory and burdensome.

39. Entertainments and Performances

Sections 23, 24 and 25 of the Children and Young Persons Act 1933 (and equivalent provisions in the Children and Young Persons (Scotland) Act 1937) regulate the employment of young persons in entertainments and performances. It is proposed to lift the restrictions on persons over minimum school leaving age by amendment.

RESTRICTED

40.

Other Retentions

Ministers have previously indicated that restrictions should be retained on employment at sea, and where moral considerations obtain. Accordingly no change is proposed to:-

Merchant Shipping (International Labour Conventions) Act 1925.
Betting, Gaming and Lotteries Act 1963. Gaming Act 1968. Licensing Act 1964 and Licensing Act (Scotland) 1976.

RESTRICTED

41

In general the majority of organisations, including the HSC and CBI are in favour of removing statutory protection which differentiates between males and females except where justified on health and safety grounds. However the TUC and a number of other organisations express the view that protective legislation needs strengthening and recommend that where practicable protection should be extended to all workers or replaced by new non discriminatory protection. Three unions and the National Council for Civil Liberties (NCCL) oppose most of the proposed repeals in the document on these grounds. The Association of British Insurers also express concern at the proposals as they envisage an increase in industrial accidents due to the introduction of women into heavier types of work for which they may not have sufficient strength.

42

The EOC welcome the proposals in general but advise that restrictive and protective measures for pregnant women should only be retained as a last option when common safe levels cannot otherwise be adopted and the hazards to men's reproductive capacity are negligible. They express concern that pregnant women, or women of reproductive capacity, should not face undue discrimination and that the hazards to men's reproductive capacity should not be overlooked. (Also a concern of NCCL).

Lead

43

(3 sections of the Factories Act 1961 and 5 regulations)

The Consultative Document proposed, in view of the monitoring arrangements set up under the Control of Lead at Work Regulations 1980, to repeal these sections of the Factories Act, the Paints and Colours Manufacture Regulations 1907 Reg 3, the India rubber Regulations 1922 Reg 1 and the Pottery (Health and Welfare) Special Regulations Reg 6 (part). Restrictions on women in the Lead Smelting and Manufacture Regs 1911, the Electric Accumulator Regs 1925 and the Approved Code of Practice of the Control of Lead at Work Regs were proposed for retention.

RESTRICTED

44

The EOC agree to the proposal but express concern that it should still be necessary to retain the 1911 Regulations, more than 7 years after the introduction of the 1980 Regulations, and that men are still allowed to work on lead processes covered by these regulations where the excessive personal levels of lead recorded put their health seriously at risk and may adversely affect their reproductive capacity.

45

The Society of Occupational Medicine accept the proposed repeals but together with the Maternity Alliance and NCCL argue that it is not sufficient to suspend women from work when pregnant as the damage can occur very early on in pregnancy when the woman may not know she is pregnant. The SOM recommends amending the 1980 Regs to prohibit women of reproductive capacity being employed in any situation where there may be significant exposure to lead. NCCL recommends strengthening the 1980 Regs and, together with the Maternity Alliance, extending the protection in these and other regulations to men in view of evidence of danger to men's reproductive health. Two of these organisations also recommend removing for pregnant women the qualifying period for protection against dismissal under the Employment Protection (Consolidation) Act 1978.

46

The CBI and the Lead Development Association oppose all the proposed repeals on the grounds that the provisions have not been totally superseded by the 1980 Regulations and that the processes are not obsolete. HSC now agree with the view that both women and young persons are still vulnerable to over-exposure to lead. However, the whole subject will need to be kept under close review. Protection for women of reproductive capacity against the effects of lead (damage to a developing foetus) can certainly be justified under Article 2(3) of the Equal Treatment Directive. The European Commission, having seen the Consultative Documents proposals, may very well be unhappy with revised proposals which would retain more of these provisions, so that there would be a continual ban on all women whether of reproductive capacity or not, but it is the simplest and surest method of protection to implement. In line with HSC advice, we recommend retention.

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47

(4 regulations of the Pottery (Health and Welfare) Special Regulations 1950).

The CBI agree to removing the ban on women in these provisions. The Institute of Personnel Management stress the need for adequate inspection and monitoring and specific provision to protect the health of pregnant women. Two other responses support the proposals, one being subject to the proviso that women are adequately protected during pregnancy. HSC state that Reg.6 (part) will be repealed under the COSHH Regulations (see para 34 above) and agree to the repeal of Reg. 18(3)(c), 18(7) and 29(1)(c)(1). Repeal is therefore recommended.

Mines and Quarries

Employment Below Ground

48

(Section 124(1) of Mines and Quarries Act. International Labour Convention 45. European Social Charter Article 8(4)(b)).

- a) British Coal are strongly opposed to lifting the restrictions on women below ground and denouncing ILO 45. Amongst their reasons are the estimated "substantial costs" and "unknown set back in productivity" that would result and "the strong traditional attitudes" within the industry which would lead to "strong opposition". They state that women could not integrate into the Corporation's present training programmes which require physically arduous tasks to be carried out and that management and professional posts require such basic training to be undergone. In addition they are concerned that pregnant women would have special medical needs in view of the arduous nature of underground work and the inherent dangers involved. In support of their argument they state

that the German Coal Industry takes the same view and that public concern might arise if female juveniles are allowed to work below ground.

- b) The Cornish Chamber of Mines are also strongly opposed arguing that women are "definitely physically unable to carry out the normal duties of a face worker" and that in addition to sanitary and cost problems safety and rescue standards would be compromised in emergencies due to women's lack of strength and inability to cope with the "psychological strains". Opposition to women working below ground is also expressed by the TUC and Mid-Glamorgan Careers Service. The TUC stress however that their objection is only to women's full-time employment below ground.
- c) The Department of Energy point to the disruption in working patterns, the effect on productivity and the significant cost of allowing women below ground for the coal industry and state that full weight must be given to these difficulties in any decisions taken on the necessary legislative changes, particularly on timing and presentation.
- d) The EOC support the removal of the restrictions and the denunciation of ILO 45. In answer to the argument that conditions are not healthy for women the EOC would question their suitability for men. However in view of practical problems that would be caused by immediate full repeal they advocate a timetabled approach; repealing the restrictions on professional posts but adopting a firm timetable for eventual full repeal with such improvements in conditions as would be necessary. Eight other organisations support lifting the restrictions on women's employment below ground subject to some reservations. The HSC has reserved its position pending the outcome of this consultation.

Comments and Recommendation

49

It is difficult to see how a ban on women working underground could be defended under the Equal Treatment Directive. A decision to repeal would entail denouncing two of the UK's international obligations; ILO Convention 45 this year, effective end May 1989 and European Social Charter Article 8 (4)(b) in 1989, effective end February 1990. Thus the repeals of UK law would not come into force immediately upon Royal Assent and the industry would have some time to adjust. Also, it is not necessary to provide in law for separate and costly sanitary conveniences underground; it is only necessary to avoid sex discrimination in law (see para 53 below). We therefore recommend that Section 124(1) of the Mines and Quarries Act 1954 be repealed, and the 2 international obligations denounced.

Other provisions

50

(Section 42(1), 43 and 44 of Mines and Quarries Act and 1 regulation).

British Coal see no need to remove references to gender in these provisions in view of their opposition to women working below ground. The Cornish Chamber of Mines is also opposed. The EOC and HSC recommend deletion of the word 'male'. Three other organisations support removing references to gender. In line with HSC's advice, we recommend retention of the age limits in these provisions (para 33 above) but with the discriminatory wording removed.

Handling of Loads

51

(3 regulations, S.93 of Mines and Quarries Act).

See paras 30 - 31 above.

52

Ionising Radiations Regulations 1985, Schedule 1, Parts IV and V

Those organisations expressing a view, including the HSC and CBI, agree with the proposal to retain. Both the EOC and the National Council for Civil Liberties (NCCL) express concern about the recent report of the National Radiological Protection Board which casts doubt on the current exposure limits and seeks to reduce them. Should this prove necessary they would like to see exposure limits set at a safe level for all workers. The Maternity Alliance express concern that damage can occur before pregnancy is diagnosed and that research also shows there is danger for men's reproductive health. They recommend amending the regulations to take these facts into account and also removing for pregnant women the qualifying period for protection against unfair dismissal under the Employment Protection (Consolidation) Act 1978. We recommend retention.

Protective Clothing

53

The HSC, EOC, CBI, the Engineering Employers Federation and one other response agree to the proposed repeal of both provisions. We therefore recommend repeal of the Cement Works Welfare Order 1930 (1)(d) and the Tin or Terne Plate Manufacture Welfare Order 1917.

Machinery Safety

54

(S.20 Factories Act, 1905 Self-acting Mules Regs).

HSC and CBI recommend removing the restriction on women in section 20 but retaining for young people (supported by 7 other organisations) and repealing the provision in the 1905 Regulations. This course is recommended.

Employment of Women After Childbirth

55

(S.205 Public Health Act, 5th Schedule of Factories Act)

- a) These provisions prohibit the employment of women in a factory within 4 weeks of childbirth. Only one response advocates total repeal. Others think that some form of protection is still necessary; many for the reason given by the EOC, that many women who become pregnant fail to qualify for the right to return to work under the Employment Protection (Consolidation) Act 1978. Several organisations have recommended strengthening the protection for pregnant women under the 1978 Act. One suggests financial incentives for women wishing to return to work early and one increasing eligibility under maternity pay legislation.
- b) Two unions recommend retaining the restriction in its current form. The EOC, CBI and 4 other organisations think that the protection should be extended to all sectors of employment and that the 4 weeks should be extended to 6 weeks, tying in with Statutory Maternity Pay. Women wishing to return to work earlier should be allowed to do so however with their doctor's consent. Two organisations (including the TUC) recommend keeping the 4 week restriction but extending to other sectors of employment and allowing an earlier return with doctor's consent as above. Two organisations recommend keeping the 4 week restriction for factories but allowing an early return with doctor's consent and one keeping the 4 week restriction but extending to all employment. Four organisations recommend simply extending the restriction to 6 weeks, two extending it to 6 weeks in all sectors of employment and three extending it to 6 weeks with the right to return earlier with doctor's consent. The National Federation of Self-Employed and Small Businesses made no specific recommendation but felt that women should be able to choose to remain at work without penalty under the SMP scheme. The Royal College of Midwives support the view that women should be given the right to return to work with their doctor's consent and the HSC said there could be a case for extending the protection to women in all employment for a specified period but that this would need further research and consultation.

We recommend that this provision be retained, as an absolute *protection* on work for 4 weeks after the birth, but extended from factories to all forms of employment.

56 Seats for Female Shop Workers in Covered Markets
(S. 37 of Shops Act)

The EOC, CBI, HSC and one other response accept the proposal to repeal, which is therefore recommended.

Washing Facilities and Sanitary Conveniences

57 Reg 12(4) Pottery (Health and Welfare) Special Regs 1950

The HSC claim that this requirement to screen off females' washing facilities is unlikely to cause discrimination against women. Other responses (including EOC and CBI) recommend extending the privacy requirement to both sexes, and this is recommended.

Sanitary Conveniences in Mines

58 Two 1956 regulations require lavatories for the use of females at a mine to have lockable doors. The EOC, British Coal and the Engineering Employers Federation support option (c) presented in the CD, which would require locks on all doors of lavatories above ground. The EOC however view this as a very short term solution in view of the proposal to allow women to work below ground. British Coal see the change as unnecessary given their opposition to allowing women below ground but have no objection to option (c). HSC indicate that this legislation will eventually be replaced in their mining legislation reform programme. Amendment as in option (c) is recommended. (See para 48 above)

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Air Flight Crew and Air Traffic Controllers

59

The Air Navigation Order 1985 provides for the automatic suspension of the licence of air flight crew and air Traffic Controllers who become pregnant. Six organisations commented. The HSC points out that this provision is designed to ensure the safety of air travellers rather than women employees but decline to comment as it is not a relevant statutory provision of the Health and Safety at work Act but a matter for the Civil Aviation Authority (who have not commented).

The EOC and two other organisations recommend that the provision should be amended so that women's employment should only be suspended where the pregnancy affects their ability to carry out the job, comparable to restrictions on seafarers. The NCCL consider it would be more appropriate if the suspension of flight crew's licences was subject to certain conditions, one of which would be a doctor's assessment of the risks to an individual's health. They also consider that the suspension of air traffic controllers is unjustifiable and the provision should be repealed. This latter point is endorsed by the union IPCS. The Society of Occupational Medicine and the Maternity Alliance both oppose lifting the restrictions on pregnant flight crew because of the incompatibility of flight deck duties with the symptoms and effects of pregnancy and research linking high altitude to low birth weight. One comment advocates retention for both occupations. Department of Employment are consulting Department of Transport who are responsible for the relevant provisions.

Merchant Shipping

60

Seven organisations, including HSE, CBI, EOC and TUC have commented: all agree that the restriction on pregnant women should be retained, and this is recommended.

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SEX DISCRIMINATION

61 As explained in paragraphs 2 - 4 above, to comply with the Equal Treatment Directive it is necessary to ensure that UK legislation pre-dating the Sex Discrimination Act which requires discrimination between men and women in employment or vocational training does not automatically override the provisions of the SDA. At present section 51 and section 7(2)(f) give priority to other legislation in the event of any conflict of obligations. Under the Consultative Document proposals this priority is to be removed and wherever possible any prior requirements that conflict with the Sex Discrimination Act and the Equal Treatment Directive are to be abolished or revised in order to remove the conflict. Some discriminatory provisions in existing legislation would still be justified and consistent with the Directive. The Consultative Document proposes that these provisions should continue to be shielded from the application of the Sex Discrimination Act. The provisions in question concern:

- a) protection of women for health and safety reasons;
- b) certain posts at Oxbridge colleges reserved for women;
- c) certain posts for head teachers at religious schools confined to members of (single sex) religious Orders.

The health and safety provisions are discussed elsewhere in this paper.

The consultation

62 The main relevant responses are those from the Equal Opportunities Commission and the National Council for Civil Liberties. Both the EOC and the NCCL argue that the Bill should deal with discriminatory provisions outside the area of employment and vocational training. They propose that schedules of discriminatory legislation in all areas should be drawn up and regularly reviewed. This approach would not necessarily require any immediate change to existing discriminatory legislation. It would however change the framework in which such legislation would be considered, and in effect would shift the presumption towards removing discrimination. This might assist the promotion of equal opportunity, but would go beyond the intended scope of the Bill. The EOC have made the same proposal in their recent report on their general review of the Sex Discrimination Act. This is under consideration by the Home Office.

The EOC are also concerned that the DE proposals do not cover indirect discrimination. They give a number of examples which in their view show such discrimination, including physical requirements for entry to the Police and Fire services and provisions giving preference to ex-service people in public sector jobs. They recommend a full review of all indirectly discriminatory provisions.

The EOC's claim that the proposals do not cover indirect discrimination is incorrect. The protection of s51 would be removed from any discriminatory legal requirements in the employment field, whether directly or indirectly discriminatory. It is difficult to identify all requirements which might be

RESTRICTED

indirectly discriminatory, since this depends on individual circumstances. In the preparation of the Consultative Document Departments were asked to identify potentially discriminatory requirements wherever possible. They should be aware that complaints of indirect discrimination may arise in future and section 51 will no longer serve to exclude them. In drafting the Bill consideration will be given to how any apparent conflict of legal obligations can be avoided or resolved in the absence of section 51.

