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File

Fair Employment

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Ms Langan
To see & p/a. Pl let
me have a copy for my personal
briefing res
16/1/91

cc PS/Mr Needham DED (B&L)
Secretary
Mr Spence
Mr McNeill, PAB
Mr Smartt
Mr Taggart
Miss Brown
Mr Bohill
Mr McAuley

11 January 1991

TO: Miss A Bailie-McCormick, Central Secretariat
FROM: P McAlister, Equality Division

Mr MacKinnon
You will write to me
again
14/1/91

VISIT TO NI OF US AMBASSADOR TO REPUBLIC OF IRELAND

I attach the following briefing as Equality Division's contribution to material for the above visit:-

1. Fair Employment (NI) Act 1989 - Bull Points.
2. Current Position on Fair Employment Practice - Bull Points.
3. Implementation of Fair Employment Act - Bull Points.
4. Fair Employment (NI) Act 1989 - Disclosure of Information - Background Note and Line to Take.
5. MacBride Principles - Bull Point Briefing.
6. MacBride Principles - Line to Take.
7. MacBride Principles - Republic of Ireland View.
8. Fair Employment and the US Companies in Northern Ireland - Bull Points.
9. US Government Policy Towards Northern Ireland.

P McA

P McALISTER

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DEPARTMENT OF ECONOMIC DEVELOPMENT
An Equal Opportunities Organisation

Fair Employment (NI) Act 1989 - Bull Points

The Act which came into operation on 1 January 1990 is tough and radical and greatly strengthens the 1976 law.

1 Structures

- Fair Employment Commission responsible for:

maintaining register of employers;
investigating employers' procedures and issuing directions;
concluding voluntary, but legally binding agreements with employers;
promoting affirmative action where necessary;
providing advice and guidance on best practice; and
assisting individual complainants.

- Fair Employment Tribunal can:

decide on individual cases of discrimination and may award compensation;
enforce the directions of the Commission;
hear appeals by employers;
fine employers or refer them to the High Court - which can impose jail sentences or unlimited fines; and
specify steps to be taken by the employer to promote equality of opportunity.

Monitoring

- All specified public authorities, and private sector employers with more than 25 employees (more than 10 from 1 January 1992) must monitor workforces;
- All specified public authorities and those private sector employers with more than 250 employees must monitor their applicants for employment.

Criminal Penalties

- Range of criminal penalties eg for failing to register, to monitor or respond to enquiries by the Commission or for supplying false information.

Economic Sanctions

- Employers disqualified by the Commission can be refused Government and public authority contracts.

Affirmative Action

- Employers must take affirmative action and set goals and timetables where required.

Indirect Discrimination

- Indirect discrimination outlawed by the Act. Direct discrimination has been unlawful since 1976.

Evaluation and Review

- Commission and Government to regularly evaluate the impact of the legislation.
- Formal review of effectiveness of the Act after 5 years.

Increased Investment

- Act will have most effect if complemented by more jobs and new investment.

January 1991

CURRENT POSITION ON FAIR EMPLOYMENT PRACTICE - BULL POINTS

Significant changes in proportions of Catholics employed in various sectors of employment:-

Public Sector

- proportion of Catholics in NI Civil Service (35.3% at 1 January 1989) improved in 1980s, is now closely in line with their representation in population as a whole.

still under-represented in higher grades (18.6% Catholic at 1 January 1989)

recruitment is improving (40% of appointments between August 1985 and 1 January 1989 were Catholic.)

Equal Opportunities Unit develops, formulates, co-ordinates and monitors equal opportunities policy for the Civil Service as a whole;
- Local Government had a particularly bad record of discrimination. In the 1970s functions were transferred from Local Government to public boards;
- in the public boards the FE Agency examined, the level of Catholic representation had improved significantly, particularly at senior level. All Boards have formally adopted policies to provide equality of opportunity;
- of the 9 public boards dealing with Health and Social Services and Education and Library Services, none in 1976 had Catholic Chief Executives; now 5 have Catholic Chief Executives;
- in 25 out of 26 District Councils (excluding Belfast) overall 34% of employees are Catholic; and
- the Northern Ireland Housing Executive has a labour force which is over 40% Catholic;
- in the Northern Ireland Fire Authority and the Ambulance Services, the levels of recruitment of Catholics are now very satisfactory.

