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FAIR EMPLOYMENT IN NORTHERN IRELAND - PRELIMINARY VIEWS

Introduction

1. Article 5(a) of the Anglo-Irish Agreement refers to "the avoidance of economic and social discrimination" and Article 6 to the role of the Fair Employment Agency. The Irish Government wishes to put forward preliminary views and proposals on the issue of equality of opportunity in employment and occupations in Northern Ireland, under Articles 2 and 3 of the Agreement. Already a useful meeting was held in the Joint Secretariat at Belfast on the 26th June at which an exchange of views on Fair Employment took place.

Review in Progress

2. It is noted that this matter is already under examination:
 - (a) A Steering Group on Employment Equality established by the Secretary of State in July 1985 is to report on how equality of opportunity in Northern Ireland could be made more comprehensive, and
 - (b) The Standing Advisory Commission on Human Rights (SACHR) announced on 11 June 1986 that it is undertaking a major review of anti-discrimination legislation in Northern Ireland which will focus inter alia but in particular on
 - the adequacy of fair employment legislation and the power of the Fair Employment Agency;
 - the anti-discrimination provisions of the Northern Ireland Constitution Act;

- the machinery for dealing with complaints of maladministration by central and local government.

It is noted however, that the SACHR does not expect the results of this review to be available until the end of 1987.

Results of Discrimination: Recent statistics and reports

3. The Irish Government believes that the high incidence of unemployment in the minority community, particularly in the 16-25 age group has been aggravated by discrimination in employment practices and has provided a fertile breeding ground for instability and for recruitment to the paramilitary organisations.
4. The Policy Planning and Research Unit Monitor (PPRU-Queens University) of June 1985 which is based on a sample survey of the general population establishes and reveals well known trends in unemployment in the two communities in Northern Ireland.

Unemployment in %

	<u>Catholic</u>	<u>All Protestant</u>
Male	35	15
Female	17	11
All	28	13

In respect of structural and long-term unemployment (those unemployed for more than two years) the respective percentages are Catholic: 44% and Protestant: 33%.

5. Figures from the 1981 Census of population also show that in all areas of Northern Ireland, Catholic unemployment is much higher than that of Protestants with an overall unemployment rate of 30.2% for Catholics and 12.4% for non-Catholics.
6. The Irish Government is concerned also at the very high level of unemployment in travel to work areas which are predominantly Catholic, e.g.

	%	%	%
	Overall	Male	Female
Strabane	41.3	53.9	20.5
Newry	32.5	39.9	21.6
Enniskillen	29.8	34.4	21.4

Since the publications of the above statistics by the Department of Economic Development in January 1985, the underlying trends have remained the same.

Recently the reports of investigations by the Fair Employment Agency into the engineering industry, the Non-Industrial N.I. Civil Service, the Building Societies, the Principal Banks and the Insurance Corporations show a disturbing bias in favour of non-Catholics in employment levels particularly in the higher grades.

International Aspects

7. It is important to show that positive inroads are being made to combat discrimination in employment to counteract the main indirect effects in the United States of the campaign based on the MacBride Principles, namely, the reduction in the level of new inward US investment for industry in Northern Ireland. Such new investment is vital

in the light of the already serious unemployment situation. The Irish Government believes that the way to counteract the campaign associated with the MacBride Principles is to point to positive reforms and practical results taking place.

Limitation of the Existing Legislation

8. The existing Fair Employment (N.I.) Act 1976 has proved useful within the limitation of its terms and underlying concepts in promoting equality of opportunity, based on the principle of selection according to merit and in countering unlawful discrimination. Its effectiveness must, however, be constantly measured against practical results. Serious imbalances in the employment profiles between the two communities continue to exist and the unemployment of recent years has exacerbated the situation of inequality, because it has affected the Catholic community disproportionately.