Oxbridge women's colleges

63 All the women's colleges affected have expressed support for the proposals in the consultative document. The EOC also support the proposals. The NCCL in their response have argued that more needs to be done to redress women's under-representation in high-level jobs in general.

Religious school appointments

64 The EOC oppose the Consultative Document proposals with regard to headships of religious schools. They have received complaints alleging sex discrimination in regard to such posts, and believe it is unjustified to require that only members of the relevant Order may be appointed. The bodies representing the schools' interests support the proposals. They raise the suggestion that some appointments other than head teachers might also be affected but do not argue that it is essential to protect them. It has also been suggested that certain educational posts at Oxford may involve sex discrimination (for instance because they are combined with Church of England appointments) and ought to be preserved.

It is important to ensure that any discriminatory provisions are fully justified. The EC Commission are known to be of the view that any exception in relation to appointments in religious schools should be tightly drawn. If we were to agree to any broadening of scope, this would also clearly be unwelcome to the EOC. At present we believe that the proposed exemption for head teachers of religious schools is defensible and should be retained, but any other exemptions will need to be carefully scrutinised. Department of Employment is in consultation with DES.

Recommendations

65 We recommend that the Consultative Document proposals concerning sex discrimination should be implemented, subject to the following provisos:

- a) the EOC report to the Home Office on the Sex Discrimination Act may result in some further amendments to legislation; and
- b) at present we recommend maintaining the scope of the provisions concerning religious educational appointments as proposed in the Consultative Document, but this needs further consideration in the light of the response to consultation and EC obligations.

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RESTRICTIONS ON YOUNG PEOPLE'S HOURS OF WORK RECOMMENDED FOR REPEAL

1. Factories Act 1961; Section 86
 Section 87
 Section 88
 Section 89
 Section 90
 Section 91
 Section 92
 Section 93
 Section 94
 Section 96
 Section 97
 Section 98
 Section 99
 Section 100
 Section 101
 Section 102
 Section 103
 Section 104
 Section 105
 Section 106
 Section 107
 Section 108
 Section 109
 Section 112
 Section 113
 Section 114
 Section 115
 Section 116
 Section 117
 Section 138(1)(d)
 Section 140(1)(a)and (d)

Secondary legislation under the Act

Bread, Flour Confectionery and Sausage Manufacture (Commencement of Employment) Regulations 1939 (SR & O 1939 No. 510)

Factories (Intervals for Women and Young Persons) Regulations 1938 (SR & O 1938 No. 607)

Factories (Separation for Certain Purposes) Regulations 1939 (SR & O 1939 No. 1888)

Young Persons Under Sixteen (Factory Hours Modification) Regulations 1940 (SR & O 1940 No. 139)

Factory (Individual Overtime) Regulations 1938 (SR & O 1938 No. 1228)

Factory Overtime (Separation of Different Parts or Sets) Regulations 1938 (SR & O 1938 No. 640)

Shift System in Factories and Workshops (Consultation of Workpeople) Order 1936 (SR & O 1936 No. 1367)

Night Work of Male Young Persons (Medical Examinations) Regulations 1938 (SR & O 1938 No. 608)

Employment of Young Persons (Iron and Steel Industry) Regulations 1959 (SI 1959 No. 756)

Employment of Young Persons (Glass Containers) Regulations 1955 (SI 1955 No. 274)

Factories (Saturday Exception) Regulations 1940 (SR & O 1940 No. 109)

Factories Act Holidays (Different Days for Different Sets) Regulations 1947 (SR & O 1947 No. 184)

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Section 30
Section 31
Section 32
Section 33
Section 34
Section 35
Section 36
Section 68
Section 72(1) and (4)(a)

4. Young Persons (Employment) Act 1938; Whole Act

Secondary Legislation under the Act

News Agencies and Communications Companies (Messengers) Regulations 1939 (SR & O 1939 No. 1560)

Young Persons (Employment) Order 1938 (SR & O 1938 No. 1501)

5. Employment of Women, Young Persons and Children Act 1920;

Section 1(3)
Section 1(4)
Part II of Schedule

6. Children and Young Persons Act 1933; Section 20

Children and Young Persons (Scotland) Act 1937; Section 30

RESTRICTED



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P A Bearpark Esq
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18th February 1988

Dear Andy, ^{*POB*} *19/2*

SEX DISCRIMINATION - EQUAL PAY LEGISLATION

HAYWARD -V- CAMMELL LAIRD

top of file

I wrote to you on 15 February about this case. You will wish to know that the House of Lords completed consideration of this case yesterday (17 February) but judgement was not given immediately. It is understood it will not be given for some four to six weeks.

I will of course let you know as soon as the decision is announced and provide any necessary briefing.

yours
Peter

PETER BALDWINSON
Private Secretary



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16/2
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15th February 1988

Andy Bearpark Esq
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Dear Andy

SEX DISCRIMINATION - EQUAL PAY LEGISLATION

Hayward-v-Cammell Laird

I am writing to alert you to this equal pay case which is expected to be heard by the House of Lords today (Monday 15 February), although it is not known when the decision will be given. Considerable publicity is likely.

Ms Hayward was the first person to bring a successful case at an industrial tribunal under the equal value provisions of the Equal Pay Act, which were introduced in 1984. Ms Hayward is a cook employed by Cammell Laird, and the tribunal accepted her claim that she was doing work of equal value to that done by a painter, a joiner and a thermal insulation engineer, who were being paid more than her. However, the matter has not been resolved because Cammell Laird have not increased Ms Hayward's pay. They have argued that although her salary is lower than the men's, she is effectively better remunerated when account is taken of other terms of employment such as meals, sick pay and holidays. This argument has prevailed at subsequent stages of the case, up to the Court of Appeal.



Miss Hayward is appealing to the House of Lords against the Court of Appeal's decision that under European Community law (if not national legislation) it is the overall package of remuneration rather than the individual terms that must be equal. Since this is a test case, Ms Hayward is receiving financial backing from the Equal Opportunities Commission.

It will be an important decision. Employers will want the package approach endorsed, since a success for Ms Hayward would open the door to claims from other women who are paid less than men doing work of equal value but receive other offsetting benefits, and from male comparators seeking equality in respect of non-pay benefits. In this, of course, there would be possible implications for pay levels generally.

We will provide further briefing as soon as the decision is known.

I am copying this letter to Moira Wallace in the Chancellor's office.

yours

Peter

PETER BALDWINSON
Private Secretary



QUEEN ANNE'S GATE LONDON SW1H 9AT

22 October 1987

~~1.2.87~~
2.2.87.

Dear Secretary of State,

EUROPEAN COMMISSION: REASONED OPINION ON SECTION 51
OF THE SEX DISCRIMINATION ACT 1975

WILL REQUEST IF REQUIRED

I have seen your letters of 26 September and 18 October to Geoffrey Howe and the comments on them of other colleagues.

Like Geoffrey and others, I would regard allowing a reference to the European Court of Justice as most undesirable. I am particularly concerned that a court judgment might limit our ability to retain protection for those areas, such as the women's colleges, where we think it is necessary. Furthermore, if we delay we shall come under pressure for wider amendment to the Sex Discrimination Act in response to the Equal Opportunity Commission's proposals for change, which will be submitted shortly. Against these arguments, I recognise that an emergency Bill in the present session would be most unwelcome. It is not entirely clear what are the full implications of the various options before us. For instance, both the section 2(2) procedure and allowing the European Court of Justice reference to take its course could jeopardise our efforts to protect the Oxbridge women's colleges.

I am aware that your officials are in touch with the European Commission and that a clearer view of the action which the Commission proposes to take will emerge from a meeting in Brussels at the end of next week. Accordingly I suggest that we should discuss the options at a meeting of H as soon as possible thereafter.

I am copying this letter to the Lord President, the Lord Advocate, the Foreign Secretary, the Secretary of State for Defence, other members of OD(E) and H Committees, the Chief Whip and Sir Robert Armstrong.

Yours sincerely
N. Fowler

(Approved by the Home Secretary & signed in his absence)

The Rt Hon Norman Fowler, MP.

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nbpm



With the Compliments
of
PRIVATE SECRETARY

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12 OCTOBER 19 87

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Minister of State
for Employment

12 OCTOBER 1987

Minister of State

**EUROPEAN COMMISSION:
REASONED OPINION ON SECTION 51 OF THE SEX DISCRIMINATION ACT 1975**

WILL REQUEST IF REQUIRED

Thank you for copying to me your letter of 8 October to Geoffrey Howe.

For the reasons you have stated I agree that it would be unsafe to rely on section 2(2) of the European Communities Act as a means of retaining such discrimination as we consider to be permitted by virtue of the Community provisions.

Furthermore in my view from a legal standpoint it would be highly undesirable to allow litigation which we know we must lose to proceed before the European Court. Particularly since such legal justification as we might claim for the discrimination practiced in the Oxbridge Womens Colleges could very well be undermined by the terms of the Court's judgment. Furthermore, we will be seen to be putting forward a defence which is clearly untenable and, more importantly, we run a substantial risk of seriously damaging our credibility with the Court. A risk which could rebound to our disadvantage in a future case where we do have a sustainable defence.

This letter is copied to The Lord President, Secretaries of State for Foreign and Commonwealth Affairs and Defence, the members of OD(E) and of H, the Chief Whip and Sir Robert Armstrong.

*Yours sincerely,
Abe Maxwell.*

CAMERON OF LOCHBROOM

Approved by the Lord Advocate
and signed in his absence

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12 OCTOBER 1987

Dear secretary of state

EUROPEAN COMMISSION:
REASONED OPINION ON SECTION 51 OF THE SEX DISCRIMINATION ACT 1975

Thank you for copying to me your letter of 8 October to Geoffrey Howe. *WILL REQUEST IF REQUIRED*

For the reasons you have stated I agree that it would be unsafe to rely on section 2(2) of the European Communities Act as a means of retaining such discrimination as we consider to be permitted by virtue of the Community provisions.

Furthermore in my view from a legal standpoint it would be highly undesirable to allow litigation which we know we must lose to proceed before the European Court. Particularly since such legal justification as we might claim for the discrimination practiced in the Oxbridge Womens Colleges could very well be undermined by the terms of the Court's judgment. Furthermore, we will be seen to be putting forward a defence which is clearly untenable and, more importantly, we run a substantial risk of seriously damaging our credibility with the Court. A risk which could rebound to our disadvantage in a future case where we do have a sustainable defence.

This letter is copied to The Lord President, Secretaries of State for Foreign and Commonwealth Affairs and Defence, the members of OD(E) and of H, the Chief Whip and Sir Robert Armstrong.

*Yours sincerely,
Abe Maxwell.*

CAMERON OF LOCHBROOM

Approved by the Lord Advocate
and signed in his absence

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LC 39



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From the Chancellor of the Duchy of Lancaster
and Minister of Trade and Industry

THE RT HON KENNETH CLARKE QC MP

Ms Angela Wilkins
Private Secretary to
The Rt Hon Norman Fowler MP
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

28 September 1987

NB25

Dear Angela,

REDUNDANCY PAYMENTS AND SECTION 51 OF SEX DISCRIMINATION ACT

Mr Clarke has seen your Secretary of State's letter to him of 25 September. In his absence from the office on European business, I am writing to let you know that he believes this matter will need to be resolved by discussion at H Committee. I understand that it has been added to the agenda for the meeting of H on Wednesday morning.

I am copying this to the Private Secretaries to members of H and ODE, and to the Private Secretaries to the Law Officers.

Yours sincerely,
Alastair Morgan

ALASTAIR MORGAN
PRIVATE SECRETARY

CC B9



From the Chancellor of the Duchy of Lancaster
and Minister of Trade and Industry

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17 September 1987

NBM

D. N.

REDUNDANCY PAYMENTS AND SECTION 51 OF THE SEX DISCRIMINATION ACT

Thank you for copying to me your letter of 12 September to Willie Whitelaw.

WILL REQUEST IF REQUIRED

I understand your concern to forestall if possible further legal action against us on this subject; and with the bulk of your proposals on Section 51 (which have, I understand, already been discussed between officials) I have no difficulty, subject to the points my officials made at EQO.

As far as statutory redundancy payments are concerned, I accept that there is little prospect of success in defending the existing position on the discriminatory upper age limit if the matter were to be brought before the European Court of Justice; and that we therefore have to examine options for removing discrimination.

That said, I am concerned to note that the option you recommend (extending women's statutory right to a redundancy payment to age 65) is likely to impose additional costs of £18m on employers.

It seems to me that before we take a firm decision on this issue we need to see the Law Officers' advice on the merits of the available options in terms of EC law.



I would suggest that our line at the 23 September meeting (if it is not possible for the Law Officers to form a view before then) should simply be that it is our firm intention to remove discrimination in relation to redundancy payments; that a number of options (some of which your officials might describe) are being considered; and that we would welcome the Commission's views.

I am copying this to Willie Whitelaw, to other members of H and ODE, and to the Law Officers.

A handwritten signature in black ink, appearing to be 'K. Clarke', with a large, stylized initial 'K' and a smaller 'Clarke' written below it.

KENNETH CLARKE



cc B.G. (2)

CDP

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213...6460.....
Switchboard 01-213 3000 GTN Code 213
Facsimile 01-213 5465 Telex 915564

Rine Minister

CDP
15/9

Robert Jackson Esq MP
Parliamentary Under Secretary of State
Department of Education and Science
Elizabeth House
York Road
London SE1 7PH

14 September 1987

Thanks on
at ACP

Dear Minister,

Thank you for your letter of 27 August about Oxford and Cambridge women's colleges and the amendment of Section 51 of the Sex Discrimination Act. I have also seen the Prime Minister's views recorded in her Private Secretary's letter of 1 September. Provided you are completely satisfied on the special merits of the case (and I feel you are in the best position to assess these), I agree that we should seek to take advantage of the European Commission's evident wish to be accommodating in this matter and set out to negotiate an exemption from the amendment on the basis of Article 2(4) of the Equal Treatment Directive. However, I think colleagues will wish to be aware of the potential wider consequences and how we might need to defend treating the women's colleges as a special case.

It has always been a firm principle of UK sex discrimination legislation that it does not permit positive discrimination in recruitment. Up to now, the Government has strongly resisted any departure from this principle and argued that the Equal Treatment Directive does not permit such discrimination. You will be aware that this is a point on which we are at some variance with certain pressure groups and, indeed, our political opponents. Any exception which allows appointments to be made on a basis other than merit risks undermining this basic philosophy unless very special circumstances can be advanced for allowing it.

Nevertheless I am, as I indicated, prepared to offer my Department's full support in seeking to secure a solution under Article 2(4) in the forthcoming negotiations in



Brussels which will enable the colleges to maintain the status quo for as long as necessary. We shall, of course, need to look to your Department for assistance in defending the exception when our intentions are made known publicly and when we introduce the legislative proposals in Parliament. Skilful presentation will clearly be important in order to minimise the potential difficulties and no doubt we shall be able to make much of the fact that we shall not be creating a new area of positive discrimination but simply preserving an existing one for a limited period against a very special historical background.

I am copying this letter to the Prime Minister's office and to the other recipients of yours.

Yours sincerely,

Norman Fowler

NORMAN FOWLER
(APPROVED BY THE SECRETARY OF STATE
AND SIGNED IN HIS ABSENCE)



DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

Charles Powell Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON SW1
PERSONAL

CP
14/9

14 September 1987

Dear Charles

I have seen your letter underlining the Prime Minister's strong interest in the Oxbridge Women's Colleges.