Private Sector

- The Derry area has the greatest concentration of American jobs. Catholics make up 65% of adult population but 70% of employees of American companies. "American Companies have on the whole a good record" (Bob Cooper);
- in the legal profession Catholics have a representation above their proportion of the population; majority of new entrants are Catholics; 4 out of 10 High Court Judges are Catholics;
- the seven major Building Societies investigated in 1986, employed 14% Catholic workforces; between then and March 1989 34% of those recruited were Catholics;
- Catholics represented 39% of recruits to the 5 Banks within the period August 1984-March 1986.

January 1991

Implementation of Fair Employment - Bull Points

Fair Employment (NI) Act 1989 was brought into operation on 1 January 1990.

Subordinate legislation made under the Act:-

- Fair Employment (Monitoring) Regulations (NI) 1989
- Fair Employment Tribunal Regulations (NI) 1989
- Fair Employment (Rules of Procedure) Regulations (NI) 1989
- Fair Employment (Questions and Replies) Regulations (NI) 1989
- Fair Employment (Specification of Public Authorities) Order (NI) 1989
- Fair Employment (Specification of Public Authorities) (Amendment) Order (NI) 1990

First Code of Practice under the new Act distributed to all employers in NI.

Fair Employment Commission came into existence on 1 January 1990.

Consists of Chairman (Mr Bob Cooper) and 8 other members. Chief Executive is Mr Harry Goodman. Commission's staff increased from predecessor body FEA's 30 in 1988/89 to FEC's 63 in post by early 1991. Budget increased from FEA's £770k in 1988/89 to £1.5m in 1990/91. Offices enlarged and refurbished.

Registration

Encouraging response by employers to requirement to register with Commission. As at 6 November 1990 1833 private sector firms had registered. One hundred public authorities are treated as registered.

Monitoring

All 100 public authorities have submitted details of the community background of their employees to the commission. Of the returns due from private sector firms in June 1990, less than 2% of firms have failed to submit returns.

Of the 25 companies which have failed to submit monitoring returns, the Commission has successfully prosecuted 6 of those defaulting employers.

Fair Employment Support Scheme

Department of Economic Development's Fair Employment Support Scheme provides private sector employers with free consultancy advice on implementing the recommendations in the Code of Practice. Over 1100 applications have been received from firms registered with the FEC.

Equal Opportunity Proofing

Government is fully committed to promoting equality of opportunity and eradicating unlawful discrimination on grounds of religious belief, political opinion, sex and marital status.

Equal Opportunity proofing focuses on the need for Government Departments to be pro-active in all aspects of their activities in promoting equality of opportunity and to develop awareness of the implications for policy and operational planning of the statutory prohibitions against direct and indirect discrimination.

January 1991

FAIR EMPLOYMENT (NORTHERN IRELAND) ACT 1989 - DISCLOSURE OF INFORMATION

LINE TO TAKE

The Department is examining urgently the implications of the Fair Employment Tribunal's decision on 11 October 1990 for the handling of individual complaints under the Fair Employment Act. The issues involved are, however, difficult since it is necessary to balance, on the one hand, the wish of an individual complainant to have access to information relevant to his or her claim, and on the other hand, the commitment to preserve the confidentiality of private information about individuals obtained for religious monitoring purposes under the new legislation. A consultation paper was issued on 14 November 1990 examining the problem and seeking comments within a month from the main interest groups. Approximately 70 responses have been received from a wide range of interested individuals and organisations. Work is now under way to assess and analyse the views that have been put forward.

BACKGROUND

1. On 11 October 1990 the Fair Employment Tribunal refused a request by a complainant for the disclosure of documents held by an employer on the grounds that to do so would have put the employer at a substantial risk of committing a criminal offence under section 30 of the Act. In effect this has brought the hearing of virtually all complaints of alleged religious discrimination to a halt.
2. The **ruling** by the Fair Employment Tribunal means that individuals pursuing **individual** complaints cannot have access to information collected for the **purpose** of religious monitoring.
3. Section 30 of the Fair Employment (NI) Act 1989 makes it a criminal offence for an employer to disclose information about an employee or job applicant which he has obtained for the purpose of monitoring, or any information from which community affiliation might be deduced. This was done in order to ensure that the monitoring arrangements worked; it was felt that providing a right of access to monitoring information for the purpose of individual complaints could compromise the whole monitoring exercise.

There is, therefore, a difficult balance to be achieved between enabling individuals to pursue effectively specific complaints and protecting the confidentiality of information obtained for monitoring purposes about the community affiliation of employees and job applicants.

5. Following the consultative process the approval of Parliament will be sought at the earliest possible date to make the necessary changes in the law. It is proposed to do this by order in Council but no commitment should be given at this stage about the timescale that might be involved.
6. The issue raised by the Tribunal's ruling does not in any way affect the duties and responsibilities placed on employers by the Fair Employment Acts.