The Fair Employment Agency has described the limitation on his own scope of action as follows:

" if a discriminatory firm is not employing any new staff, the Agency is powerless.... The Agency does not have the power to direct that there should be reverse discrimination (e.g. the employment of persons of one religion in order to achieve a balanced workforce or to redress past discrimination). The Agency has only the power to operate within the terms laid down by the Fair Employment (N.I.) Act 1976 - all other matters such as reverse discrimination are matters for politicians to discuss and act on" (Seventh Annual Report page 5). If the underlying concepts on which the Fair Employment (N.I.) 1976 - and the Van Straubenzene Working Party Report 1973 - are based, are shown to be inadequate over a period of years in making substantial progress in achieving an overall balance in

employment in Northern Ireland in proportion to the numerical strengths of the two communities the conclusion must be that more radical measures, including if necessary amendment of the 1972 Constitution Act should be considered. The Fair Employment Agency has now been in operation for ten years, and it is timely to consider if the Northern Ireland legislation need radical revision. As has been noted (par. 2) a full examination is already in progress

Action in the Short Term

9. We feel, however, that despite - and indeed because of - the grave economic situation and its social and political consequences, more vigorous action should be taken within the general principles of the existing legislation without waiting for the results of the extensive examination. Accordingly we are putting forward views and proposals as follows:

Public Sector Employment

10. The Fair Employment Agency Report on its Investigation into the Non-Industrial Civil Service (December 1983) pointed out among other matters that:
 - Catholics and Protestants are not properly represented at all levels in the Northern Ireland Civil services;
 - employment opportunities in Government service should be - and should be seen to be - open to all citizens without regard to their religious beliefs;
 - the role of the Government through the character of its recruitment and promotion policies is a key influence in the development of equal opportunities in employment in Northern Ireland.

- An effective Affirmative Action Plan should be adopted by the Northern Ireland Civil Service in consultation with the Fair Employment Agency to remedy the disparity in relation to religious composition.

11. The investigation covered 23,000 civil service employed in the non-industrial grades but the total civil service numbers were in fact 31,000. In addition there are the public bodies, boards, undertakings, the local government sector and State-subsidised companies and undertakings dependent on public funds. In all, the public sector in Northern Ireland has been estimated as accounting for some 45% of total employment. These figures clearly underline the responsibility and potential of the Government as a leader in employment policy and practice.

(A) - The Civil Service

Views

The establishment of the Equal Opportunities Unit of the Department of Finance and Personnel on Equal Opportunities policy and programmes in the N.I. Civil Service with extensive provision for monitoring results, following the FEA investigation, has been a useful first step. The increasing number of Catholic appointments in the middle grades is obviously important for the future. However, the percentage increase over the previous five years (First Report of the Unit, 22 July, 1986) in the two higher grades of the Civil Service has been only 2.2% and 3.3% (for Grades B and A respectively) by comparison with an increase of almost 6% in the Civil Service as a whole. There is also a very high concentration of Catholics in the lower grades in the large Department of Health and Social Services where promotion prospects are limited.

Proposals

- The Equal Opportunities Policy established by the Northern Ireland Civil Service last year should be strengthened and developed in consultation with the Fair Employment Agency into an effective Affirmative Action Plan (see para. 13(c) below).
- The monitoring system now established should be tested periodically for its effectiveness with the advice of the FEA and specialised outside consultants.
- Particular emphasis should be placed in view of the imbalance in the employment pattern in the higher grades on encouraging Catholics with good academic qualifications to seek employment within the N.I. Civil Service, particularly at the higher entry levels. As promotion on seniority (as opposed to merit) is no longer a dominant factor in appointment policy in the Civil Service, consideration should be given to opening up periodically recruitment for certain of the higher civil service posts to the public sector as a whole and possibly to the private sector.
- The resiting of certain Government offices (for instance West of the Bann) should be examined as it is clear that the location of offices has a major impact on religious composition of Departments.

(B) - Local Government

Views

Successive Annual Reports of the Fair Employment Agency have pointed to the fact that of the Twenty Six Councils only seven (Belfast City Council and the District Councils of Down, Fermanagh, Newtownabbey, Newry & Mourne, Magherafelt and Omagh) have signed the Declaration of Principle and Intent to promote

and protect equality of opportunity in employment (under Section 6.3 of the Act. In addition the North Eastern Education and Library Board have not signed the Declaration. A non-signatory Council, Cookstown District Council, has been the subject of a Part Two Investigation and lengthy Appeal. The local Government situation is clearly unsatisfactory.