Like her, I guess, my instinct is that these are voluntary bodies (although receiving public funds), and that in a free society they should be entitled to discriminate. On the other hand, we seem to have abrogated this principle in our Sex Discrimination Legislation, both national and European - which is why I have accepted official advice that we have to argue the case for the exclusiveness of the Women's Colleges as a measure of positive discrimination (the paucity of women dons). I note that the Prime Minister concurs - and I hope that if this is seen by the Department of Employment as the "thin end of the wedge" she might come to our aid!

You might like to know that I refused to accept advice that we should offer a definite time limit (10 years was proposed), because the Commission would expect it. I am told that Brussels is quite hard on this - but in my view we should try to get the widest and most enduring facility for the Women's Colleges to make their own choices. If necessary I will use my own Euro-contacts to press the point - but I will keep you posted if we run into trouble.

*Very
Yours
Rob*

*P.S. You may be
amused by the
attached reply to
an incident regarding
an my part!*

ROBERT JACKSON



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

- 9 SEP 1981

John Patten

Thank you for your letter of 27 August. I am content with the approach that you are proposing to take to protect the position of the women's colleges at Oxford and Cambridge. I am sure we should do all we can to try to afford them protection until such time as they judge it is no longer needed.

It is clearly important that the Universities - and not only Oxford and Cambridge - take positive steps to improve the prospect for women. There is no doubt that, as has been found in other areas of employment, they will need to look carefully at their selection criteria to ensure that women are able to compete on equal terms for all posts and are not being indirectly discriminated against with the result that, although otherwise well qualified, they are excluded from posts. To ensure that the Universities take positive steps, I think it would be useful to suggest that they consult with the Equal Opportunities Commission, who have extensive experience of working with employers on eliminating discrimination. I know the Commission would be willing to give the Universities every assistance. If we were to do that, I believe the European Commission would respond more favourably to our approach for special treatment under Article 2(4) of the Equal Treatment Directive.

I am copying this letter to Norman Fowler, Geoffrey Howe, Patrick Mayhew and to the **Prime Minister's Office** and Sir Robert Armstrong.

as ltr, John

JOHN PATTEN

Robert Jackson Esq MP



FCS/87/182

ed?
8/1

SECRETARY OF STATE FOR EDUCATION AND SCIENCE

Sex Discrimination and Oxbridge Colleges

1. Robert Jackson kindly copied to me his letter of 27 August to Norman Fowler recommending that we seek to retain, for a period, special protection for certain Oxford and Cambridge Colleges to enable them to appoint only women as fellows.
2. I am content with the approach Robert Jackson suggests.
3. I am copying this minute to the Prime Minister, Norman Fowler, Douglas Hurd, Patrick Mayhew and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
7 September 1987



SW2ABM

ape

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

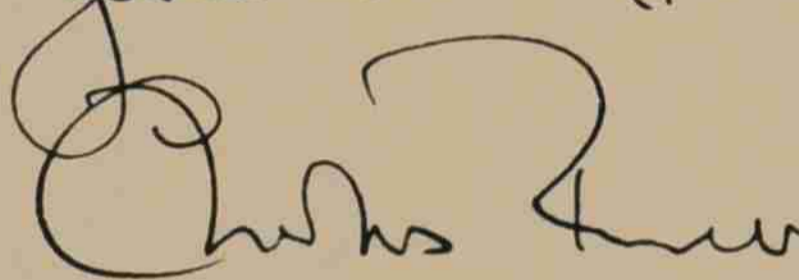
1 September 1987

See John.

The Prime Minister has seen a copy of Mr. Robert Jackson's letter of 27 August about repeal of Section 51 of the Sex Discrimination Act 1975, and its effect on women's colleges at Oxford and Cambridge.

The Prime Minister feels strongly about this matter which she has discussed on more than one occasion with the President of the European Commission. She very much agrees with Mr. Jackson that we must take legal powers to preserve the protection afforded to the four women's colleges, and would wish this to be done as soon as possible.

I am copying this letter to Tom Jeffery (Department of Education and Science), Miss C M Roberts (Office of Mr. Robert Jackson, Department of Education and Science), Lyn Parker (Foreign and Commonwealth Office), Philip Mawer (Home Office), Michael Saunders (Law Officers Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,


(C. D. POWELL)

John Turner, Esq.,
Department of Employment.

JTW



10 DOWNING STREET

Prime Minister

Discrimination Against

Women at Oxford &

Cambridge Colleges.

You will recall that you
raised this with Mr. Belors
& received a sympathetic
response.

Robert Jackson is now
seeking Dept. of Employment
& agreement to take
legal powers to preserve
the protection of women's

colleges at Oxford &
Cambridge. Employment
officials are objecting,
because they do not
like setting a precedent
of positive discrimination.

This is not a
strong argument: The
problem already exists.

Agree to support

Robert Jackson?

Yes - unreservedly
me

CDP

20/8



DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

27 August 1987

Dear Norman

I am writing in Kenneth Baker's absence on holiday.

As you know, the European Commission has issued a Reasoned Opinion that section 51 of the Sex Discrimination Act 1975 (which allows discrimination to continue where it is permitted under previous legislation) is too wide and should be repealed. Legal advice is that there would be no defence against the repeal of section 51, although discussions within government have shown that there are a number of areas where continued protection would be desirable.

Whilst you are in the lead over the repeal of section 51, a particular issue arises for me in relation to certain colleges at Oxford and Cambridge identified as being protected by the section because discrimination is required to appoint women only as fellows and other academic staff under the terms of their statutes. These statutes are instruments made under various Oxford and Cambridge Acts. The four colleges involved are Somerville and St Hilda's at Oxford, and Lucy Cavendish and Newnham at Cambridge. If section 51 is repealed, the present protection of these statutes would cease.

In discussions between officials from our departments and the Commission in June 1986, the Commission - who are sympathetic to the position of the women's colleges - offered Article 2(4) of the Directive as a solution under which the colleges might continue to be protected for a period after section 51 was repealed. The relevant clause reads:

"This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in article 1(1)" [employment including promotion, vocational training, working conditions, and social security].

The Commission's offer was re-iterated when the Prime Minister raised the issue with President Delors in December 1986.

RESTRICTED

There is no question that there remains an inequality of employment in higher education for women - as shown in the national statistics for 1984/85 (the latest published); and no doubt in my mind that this has a direct bearing on maintaining opportunities for women in the same area. Women represented only 17.6% of the total full-time academic posts ie professors, readers, lecturers. The Oxford and Cambridge figures showed that these universities overall were marginally below this figure (16.7% and 15.6% respectively). However, of the posts fully at the disposal of the Universities, as distinct from contract research posts based at the Universities over which they have no direct control, the percentage of women full-time academics at Oxford is 11.3% and at Cambridge only 8.5%.

This inequality has largely come about for historical reasons. In the 1960s United Kingdom universities underwent a period of expansion and recruited large numbers of staff. At that time it has to be remembered there was no sex discrimination legislation and the majority of Oxford and Cambridge colleges were for men only. There was only a very small pool from which suitably qualified women could be appointed. In addition women have traditionally been employed in short-term (up to three year) research fellowships and in these times of financial stringency, it is these short-term posts which have become vulnerable to cuts when they have fallen vacant.

Academics appointed during the expansion period enjoy security of tenure until retirement age, normally at 67. Whilst we are proposing measures to change the position on tenure for future appointments, the legacy of the past at Oxford and Cambridge will take many years to work through the system, and I see it as important to buy time to enable the pool of women to increase so that by the end of that period there should be greater equality of opportunity for women to be appointed. Progress towards a better balance will obviously be slow, but that is all the more reason to ensure that it is encouraged and not set back.

In short, the number of women academics at Oxford and Cambridge is below the national average - a figure which in itself is no cause for complacency - and if the present protection afforded to the four women's colleges is removed, the position at these universities will inevitably become even worse. To prevent this happening I am satisfied that we need to seek the agreement of the EC to my taking legal powers to preserve the protection, following the repeal of section 51, for a period in order to enable the pool of women candidates to grow so that, when more posts - in particular senior posts - fall vacant towards the turn of the century, a sufficient number of well-qualified women exists to take advantage of the situation. In this very real sense, Article 2(4), which is directed at securing equality of opportunity, is entirely at one with my objective.

I am conscious that the use of Article 2(4) is seen by your officials as setting a potentially difficult precedent. You do not want the Government to set an example of positive discrimination in job recruitment, which could be seized upon by other interests. But, of course, what I am seeking does not set such an example because the example exists already. All I wish to do is to permit its continuation for a period.

To sum up, before consideration is given to ending the protection of the women' colleges, I want to see the statistical balance starting to be

RESTRICTED

redressed and the pool of women academics increased to a point where they could be said to enjoy real equality of opportunity. To satisfy the points put by the Commission in order to receive its support, I would ask the Universities what positive steps they would take to improve female recruitment in the mixed colleges; and I would offer periodic reviews so that when the situation has improved sufficiently the protection can be brought to an end.

It seems likely that an approach to the Commission would be pushing at an open door and I have no doubt that we should proceed. Your own difficulties are real, but they will not be substantially affected by this proposal to deal with a unique situation.

Copies of this letter go to Geoffrey Howe, Douglas Hurd, Patrick Mayhew and to the Prime Minister's Office, and to Robert Armstrong. In view of the need to give officials a clear line to take at their meeting with the Commission on 23 September I must ask for replies to be received by 7 September.

Wm. James McCarty
Robert Jackson

ROBERT JACKSON

RESTRICTED



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

21 August 1987

The Prime Minister has seen, and noted,
your Minister's minute of 14 August
reporting on the Second Meeting of Commonwealth
Ministers for Womens Affairs in Harare.

(P. A. BEARPARK)

Ms. Susan Scales,
Department of Education and Science.

PA

015
2
PRIME MINISTER

PSM 20/8
Second Meeting of Commonwealth Ministers for Women's Affairs
Harare, Zimbabwe, 3-6 August 1987

1. This Commonwealth meeting achieved a good working relationship both in debate and behind the scenes. Other countries' delegates commented on the UK's positive contribution toward achieving a practical approach and consensus. I was able to learn from other countries' experiences for our activities both as an aid donor and also domestically with regard to the economy and women's development.
2. I shall be reporting to Chris Patten and John Patten on Development and Violence respectively, and more generally to the Ministerial Group on Women's Issues. First, however, I should like to offer you a personal summary of what was achieved. Two recommendations will go to Heads of Government and Finance Ministers.
3. The Commonwealth Plan of Action on Women and Development was adopted as a practical step by the Secretariat. Ministers asked that it be endorsed at the Heads of Government meeting in Vancouver this October. They felt attention at the highest level was vital because the Plan required complementary and supporting measures at national level to incorporate women and development issues into all sectors of national development planning.
4. Ministers further discussed measures to reduce Violence Against Women. I reported the good progress that we are making in the UK and said that I hoped we would continue this by stimulating both the judiciary regarding length of sentences for rape and the police regarding the more pro-active role already being instituted.
5. Commonwealth countries vary in their national machinery for handling women's issues. A few have Ministers for Women's Affairs (or similar title) including Canada; most have women's bureaux. I described individual Departments' responsibilities and the progress of our Ministerial Group on the coordination of the government's response to the Nairobi Forward Looking Strategies for the Advancement of Women. My impression was that in comparison with other countries, we are performing reasonably well.
6. The most interesting item on the agenda was Macroeconomic Policy and in particular the effect that structural adjustment measures can have if they are undertaken without sensitivity to women's role in the economy. Developing countries had found that while some policies had been economically successful, others had not. Some had incurred unacceptable social costs. A key factor was the lack of people's responsiveness to incentives in areas where women play a major role in the economy. The reasons for this are not well understood.

7. Ministers concluded that they would recommend to Heads of Government at Vancouver that an Expert Group should be set up in consultation with Finance Ministers. Its task would be to examine further the relationship between women's economic contribution and the effectiveness of structural adjustment policies, and to make recommendations.
8. In addition to supporting an Expert Group I think it be productive if the Ministerial Group were to examine the extent of the relationship between macroeconomic policy and women in the United Kingdom. It seems to me that our long term economic policy should take full account of women's contribution and ensure that their position in business and in the workforce is not neglected.
9. A copy of the final communique from Harare is attached.

ANGELA RUMBOLD

APPROVED BY ANGELA RUMBOLD AND SIGNED IN HER ABSENCE

Susan Scales
19 August 1987.

Women and Development Programme

Second Meeting of
Commonwealth Ministers
Responsible for Women's Affairs

Harare, Zimbabwe: 3-6 August 1987

COMMUNIQUE



Commonwealth Secretariat

MARLBOROUGH HOUSE · PALL MALL · LONDON SW1Y 5HX

COMMUNIQUE

1. The Second Meeting of Commonwealth Ministers Responsible for Women's Affairs was held in Harare, Zimbabwe, from 3 to 6 August 1987. The Meeting was opened by the Honourable Prime Minister of Zimbabwe, Cde Robert Gabriel Mugabe, and chaired by the Minister of State for Community Development and Women's Affairs, Honourable Mrs. J.T.R. Mujuru. Thirty two countries were represented, 23 of them by Ministers charged with responsibility for women's affairs.

2. A central theme of Ministers' deliberations was the development of effective means of incorporating women and development issues into the mainstream of policy and planning processes, both at the national and international levels. In particular, Ministers were concerned with the interaction between economic and women and development issues. Ministers were conscious of the deterioration in the international economic environment and its impact in all sectors of policy development. They reaffirmed the value they placed on co-operation among Commonwealth governments to explore ways of ensuring that macro-economic and sectoral policies support women in contributing to economic recovery and avoid placing disproportionate burdens on women in the adjustment process.

Plan of Action on Women and Development

3. Ministers welcomed the Secretariat Plan of Action as a concrete step towards the implementation of the Secretariat Policy on Women and Development. They attached particular importance to the Secretariat playing a proactive role on women's issues.

4. Ministers pledged their full support in assisting the Secretariat to attain the objectives of the Plan of Action through complementary and supportive measures at national level.

5. Ministers also considered the role of national governments in the implementation of Commonwealth objectives on women and development. Agreement was reached on measures which should be taken at national level in key areas to further a comprehensive approach to the participation of women in the development process, and the incorporation of women and development issues in national policy planning in all sectors.

6. It was agreed that a statement on national initiatives should be incorporated as an integral element of the Plan of Action, with a view to giving the Plan greater scope, substance, and impact.

7. Ministers adopted the Plan of Action as revised, subject to the inclusion of a section on national initiatives. They requested the Secretary-General to forward the Plan of Action to Heads of Government for their endorsement. Ministers also welcomed the Secretary-General's statement that he would report regularly to them and to Heads of Government on progress in the implementation of the Plan.

Violence Against Women

8. Ministers reiterated their concern about violence against women and the urgent need to proceed with the development of effective and co-ordinated measures to address it. They expressed their appreciation to the Secretariat on the production of Confronting Violence: A Manual for Commonwealth Action, which provides practical information about both legislative measures and social supports in relation to violence in the home, sexual assault, sexual harassment and violence related to dowry. They commended its utility to Education, Health and Law Ministers.

9. On their own part, against the background of the wide-ranging information provided by the Manual, Ministers stressed the need for further discussion of legislative remedies and for monitoring the success of innovative legal

approaches. They undertook to give urgent consideration to the Manual's suggestions on legislative change, including the definition of rape, as well as the provision of protective and support measures such as shelters and counselling. In commending the kit for dealing with sexual abuse, Ministers undertook to promote its use. They reaffirmed the special value which they attached to stringent legislative measures involving increased penalties for all forms of violence against women.

