



NORTHERN IRELAND Information Service

2 March 1988

NEW EMPLOYMENT EQUALITY MEASURES

The Government today announced new policy proposals which will substantially strengthen the practice of religious equality of opportunity in employment.

At a Press Conference in Belfast the Secretary of State, the Rt Hon Tom King MP said Government was determined to tackle the problem of religious discrimination in employment.

In a Written Answer to a Parliamentary Question he had announced the publication of plans for new legislation, and he had also written to the Chairman of the Standing Advisory Commission on Human Rights in response to the Commission's Report on Fair Employment. The text of the Parliamentary Question and of the Written Answer is attached.

The proposed new legislation will require all employers not only to avoid discrimination but actively to practise equality of opportunity and where necessary to take affirmative action measures.

The Secretary of State said:-

"It is the Government's firm belief that appointments to jobs should always be on the basis of merit. But for the merit principle to operate properly, it is essential that there should be no unnecessary obstacles in the way of any applicant being considered on merit. Employers must open out their recruitment process to the widest possible range of applicants. Under-represented groups must be given a full and fair opportunity to compete for employment."

Under the new proposals all public sector employers, and private sector firms employing more than 10 people, will be required to monitor the religious make-up of their staff and make annual returns. Initially this requirement will apply to private sector firms with 25 or more employees. Failure to do so will be a criminal offence and employers who fail to meet their obligations will not normally be eligible for Government grants and contracts. As an essential complement to internal monitoring, there will be regular and systematic audit of employers monitoring returns.

Stressing that continuity was important and that the valued work of the Fair Employment Agency must be built upon, the Secretary of State indicated that the Agency will be strengthened and restructured. Its educational, promotional and investigative functions will be concentrated in a new Fair Employment Commission which will inherit its assets, staff and experience. Individual cases will be dealt with by a tribunal, leaving the new Fair Employment Commission to concentrate on the tasks of investigating pattern and practice cases, auditing the monitoring returns from employers and carrying out vital educational and promotional work.

The Secretary of State said:

"The new proposals will give a fresh impetus to the work that the FEA is already doing. The aim is to strengthen the existing law. In the meantime the Government's existing Guide to Effective Practice already gives employers clear guidance on the range of measures that is currently open to them to take to provide equality of opportunity. Today we are adding to this a private sector support scheme, which will give employers financial and other help in actually introducing fair employment schemes."

Stressing Government's commitment to the introduction of new legislation at the earliest opportunity Industry Minister, Mr Peter Viggers, MP, emphasised that increased investment and job creation were essential complements to the more effective practice of equality of opportunity. He said:

"If the unacceptable employment differentials between Catholics and Protestants are to be reduced as quickly as possible then more new jobs are needed. The Government continues to promote the considerable attractions of the Province as a location for new investment. I hope that all who are genuinely interested in employment equality will support the drive for more investment and jobs in Northern Ireland."



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PARLIAMENTARY QUESTION

The following is the text of the reply by the Secretary of State, the Rt Hon Tom King MP, to a written Parliamentary Question in the House of Commons from Mr Nicholas Soames MP, (Crawley):

I have today written to the Chairman of the Standing Advisory Commission on Human Rights giving the Government's response to the Commission's Report on Fair Employment and outlining our plans for new legislation in this field.

The Government is committed to ensuring that all employers in Northern Ireland positively practice equality of opportunity in employment. It is in the interests of all the people of Northern Ireland that there should be, and be seen to be, fair treatment for all.

I have today published an outline of the Government's proposals for legislation which have been drawn up after wide consultation with interested parties including employers' organisations and trade unions. Copies of the brochure, and of my letter to the Chairman of SACHR, have been placed in the Library and are available in the Vote Office. I welcome this opportunity to acknowledge the contribution which the SACHR Report has made.

