

44/157
PS/Minister

VISIT BY CONGRESSMAN DONNELLY AND THE FRIENDS OF IRELAND

1. The Minister is scheduled to meet Congressman Donnelly (D-Massachusetts) for lunch next Wednesday 20 January. Congressman Donnelly is Chairman of the "Friends of Ireland" Group and it is understood that he will be accompanied by the US Ambassador in Dublin, Mrs Heckler, Democratic Senators Dyer (New Jersey); Williams (Montana) Coyne (Pennsylvania); the Sergeant at Arms in the Federal House of Representatives Mr Peterson; Mr Caruso and Curran - US officials from the Dublin Embassy; Mr Myers and Mr Scallion from the US Consul General's Office in Belfast. Briefing has been requested by Central Secretariat for the Minister.
2. Attached please find a Background Note and a Line to Take on the main issues likely to arise on the equality of opportunity in employment front. Mrs McAllister is preparing complementary material on MacBride - and some background on the Friends of Ireland. You will wish to associate this briefing with mine in putting together a composite employment equality brief for the Minister.

J.E. Wolstencroft

J E WOLSTENCROFT

18 January 1988

cc Secretary
Mr Gowdy
Mr Wilson
Mrs McAllister (Arches Centre)
Mr Taggart
Mr Lavery
Dr Smyth
Miss Hutchinson (Central
Secretariat)

MINISTER'S LUNCH WITH CONGRESS DONNELLY (D-MASSACHUSETTS) - 20 JANUARY 1988
EQUALITY OF OPPORTUNITY IN EMPLOYMENT

Background Note

1. The Minister may recall that Congressman Donnelly hosted a lunch for the Secretary of State on his recent visit to the US; and also met with Sir Kenneth Bloomfield during his pre-Christmas visit to the US. Our Embassy in Washington consider it very important that we favourably impress Congressman Donnelly and his party with the seriousness of our legislative intentions in the field of equality of opportunity in employment.
2. The Congressman's main interests are likely to centre on (a) the timing and (b) the content of our proposed new legislation. Congressman Donnelly, or individuals in his party, may be predetermined to remain unconvinced about HMG's commitment to the introduction of more effective practice. The Minister is aware that our legislative proposals have been circulated to the Secretary of State's "H" Committee colleagues (their response has been very supportive), and that a bid for a Bill has been made to "QL" Committee (due to meet early in February). While it will not be appropriate to give Congressman Donnelly specific details of our future legislative proposals, or to be absolutely precise about the timing of legislation, it may be necessary to provide sufficient information to try to convince him of HMG's sincerity and commitment on the employment equality issue and of the high political priority attached to it.
3. The Congressman might also (c) repeat criticism - previously articulated by Congressman Kennedy of Massachusetts - of the Guide as being "slick" rather than substantive; (d) question why we do not use the American "model" of affirmative action (ie "quotas" and "job reservations"); (e) attack our commitment to the merit principle and a policy of no discrimination despite the effects of past discrimination; (f) make the ill informed accusation that present legislation is minimalist. There might also be allusions to the recent media speculation about the (g) future of the FEA; the SDLP strongly favour restructuring the Agency and see any suggestion that it is being abolished as a concession to hard line unionism. It would be prudent to assume that the Congressman and his party will be sympathetic to SDLP views on this matter.

4. Attached please find Lines to Take covering all these issues. The Lines to Take correspond with the information contained in the Secretary of State's correspondence with Congressman Kennedy of Massachusetts and in associated Ministerial correspondence with other US contacts. The main point to get across is that HMG is politically committed - at the highest level - to addressing the employment equality issue through new, effective and urgent legislation at the earliest possible opportunity. Work is in hand to that end and close consultation is being maintained with the RoI through aegis of Inter-governmental Conference.