10. Ministers commended the work of the Expert Group Meeting of Law Teachers and recommended that their proposals for teaching materials for law students be elaborated and then disseminated as widely as possible throughout the Commonwealth. They considered that these materials would provide a useful model for the development of training components for other professionals (including police, prison officers, the judiciary and community workers) dealing with incidents of violence against women.

11. Ministers emphasised the importance of public education efforts, both to ensure that women are aware of their rights and to overcome societal attitudes condoning violence against women.

12. They asked the Secretariat to continue the exchange of information and provision of skills training programmes on measures to cope with violence, and to expand its range of concerns to include sex tourism and child abuse. Ministers agreed to keep all aspects of the issue of violence against women under review.

Violence Against Women in South Africa

13. Meeting in Harare on the doorstep of South Africa, Ministers were conscious of the special burdens and sacrifices imposed on the black women of South Africa by the violence of the apartheid system. They expressed profound solidarity with, and support for, their struggle against apartheid, and looked to the day when the entire region would be free from its devastating effects. They urged member countries to enlarge programmes of humanitarian assistance to the

victims of apartheid, make available increased scholarship and training awards, and give the plight of the suffering women and children of South Africa the fullest publicity.

Integrating Women and Development Concerns: the Systemic Approach

14. Ministers commended the Governments of Australia and India whose innovative approaches to ensure appropriate budgetary provisions for Women and Development issues provided models for national action. Australia's approach in the annual "Women's Budget Program" requires each Ministry to report on the impact of programme expenditure on women. India's "special component plan" to allocate and monitor the flow of resources to specific targets provides a useful analogy for Women's Ministries.

15. In reviewing the techniques developed by the Women and Development Programme for training policy-makers in gender-aware approaches, Ministers examined materials prepared on gender issues in health, agriculture and macro-economic policies. Ministers commended the materials as an excellent tool for assisting policy-makers to perceive the systemic nature of gender concerns and the necessity for inter-sectoral approaches to planning.

16. Ministers reiterated the critical role of national machineries in providing policy advice and support to sectoral ministries. Recognising that effectiveness in initiating policy discussions and monitoring policy developments in key sectoral areas is influenced by the resources and skills the machineries can command, they emphasised the need for the provision of adequate training for their staff.

Macro-economic Policy and Women

17. Ministers considered the impact of macro-economic decisions and particularly the effect of structural adjustment measures undertaken without sensitivity to gender. Recognising

the importance of this issue, they recommended to Heads of Government that the Secretary-General, in consultation with Finance/Economic Planning Ministers and Ministers Responsible for Women's Affairs, set up an expert group to study this method in greater detail as follows:

- (a) To establish the extent of women's contribution to the economy (paid and unpaid) and its implications for structural adjustment measures.
- (b) To examine available evidence on the impact, both direct and indirect, of structural adjustment measures on specific groups of women, in particular women farmers; self-employed women; women employed in the public and private sectors; women heads of households.
- (c) To consider alternative structural adjustment measures which could be more socially and economically effective.
- (d) To suggest measures for influencing international aid and finance institutions in the light of the findings.

Training

18. A continuing concern of Ministers was the overriding importance of training. Ministers emphasised the need for a variety of training formats and durations, directed at a range of participants: training for senior policy-makers in governments to orient and sensitise them to women's issues; for staff of national machineries to enhance their professional competence; for women in local communities to develop their decision-making capacity.

19. In particular, they stressed the need for in-country training to enable more women to benefit. In order to facilitate this, they emphasised the value of programmes for training of trainers. In view of family responsibilities, Ministers urged that childcare be provided at training sites or in conjunction with training.

20. Ministers condemned the continuing stereotyping of education training for women, whether offered by national institutions or through international agencies. They were particularly concerned about the need for women to have greater access to technical and scientific training. They requested the Secretary-General to bring these concerns to the attention of Education Ministers and the Association of Commonwealth Universities. They drew the attention of their governments to the existence of the Commonwealth Industrial Training Experience Programme (CITEP) as a tool for expanding women's training opportunities in the industrial sector. Ministers further decided to draw the attention of their respective Education Ministers to the need to ensure that distance education programmes be of benefit to both women and men.

Women and Development Programme

21. Ministers commended the contribution made by the Women and Development Programme to the promotion of gender-aware approaches to policy and planning and its support to individual governments in the development of national policies and plans of action. They urged that national workshops for senior policy-makers similar to those undertaken in the past year be continued and extended. They expressed appreciation of the Programme's innovative and stimulating training methods, and its creative management of limited resources.

22. Ministers expressed their gratitude to the Government of Zimbabwe for the excellent arrangements made for the Meeting and the warmth of the hospitality they had received.

23. Ministers saw value in continuing their consultations at three-yearly intervals and agreed to meet again in 1990.



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

16 July 1987

1. ~~CDP~~

2. ~~pe~~

Dear Robin

EQUALITY OF OPPORTUNITY IN EMPLOYMENT

Thank you for your letter of 10 July seeking H Committee's approval to the terms of a draft reply to an arranged Question on equality of employment in Northern Ireland.

As you know, no member of the Committee has objected and this is simply to confirm my telephone message that you may take it that the Committee are content for your Secretary of State to answer the Question in the terms proposed (subject to one or two minor changes agreed between us).

I am sending a copy of this letter to the Private Secretaries to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the members of H Committee, and Sir Robert Armstrong.

yours sincerely,
Mike Eland

M J ELAND
Private Secretary

Robin Masefield Esq
Private Secretary to the Secretary of State
Northern Ireland Office



FCS/87/118

PAYMASTER GENERAL

CCPC
CDD
1575

Council of Europe: European Social Charter: Denunciation
of Article 8(4)(a)

1. Thank you for your letter of 5 May in which you propose that we now proceed to give notice of our intention to denounce Article 8(4)(a) of the European Social Charter.
2. I agree. However, in view of the fact that since you wrote the date of the election has been announced, I propose, subject to your agreement, to instruct our Permanent Representative in Strasbourg to defer giving formal notice to the Council of Europe Secretary General until after the election has taken place.
3. I am copying this minute to the Prime Minister, members of H and OD(E) Committees and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign & Commonwealth Office

15 May 1987



Department of Employment
 Caxton House Tothill Street London SW1H 9NF
 Telephone Direct Line 01-213 5949
 Switchboard 01-213 3000

The Rt Hon Sir Geoffrey Howe QC MP
 Secretary of State for Foreign
 and Commonwealth Affairs
 Foreign and Commonwealth Office
 LONDON SW1

R6/5

ADD 6/15

5th May 1987

Dear Sir,

**COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER: PROPOSED
 DENUNCIATION OF ARTICLE 8(4)(a)**

I wrote to you on 15 September 1986 regarding our proposals to denounce Article 8(4)(a) of the European Social Charter following the enactment of the Sex Discrimination Act 1986, which provides for the repeal of certain statutory restrictions on the employment of women at night.

The CBI, TUC, Health and Safety Commission and the Equal Opportunities Commission have now replied to my invitation to give their views on the denunciation proposal. The Health and Safety Commission did not wish to express a view, while the CBI and Equal Opportunities Commission expressed their approval of the Government's proposal. The TUC replied putting forward arguments against denunciation similar to those expressed by the Opposition during the debate on the Sex Discrimination Bill, and I enclose a copy of their letter. ... Having taken all views into consideration, I propose that we should proceed with the denunciation of Article 8(4)(a) of the Charter. Our intention to do so prior to the entry into force of the relevant provisions of the Sex Discrimination Act 1986 was announced in Parliament during the passage of that legislation.

If you are content for denunciation now to proceed, I should be grateful if you would arrange for the Secretary General of the Council of Europe to be informed by our Permanent Representative to the Council of Europe of the United Kingdom's intention to denounce Article 8(4)(a) on 26 February 1988. Registration of our intention to denounce on that date before 26 August 1987 will enable us to satisfy the requirements of Article 37 of the Charter to give six months' advance notice. I attach a draft letter prepared by my ...



officials setting out the reasons for the denunciation which might form the basis of the formal communication to the Secretary General.

I am copying this letter to the Prime Minister, colleagues on H and OD(E) Committees and Sir Robert Armstrong.

J. Armstrong

KENNETH CLARKE

DRAFT

The Secretary General of the Council of Europe
Council of Europe
STRASBOURG
FRANCE

1 Following a review of the hours of work of women, the United Kingdom Government decided to repeal certain legislation containing restrictions on the hours and times of work of adult women in industrial undertakings including the repeal of restrictions on the employment of women at night. The Sex Discrimination Act 1986 provides for the repeal of the relevant legislation, including the Hours of Employment (Conventions) Act, 1936 which is the United Kingdom's main means of complying with Article 8, paragraph 4(a) of the European Social Charter.

2 This particular provision concerns the regulation of the employment of women workers on night work in industrial employment. The United Kingdom Government believes that the restrictions on the hours of work of women are out of date and discriminatory as between the sexes and their continued existence could reduce the opportunities for female employment in some industries. It accordingly takes the view that it would now be right for Her Majesty's Government to denounce Article 81 paragraph (4)(a) as the Government will no longer be able to comply with its provisions.

3 Under the terms of Article 37 of the European Social Charter, a Contracting Party is required to give six months' notice to the Council of Europe of its intention to denounce the Charter or any part of it. As far as the United Kingdom is concerned, the Charter came into force on 26 February 1965, the United Kingdom having ratified the Charter on 11 July 1962, and notice is required to be given by 26 August 1987 in order that the denunciation can

take effect from 26 February 1988.

4 I should accordingly be obliged if the necessary steps could be taken to register the United Kingdom's denunciation of Article 8, paragraph 4(a) to take effect from 26 February 1988.

TUC

Congress House
Great Russell Street
London WC1B 3LS

01-636 4030

Trades Union Congress

Rt.Hon. Kenneth Clarke, MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

Your reference:

Our reference: OIRD/NDW/MW/KC/GS

Date: April 1, 1987

cc PS/SOS
PS/M Lee
Mr Marley
Mr Whyman
Mr W B Edusan
Mr D A Roberts
Mr Sirett
Ms Boulton - advice pl
JC 3/4

Dear Mr Clarke,

European Social Charter - Article 8(4)(a)

Thank you for your letter of December 3, 1986, relating to the Government's intention to denounce Article 8(4)(a) of the European Social Charter. I apologise for the delay in replying.

May I preface my comments on this matter by saying that the TUC strongly opposes the provisions of the Sex Discrimination Act 1986 which repeal the restrictions on employment of women at night. The General Council's views on this issue were made plain to the Government during the Bill's passage.

The TUC is in favour of retaining protective legislation for women workers for several reasons.

Briefly, we are, firstly, concerned about women's health and safety at work.

Women working nightshifts are less likely than men to get enough rest during the day, since they are more likely to bear the major responsibility for their families. Consequently they are more vulnerable to accidents at work.

Further, the TUC is concerned that the removal of protective legislation might well affect women's work patterns in ways detrimental to established conditions at work and to family life. Nightworking could in some circumstances become compulsory, extended or permanent for women, whereas at

.. .../...

present nightshifts are usually worked by women with their consent and when negotiated by union agreement. These arrangements enable women to co-ordinate periods of nightwork with domestic responsibilities.

The TUC is also aware that not all women working nights receive the same rate of pay as men, and our concern is therefore that women will be open to even more economic exploitation than they already experience, once restrictions on nightwork are removed.

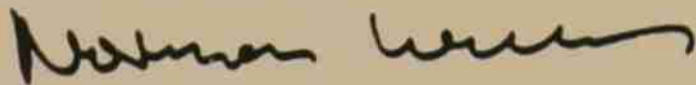
A further not insignificant point is the considerable increase in recent years in violence to workers, particularly on trains and buses late at night and in the early hours of the morning. Women who work nightshifts will inevitably travel at these times, and this increases their exposure to possible attack.

For these reasons the TUC considers measures in the Sex Discrimination Act 1986 to be irresponsible and harmful to women workers.

Since the General Council are opposed to the ends of the Government in this matter they are also opposed to the means to which it is having recourse to achieve them. But we are against the denunciation of Article 8(4)(a) of the European Social Charter for a second reason. The approach of the Government to its international commitments is wholly contrary to the aim of the ILO and the Council of Europe of encouraging the extension of protections and of enhancing progressively the entitlements of working people. The Government since 1982 has denounced three International Labour Conventions in order to be able to abandon basic protections for working people which the Conventions had underpinned. I am sure that denunciation of Article 8(4)(a) would further reduce the authority of, and respect for, the international instruments concerning rights in employment.

These rights have been under attack in recent years, not least by the British Government which has in several instances flouted Conventions and the recommendations of authoritative ILO bodies. I am sure that diminution of respect for the Charter and the Conventions can only be harmful to working people in Britain and elsewhere. I believe that in the longer term the denunciation of parts of the Charter and of Conventions will not benefit the nation economically but will encourage trading competitors also to abandon pursuit of protection of rights in employment lest they put themselves at a disadvantage.

Yours sincerely,



General Secretary



10 DOWNING STREET

DN pa

Delors has

given an

assurance that

Common- sense will

prevail. Re PM

has been informed.

Nja.

ESD
5/12.

OXFORD AND CAMBRIDGE WOMEN'S COLLEGES AND THE SEX DISCRIMINATION ACT 1975

1 later it that
no decision has been
taken about
S.51.1

A European Community Directive of 1976 required member states to end discrimination on grounds of sex in access to employment and vocational training. Effect was given to this in the UK by the Sex Discrimination Act, 1975. However, Section 51 of that Act excluded from its coverage such discrimination required by legislation which pre-dated it. The statutes of several Oxbridge women's colleges exist under the Oxford and Cambridge Universities Act of 1923 and are thus protected under Section 51; these statutes require the appointment of women dons only.

should
not
is respect
most seriously
Please keep
me in touch.

The Commission has long been pressing for Section 51 to be repealed. The Government has resisted this pressure, although advice from the Law Officers is that the Section is contrary to the terms of the Directive and that if the matter were taken to the European Court of Justice we should lose.

The women's colleges have been concerned about losing the protection of Section 51 and Dr Park wrote to the PM on 2 June 1986. The heads of several of the colleges saw Mr George Walden, the PUSS, on 3 June 1986 and presented their case. Essentially this was that women dons at Oxbridge are still few in number and that the protection is needed for some years until the balance within the universities is redressed. They pointed out that the purpose of the Directive was to prevent discrimination against women, and that this purpose would be defeated by removing the protection of Section 51. This summer the Government agreed informally with the Commission that the colleges should be given the opportunity to support their arguments with facts and figures, and that if they could do so they might be exempted from the Directive for some years, until the pool of qualified women applicants for academic posts had significantly increased. Mr Walden wrote to the Oxford and Cambridge vice-chancellors in July asking the universities for their formal view on the case put forward by the colleges. The formal response of the universities is expected shortly.


I will
check any
(or every)
meeting
on this subject
also had
Discussion
are
present
not

However, in October the Commission issued a Reasoned Opinion against the UK over Section 51 (and two other sections of the Act) asking the UK "to take the measures necessary to comply" with the Opinion. At a meeting of EQO(L) Committee on 4 November officials considered the Opinion and

concluded that, as no respectable defence could be constructed for the generality of Section 51, the Government should agree to its abolition but at the same time provide for specific exemptions. One of these would be the continued protection of the women's colleges as suggested above, calling in aid Section 2.4 of the Directive which provides that it should "be without prejudice to measures to promote equal opportunities for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to".