The main features of our proposals are as follows. All employers in Northern Ireland will be required to practice equality of opportunity. All public sector employers, and all private sector employers with more than 10 employees, will be required to monitor the religious composition of their workforce. Failure to do

so will be a criminal offence. For a transitional period the threshold in the private sector will be 25 employees. Employers who fail to meet their obligations will not normally be eligible for Government grants and contracts. Employers will be enabled to undertake affirmative action programmes designed to give under-represented groups better access to employment and training opportunities. The Fair Employment Agency will be strengthened and restructured with its educational, promotional and investigative functions concentrated in a new Fair Employment Commission which will inherit the Agency's assets, staff and experience. The Commission will audit the monitoring returns compiled by employers registered with the Commission, and it will investigate employment practice and patterns. Individual complaints of alleged religious discrimination will be dealt with by a separate tribunal using the same sort of procedures as are already successfully used for employment matters in the existing Industrial Tribunal structure. In pattern and practice cases the Commission will be able to apply to the tribunal for an Order of compliance if its Directors are not obeyed.

We intend to publish a White Paper in the late spring, and new legislation will be introduced at the earliest opportunity.



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FAIR EMPLOYMENT SUPPORT SCHEME

Industry Minister, Mr Peter Viggers MP, today gave details of the Fair Employment Support Scheme, which will come into operation on 14 March 1988. The scheme offers free consultancy advice and some financial aid to firms to assist private sector employers to promote the active practice of equality of opportunity in employment in accordance with the recommendations contained in Government's 'Guide to Effective Practice'.

Mr Viggers said:

"When the 'Guide to Effective Practice' was issued in September 1987 Government showed its firm commitment to religious equality of opportunity in employment. That Guide, which was personally endorsed by the Prime Minister, recognised that while employers had the primary responsibility in this matter they could not be expected to go it alone. Accordingly religious equality of opportunity in employment was seen as a common concern and purpose, and Government accepted its part in promoting its effective practice. This support scheme shows that Government is prepared to assist employers in taking the steps necessary to ensure such practice.

"The scheme offers important benefits to participating employers. In particular they will have access (free of charge) to independent, confidential and professional consultancy advice tailored to their own particular circumstances. They will also have access (again free of charge) to training in the use of objectively-based selection techniques. And, where it is considered appropriate, there will be a financial contribution towards identifiable, initial costs incurred in putting new procedures into effect."

Mr Viggers emphasised that the new scheme was an ideal, and very practical, complement to the advice and guidance offered to employers in Government's 'Guide to Effective Practice'; and to the current series of private sector seminars designed to promote and publicise the steps necessary to ensure best practice. Indicating that the scheme was an interim measure pending the introduction of new legislation, and urging all eligible employers to take full advantage of the scheme, Mr Viggers said:-

"The introduction of systematic and objective recruitment and selection procedures, particularly monitoring, goes a very long way towards ensuring not only full equality of opportunity but also selection on the basis of merit. Both are central to the philosophy that informs Government's approach to better practice because they are essential to fair and equitable personnel procedures and to the best use of human resources. By taking the unique opportunity offered by this scheme private sector employers can ensure that their own particular procedures are fully consistent with the delivery of religious equality of opportunity in employment and selection on the basis of merit - and are seen to be so. I hope that good use will be made of the scheme so that best practice can be introduced as quickly as possible."

The discretionary scheme will be open to those private sector employers with 25 or more employees, who have signed the Declaration of Principle and Intent under the Fair Employment (NI) Act 1976, to assist them to introduce monitoring and recording arrangements as part of an action plan agreed with consultants. The amount of free consultancy advice varies with firm size and the maxima are set out below:

Firm Size (No of employees)	25-99	100-499	500-999	1,000+
Consultant Days	5	7	10	15

The amount of financial assistance, will be subject to a maximum of £5,000 and will vary with the size and circumstances of the firm. The training on the use of objective selection techniques will be arranged by the Department.

Those wishing to apply for more details and assistance under the scheme should contact the Department of Economic Development, Employment Equality Branch, Netherleigh, Massey Avenue, BELFAST BT4 2JP (telephone Belfast 63244 extension 2346 or 2460).



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The following is the text of the March 1 letter of reply by the Secretary of State, Rt Hon Tom King MP, to Mr James O'Hara, Chairman of the Standing Advisory Commission on Human Rights.

1. In my letter of 13 October 1987, I warmly welcomed the Standing Advisory Commission's Report on Fair Employment. We have now been able to consider the Report in greater detail and my officials have had an opportunity to discuss aspects of the Report with Commission members. Now that the broad structure of the Government's proposals is shaping up, it is appropriate for me to give a fuller response to the Report and to outline our policy proposals. The framework of our policy has the same theme as the Commission's Report - the need for a new legislative and administrative structure that will ensure the effective practice of equality of opportunity in employment. We have drawn substantially on the recommendations of the Report, and it was, of course, extremely useful to have SACHR's views before us in formulating our proposals.

