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DESK BY 1600 HOURS

FROM: R C MASEFIELD

26 JULY 1989

RM/7220/89/JEC

cc 1. PS/Sir K Bloomfield - B
Mr Fell, DED
Mr Burns (B&L) - B
Mr Thomas - B
Mr Kirk - B
Mr Wolstencroft, DED

359/7
Mr Gowdy, (DED and NIO(L))

FURTHER DISCUSSION WITH IRISH OFFICIALS ON FAIR EMPLOYMENT
LEGISLATION

SUMMARY

You kindly met Messrs O hUiginn, Collins and Gaffey (from the Secretariat) and Ms Anderson (DFA) on 25 July for a discussion primarily on the progress of the Fair Employment Bill. While the Irish side acknowledged that the present shape of the Bill represented substantial progress in many respects, there remained some areas where they were doubtful if the provisions would achieve the Government's stated intention, eg affirmative action, aspects of contract compliance and some House of Lords amendments, while in respect of a third set, the Bill's shortcomings were more manifest, eg the absence of provisions for appeals against Section 42 Certificates and a reference to Flags and Emblems. While they accepted that the Bill was in its final form, they again covered much of this largely familiar ground. In response to your request, they said that a broadly positive Irish statement was likely on the day of Royal Assent, but it would be qualified both by their remaining doubts in respect of certain provisions, and by the general climate of comment - some people were again criticising the Irish Government for being too positive towards the legislation. They did not themselves know how the SDLP would vote in respect of

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the various amendments, but they hoped that there might be an opportunity during the debate for an expression of general goodwill towards the Bill, (their attitude being broadly similar to the Irish Government's), to avoid the final taste being a series of negative comments on individual aspects.

TIMETABLE

2. You began by taking the Irish side through the overall timetable, and by referring to the 6 sets of regulations and the Code of Practice. In regard to the latter, you explained that, to avoid delay, the consultation period would be only 4-6 weeks. The Irish made no adverse comments on this, although they emphasised that in both presentation and substance, they believed that change to the illustrative draft was required.

THE SHAPE OF THE BILL

3. The Irish side professed to be somewhat perplexed at the way in which the consensus behind the measure as it emerged from the House of Commons had apparently unravelled. They recognised that the Bill represented substantial progress in many areas. There were a second set where they were dubious as to whether the Government's stated intention would be achieved by the actual provisions, while in respect of a third set of mostly familiar topics, they considered the Bill was still inadequate. They cited specifically the absence of goals and timetables on the face of the Bill, and the decision not to permit religion specific training. You made the point that the Bill represented the basic skeleton, but that the overall impact would be clearer when the implementation phase with the new Code of Practice was reached. Many changes had been made to meet the concerns of Irish and other representatives, including several provisions where the Government's legal advice had suggested that the point was already covered in the draft.

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THE ADEQUACY OF CLAUSE 53 PROTECTION

4. The Irish queried whether the provision gave sufficient protection against an employer being charged with indirect discrimination, the corollary being that a prudent employer would be unlikely to run the risk of outreach training. You explained the decision not to permit religion specific training, but expressed confidence that employers would provide suitable measures such as training, while being specifically protected by Clause 53(2). The Irish expressed concern that the Tribunal might interpret individual cases legalistically, and asked whether, should the law not protect employers against such charges, this provision would come within the review to which the Government was committed. You said that it would, though you stressed that the eventuality was most unlikely.

APPEAL PROVISIONS AGAINST SECTION 42 CERTIFICATES

5. The Irish asked why the Labour Party appeared to believe that provision for some sort of appeal would be made known during the passage of the Bill through the House of Lords. You explained that the Government's position had always been that it hoped it might be possible to make some provision in administrative terms, but no commitment as to timing had been given. Moreover the shape of such a provision could not have been determined ahead of other legislation proceeding through Parliament.

REDUNDANCY

6. The Irish sought clarification about the Government's amendment. You explained that this was a particularly emotive issue in industry given the acceptance of the last in first out rule, and that the Government believed the best way forward was for it to be dealt with in the context of agreed procedures between trade unions and employers. The Government believed that the unions (in the form of NIC/ICTU) would be obliged to give a lead; it was possible there might be a problem in individual plants, but the employer would then have a justifiable basis for taking action.