Line to take.

"The PM can point out that the Directive provides for exceptions to promote women's opportunities. It therefore rests with the colleges (and their universities) to substantiate their arguments and satisfy the Government, and through it the Commission, that they deserve continued protection for some years at least. Although the Reasoned Opinion steps up the pressure for a resolution, it does not fundamentally affect the position of the colleges as outlined in Mr Walden's letter of July."



UNIVERSITY FUNDING

Line to take

1. Kenneth Baker has announced additional funding for the universities - an extra £95 million (7.2%) for recurrent grant between the financial years 1986-87 and 1987-88.
2. Equipment grant is to increase by £6.5 million, an increase of over 6%, for the academic year 1987-88.
3. Provision for later years will be subject to review in the usual way, in the light in particular of progress in the programme of work that Kenneth Baker has agreed with the University Grants Committee and the Vice-Chancellors' Committee.
4. Kenneth Baker also said that he had welcomed the universities' proposals for the restructuring of academic pay and would be prepared to provide further additional funding for pay restructuring if desirable changes could be agreed at an affordable cost. Discussions are being set in hand immediately.
5. It is for the universities to consider what they can afford for this year's pay settlement in the light of the funding now available to them. [Academic pay from 1 April 1986 is still unsettled] But before settling both sides might be wise to explore the Government's offer of additional funding for pay restructuring in the discussion that Kenneth Baker has promised.

Background

6. Kenneth Baker announced on 6 November an additional £61 million for recurrent and equipment grant for the universities for 1987-88 compared with previous plans, giving the cash increases compared with the previous year quoted above. The Government's present plans allow for recurrent grant for later years to rise in line with the forecast of general inflation.
7. This announcement fulfilled the Government's promise (Sir Keith Joseph, 20 May) to consider additional funding for the universities. It responds to an action programme agreed with the University Grants Committee and the Vice-Chancellors' Committee (CVCP) that addresses the Government's main concerns, including
 - development of the policy of selectivity in research funding
 - rationalisation of small departments
 - better financial management
 - improved standards of reading
 - a review of current practice in granting academic tenure.
8. There is nothing like as much available for pay as the 6% for 1986-87 plus 18% for pay restructuring proposed by the universities. But there is a firm promise of some further additional funding and the scope for agreement must now be explored in discussion.

OXFORD AND CAMBRIDGE COLLEGE FEES

Line to take

I am aware of the discussion that is going on with the research councils and the University Grants Committee about the position of college fees, which are largely paid from public funds.

2. Oxford and Cambridge have been treated relatively generously and they must accept that there is a case for a review of the fairly haphazard way that the public funding of the colleges and their parent universities has developed historically.

3. I hope that the bodies concerned will be able to agree an equitable solution among themselves. I know that Kenneth Baker is keeping an eye on how things are developing.

4. There is no intention to threaten the things that make Oxford and Cambridge unique, but they must also have regard to the scope for rationalisation and increased efficiency. How much are Oxford and Cambridge doing, for example, in response to Sir Alex Jarratt's report on efficiency in the universities?

Background

5. Oxford and Cambridge universities receive grant from the University Grants Committee - Oxford about £45 million a year - and the standard university fee, which for undergraduates is £536 a head and is paid as part of the student award. In addition the colleges charge fees averaging at Oxford about £2100 for undergraduates and £1000 for postgraduates. For award holders the fee is paid as part of public funds: Oxford colleges receive about £20 million annually from public funds in this way.

6. Over the past eighteen months or so both the research councils (which pay postgraduate awards) and the University Grants Committee have begun to look more closely at the funding of Oxford and Cambridge. The research councils have queried what it is that the colleges provide for postgraduate students to justify the level of fee charged. The UGC has said that it is not prepared to pay grant to the parent universities for tuition and libraries and other facilities that are in fact provided by the colleges and funded from the colleges' fee and other income. The research councils initially proposed to stop paying college fees entirely, and the UGC cut its grant to Oxford and Cambridge for 1986-87 by the equivalent of 50% of college fee income. Discussions between the universities, the UGC and the research councils are still continuing, but the Chairman of the UGC is hopeful that agreement can be reached between the parties without having to look to Ministers for arbitration.

DEFENSIVE SPEAKING NOTES ON THE SCIENCE BUDGET

1. What is the Government's attitude to the Science base?

The Government's determination to sustain the science base is reflected in the additional money we are making available. Comparing 1987/88 with 1986/87, this amounts to £39 million for the Science Budget and £95 million for recurrent grant to the universities, the second arm of the dual support system. Taken together, these sums should enable the scientific community to maintain their output.

2. The ABRC asked for more than twice as much money (£35/50/60 million) as the Government has provided (£24/20/20 million). Surely science has been badly treated?.

Certainly not. There are many claims in the public expenditure round, and not all of those claims can be met in full. We have been as generous to science as we can, given the other demands on funds; and the Science Budget will rise by over 6% between this year and next.

3. Won't all of the money have to go to meet the increased cost of international subscriptions?

The Advisory Board for the Research Councils will be advising the Secretary of State for Education and Science on the allocation of the money towards the end of this month. He will not make any decision on allocations until that advice has been received. No doubt the Board will take the cost of international subscriptions into account when drawing up its advice.

4. The ABRC recently published reports which showed that British science was in decline and that we spent less on it than any of our major competitors. Is the settlement for the Science Budget an adequate response to the evidence?

While it is true that the reports leave no room for complacency, the picture painted by them is not quite as black as the question suggests. UK Government spending on the science base is in fact higher as a proportion of GDP than that of Japan and the USA. Furthermore, the Royal Society study shows that in 1982, the last year for which data is given, the UK was still ahead of all other OECD countries except only the USA in terms of the total number of science articles published and the extent to which these articles were cited by other scientists. This is something to be proud of.

010.

CC/PC

CIP
9/12

Note for the Record

EQUAL TREATMENT FOR MEN AND WOMEN

1. When I called on Delors on 4 December I gave him the attached piece of paper about the Commission infraction proceedings against Oxford and Cambridge women's colleges which the Prime Minister had raised with him when she saw him last week.
2. Delors read the note quickly and said it seemed to him one of those cases where Community law and common sense were contradictory. In his view common sense should prevail on these occasions. He would look into the matter further.

D H A Hannay

D H A Hannay

4 December 1986

cc: C Powell Esq - No 10
D Williamson Esq CB - Cabinet Office
R Renwick Esq CMG - FCO

Mr Elliott
Mr Currie
Mr Goulden
Mr Chamberlain

CCBB

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel: 01-233 3000 (Switsfwrdd)
01-233 7448 (Llinell Union)
Oddi wrth yr Is-Ysgrifennydd Seneddol



WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel: 01-233 3000 (Switchboard)
01-233 7448 (Direct Line)
From The Parliamentary Under-Secretary

14 October 1986

Dear Kenneth

*200
14/x*

**COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER:
DENUNCIATION OF ARTICLE 8(4)(a)**

Thank you for your letter of 15 September to Nick Edwards about your proposal, subject to the Sex Discrimination Bill receiving Royal Assent and to consultation with the TUC and CBI, to denounce Article 8(4)(a) of the European Social Charter.

In Nick's absence, I am content that you should proceed as you propose.

- / Copies of this go, as did yours, to the Prime Minister, Members of 'H' and Sir Robert Armstrong.

Wyn Roberts

WYN ROBERTS

Kenneth Clarke Esq
Paymaster General
Department of Employment
Caxton House, Tothill Street
LONDON SW1H 9NF



SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

CCSG
EDP
14X.

Rt Hon Kenneth Clarke Esq QC MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

13th October 1986

Dear Paymaster General,

COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER: PROPOSED DENUNCIATION
OF ARTICLE 8(4)(a)

Thank you for sending me a copy of your letter of 15 September 1986
to Geoffrey Howe.

The Department of Economic Development is introducing a Sex
Discrimination (Amendment) Order in Northern Ireland to mirror
the provisions of the Sex Discrimination Bill. I am therefore
in agreement with the proposals for denunciation of Article
8(4)(a) of the European Social Charter.

I am copying this letter to the Prime Minister, Geoffrey Howe,
colleagues in H, and Sir Robert Armstrong.

Yours Sincerely
Edward
(Private Secretary)

Jaw^{TK}
(Approved by the Secretary
of State and signed in his
absence in Northern Ireland)



CCBA

FCS/86/231

PAYMASTER GENERAL

EBD
2/11

Council of Europe: European Social Charter:

Denunciation of Article 8(4)(a)

1. Thank you for your letter of 15[✓] September about the Sex Discrimination Bill and your intention, subject to the Bill's receiving Royal Assent and to consultation with the CBI and the TUC, to denounce Article 8(4)(a) of the European Social Charter.
2. I concur with what you propose, and agree that the existing United Kingdom legislation prohibiting night work by women should be retained until our denunciation of Article 8(4)(a) has taken effect, following the due notice prescribed by Article 37 of the Charter.
3. I am copying this letter to the recipients of yours.

(GEOFFREY HOWE)

The Foreign and Commonwealth Office
2 October 1986



Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

CG 89
OSP
li.

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Whitehall
London
SW1A 2AH

CDP
15/9.

15 September 1986

The Secretary

**COUNCIL OF EUROPE: EUROPEAN SOCIAL CHARTER: PROPOSED
DENUNCIATION OF ARTICLE 8(4)(a)**

The Sex Discrimination Bill, which is in its final stages in the House of Commons, provides for the repeal of certain statutory restrictions on the employment of women at night which are discriminatory and incompatible with the Government's deregulation policy.

The implementation of this provision of the Bill is complicated by the fact that we are under an obligation under Article 8(4)(a) of the European Social Charter to regulate the employment of women on night work in industrial employment. Although we can now remove the restrictions on women's hours of work in the Factories Act 1961 and the Mines and Quarries Act 1954, we must retain Section 1 of the Hours of Employment (Conventions) Act 1936 until such time as we have denounced Article 8(4)(a) to meet that obligation.

Following correspondence earlier this year I agreed with Janet Young, and Ian Lang indicated to Standing Committee A on 1 July, that the Government would adhere strictly to the Charter's requirements until the next date when it would be open to the United Kingdom to denounce Article 8(4)(a), ie February 1988 with prior notification required by 26 August 1987. Janet has confirmed that denunciation raises no legal or technical problems. A note on the Charter and denunciation ... issues is attached.

Accordingly, on the assumption that the Sex Discrimination Bill receives Royal Assent before Parliament is prorogued, I propose to inform the CBI and TUC in November of the Government's intention to denounce Article 8(4)(a), and subject to the outcome of that consultation to invite you to initiate the necessary action to give notice of denunciation to the Council of Europe before 26 August 1987.



The European Social Charter is an international treaty (Treaty Series No 38 (1965)). I therefore seek the concurrence of colleagues to this proposal and would be grateful for their comments, if any, by 17 October.

I am copying this letter to the Prime Minister, colleagues on 'H' and Sir Robert Armstrong.

KENNETH CLARKE

The European Social Charter: Denunciation Issues

1 The European Social Charter, which guarantees fundamental social and economic social rights, was ratified by the United Kingdom on 11 July 1962 and entered into force on 26 January 1965. The United Kingdom was the first member state of the Council of Europe to ratify the Charter, which has to date been ratified by 14 of the Council of Europe's 21 member states.

2 To date no member state has denounced any part of the Charter. In denouncing Article 8(4)(a) the United Kingdom would be setting a precedent likely to arouse some concern in the Council of Europe, particularly in the Parliamentary Assembly, although this may be tempered by recognition that Article 8(4)(a), in restricting the employment of women at night in industrial employment, is discriminatory and out-of-date.

3 Article 37 of the Charter allows any Contracting Party to denounce the Charter in whole or in part at the end of a period of five years from the date on which the Charter entered into force for that state, or at the end of any successive period of two years and, in each case, after giving six months' notice to the Secretary General of the Council of Europe. As far as the United Kingdom is concerned, the Charter entered into force on 26 February 1965, so the first date for denunciation was 26 February 1970 and thereafter the relevant dates would be at the conclusion of successive periods of two years, ie. 1972, 1974 etc. The next available date for denunciation for the UK is therefore 26 February 1988, and the necessary six months' notice must accordingly be given before 26 August 1987.



cc *[initials]*

DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH
TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

The Private Secretary
10 Downing Street
LONDON SW1A 0AA

CDP
9/6

9 June 1986

Dear Private Secretary

The Principal of St Hilda's College, Oxford, Mrs Mary Moore, is attending the dinner for Mr Hu Yaobang being given by the Prime Minister tonight and has warned that she may take the opportunity to mention the current action on Oxbridge Colleges. With the agreement of the FCO and Department of Employment, the attached background note and line to take is suggested for the Prime Minister's use at the dinner and in Prime Minister's Question Time tomorrow.

Yours sincerely
C M Roberts

MISS C M ROBERTS
Private Secretary

EC EQUAL TREATMENT DIRECTIVE AND OXBRIDGE COLLEGES

The EC Commission have queried the cover provided by Section 51 of the Sex Discrimination Act 1975 and announced their intention to bring infringement proceedings against the UK.

2. Section 51 protects an individual from liability under the SDA 1975 for a piece of discrimination which he was required to perform by a pre-1975 Statute.

3. A few provisions protected by Section 51 seem to be contrary to the Equal Treatment Directive and the Government may be obliged by the EC to remove these few remaining areas of discrimination in employment.

4. The remaining single-sex Statutes of Oxbridge Colleges may be contrary to the Directive. Colleges are arguing for protection for a further period to preserve adequate opportunities for women in academic appointments in Oxbridge. The Directive may offer an opportunity for delay.

5. The single-sex admission of students to the colleges is not at issue under the Directive.

6. Positive discrimination in employment is not permitted in schools or other educational institutions or indeed in employment unless there is a special need for a woman in a particular job.

LINE TO TAKE

1. The UK Government is obliged to fulfil its obligations under the EC Equal Treatment Directive.
2. However we recognise that there are problems with ensuring adequate opportunities for women academic appointments in Oxbridge Colleges without the protection afforded by Section 51 in the employment field for a further period.
3. The PUSS Mr Walden met the Principals of the four women's Colleges last week. The UK Government will be presenting the College's case to the EC Commission shortly.
4. We are not proposing to take action under the current Sex Discrimination Bill.
5. The single-sex admission to the colleges is not at issue under the Directive.

From THE PRINCIPAL

Prime Minister (4) mt

SOMERVILLE COLLEGE
OXFORD
OX2 6HD

Telephone: 0865/55880 (College)
0865/57015 (Home)

I have asked DES for

a draft reply. They have in fact now dropped the proposal to remove protection for Oxbridge colleges. MESA 13/6

2 June 1986

The Rt.Hon. Mrs Margaret Thatcher, PC, FRS
10 Downing Street
London S W 1

It is almost
to us to prevent women
colleges from continuing as women's
colleges with women fellows. To stop it
would infringe not. enlarge whatever

Dear Prime Minister,

You may wish to know that, in response to pressure from the European Commission, there is a move to amend or repeal Section 51 of the Sex Discrimination Act, 1975. This is to be done in the Committee Stage of the present Sex Discrimination Bill, which has just had its Second Reading.