Proposals

- Government should require local government bodies to introduce effective monitoring on the lines of the Civil Service, in consultation with the Fair Employment Agency.
- Government, especially when the Declaration has been strengthened and improved (through amendment of the Act), should require local government bodies to sign the Declaration (see proposals on the Declaration below para. 13 (a))
- Councils already operate the Local Government Staff Commission Employment Code. In addition in the case of each senior appointment, Councils should be required to bring in an independent assessor on the lines of the FEA recommendation in the case of the Cookstown investigation (see FEA Sixth Annual Report page 20). An alternative would be to establish an independent Local Governments Appointments Commission which would make all middle and senior local government appointments.
- Standard assessment forms should be used for all staff appointments; such forms should clearly show the final assessment and the reasons for the rejection of any candidate. The forms should be stored for at least two years after use.

(C) - Public Bodies and Undertakings dependent on Public Funds

Proposals

- All major public bodies have signed the Declaration (second annual report of FEA page 6); such bodies that have not already introduced monitoring should be required to do so.

- Siting or resiting of some such bodies should be considered with regard to the effect of equality of opportunity.

(D) - The Declaration in relation to
Tenders for Government contracts

Views

The announcement on 10 December 1981 that tenders for Government contracts would not normally be accepted from firms within the scope of the Fair Employment Act unless they held and Equal Opportunity Certificate resulted in an increase in signatories from between two-three thousand before the announcement to over seven thousand in 1985. This shows the importance of the Government's role.

Proposals

The Government's role and influence should be further extended in this area to ensure that, not only tenders for Government contracts, but also tenders for all local government, public bodies and state-subsidized undertakings are accepted only from firms holding Equal Opportunity Certificates.

12. Resources of the Fair Employment Agency

Views

Ten years ago, at the time of the introduction of the draft legislation, the Government considered that an amount of approximately £280,000 a year would be needed to cover the total expenses of the Agency and that it would have a staffing requirement of 40. In fact the grants received in the year 1985 had not yet - despite inflation - reached this cash figure. Staff in 1985 was only 16.

The announcement by Dr. Rhodes Boyson, Minister of State on 1 July 1986 of an increase of £75,000 in the grants to the Agency is very welcome but the overall grant is still insufficient to allow the Agency to fulfil its important legal mandate.

Proposals

- The level of the Government's annual grant to the Agency should be at least doubled, the additional resources to be concentrated on: development of the Agency's educational functions, widening of the scope and number of its investigations and building up its own legal expertise through employment of its own legal staff.

13. Strengthening of the Fair Employment Act 1976

(A) - Declaration of Principle and Intent,
Certification as Equal Opportunity Employer/Organisation
and Register (Sections 6-10 Act), Monitoring.

Views

The existing Declaration as set out in Schedule 3 of the Act is too general - though the Agency has the power to vary the text in a minor way in the case of any specific declarants, provided the meaning is not altered (Second Annual Report of FEA, page 6). The Agency (Ninth Annual Report page 6) has pointed out that at present while declarants are generally cooperative in supplying information: "few companies or organisations.... are willing to carry out any form of compositional analysis which the Agency considers an essential element of any equality of opportunity policy..."

Proposals

- The Declaration should be amended to include a requirement to monitor composition of the work force in the case of each declarant.

- As a condition for inclusion and retention on the Register, declarants should be required to supply to the FEA, initially and thereafter annually a compositional return of employees, and at three year intervals to reaffirm the Declaration to the Agency and at that time to show that the monitoring provisions are being effectively carried out.

(B) - Guide to Good Manpower Policy and Practice (Section 5 of Act)

Views

Section 5 of the act stipulates that the Department (now the Department of Economic Development) shall prepare and cause to be published a guide to Manpower Policy and Practice, shall encourage employers and vocational organisations to adopt the policies and practices recommended in the Guide and shall, where necessary, revise it. The Guide published originally in 1977 was reissued in May 1983 but without any revision. It is overdue that the Guide should be reviewed to take into account the ten years experience of the Fair Employment Agency.

