

EMPLOYMENT EQUALITY PROPOSALS

TAB D

BACKGROUND NOTE

1. The Secretary of State/Minister will be aware that Congressman Kennedy is hostile to the fair employment proposals currently being developed by Government. During the Secretary of State's visit to the US in September last, Congressman Kennedy denounced existing fair employment provision as "minimalist"; and although he subsequently received a letter from the Secretary of State outlining future proposals (copy attached at Appendix I), and has probably seen the brochure released on 2 March, it is clear that he has not allowed himself to be convinced of HMG's commitment to introducing more effective practice. The tone of his recent letter to the Prime Minister (copy attached at Appendix II) indicated no disposition to take a balanced view of the new policy.
2. His main criticisms will centre generally on the content and timing of our new legislation; and, since he will be spending time under the tutelage of the SDLP, it is safe to assume that he will be fully au fait with the reservations which have been expressed by the ROI, Labour Party, and SACHR. It is unrealistic to assume that he will be converted to a supportive view of our proposals; but the opportunity should be taken to present Government's policy in a strong and positive light.
3. His specific areas of criticism are liable to be - (a) Government's failure to adopt affirmative action on American lines - ie reverse discrimination, quotas etc; (b) adherence to the merit principle will be a block to effective remedial action against past injustices; (c) Government's failure to set a target for reducing the unemployment differential between the two religious communities; (d) more use should be made of goals and timetables to give impetus to the new policy; (e) existing fair employment policy is inadequate and is indicative of insitutionalised indifference to, and neglect of, the problem; and (f) that HMG is dragging its feet on the introduction of the new measures.
4. Attached to this note are lines to take on the above issues. In view of the fact that Congressman Kennedy will have been briefed by the SDLP (who have been afforded a detailed insight into our proposals), the information contained in the lines to take represents a reasonably full exposition of policy. The objective of the meeting should be to impress upon Congressman Kennedy (a) that HMG is fully committed to the provision of a new employment equality policy; (b) that the policy is designed to achieve a permanent

solution to the problems of inequality, rather than quick but ephemeral gains; and (c) that the policy is being progressed as urgently as possible. It may also be emphasised that the ROI has been extensively consulted on the development of the policy, and welcomed the proposals outlined on 2 March.

5. As the response to Mr Stanley's recent US visit indicated, Irish-American politicians (particularly in a Presidential Election year) are reluctant to be impressed by HMG's policy in NI. The distrust aroused by recent developments in the law and order situation will inevitably colour still further Congressman Kennedy's views on fair employment proposals. The best to be hoped for from a difficult meeting is that he is made aware that HMG is developing an effective and defensible policy.

Line to Take

I. Affirmative Action

- . recognise that reverse discrimination and quotas have strong element of retributive justice, but convinced they would be fatally divisive in a community already polarised
- . most influential interest groups - including SACHR - recognise that preferential treatment on this scale would be counter-productive to progress on equality of opportunity

Caution: SDLP have countenanced use of quotas after permitted affirmative action measures have failed: ROI would allow use of "tie-break" (as would SACHR, but only if new legislation proves inadequate)

- . HMG convinced that, for policy to succeed, it must prove acceptable to both communities - this more important than short-term changes in statistics
- . affirmative action permissible under Government's proposals will allow programmes designed to specially facilitate access by members of under-represented community
- . will also allow goals and timetables, preferably for applications, but also for appointments, as part of remedial action programmes specified by Commission

II. Merit Principle

- . merit principle is central plank in policy which is fair to both communities
- . positive, pro-active, expansive concept: wide definition in Guide to Effective Practice urges recognition of potential as well as of ability - this very important for young first-time job-seekers

- . Government's proposals allow considerable scope for remedial action - but avoid creating present injustice in attempting to remedy past injustice
- . systematic and objective recruitment procedures, with monitoring and affirmative action, represent key to sustained and permanent progress
- . adherence to merit principle does not mean that Government will be "soft" with recalcitrant employers - sanctions will be used where necessary
- . sanctions against employers will include extensive range of fines (unlimited in some circumstances) enforceable via Courts, and denial of access to Government business

III. Target for reducing unemployment differential (as recommended by SACHR, ROI, Labour Party)

- . our target is immediate implementation of best practice, as set out in Guide: injecting employment equality into the corporate bloodstream: ensuring that it is actively and vigorously promoted
- . Government regard it as simplistic to set target when levels of unemployment may be affected by factors - state of world economy, rate of inward investment - which have nothing to do with fair employment
- . but policy will be very closely monitored and subject to periodic review; its operation assessed against range of relevant factors - eg composition of workforces as revealed in compulsory monitoring returns, use made of complaints procedures, effectiveness of remedial action programmes - to assess if equality of opportunity being afforded
- . important that employers adopt good practice as soon as possible - hence the Guide, seminars, support scheme

IV. Use of goals and timetables

- . current legislation permits goals and timetables to be set for both applications and appointments - employers free to choose

- . on recommendation of FEA, Guide to Effective Practice advises use of goals only for applications: their use for appointments may be misinterpreted as quotas, or put pressure on merit principle
- . new Commission may take different view to present FEA and may recommend goals/timetables for appointments - will remain legal
- . goals/timetables could form part of affirmative action programmes drawn up by FEA or by new Commission

V. Existing Legislation is minimalist

- . FEA possesses extensive powers to combat discrimination and promote equality of opportunity
- . must investigate all individual complaints: can ensure that Directions to employers to provide equality are enforced via the Courts
- . new Guide to Effective Practice strengthens FEA's hand - provides standard for good practice, must be taken account by FEA in determining whether or not equality of opportunity is being provided: it is touchstone of good practice
- . FEA staffing and resources doubled in recent years
- . FEA itself has reviewed procedures to allow for more effective investigation of complaints
- . new policy being instituted to build on work of FEA - increase in emphasis, not a change in direction: staff and experience will transfer to Commission

VI. Timetable

- . highest political priority attached to legislation - Prime Minister personally endorsed Guide and indicated her commitment to further measures

- . urgent work proceeding on finalising details to be published in White Paper, probably in May
- . highly sensitive area - vitally important to get legislation right: continuous amendments to legislation when passed would damage credibility of policy
- . Government has felt it important to consult widely on policy details - SACHR's very detailed Report; five submissions of views from ROI, and similar number of meetings with officials, plus regular discussions at Intergovernmental Conference
- . If pressed: legislation probably announced in Queen's Speech in November, debated in Parliament early months 1989, becoming effective mid-1989