Section 51 exempts from the operations of the Act any discriminatory practices carried out under Acts or instruments dating from before the Sex Discrimination Act 1975. Thus the Oxford and Cambridge Act, 1923, under which our statutes were enacted, continues to protect our status and enables us lawfully to advertise posts for women only, and to appoint women only, by virtue of our statutes. Two (women's) colleges in Oxford, Somerville and St Hilda's, and three colleges in Cambridge (one a men's College, Magdalene, and two women's, Newnham and Lucy Cavendish) would have to change their statutes if the legislation were to go through.

We recognise that HMG would not wish to be in breach of the E.C. directive, and to risk infraction proceedings for failure to implement it. However, we believe the Commission may have been exerting this pressure under the mistaken impression that in so doing, it is attacking discriminatory practices against women. We have been most fortunate in receiving very positive support from a number of quarters. Lady Young in particular has been most helpful in alerting the DES and the Department of Employment to the problems which would arise were the proposed legislation to go through, and thanks to her, the heads of houses affected (Sheila Brown, Dame Anne Warburton, and David Calcutt from Cambridge, and Mary Moore and I from Oxford) will now have the opportunity to discuss the issue with George Walden in the DES on Tuesday, 3 June. We all hope that a way may be found, if the Government is minded to explore the matter informally with the Commission, whereby action might at least be suspended for a transitional period (Clause 5c of the Commission's directive of 9 February 1976 appears tacitly to recognise a possible need for protection for a period where equal treatment is concerned).

Somerville is meanwhile taking Counsel's opinion on whether it is possible to find a formula for the draft amendment which could satisfy both the Government's need to be seen to respond to Commission directives, and our own need to safeguard the status quo, at least for a time.

We are doing what we can to maintain Section 51 and the status quo in order to preserve, if possible, not positive discrimination but, at least for a transitional period, a position which affords some interim protection for the interests of women with regard to appointments. The Sex Discrimination Act 1975 opened some doors to women but it has not yet had much effect on the number of women in tenured appointments. The statistical imbalance between numbers of men and women applying for posts continues, and the proportion of women to men in academic posts has not risen since the Sex Discrimination Act came into force, as was no doubt the hope of those who framed that legislation. While that is so, a strong case can be made for protecting the present single-sex status of the remaining women's colleges in Oxford and Cambridge. It is certainly the case that the concern for women's education, and in particular for the movement of more women into tenured academic appointments, which originally inspired those who framed our statutes, is still valid.

I am not asking you, busy as you are with affairs of state, to do anything: but I thought you might wish to learn what is happening from us, and to know what we are doing about it, rather than to read it in the press. I hold no brief for resisting change when the time is ripe, but I hope the College will be able to choose its course when the right time comes rather than to have the decision made for us, for reasons which are not germane to the issue.

Yours sincerely,

Daphne Park

Daphne Park

EMG. D.B.E

C.B.G.



Department of Employment
 Caxton House Tothill Street London SW1H 9NF
 Telephone Direct Line 01-213..... 5949
 Switchboard 01-213 3000

The Rt Hon Leon Brittan QC MP
 Secretary of State
 Department of Trade and Industry
 1 Victoria Street
 LONDON
 SW1

21 November 1985

Dear Sir,

NSM

SEX DISCRIMINATION BILL

Thank you for your letter of 25 October to David Young putting forward the case that some of the restrictions on young people's hours of work should also be removed in this Bill.

Douglas Hurd, David Young and I have, in fact, considered this very point in our discussions about the Shops Bill and concluded, with the agreement of the Chief Whip, that the Shops Bill should not include provisions repealing statutory protection for young persons. We agreed that we should put in hand a detailed review of the whole body of legislation governing the hours of work of young people, with a view to arriving at conclusions by next summer and legislation next session. We have deliberately sought to delay the issue in order to avoid the debate on the Shops Bill being complicated by arguments about alleged weakening of the protection of younger employees.

I am copying this letter to the Prime Minister, the Lord President, the Secretary of State for Foreign and Commonwealth Affairs, members of H and QL, and Sir Robert Armstrong.

J. M. L.

KENNETH CLARKE



CEB

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

25 October 1985

The Rt Hon Lord Young of Graffham
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

NBPM

Dear David,

SEX DISCRIMINATION BILL

Thank you for copying to me your letter of 8 October to Willie Whitelaw on this subject.

with request if req'd

2 I welcome your proposal to make use of the Bill to remove unnecessary restrictions in health and safety legislation on women's hours of work. I am sure this will make the measure more attractive to our supporters.

3 As I understand it the additional provisions you propose are confined to removing discriminatory restrictions on the hours of work of adult women. There is a strong case for removing, in addition, some at any rate of the existing restrictions affecting the hours of work of young people - which discriminate not only on grounds of sex but also between types of industry. For example, I understand that the Shops Act 1950 permits male persons between the ages of 16-18 employed in the delivery of milk, newspapers and bread to work between 5 am and 6 am, but provides no similar exemption for girls or for employees in other areas, eg in postal services. The Post Office has pointed out to us that these provisions are inhibiting their efforts to provide employment for young people. The Newspaper Society have also indicated that they would welcome the extension of the current provision to both sexes.

4 In short, while I welcome the deregulatory measures you propose, I should be grateful if you could consider going further.

JH3CHM



5 I am sending copies of this letter to the Prime Minister, the Lord President of the Council, the members of H and QL Committees, the Secretary of State for Foreign and Commonwealth Affairs, and Sir Robert Armstrong.

Leon

LEON BRITTAN

JH3CHM

CONFIDENTIAL



HOUSE OF LORDS,
LONDON SW1A 0PW

24 October 1985

MBM

My Dear David:

Sex Discrimination Bill

I have seen your letter of 8th October 1985 to Willie Whitelaw and the replies from David Young and Geoffrey Howe. Whilst the proposal for the removal of restrictions on night work in the bakery industry may well be right as a matter of policy, the removal of such restrictions appears to have little relevance to the main purpose of the Sex Discrimination Bill but its inclusion in the Bill will certainly prolong debate and interfere with the legislative programme.

I am sending copies of this letter to the Prime Minister, the members of H and QL Committees, the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Trade and Industry and to Sir Robert Armstrong.

YLS:

From: THE RT. HON. LORD HALLSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

The Right Honourable
The Lord Young of Graffham,
Secretary of State for
Employment.

CONFIDENTIAL



FCS/85/264

SECRETARY OF STATE FOR EMPLOYMENT

Sex Discrimination Bill

1. Thank you for copying to me your letter of 8 October to Willie Whitelaw about the inclusion of a Sex Discrimination Bill in the 1985/86 session to meet EC requirements. I share your view that it would be right to balance the Bill by including provisions for deregulation in the areas of hours of work for women and the hours of work for men in the baking industry.

2. While appreciating the need for public consultations, I hope that the Bill can be introduced as early as possible in order to demonstrate our determination to comply with Community law.

3. I am sending copies of this letter to the Prime Minister, the Lord President of the Council, the members of H and QL Committees, the Secretary of State for Trade and Industry, and Sir Robert Armstrong.

Foreign & Commonwealth Office
15 October 1985

GEOFFREY HOWE

NBM
CC 2/0
✓

CS



Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6460

Switchboard 01-213 3000

The Rt Hon Viscount Whitelaw
Lord President of
the Council and Leader of the
House of Lords
Privy Council Office
68 Whitehall
London SW1

N5M

8th October 1985

Jo Willie,

SEX DISCRIMINATION BILL

You have agreed that a place has to be given to a Sex Discrimination Bill in the 1985/86 Session to meet EC requirements. This Bill will not be popular with a number of our supporters and runs counter to our aim of lightening the legislative burden on industry. I have therefore considered including a balancing deregulatory measure.

In the White Paper 'Lifting the Burden' we announced our decision to remove unnecessary restrictions on hours of work of women now found in health and safety legislation. The Equal Opportunities Commission recommended the removal of discrimination in this area over five years ago. I am very much of the view that this should be done in the Sex Discrimination Bill next Session. At the same time my intention would be to repeal parallel restrictions on men's hours of work in the Baking Industry (Hours of Work) Act 1954 which would themselves then be discriminatory. These additional provisions could, I believe, be in short form and should not add significantly to any difficulties for the Bill's passage. Indeed, they would be welcomed by our supporters.

I am therefore seeking your agreement and that of colleagues to this change in the Sex Discrimination Bill for next session.



In your letter of 31 September you pressed me to secure its early introduction and I will certainly seek to ensure that these additional matters will not provide any delay. But, in any case, I could not have guaranteed the Bill's introduction before early in the New Year because of the inescapable need for public consultations which are already in hand.

You also suggested that the Bill should be introduced in the Lords and I should be content to do so.

I am sending copies of this letter to the Prime Minister, the members of H and QL Committees, the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Trade and Industry, and Sir Robert Armstrong.

Law
Law

CONFIDENTIAL



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

2. September 1985

CG23/9

Dear David

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

You wrote to Geoffrey Howe on 10 September further to Tom King's earlier letter of 6 August. In your letter you propose full compliance with the European Court's ruling following receipt of an Article 169 letter from the European Commission in respect of our failure to date to implement the ruling. I understand that colleagues are now content with this revised course of action and you may take this letter as giving you policy approval for the legislation you propose.

You also wrote to me on 10 September in my capacity as Chairman of QL. I note that your Bill to implement these proposals will now have to be transferred from the contingent category into the main category of the legislative programme, and I agree that some reference to the forthcoming Bill will need to be included in the Queen's Speech. A reference to that effect will be included in the version I am sending to Cabinet colleagues. I would be grateful if you could let me know whether the Bill could possibly be introduced before Christmas. There is a good case on business management grounds for introduction in the House of Lords. I would be grateful if you could let me know whether you would be content with this.

I am sending copies of this letter to the Prime Minister, the members of H and QL Committees, the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Trade and Industry, and Sir Robert Armstrong.

John
Lith

The Rt Hon Lord Young of Graffham

CONFIDENTIAL



Told party.

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213.....6460.....

Switchboard 01-213 3000

Mark Addison Esq
Private Secretary
10 Downing Street
London SW1

19 September 1985

Dear Mark,

EUROPEAN COURT OF JUSTICE: SEX DISCRIMINATION
AND RETIREMENT

... As I believe you requested, I am attaching a note on the opinion delivered yesterday by the Advocate General to the European Community in the case of Marshall v S W Hampshire Area Health Authority.

Yours etc,

CHRISTOPHER SNELL
Private Secretary

EUROPEAN COURT OF JUSTICE : MARSHALL V S W HAMPSHIRE AREA HEALTH AUTHORITY

Line to take

The Advocate General's opinion is not the final judgment of the Court. We will of course study the opinion carefully when we receive it, and eventually the judgment.

Background

1 This case concerns an allegation of discrimination by a female dietician who was allowed to continue working beyond the normal retirement age of 60, but then dismissed at 62. The only grounds for dismissal were that she had passed normal retirement age; had she been a man she would *probably* have been retained until 65. The UK courts had difficulty reconciling the principle of equal treatment laid down by the EC Equal Treatment Directive with the Sex Discrimination Act's general exclusion for provisions relating to death and retirement and referred the case to the European Court of Justice for a preliminary ruling. The UK Government submitted written observations to the Court and presented further arguments at the hearing on 5 June.

2 The Court had already indicated, in an earlier case (Burton v British Rail Board) that benefits which are discriminatory because they flow from state pensionable ages are not contrary to the Equal Treatment Directive; the Social Security Directive permits member states to set different pensionable ages. The applicant argued that whereas benefits flowing from different pensionable ages were permissible (following Burton), disadvantages such as compulsory retirement were not. The UK Government argued that the normal retirement ages for that employer of 60 and 65 are inextricably linked to the state pensionable ages; it is perfectly reasonable for an employer to fix his employees' retirement ages to coincide with when they can collect their state pension.

3 The Advocate General's Opinion delivered on 18 September is not binding on the final judgment of the Court (which may not be given before December), though in many cases the Court follows his advice. We have not yet seen a copy of the Opinion.

4 If the Court rules in favour of Miss Marshall, the judgment will mean that discriminatory retirement ages set by employers are contrary to the Equal Treatment Directive. The general exclusion in the Sex Discrimination Act of provisions relating to death and retirement would have to be amended. The effect of such an amendment on employers would be serious, since probably the majority at present have discriminatory normal retirement ages for their employees. Moreover, if they have to equalise retirement age, pressure will inevitably increase to equalise occupational (and indeed state) pensionable ages.

5 Such a ruling would also have a consequential effect on other employment legislation which, broadly, removes from an individual reaching his or her normal retiring age (which may be discriminatory) or 60/65, the right to complain of unfair dismissal or to a redundancy payment. If ages for these provisions have to be equalised, the costs will fall upon employers, and, significantly, on the Redundancy Fund (depending which age was chosen).

6 Our understanding of the Opinion is that the Advocate General has advised that the Health Authority is an "emanation of the State", and so employees can invoke the European legislation against their employer, despite the exclusion in our legislation. This means that other public employees would be able to bring successful claims even before the Sex Discrimination Act were amended, although employees of private firms would not.



FILE

10 DOWNING STREET

18 September 1985

From the Private Secretary

Dear Leigh

SEX DISCRIMINATION: EUROPEAN COURT RULING

The Prime Minister has seen your Secretary of State's letter of 10 September. She has noted its contents without comment.

I am copying this letter to the Private Secretaries to members of H, John Mogg (Department of Trade and Industry), Henry Steel (Law Officers' Department), Iain Jack (Lord Advocate's Department) and Michael Stark (Cabinet Office).

Z v

Mark Addison

Mark Addison

Leigh Lewis, Esq.,
Department of Employment.

67

- 1. MR POWELL
- 2. PRIME MINISTER

You will wish to be aware of Lord Young's letter of 10 September in which he agrees with colleagues that, following the Commission's Article 169 letter, the Government has no alternative but to introduce legislation to comply with the Court's ruling, and to extend the Sex Discrimination Legislation to cover firms with five or fewer employees.

Lord Young notes that he will press ahead with his efforts at the same time to secure a change to the Equal Treatment Directive, following up the March European Council conclusions on de-regulation.

All this is unfortunate, particularly for Lord Young, in that one of first his actions as Secretary of Employment with special responsibility for de-regulation will be to increase the burdens on business rather than reduce them. The draft consultative document does, however, make clear that this is being done clearly at the behest of the Court, and it seems there is no alternative to this unhappy course.

Mark Addison

ms

11 September, 1985



Caxton House Tothill Street London SW1H 9NF

6460

Telephone Direct Line 01-213.....

Switchboard 01-213 3000

The Rt Hon Sir Geoffrey Howe QC MP
 Secretary of State for Foreign and Commonwealth Affairs
 Downing Street
 LONDON SW1A 2AL

10 September 1985

Geoffrey Howe

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

Tom King's letter of 6 August to you and colleagues was overtaken by the receipt of an Article 169 letter from the European Commission in respect of our failure to date to implement the Court's ruling in this case. I think we would all agree that this development changes the situation significantly and that there is now no practicable alternative to complying with the judgment as quickly as possible. I propose to alter the draft consultative document which was circulated accordingly and publish it in advance of the informal meeting of EC employment ministers on 23 September. I envisage that the revised document will in effect form our response to the Article 169 letter. I attach a revised passage on the small firms issue which will replace the current paragraphs 3 and 4. I shall also make clear in the document that we intend to make the necessary legislative amendments as soon as possible after the close of the consultation period, and shall take account of other points raised at official level.

As you will see from the draft, I intend to continue our efforts to secure an amendment to the Equal Treatment Directive permitting Member States to exempt employers with five or fewer employees from their implementing legislation. I intend to write to EC Commissioner Pfeiffer with a copy of the consultative document on the day it is published asking him to renew his consideration of this proposal. A copy of my draft letter is attached. We shall also be making the case for such an amendment at the 23 September meeting in Luxembourg.