Proposals

- The Fair Employment Agency (and not the Department) should be responsible for issuing and revising the Guide.
- In general the text should be strengthened so that the Guide becomes a Code of Practice.
- The advantages of making such a Code of Practice legally binding in itself should be carefully examined.
- The revised text should take into account in particular the experience and views of the Fair Employment Agency as regards monitoring (see "Declaration" above). There should be a requirement that all application forms - preferably of a standard type - should be kept for at least two years, annotated in the case of each job application to show the case history including reasons in the case of any rejection.
- The Section on Protection of Workers - including display of flags and emblems - needs revision and strengthening.

(C) - Affirmative Action Programmes -
Section 13 and 27 of the Act

Despite the limitation that such programmes are provided for only when it can be shown conclusively that there has been a failure to afford equality of opportunity either generally or in relation to any class of person (as a result of investigation of practices under Section 13) or after investigation of a complaint (under Section 24), affirmative action programmes have been a useful instrument of the Agency.

It would probably be difficult to draw up a standard affirmative action programme which could be applied in every case. But the Agency has acquired over the years great experience both as regards the drafting and the supervision of such programmes.

Proposals

- Greater use should be made in such programmes of specific goals including numerical targets and timetables especially as regards applications for employment.
- Review provisions by the Agency (in conjunction with outside consultants as necessary) should be written into the programmes.
- Specific areas of failure (e.g. apprentice recruitment) should be highlighted and remedial action in such areas should be carefully reviewed.
- Creation of a conducive atmosphere for all employees should be stressed in such programmes (e.g. as regards display of partisan flags and political emblems) with provision for enforcement.

(D) - Complaints Procedure (Section 24.3 of Act)

Proposals

- The statutory time-limit of two months is too short. It should be extended to, say, three months at least.
- The educational role of the Agency should be used to try to overcome distrust or apathy as regards recourse to the procedure (as shown by the very low number of complaints made).
- Generally the procedure needs to be made easier for the public (possibly by transferring greater onus of proof on the 'respondent' rather than the complainant).

(E) - Acts Done to Safeguard National Security
(Section 42 of the Act)

Views

The Fair Employment Agency has expressed concern that individuals should not become victims and be deprived of their livelihood under this section as a result of some administrative error, and has referred by way of illustration to a case where such administrative error was in fact made. In certain cases where complaints have come before it, the Agency has expressed concern at the fact that it is unable to judge whether or not such administrative error may have taken place. It is possible also that in individual cases the rules applied are too rigid or are applied in too rigid a fashion.

Proposal

Consideration should be given as to whether there is a need for

retention of Section 42 at all. Action in any event should be taken to allow complaints made by the public in this area to be investigated, possibly by referral to the Parliamentary Commissioner for Administration (Ombudsman).

(F) - Protection of Workers

Proposal

- The Act and the Guide need to be strengthened in this regard with severe fines for failure to comply, e.g. in regard to display of flags and emblems which are likely to give offense or cause apprehension among employees. This area should be covered also in affirmative action programmes. (Par 13(c) above)

(G) - Fines

Proposal: All fines specified in the Act need to be brought up to date.

(H) - Industrial Location

Proposal: Companies/organisations should be encouraged as a part of their equal opportunities policies to consider:

- additional workplaces
- sub-contracting
- additional training locations and recruitment offices

The aim should be to ensure a better overall spread of jobs as between the two communities but not, of course, to exacerbate already existing divisions in the workforce.

14. Conclusion

The emphasis in this preliminary paper has been on the over-riding importance of Government as an agent for promoting equality of opportunity in employment, on the need to strengthen the Fair Employment Act in the short term in light of ten years experience in particular through including a mandatory provision in the Declaration of Intent as regards monitoring and on the allocation of adequate resources to allow the Fair Employment Agency to carry out its functions. Of great concern, however is the continuing worsening of the position of employment for Catholics in Northern Ireland relative to the composition of the community as a whole. The need for more radical measures through legislation needs to be examined. The proof of the efficacy of Fair Employment legislation will be evident when this imbalance is put right.

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