TIME LIMIT ON REQUESTS FOR INFORMATION FROM THE FAIR EMPLOYMENT COMMISSION (CLAUSE 32)

7. You explained that the Government had been concerned that employers could be harried unnecessarily frequently by the Commission, which should be required to operate in a professional manner, working together with employers. The Irish side expressed some concern lest an unhelpful employer might seek to shelter behind the 6 month time limit.

CONTRACT COMPLIANCE

8. The Irish side had noted Mr Viggers's assurances in the House of Commons, and suggested that it would be helpful if the Secretary of State were able to re-affirm them on the record.

OVERALL APPROACH TO THE BILL

9. The Irish expressed some concern at the shift from the previous consensus in the House of Commons, which they suggested the Government had jeopardised for the sake of small changes during the House of Lords stage. You explained that the Labour party's criticisms which were indeed disappointing, were rather a reversion to more fundamental differences of approach in respect of certain issues. In the specific context of Clause 53, Mr O hUiginn in one of his few rhetorical remarks, suggested that the Government had a fundamental presentational problem in that the declared aim of the Bill was to redress religious imbalance in the workforce while the measure did not permit religion specific training. You said that in practice the provision in Clause 53 would permit such imbalances to be taken into account by an employer in providing outreach measures.

IRISH PUBLIC REACTION

10. You explained that the Government would be issuing a press statement on the day of Royal Assent, (the gist of which you put to the Irish in draft), and said that a positive Irish response would be very welcome. Both Mr O hUiginn and Ms Anderson were at pains to say that the Irish response would be as positive as practicable,

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though there might be a number of qualifications. First, they had not yet fully briefed Mr Collins, the new Foreign Affairs Minister. Second, they remained hesitant about the effect of some provisions in practice, and as this was a complex area, they were reluctant to express too certain a view until the Act and associated measures were implemented. Third, in framing their response, they had to be conscious of the climate of informed comment on the Bill - not that they would be endorsing all of the criticism made by the Labour Party, but they would be under pressure not to be too wholeheartedly enthusiastic. Ms Anderson added that she hoped that credit for changes which had been made during the passage of the Bill, for example the increase in the ceiling in individual's awards, would be given in any statement. Both you and the Irish representatives remarked that the impact on American opinion would be important. You explained that the Government's intention was to produce a publicity brochure on the fair employment measures, for probable publication in September. Irish support would be welcome then also.

THE COMMISSION AND TRIBUNAL

11. The Irish said that it was important that the President of the Tribunal should himself deal with fair employment cases. You said that this was indeed the plan, and that we envisaged that in the early days at least only one Tribunal would be required to hear fair employment cases, though provision was being made for others if necessary.

12. The Irish expressed (familiar) concern at the Government's decision to appoint only employer and union representatives to the panel of lay members of the Tribunal. (They expressed passing regret too that they had heard formally of this decision only after the letters of invitation had gone out). They had however noted the stress placed in the letters on the appropriate qualities that would be sought; they were also glad to hear that both the Department and the President would place emphasis on appropriate training.

13. You said that the interviews of candidates for the post of Chief Executive of the new Commission were being conducted this week. You also explained that agreement had been reached on the appointment of

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most of the independent members of the Commission. The Irish stressed the importance of having a strong and representative Commission, and hoped that they would be notified of the membership as soon as possible.

CONSEQUENTIAL REGULATIONS

14. The Irish put down specific markers in respect of the forthcoming regulations dealing with the questionnaire and monitoring. You undertook to ensure that they would continue to be kept informed; the target date for full implementation remained 1 January 1990.

CONCLUSION

15. In conclusion, Mr O hUiginn expressed personal appreciation on his own behalf and that of his colleagues on the Irish side for all those officials who had been involved in the long process of consultation which in his view and that of his colleagues had been very fruitful.

(Signed)

R MASEFIELD
26 July 1989

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