I am copying this letter to the Prime Minister, members of 'H' Committee, Leon Brittan, the Attorney General, the Lord Advocate and Sir Robert Armstrong. I will assume the course I am proposing is acceptable unless I hear from you and other recipients by 1.00pm on Monday 16 September.

Paul
Paul

DRAFT ADDITION TO CONSULTATIVE DOCUMENT ON AMENDMENT TO THE
SEX DISCRIMINATION ACTFirms with five or fewer employees

21. The Court found the small firms exemption to be broader than what is permitted under Article 2(2) of the Equal Treatment Directive. The Court said about this exemption:

"As regards small undertakings with not more than five employees, the United Kingdom has not put forward any argument to show that in any undertaking of that size the sex of the worker would be a determining factor by reason of the nature of his activities or the context in which they are carried out. Consequently, by reason of its generality, the exclusion provided for in the contested provision of the 1975 Act goes beyond the objective which may be lawfully pursued within the framework of the Directive".

22. The judgment has raised difficult problems. It is a major aim of this Government to minimise the burdens imposed by legislation on employers. Small enterprises are playing an ever greater part in job and wealth creation and it is particularly important that they should be able to grow and prosper without being hampered by the need to inform themselves about, and comply with, inappropriate restrictions. The Government has already done much in this field and our recent White Paper "Lifting the Burden" presented a package of further policies, for example raising the threshold for the requirement to prepare written safety policies to firms of 20 employees and above.

23. The heads of government of the European Community called at their March meeting for a review of administrative and

legal constraints on small and medium sized enterprises. In this context the UK Government is proposing within the Community that member states should have the power to exempt very small enterprises from national provisions which implement the Equal Treatment Directive. We shall continue to emphasise to fellow members of the Community the importance of the power to make such an exemption, which has been a feature of the Sex Discrimination Act since its passage in 1975.

24. Nevertheless the terms of the Court's judgment made it clear that a numerical exemption for small firms cannot satisfy the present requirements of the Equal Treatment Directive. Not to comply with this judgment would place the UK in breach of its obligations under the Treaty of Rome. The Government has therefore concluded that to meet its obligations, it will be necessary to repeal the present exemption for small firms. At the same time, the Government will continue to press for the Directive to be amended, so that individual Member States should be able, if they so choose, to exempt very small enterprises from its application.

25. The repeal of the current exemption will mean that for the first time, firms with five or fewer employees will have to take account of the provisions of the Sex Discrimination Act 1975 in recruiting staff and in determining conditions of employment and procedures for promotion, dismissal and redundancy. It will thus generally be unlawful for them to discriminate between men and women or against married persons. At the same time, the change to the legislation will not restrict the ability of small employers to recruit the most suitable person for a given job. For example, they will not be compelled to accept a male applicant if a female applicant is better qualified or is genuinely needed because of the nature of the work. It is thus important to keep in mind the distinction between what the change would require - the

avoidance of discrimination - and what it would not require - the employment of persons irrespective of suitability.

(It is also proposed to insert an additional sentence at the end of para 2, as follows:

"The Government proposes that the Sex Discrimination Act should be amended as soon as possible after responses to this document have been received and considered".)

DRAFT LETTER TO COMMISSIONER PFEIFFER

As you know, I have recently succeeded Tom King as Secretary of State for Employment. I expect to be actively involved in European Community matters and am looking forward to meeting you and working with you.

I have been considering how to proceed on the questions which Tom King raised with you and his colleagues on the Council of Ministers concerning the implementation of the European Court judgment in Case No 165/82 on the Equal Treatment Directive, particularly its application to very small firms. I fully share the concern which he expressed that such firms should be freed or protected from unnecessary legislative and administrative burdens - a concern that was of course very clearly expressed in the conclusions of the European Council meeting in March, which I and my colleagues will be following up with the European Commission. It seems to us wrong that we should be required to impose new burdens on very small firms who play a vital part in economic growth and whose circumstances make the kind of obligations imposed on larger employers quite inappropriate. I would therefore hope that in following up the European Council conclusions the Commission will consider an amendment to the Equal Treatment Directive which would permit - not require - Member States to exempt very small employers from their implementing legislation.

At the same time, I would wish to make it clear that the UK places a high value on respect for the law and has a good record of complying with Community obligations. I am therefore consulting interested organisations in the UK on the way in which the Court judgment should be implemented with a view to early legislation. I enclose a copy of a consultative document published today which sets out my proposals and requests comments by 13 December. I intend to have a Bill ready for Parliament as soon as comments have been received and considered.

A copy of the document has been sent to the Commission Secretariat in response to the Article 169 letter dated 31 July. I have to say that we were somewhat surprised to receive that letter given that my predecessor's request for an amendment to the Equal Treatment Directive exempting very small firms was due to be considered again at the informal meeting of Community employment ministers this month. I would also in any event hope that the steps we are taking to implement the judgment should dispose finally of any further proceedings in this case.

Finally, let me assure you that my strong feelings on this subject do not imply any lack of commitment to equal opportunities for men and women in the labour market. I believe that the various policies which the UK has adopted, whether through legislation, encouragement of good employment practice or suitable employment and training measures, are fully in line with the general objectives of the European Community in this field and we have every intention of maintaining them.



With Compliments of the

20 August 1985

Lord Advocate

Lord Advocate's Chambers
5/7 Regent Road
Edinburgh EH7 5BL

Telephone: 031-557 3800

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

I refer to your letter of 6 August to Geoffrey Howe enclosing the consultation document you propose to issue on the Sex Discrimination Act 1975 and its relation to the European Court of Justice's Judgement in Case 165/82.

I regret not having been able to respond earlier but I note from Patrick Mayhew's letter of 14 August that the position has altered slightly in that the Commission have now sent us an Article 169 letter, the first step in proceedings to enforce the Court's judgement on us in the light of our failure to do so for nearly two years. Whilst we may have been able to satisfy the Commission with your legislative proposals on two of the Court's three points (although neither the Commission nor the Court tend to be satisfied with legislative proposals alone), we do not seem to be in a position to offer any defence with regard to the third point in relation to small businesses. Indeed, your clear policy line on this matter is that the Court's judgement should be ignored.

I can appreciate your reasons for wishing to ignore the Court and it may be that the political climate may be moving towards what you propose with regard to deregulation of small businesses. The timing of the Commission's letter and your policy initiative is unfortunate and I recognise your dilemma. However, we have delayed implementation of the judgement to a point where we can delay no longer as the Commission is now forcing the issue of whether we intend to obey at all. For my part, I can have no hesitation in saying that obedience to a judgement of the European Court of Justice directly addressed to the U.K. must take precedence over any particular policy objective.

As Patrick Mayhew has already pointed out, defiance of the Court has implications beyond the deregulation policy initiative. It could affect any policy interest we may have which involves the Community and it would be a long time before we could revert to our present position, based on complying ourselves, of insisting that our Community colleagues comply also. Accordingly, I hope that you will reconsider your position on

20 August 1985

The Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

ABPM

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

I refer to your letter of 6 August to Geoffrey Howe enclosing the consultation document you propose to issue on the Sex Discrimination Act 1975 and its relation to the European Court of Justice's Judgement in Case 165/82.

I regret not having been able to respond earlier but I note from Patrick Mayhew's letter of 14 August that the position has altered slightly in that the Commission have now sent us an Article 169 letter, the first step in proceedings to enforce the Court's judgement on us in the light of our failure to do so for nearly two years. Whilst we may have been able to satisfy the Commission with your legislative proposals on two of the Court's three points (although neither the Commission nor the Court tend to be satisfied with legislative proposals alone), we do not seem to be in a position to offer any defence with regard to the third point in relation to small businesses. Indeed, your clear policy line on this matter is that the Court's judgement should be ignored.

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As Patrick Mayhew has already pointed out, defiance of the Court has implications beyond the deregulation policy initiative. It could affect any policy interest we may have which involves the Community and it would be a long time before we could revert to our present position, based on complying ourselves, of insisting that our Community colleagues comply also. Accordingly, I hope that you will reconsider your position on

this matter and include in your legislative proposals all that is required by the Court's judgement.

I am copying this letter to the Prime Minister, members of "H" Committee, Geoffrey Howe, Norman Tebbit, David Young, Patrick Mayhew and Sir Robert Armstrong.

CAMERON OF LOCHBROOM



CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-233 3299

From the Minister without Portfolio
The Rt Hon Lord Young of Graffham

The Rt. Hon. Tom King M.P.,
Secretary of State for Employment,
Department of Employment,
Caxton House,
Tothill Street,
London, S.W.1.

16 August, 1985

NSM
AS

Tom King

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

Thank you for copying me your letter of 6th August to Geoffrey Howe enclosing a draft consultative document about amendments to the Sex Discrimination legislation. I have a particular interest in deregulation and, along with colleagues, I have been actively pursuing our deregulation initiative in Europe.

I very much share your views on this issue and I am therefore particularly sorry that there seems no alternative but to agree to implement the judgement concerning exemptions for small firms since we are advised that we have no defence against the immediate judgement.

That said, I very much agree with Janet Young that, far from giving up on this issue, we use this unhappy example to press strongly for a specific derogation for small firms from the Equal Treatment Directive. I will do so in my planned European visits during the Autumn and I am sure you will want to do so at your meetings with colleagues during September. No doubt other colleagues will similarly take every opportunity to argue the case for deregulation generally and derogation in this specific case.

We can, quite understandably, expect a hostile reaction by agreeing to comply with this judgement from both the small firms and deregulation lobbies. I believe it is essential, therefore, that we should let the reason for our decision be known and be seen to be redoubling our efforts in Europe to put real impetus behind deregulation.

I am copying this letter to the Prime Minister, members of H Committee, Norman Tebbit, Janet Young, Patrick Mayhew and Sir Robert Armstrong.

Lord Young



DEPARTMENT OF TRADE AND INDUSTRY
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From the Minister of State for Industry

Norman Lamont MP

The Rt Hon Tom King MP
Secretary of State for
Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1H 9NP

Norman

15 August 1985

Dear Secretary of State

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

Your letter of 6 August to Geoffrey Howe on this subject was copied to Norman Tebbit, in whose absence on leave I am replying.

I share your view that we should seek to persuade the Commission and other Member States to amend the Equal Treatment Directive so that the current exemption from the Sex Discrimination Act 1975 for employers with five or fewer employees can be maintained. To do otherwise would run counter to our policy of easing the burdens on small firms wherever possible.

Nevertheless, I have to say that for the UK to be taken back to the European Court of Justice for a second time on this issue would have serious repercussions for this Department's wider internal market objectives. On insurance, for example, we are intervening on the side of the Commission in four cases currently before the Court, in the hope that the judgement (expected early next year) will open the way for freedom of non-life insurance services throughout the Community. Any suggestion that the UK takes the view that unwelcome judgements need not be complied with would seriously damage our credibility on issues of this kind, where we are seeking to persuade other Member States to comply with their Community obligations.

For that reason you might consider making clear in your consultation document - which will of course be seen by the Commission as well as by small firms in the UK - that you are seeking, in consultation with other Member States, to secure amendment to the Directive, but invite views in the meantime on how

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the small firms judgement might be implemented. This might make it easier to persuade the Commission to hold off further proceedings, while domestically it would enable us to gauge the strength of feeling on the issue, and to some extent to prepare the ground for implementation should that prove to be necessary.

I am content with your proposals on the other two heads of the 1983 judgement.

I am copying this letter to the Prime Minister, members of 'H' Committee, David Young, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Your sincerely
Edmund Hooley*

for NORMAN LAMONT

(Approved by the Minister and signed in his absence)



SECRETARY OF STATE FOR EMPLOYMENT

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

1. In Geoffrey Howe's absence I am replying to your letter to him of 6 August.

2. As you say, we do not wish, for the first time since we joined the Community, to be taken back to the European Court for the second time on the same issue. Despite our serious misgivings about the wisdom of applying the provisions of the Sex Discrimination Act to very small firms, there is now a serious danger that we shall be taken back to the Court, and sooner rather than later; an Article 169 letter - the first stage in these proceedings - has recently been received. I do not believe Community policy has changed substantially since the first Court ruling. As you discovered in June, there is little support elsewhere in the Community for relaxing Community law in this area. If we make it clear in our consultative document that we are not intending to amend the Sex Discrimination Act to take account of the Court Ruling on its application to small firms, the Reasoned Opinion will follow very shortly. I see no prospect of the ECJ reversing or modifying their earlier judgement. A

/further



further ruling against us for non-compliance would seriously and unnecessarily tarnish our good record on complying with Community obligations which the Prime Minister has recently cited in the House.

3. I know Geoffrey would strongly prefer us to pursue a course of compliance with the Court ruling while at the same time continuing discussions in the context of deregulation on the need to provide specific derogations for small firms from certain items of Community legislation. If we demonstrated our willingness to comply with the Court ruling, this would hold up the legal proceedings. The Commission's substantive report on measures to help small businesses will be discussed at the European Council in December. In discussions on that report, we should press for a specific derogation for small firms from the Equal Treatment Directive.

4. I am copying this minute to the Prime Minister, members of H Committee, Norman Tebbit, David Young, the Solicitor General, the Lord Advocate and Sir Robert Armstrong.

Janet Young

Baroness Young

Foreign and Commonwealth Office
14 August 1985



01-405 7641 Extn

ROYAL COURTS OF JUSTICE.

LONDON, WC2A 2LL

14 August, 1985

The Rt Hon Tom King MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

NSM

Dear Secretary of State,

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

In the absence of Michael Havers, I write to comment on your letter to Geoffrey Howe of 6 August concerning the consultation document you propose to issue relating to the European Court of Justice's Judgment in Case 165/82.

The Commission have now sent to us the Article 169 letter, as you predicted, claiming that in not implementing the Judgment of the Court we have failed to fulfil our obligations under Article 171 of the Treaty, and threatening infraction proceedings. There would, in my view, be no legal defence that could be mounted in relation to such proceedings. If we persist in not implementing the Judgment in relation to very small businesses our answer to the Article 169 letter would lack any credibility. To contend that Community policy has changed since the ruling of the Court will cut no ice whatsoever in the absence of any amendment to the relevant legislation.

Our submission to the Court, when the matter reached them, would therefore be seen to lack integrity. This, and our continued defiance of the Court, would gravely damage our standing before that tribunal, and indeed before other international tribunals. I would expect this to have very serious practical

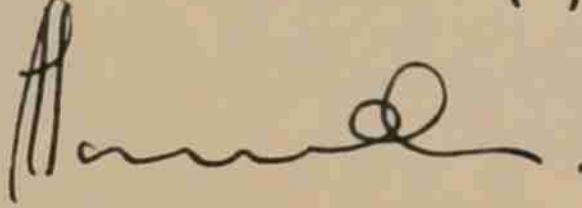
/consequences

consequences for us in future litigation. I note that in respect of this Judgment we already feature as a defaulter in the Second Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law, a Report which confirms our otherwise good record on infraction proceedings. France and Germany do not appear on the list of Member States failing to implement Judgments of the Court.

We have not shrunk in the past from implementing unpalatable judgments of international tribunals, as I of course see that this one is, recognising the damage that would be caused to our reputation and standing were we to defy them. It is for my colleagues to determine whether the European Court's Judgment on sex discrimination in relation to very small businesses is of such consequence as to justify this fundamental change in our consistent policy of complying with judgments of international tribunals, as part of our policy of displaying respect for law. My personal judgment is that it cannot be.

