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Publication of Bill on Fair Employment  
15 December 1988  
Draft Government Statement

P.A. 5. 20705

The Government are pleased to note the publication today of a Bill containing new provisions to deal with fair employment problems in Northern Ireland.

In accordance with the terms of the Anglo-Irish Agreement, the Irish Government have put forward detailed views and proposals during the preparation of this legislation. In the course of consultations over many months, determined efforts have been made to resolve such differences in approach as arose.

While the provisions published today are not in all respects as the Irish Government would have wished, we believe that they represent a significant improvement over existing legislation and that, if effectively implemented, they have the capacity to bring about concrete change in employment practices in Northern Ireland. We attach particular importance to the provisions on monitoring, withholding of public monies from discriminatory employers, and the powers provided for the Tribunal and the Courts to impose heavy fines.

The entitlement to a fair deal in the workplace is one of the basic civil rights. For too long that right has been denied to the nationalist community. The introduction of this draft legislation conveys a clear message that discrimination is no longer acceptable and will not go unpunished. It puts the force of law behind the rightful claim of nationalists to equal treatment in terms of the quantity and quality of jobs available to them.

The document published today is, of course, a Bill which has yet to be debated, and perhaps amended, in the British Parliament. The criterion for the success of the legislation will be its effectiveness in bringing about a fairer distribution of jobs in Northern Ireland. The Government will follow closely the passage of the Bill through Parliament, and developments subsequent to its adoption.

W1823

*M. Keenan  
Speed by Taoreath with  
minor change. 5/2  
15/12*

PUBLICATION OF BILL ON FAIR EMPLOYMENT, NORTHERN IRELAND,  
15 DECEMBER 1988

DRAFT GOVERNMENT STATEMENT

Attached are

- (i) summary note on the new Bill
- (ii) draft Government statement
- (iii) summary note on how the new institutions will operate

*DAS*  
Anglo-Irish Division  
13 December 1988

cc. PSM  
PSS  
Joint Secretary

Mr Nally  
Dr Mansergh

## Fair Employment: How the new system will operate

1. The two institutions charged with implementation of the legislation will be

- The Fair Employment Commission
- The Fair Employment Tribunal.

### The Commission

2. The Fair Employment Commission will be the successor to the existing Fair Employment Agency. The staff of the agency will be maintained and the existing head of the Agency, Bob Cooper, is very likely to become the head of the Commission. The Commission however is expected to have double the budget and double the staff of the present Agency (i.e. it will have a budget of about £1.5m and a staff of 70-80).

### The Tribunal

3. The Fair Employment Tribunal will be a new body (though formally part of the Industrial Tribunal system) and will most probably be headed by a senior barrister.

### Types of Cases

4. There are essentially two types of fair employment cases

- pattern (and practice) cases
- individual cases.

The former are far more significant in bringing about change, but the latter are also of course sensitive and psychologically important within the nationalist community.

### Pattern Cases

5. The present system is that the Fair Employment Agency launches investigations into the employment patterns of selected bodies or industries and, if justified by the findings, it issues directions to the body concerned as to changes in employment practices. These directions can be challenged by employers, or enforced by the Agency, through the court system.

The new procedure will be that the Commission will issue directions, as the Agency does at present but they will now be enforceable or challengeable through the Fair Employment Tribunal which has specific responsibility in this area. The Tribunal can either confirm or amend Commission directions. If an employer is in breach of a direction approved by the Tribunal, he can be fined up to £30,000 by it; he also becomes liable for prosecution in the High Court on a contempt of court charge. (There is no ceiling on fines for contempt of court.)

#### Individual Cases

6. The present system is that the FEA investigates and makes findings on individual complaints. This has attracted some criticism on the grounds that the Agency is both judge and jury. The new procedure is that decisions on individual complaints will be made by the Fair Employment Tribunal, with the Commission providing assistance for at least some complainants in bringing their cases before the Tribunal.

13 December 1988

W1845

Fair Employment: Northern Ireland  
Publication of Draft Bill, 15 December 1988

1. The attached text sets out suggested lines of a Government response to the Fair Employment Bill to be introduced in Westminster on 15 December. (We received in confidence a copy of the Bill through the Secretariat late last week.)

2. The draft statement gives a qualified welcome to the Bill. We have tried to strike a careful balance, stopping short of full endorsement but acknowledging that the Bill does represent a very significant improvement over existing provisions. The reasoning behind our approach is:

- Fair employment is an area to which the Government attach priority and a great deal of detailed work has been done under the Anglo-Irish Agreement over the past eighteen months. The Bill deserves to be seen as achievement of the Agreement, and we are entitled to claim credit for our part in ensuring that a substantive Bill was tabled.
  
- At the same time, we do not want to lock ourselves into total support for the Bill. Firstly, the Bill in our view still has a number of weaknesses. Secondly, we do not want to undermine the position of those in Westminster (the Labour Party and the SDLP) who will seek to amend and strengthen the Bill. Thirdly, the real effectiveness of the Bill can only be tested during the period of implementation; until we see actual results, it would obviously be premature to declare a victory.

3. Depending on one's perspective, the Bill can be viewed, at one extreme, as truly radical, or, at the other extreme, as failing entirely to grasp the nettle of discrimination. There is no doubt that the Bill runs directly contrary to the prevailing philosophy in Britain of removing the burdens on business -

viewed in the context of Thatcher's Britain, it is perhaps surprising that the Bill goes as far as it does. On the other hand, given the American experience on fair employment - particularly the use of quotas - it is to be expected that at least some of the MacBride campaigners will be inclined to view the proposals as pallid and inadequate.

4. We are preparing a detailed balance sheet of the strengths and weaknesses of the new provisions. As regards the strengths, we would include the following:

- the monitoring requirements, which state that every firm with more than 10 employees (more than 25 for an initial two year period) will have to submit an annual return showing the religious breakdown of the workforce. We see monitoring as a vital diagnostic tool in the hands of those who are trying to reform employment practices.
- Imposition of fines on discriminatory employers. The new Fair Employment Tribunal will be able to impose fines of up to £30,000; additionally non-compliance with Tribunal directives can incur High Court fines of unlimited amounts.
- A new system of "contract compliance" to ensure that public monies, in the forms of grants and tenders, are withheld from discriminatory employers.

5. The weaknesses of the Bill include

- an unduly cautious treatment of affirmative action;
- a system of support for individual complainants which, while it may work reasonably well in practice, is currently viewed by the SDLP as seriously deficient.

- A failure to set a specific target for reducing imbalances in Catholic/Protestant unemployment (the current ratio is 2½/1).

6. The institutions that are charged with implementation will obviously be crucial in determining the success or otherwise of the legislation. The key bodies will be the Fair Employment Commission and the Fair Employment Tribunal; we are reasonably reassured by current indications that Bob Cooper is likely to continue to head a strengthened Commission, and that the Tribunal may be headed by a senior Catholic barrister. (However, until final decisions are taken in relation to the staffing of these institutions, a level of uncertainty obviously remains.)

7. We will be in contact over the next couple of days with the SDLP and the British Labour Party so as to ensure a degree of coordination in our public responses to the Bill. We will also be meeting with one of the leading members of the MacBride campaign (Pat Doherty, Office of New York Comptroller Harrison Goldin) to get a sense of the likely reaction among MacBride activists.

Anglo-Irish Division

13 December 1988

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