LINE TO TAKE

(a) Timing of Legislation

- . highest political priority attached to legislation to ensure more effective practice (the Prime Minister's personal endorsement of the "Guide to Effective Practice" testifies to this)
- . urgent work now proceeding on this; hope to introduce legislation later this year (if pressed - probably Queen's Speech in November)
- . we were committed to taking the SACHR Report into account in determining on final content of our legislation: (the RC Bishops specifically requested this in their comments on the Consultative Paper). The SACHR Report is comprehensive with over 120 recommendations
- . the RoI have been consulted closely on the proposals through the Anglo-Irish Secretariat; they have forwarded four sets of comments (the latest from the new Fianna Fail administration); RoI and UK officials have recently (18 January) discussed these comments under the aegis of the Inter-governmental Conference
- . hope to announce broad details of our proposals as soon as possible (if pressed within the next 4/6 weeks)

(b) Content of Legislation

- . now being considered by Ministerial colleagues; inappropriate to divulge precise details
- . but emphasis will be to ensure effective practice of employment equality in both the public and private sectors
- . key objective in new legislation will be to set in motion and link two things (1) internal monitoring by employers (2) regular and systematic external audit by the enforcement Agency
- . likely to involve formal registration which would commit employers to (1) monitoring religious composition (2) recording outcome of monitoring (3)

submitting annual returns to enforcement body (4) taking remedial - or "affirmative action" - measures when directed to do so by the enforcement body

- . registration would no longer be open-ended (as at present); it would be limited to a finite period; subject to periodic review; and, because of that, subject to more regular and systematic external audit
- . and we propose to back registration by Government's economic muscle
- . so firms seeking grant support or tendering for Government work would have to be registered and committed, through registration, to monitoring effective practice
- . also proposing a new administrative framework that will separate investigatory and decision making functions; this will add to the status/ authority of Directions issued following investigations (see point (g) below)

(c) Guide

- . more detailed, specific, practice centred - and clearer - than the "MacBride Principles"
- . unlike those "Principles" drawn up in consultation with local interests; including RoI under auspices of Anglo-Irish Secretariat
- . has immediate impact because
 - Agency is statutorily required to take Guide recommendations into account in determining whether or not equality of opportunity is being provided
 - the more detailed and specific the Guide, the more incisive and comprehensive is the Agency's scope for action
 - the Agency can immediately use the Guide's recommendations as the touchstone of good practice
- . welcomed by present RoI Government following publication

(d) Affirmative Action (why not use the American model (ie) "quotas" and "job reservation?")

- . no uniform model of affirmative action in the US; it can take a variety of forms (sometimes it involves "quotas" and "reverse" discrimination - illegal in NI)
- . we define affirmative action as those special measures that an employer can take to ensure a more representative distribution in his workforce when monitoring reveals that a particular group is under-represented
- . this includes "outreach" training - open to all - but designed to facilitate the access of an under-represented section of the community to employment or promotion
- . also includes "goals and timetables" for applications (could also be set for appointments; but Agency prefers not to put too much pressure on the merit principle at the point of selection)

(e) Why adopt a policy of no discrimination (that does not resolve the problem of past discrimination)

- . our policy recognises and attempts to resolve the problem of past discrimination
- . but to try to redress past discrimination with more of the same (ie "quotas" and "reverse" discrimination) would perpetuate division/resentment/hostility and militate against peace/reconciliation/mutual respect and recognition
- . the best solution is to develop effective employment equality practice and to ensure that it is implemented
- . so systematic and objective recruitment procedures - including monitoring and affirmative action - are the keys to real progress

(f) Accusation that present legislation is "minimalist"

- . not so; the Agency does have very extensive powers under the present Act

- . it must investigate any individual complaint of discrimination brought to it;
- . of its own volition, it can carry out "pattern and practice" investigations into any public and private sector undertaking in NI;
- . in individual cases - where respondent unwilling to settle - it can issue recommendations to that respondent; if respondent fails to comply it can bring proceedings in the County Court to enforce compliance
- . in "pattern and practice" cases it can issue Directions and bring enforcement proceedings in the County Court

(g) Future of Fair Employment Agency

- . the Government's approach is to build on the valuable experience and achievements of the FEA
- . its plans are an extension and development of the work of the FEA and not a change of direction
- . Government would not wish to lose the commitment and expertise of the staff of the FEA in whatever new arrangements are eventually put in place
- . recent media speculation is ill informed and premature; Government's proposals should not be judged until they are publicly presented

3-1-15