I therefore recommend that you implement the Judgment of the Court in full now, rather than seek, with scant hope of success or even of respectable argument, to persuade the Commission to hold up further proceedings while the deregulation initiative is in progress.

I am copying this letter to the Prime Minister, members of 'H' Committee, Geoffrey Howe, Norman Tebbit, David Young, Kenneth Cameron and Sir Robert Armstrong.

Yours sincerely,


PP PATRICK MAYHEW

(Approved by the Solicitor General
and signed in his absence)

cell



Treasury Chambers, Parliament Street, SW1P 3AG

D J Normington Esq
Private Secretary to
Secretary of State
Department of Employment
Caxton House
Tothill Street
LONDON SW1H 9NF

Norm.

13 August 1985

Dear David,

The Economic Secretary has seen a copy of your Secretary of State's letter of 6 August to Sir Geoffrey Howe enclosing a draft consultative document about amendments to Sex Discrimination legislation.

He strongly supports your line on resisting the imposition of burdens on small firms and agrees that it is desirable to press ahead with implementing the other two rulings of the European Court in the way you suggest.

I am copying this letter to recipients of yours.

Yours ever,
Adrian Ellis
ADRIAN ELLIS
PRIVATE SECRETARY



Caxton House Tothill Street London SW1H 9NF

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The Right Hon Sir Geoffrey Howe QC MP
 Secretary of State for Foreign & Commonwealth Affairs
 Foreign & Commonwealth Office
 Downing Street
 LONDON SW1A 2AL

6 August 1985

NS PM

SEX DISCRIMINATION ACT: EUROPEAN COURT RULING

- with request, 17/8/85

I wrote to you on 2 May about a ruling of the European Court of Justice in November 1983 to the effect that the current exemption from the Sex Discrimination Act 1975 (and the equivalent Northern Ireland order) for employers with five or fewer employees was contrary to the EC Equal Treatment Directive. I said that implementing this judgement would run counter to our policy of easing the burden on small firms and expose us to severe criticism at home. We agreed that I should write to my Community counterparts proposing that the Directive be amended to permit such exemptions and raise the matter at the Social Affairs Council in June in the context of the conclusions on deregulation adopted by the March Council. I wrote to my European colleagues on 22 May and the President, Gianni de Michelis, agreed to include the issue on the agenda for the council meeting of 13 June. But I have to say that I received no support for my position and the President suggested it might be discussed again at the informal meeting of employment ministers to be held in September under the Luxembourg presidency.

In the meantime the Commission has indicated its intention to take further proceedings against us for non-compliance with the judgement. Naturally I do not wish to set the precedent of the UK being taken back to the European Court of Justice for a second time on the same issue. The Prime Minister rightly commented at the Milan Council on our good record of complying with Community obligations. But there is no doubt that Community policy has changed since this ruling, and it seems to me quite wrong for the Commission to seek to enforce



it when the Council of Ministers has recently asked it to report on measures to be taken at Community level to reduce the administrative and legal constraints on small and medium-sized undertakings with a view to creating employment. As you know, we have sent the Commission a list of Community measures which we regard as unduly burdensome and this includes the application of the Equal Treatment Directive to very small firms. I think we should continue to urge the Commission to hold off further proceedings while the deregulation initiative is in progress. We can reconsider the issue should it be decided not to opt for deregulation in the field of equal treatment.

I think we should press ahead immediately, however, with implementing the other two heads of the 1983 judgement which require us to void discriminatory provisions in collective agreements and the internal rules of undertakings and to narrow the current exemption for employment in private households. I have bid for a place for the necessary Bill in the coming legislative session, but the first step should be to issue a consultative document. This will, I hope, demonstrate to the Commission our general willingness to comply with our Treaty of Rome obligations and reinforce our argument that the small firms issue is a very special case.

I attach a draft consultative document which I would propose to publish in August - and send to the Commission at the same time - giving a three month period for responses. The draft reflects discussion between interested Departments at official level. I think the proposals are self-explanatory so I shall confine myself here to brief introductory remarks. On small firms I would draw your attention to paragraph 4 of the document which states that the issue is still under discussion in the European Community. On collective agreements and the rules of undertakings I should say that the necessary changes, whilst complex, will make very little difference to employers and employees in practice for the reasons set out in paragraphs 6 and 7 and because it is unlikely that many directly discriminatory provisions remain in collective agreements ten years after the Equal Pay and Sex Discrimination Acts were implemented. The extension of the Sex Discrimination Act to employment in private households may raise some controversy but I am confident that the Court's judgement allows us to continue with an exemption for those jobs, such as caring jobs, which involve close association with a member of the family.



I should be grateful if you could let me have any comments you may have on the draft consultation document by 14 August. I am copying this letter to the Prime Minister, members of "H" Committee, Norman Tebbit, David Young, the Attorney General the Lord Advocate and Sir Robert Armstrong.

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[Signature]

THE SEX DISCRIMINATION ACT AND EUROPEAN COMMUNITY LEGISLATION

DRAFT CONSULTATIVE DOCUMENT

1. In its judgment of 8 November 1983 the European Court of Justice found that UK legislation - the Sex Discrimination Act 1975 and the equivalent Northern Irish Order (1976 No 1024) - failed fully to implement the UK's obligations under European Community Council Directive 76/207/EEC 'on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions' (the Equal Treatment Directive). The Court found the Sex Discrimination Act deficient on three counts, which are:

- (i) its treatment of discriminatory provisions in collective agreements, the internal rules of undertakings and the rules governing independent occupations or professions;
- (ii) the fact that there is a blanket exemption (by virtue of the exclusion contained in section 6(3)(a)) for employment 'for the purposes of a private household';
- (iii) the fact that there is a blanket exemption (by virtue of the exclusion contained in section 6(3)(b)) for employers with five or fewer employees.

2. This document seeks comments from interested persons and organisations on the amendments needed to bring the Sex Discrimination Act into line with the Equal Treatment Directive following the Court ruling. The Government wishes to emphasise that the need to amend the legislation arises directly from our obligations under the Treaty of Rome. The question is therefore not whether UK legislation should be amended but how the necessary amendments can most suitably be made in line with the general framework of relevant UK legislation and our national circumstances and policies.

3. Proposals for implementing count (i) of the judgment, on collective agreements, and count (ii), on private households, are set out in paragraphs 5-21 below.

4. The position on count (iii) raises special considerations. It is clear from the Court's judgment that the present requirements of the Directive cannot be met by a simple numerical exemption for small employers. It is however a major aim of the Government to minimise burdens imposed by legislation on small employers wherever possible and this was a clear commitment in the manifesto on which it was elected. Small enterprises are playing an ever greater part in wealth and job creation in the UK, and it is essential that they should be able to grow and prosper without being hampered by inappropriate restrictions. To subject them to requirements essentially designed to meet the very different circumstances of larger enterprises would tend to discourage new job opportunities and would consequently retard rather than advance the establishment of effective equal opportunities in employment. The European Community has itself recently called for a review of administrative and legal constraints on small enterprises. The Government is therefore discussing this important matter further within the European Community.

Discriminatory provisions in collective agreements, the internal rules of undertakings and the rules governing independent occupations or professions

5. The EC Equal Treatment Directive requires that:

'any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended.'

Collective agreements

6. The Government argued before the Court that this requirement is already met in relation to collective agreements under UK law. The Government argued this on two main grounds:

- (i) 'void' must, in the Government's view, mean 'of no legal effect'. Where a collective agreement is not legally binding (as is the case with the vast majority of collective agreements in the UK), none of its provisions, whether discriminatory or not, is of legal effect;
- (ii) where, exceptionally, a collective agreement is made legally binding (ie it becomes a contract between the two negotiating sides) section 77 of the Sex Discrimination Act makes void any term in it which would involve those carrying it out in an act of unlawful sex discrimination.

7. The Government also argued before the Court that the important issue is not the formal legal position of discriminatory provisions in collective agreements but whether employees against whom such provisions are put into effect have a means of redress. Employees do have means of redress in the UK through the Sex Discrimination Act and Equal Pay Act, which enable them to pursue claims at industrial tribunals if they think they have been subjected to unequal treatment or unequal pay. If they are successful the tribunal will award compensation for any loss suffered. In equal pay cases the decision will also establish what the terms of the contract should be, while in sex discrimination cases there may be a declaration of the employee's rights and a recommendation as to what needs to be done to remove or reduce the effect of the discrimination. A tribunal decision that a particular term originating in a collective agreement is discriminatory does not directly affect the agreement. It is however likely to exert pressure on the employer to renegotiate the term since he will wish to avoid further cases.

8. The Court was satisfied that section 77 of the Sex Discrimination Act dealt adequately with legally binding collective agreements but ruled that the Directive covers all collective agreements and that there should be corresponding provision for non-binding agreements. Discrimination arises when collective agreements include single sex terms, ie separate provisions for men and women or provisions applicable to one sex only. The Government therefore proposes an amendment to the Sex Discrimination Act which would formally void discriminatory terms in present and future collective agreements, whether the terms occur in the same agreement or different agreements between the same parties. It is not thought that there are many such terms in existence today or that they are likely to be negotiated in the future.

9. Where a discriminatory term of a collective agreement is incorporated into a contract of employment it is proposed that the voiding should not operate so as to leave a gap in the individual's terms and conditions of employment, since this could be detrimental to the individual. For example, instead of an unequal holiday entitlement employees could be left with no holiday entitlement at all. Removal of contractual terms could also result in employees being prevented from exercising their current right to complain to an industrial tribunal under the Equal Pay Act. It is therefore proposed that the term should remain in the employee's contract until the collective agreement is renegotiated. The term in the individual's contract will not, however, be enforceable against the employee and will continue to be subject to challenge before an industrial tribunal under existing legislation.

10. The Government considered an alternative approach to that set out in paragraph 9 whereby the more favourable of two discriminatory terms would have been automatically implied into the individual contracts of employment of both sexes. It was concluded, however, that this approach was impracticable since it would not always be possible to determine objectively which of two terms was the more favourable. For example, if a collective agreement provided for women to work 38 hours per week and men to work 40 hours (and be paid accordingly) views might differ as to which was the more favourable. The Government believes therefore that the replacement of voided terms in collective agreements must be left to the negotiating parties. This also has the advantage that a wider range of solutions can be considered.

11. The scope of the Government's proposal is confined to "direct" discrimination. It is not considered that the Court's judgment makes it necessary to deal with "indirect" discrimination (as the discrimination covered by section 1(1)(b) of the Sex Discrimination Act has come to be called) at the level of the collective agreement. Indirect discrimination arises when an employer applies to a category of employees treatment which is prima facie equal, but has a disproportionately adverse effect on one sex which the employer cannot justify by showing that the needs of his business outweigh it. Its existence does not therefore result from the terms of the collective agreement but depends upon the particular circumstances in which

the treatment is applied, including the composition of the category of employees, the employer's reasons for applying the treatment and the significance of the discriminatory effect. It follows that whether discrimination flows from a particular collective agreement may vary from workforce to workforce and from time to time and that its existence can only be identified at the level at which the treatment is applied and takes effect (that is to say at the level of the individual's contract of employment and not of the collective agreement). The Sex Discrimination and Equal Pay Acts already provide for the elimination of indirect discrimination at the only level at which it can be identified.

12. It may be helpful to illustrate the matters explained in the last paragraph with an example. An agreement could set an age limit of 35 for access to management training which arguably discriminates against women because many of them have career breaks in their twenties and thirties to care for young children. However, in a firm where men and women were in fact equally able to take advantage of the training (possibly because of some facility such as flexible working hours which encouraged women with children to stay on) the age limit would not have a disproportionately adverse effect on those women. Even where there was such an effect, the discriminatory result of applying the age limit might be justifiable in one firm but not in another.

13. The Court's judgment was confined to the requirements of the EC Equal Treatment Directive. However, the Equal Pay Directive contains a similar requirement on collective agreements. In amending our domestic legislation the Government intends therefore to make parallel provision so that discriminatory terms in collective agreements relating to pay will also be void. The implications for section 3 of the Equal Pay Act will need to be considered.

14. The Government's proposals also cover provisions in collective agreements which are discriminatory against married persons under the Sex Discrimination Act.

The internal rules of undertakings and the rules governing independent occupations or professions

15. Again the Court was concerned to ensure that UK legislation contained provision equivalent to section 77 of the Sex Discrimination Act which would make void discriminatory terms in the internal rules of undertakings and rules governing independent occupations or professions.

16. As regards the internal rules of undertakings it is proposed, in order to comply with the judgement, to provide for discriminatory rules to be void. Parallel to the proposals on collective agreements, any term in an individual contract of employment which derives from discriminatory rules will continue until a new non-discriminatory rule is provided but will not be enforceable against the employee. Once again the proposals will apply not only to matters falling within scope of the Sex Discrimination Act (including discrimination against married persons) but also to any discriminatory pay provisions in rules.

17. The rules of independent occupations and professions invariably form a binding contract either between the members of the occupation or profession or between those members and the body establishing the rules. Section 77 of the Sex Discrimination Act therefore operates to void provisions in such rules which are unlawful under sections 12 and 13 of that Act (concerning non-discrimination by trade unions, professional associations etc). It appears therefore that although the substance of our law is not at fault, the Court's judgment requires the law to be made more explicit. It is therefore proposed to amend section 77 to make clear that it applies to the rules of independent occupations and professions as well as other forms of contract.

Private households

18. The Equal Treatment Directive (Article 2(2)) provides that:

"This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities

and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor."

19. The Court did not consider that the Sex Discrimination Act's exemption in favour of employment for the purposes of a private household fell within the scope of Article 2(2). It said:

"It must be recognised that the provision of the 1975 Act in question is intended, in so far as it refers to employment in a private household, to reconcile the principle of equality of treatment with the principle of respect for private life, which is also fundamental..... . Whilst it is undeniable that, for certain kinds of employment in private households that consideration may be decisive, that is not the case for all the kinds of employment in question."

20. The current exemption applies only to employment for the purposes of a private household. It therefore covers domestic servants, gardeners, chauffeurs etc (but not, for example, repair workers visiting the house or people employed to show visitors around a 'stately home'). The Court clearly considers that the current exemption is too broad in that it allows the employer to discriminate in relation to all jobs for the purposes of a private household and not only those where the job would require the job holder to be involved in the employer's private life. It is necessary therefore for us to narrow the exemption so that it applies only to the latter kinds of job.

21. It is proposed that in future the employment provisions of the Sex Discrimination Act should apply to employment for the purposes of a private household, except where the employment is likely to involve close association with or a close relationship between a member of the household and the job holder and it is reasonable, having regard to the need to maintain respect for private life in domestic circumstances, that the employer should be free to choose the sex of the job holder. This would have the effect of exempting from the Act, inter alia, jobs involving medical or nursing care to a member of the household; companionship with or care of a member of the household; or

attendance on a member of the household where the member dresses, bathes or sleeps.

22. In making this proposal, the Government stresses that it regards the principle of respect for private life as of fundamental importance and is sure that this would be supported by the overwhelming majority of public opinion in the UK and indeed throughout the European Community.

Response

23. Comments on the proposals in this paper should be sent to Mrs S J Webber, Section E01, Department of Employment, Caxton House, Tothill Street, London SW1H 9NF by 30 November 1985. Additional copies can be obtained from the Department (telephone no (01) 213 7585).