January 1991

MacBRIDE CAMPAIGN - BULL POINT BRIEFING

1. Government Policy
 - The Government recognises problem of fair employment.
 - Totally committed to equality of opportunity. (Religious discrimination already illegal).
 - Northern Ireland fair employment legislation more radical than MacBride Principles.
2. US Interest
 - Understand US concern and why McBride Principles seem attractive.
 - HMG shares objective of fair employment but concerned about MacBride campaign.
3. Campaign detrimental
 - Campaign counter-productive to investment.
 - Shareholder resolutions, State legislation (requiring monitoring and report to multiple interests), threatened disinvestment and product boycotts, raise doubts in corporate HQs about wisdom of investment in NI (possibly only a small part of the worldwide investment).
 - Locations with fewer "political" complications may appear more attractive to companies, investment advisors and private and institutional investors including State Treasurers.
4. Campaign negative
 - No attempt by the MacBride lobby to attract new industry to areas of high unemployment in NI (November 1990 unemployment rate 13.8%). Better to be constructive.
5. Wide ranging opposition to campaign
 - Those opposed include US Government; SDLP/John Hume (critical of effect on the ground in NI in terms of discouraging investment and jobs); trade unions (Irish Congress of Trade Unions rejected a pro-MacBride resolution); Fair Employment Agency (was critical of impact on US employers and the job creation essential to progress).
6. Not just about fair employment
 - Key players in campaign include Irish National Caucus and NORAIID (PIRA's registered "agent" in US). Only Sinn Fein among NI political groups supports the campaign.
 - Wider political objectives a motivating force.
7. ROI view
 - Taoiseach's view is that Principles are acceptable. But ROI welcomed new fair employment legislation as a "significant step forward" in the campaign to eradicate religious discrimination and a "serious attempt to respond to the problem and to point the way forward".
8. Conflict with NI law
 - FEA (and US State Department) view is that adherence to some of the Principles (which appear to envisage

reverse discrimination) could be a contravention of domestic law. Companies have similar advice. Would obviously put the US companies in very difficult position.

9. Situation report

- MacBride Legislation is in force in 12 States (Massachusetts, New York, Connecticut, New Jersey, Rhode Island, Maine, Minnesota, Florida, Illinois, Michigan, New Hampshire, Vermont) and over 30 cities.
- In December 1990, New York City Council introduced legislation which would force New York City to deal only with companies which adhered to the MacBride Principles. That legislation is expected to pass into law early this year.
- So far, in 1991 Bills have emerged in 3 States, Massachusetts, Missouri and Virginia.
- In 1990 no Bills passed. Bills failed to pass in 10 States (Colorado, Maine, Massachusetts, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, Utah and Virginia).
- No let up expected in Campaign, despite passing of Fair Employment Act.
- 31 companies are likely to receive Shareholder resolutions in the 1991 proxy season.

January 1991

LINE TO TAKE ON THE MacBRIDE CAMPAIGN

Our main concern is not with the MacBride Principles themselves. Of course we do have some difficulties with them; for example, Principle 2 requires an employer to ensure the safety of his workforce outside of the workplace, and that is something that is beyond the employer's power, just as much in Belfast as in Boston. But to the extent that the MacBride Principles represent a statement in favour of fair employment, and opposition to discrimination, that is exactly the position of the British Government. Our Fair Employment (Northern Ireland) 1989 Act is based on a commitment to such a policy. But of course that Act goes well beyond a mere statement of faith in a set of principles: it goes well beyond the MacBride Principles, in that it sets out very clearly the action that employers in Northern Ireland must take if they are to be fair employers, and has real teeth: it introduces significant economic and criminal sanctions against those who do discriminate, and those who do not offer equality of employment opportunity.

We have a genuine commitment to ensure that the Act will work: we are determined that it will deliver equality of opportunity. I have no doubt that it will succeed in ensuring a fair distribution of jobs. But unemployment is running at 14% in Northern Ireland and unless we can reduce that level, unless we can generate more jobs the Fair Employment Act cannot be as successful as it could otherwise be. We must try to bring additional employment to Northern Ireland: without that, significant numbers of our people are going to continue to be unemployed, and the Fair Employment Act will not be able to help them.

But the ~~campaign~~ surrounding the MacBride Principles is making one means of generating jobs in Northern Ireland much more difficult. The campaign is based on adoption of legislation enshrining the Principles in US State and City Legislatures, monitoring of companies by State and City authorities, shareholder resolutions, and boycotts. All of this adds up to "hassle" for US companies operating in Northern Ireland, and is a deterrent to others who might invest in Northern Ireland, bringing the jobs that we so much need, if there is to be equality of opportunity for all, and especially those who are unfortunate enough to be unemployed. That is why I hope that those who lead the MacBride campaign in the USA will accept that what they are doing is hindering the achievement of equal opportunities for all in Northern Ireland, by deterring American

investment there and the jobs it will bring. They should recognise that we have a tough Fair Employment Act on the statute book, and we are determined that it will work. We have the commitment to make it work. But we want help - not hindrance - from those who care about the issue, to bring additional employment to Northern Ireland.

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MACBRIDE PRINCIPLES - REPUBLIC OF IRELAND VIEW

Taoiseach's view is that Principles are acceptable. But ROI welcomed new fair employment legislation as a "significant step forward" in the campaign to eradicate religious discrimination and a "serious attempt to respond to the problem and to point the way forward".

Comptroller Holtzman of New York City visited Great Britain, Northern Ireland and Republic of Ireland in July 1990. In the report of her visit, Irish officials whom she met, Dermot Gallagher (Director of Anglo-Irish Relations, Department of Foreign Affairs) and Dr Martin Mansergh (special assistant to the Taoiseach, Mr Haughey TD) are quoted as welcoming continuing US monitoring and oversight of the Fair Employment Act. It is not clear whether the views attributed to the Irish Officials are at the Taoiseach's behest or are simply personal reflections by the Officials concerned.

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FAIR EMPLOYMENT PERFORMANCE OF US COMPANIES IN NORTHERN IRELAND - BULL POINTS

- aware of at least 60 companies in Northern Ireland with a US involvement who have attracted the notice of MacBride proponents.
- 31 US companies, employing approximately 10,300, representing around 10% of the manufacturing workforce.
- Mr Cooper of the Fair Employment Commission, in his testimony to a MacBride hearing in Missouri in January 1990 stated "the major problems of inequality are not generally connected with [manufacturing factories set up by outside investors in the last few decades], and most American companies have on the whole a good record. Of the complaints which the Commission received, very few of those about general patterns of inequality involve American companies, and indeed the majority of complaints are from the leaders of the Protestant community, who consider that some of the American companies employ too few Protestants".
- area with greatest concentration of American jobs is Derry. Catholics make up 65% of the adult population in Derry, but 70% of employees in US companies.
- extent to which existing American companies can bring about further improvements in the position of Catholics in Northern Ireland is minimal.
- under the Fair Employment (Northern Ireland) Act 1976, s.12, investigations were carried out on the employment practices of 3 US companies - AVX (no longer US-owned), American Brands and Hyster. The companies attracted no adverse comment from the FEA for their current practices although American Brands was found to have failed to provide equality of opportunity in the past.

US GOVERNMENT POLICY ON EQUALITY OF OPPORTUNITY IN NORTHERN IRELAND AND MACBRIDE

At a Conference on Anglo-Irish Relations in Northern Ireland, held in the Woodrow Wilson Centre in Washington in May 1990, Mr Ralph Johnson, Deputy Assistant Secretary of State for European Affairs made a helpful speech which outlined the State Department's support for HMG's approach to providing equality of opportunity in Northern Ireland and opposition to MacBride.

Extracts from the speech are recorded below.

US Policy

- the United States advocates peaceful solutions to the problems of Northern Ireland. Consequently, we support the efforts of the United Kingdom and Ireland to use the Anglo-Irish Agreement to address the social, economic, political, and security problems of Northern Ireland.
- this means, in our view, promoting equality of opportunity in employment and in the administration of justice, encouraging job-producing investment, finding acceptable political solutions, and eliminating terrorism.

Support for Economic Development

- the US Government supports economic development in Northern Ireland with the hope that economic progress will facilitate peaceful political accommodation.
- the US **actively** encourages investment in Northern Ireland.
- the US **opposes** federal, state, and local US legislation to force firms to adhere to the MacBride Principles, since we believe that US legislation would inhibit job-creating investment.
- we also oppose US legislation because we fear it could interfere with firms' obligation to adhere to British Law, because we believe that the new Employment Law makes US Laws unnecessary, and because the recognised leaders of the Nationalist community have opposed such US Laws.

Support for Human Rights

- the protection of human rights is an essential component of American foreign policy. Our concern for human rights extends to Northern Ireland.
- our efforts to promote human rights there include strong support for the efforts of the United Kingdom and Ireland to promote equal opportunity in employment and fairness in the administration of justice.