2. I believe that the Report has already been accepted as a major contribution to the analysis of fair employment issues. The research undertaken by the Policy Studies Institute on the Commission's behalf has demonstrated that most people in Northern Ireland support measures to ensure that discrimination is eliminated and that equality of opportunity is provided. I welcome the Report's comments on the current campaign in the United States to promote the so-called "MacBride Principles" which poses a threat to new investment, and thus to jobs, in Northern Ireland. I agree with the Report's conclusion that the lack of clarity and of precision in the MacBride Principles make them an unsuitable basis for practical action, and that disinvestment from Northern Ireland would be damaging and counter-productive. Furthermore, I believe that the measures we shall be introducing will be more effective than the MacBride Principles could ever be in ensuring equal treatment for all.

General Principles

3. Like the Commission, the Government wants to see the unacceptable differential in employment rates between the two communities in Northern Ireland reduced substantially and quickly. Immediate progress can be made by implementing the advice contained in the "Guide to Effective Practice". Our proposed new legislation will sustain and increase the momentum of progress. We will be monitoring the impact of that legislation and reviewing its effectiveness after five years.

4. The Government supports the Commission's recommendation of a strengthened legal framework to remedy both individual cases of discrimination and to deal with patterns of discrimination. We welcome the Commission's assertion of the need to go beyond eliminating discrimination and to require positive measures to be taken to promote equality of opportunity. We accept the principle

that there should be legally enforceable remedies, both for individual complaints of discrimination and where there appears to be a failure to provide equality of opportunity. While also accepting, as does the Report, that the prime aim should be to bring about voluntary changes in practice where they are needed. We agree that there must also be a clear and comprehensive legal framework to back up the educational and promotional work where necessary. We welcome also the Commission's rejection of reverse discrimination, and accept the recommendation that it should remain unlawful.

Meaning of Proof of Discrimination

5. The Government accepts the Commission's recommendation that "direct discrimination" on religious or political grounds should continue to be prohibited, even where the expressed intention behind such discrimination is ostensibly benign. We also accept that legislation should expressly prohibit "indirect discrimination".

Equality of Opportunity and Affirmative Action

6. We accept that there should be a requirement on employers actively to practice equality of opportunity. We also accept that there should be a requirement for internal monitoring; and that this should be linked to regular and systematic audit by a regulatory body. We further accept that the Code of Practice should be drawn up by that body, subject to departmental and legislative approval. The Code will spell out the details of those "affirmative action" measures considered necessary to correct under representation and its provisions will be able to be taken into account in legal proceedings. In addition we propose to give clear statutory backing for those affirmative action programmes which include special measures designed to give

under-represented groups better access to employment and training opportunities. Such measures would operate, of course, subject to the merit principle at the point of selection.

7. Like the Commission, we are firmly committed to the centrality of the merit principle at the point of selection; and like the Commission we subscribe to a broad and comprehensive definition of that principle. That is why the definition contained in our "Guide to Effective Practice" lays particular emphasis on the recognition and development of potential, as well as experience, as key factors in the selection process. The objective is to define, and encourage the application of, the merit principle so that it opens up the recruitment process to the widest possible range of applicants. Indeed, the "Guide to Effective Practice" provides detailed guidance to employers on the application of the merit principle in a positive way. The philosophy underlying such an application of the merit principle will inform our proposed new legislation; and I believe that this positive approach to the merit principle matches the Commission's own approach.

Scope and Coverage of the Act

8. In our Consultative Paper we proposed that the obligation to provide equality of opportunity, which goes beyond simply refraining from discrimination, would be limited to the public sector. In the light of further consideration, the responses to our paper, and the Commission's own recommendations, we now propose that this obligation should apply to all employers.

9. The Commission has recognised the need for specific exceptions to continue to be made where matters of national security, public order or public safety arise. The existing provision under Section 42 of the Fair Employment Act has been

used only sparingly and it is clearly important that consistent and fair standards should be applied in this sensitive area. We shall consider whether any additional safeguards might be adopted, but I do not believe that it would be appropriate to give a role to the Northern Ireland Parliamentary Commissioner for Administration here.

Encouraging Equality of Opportunity in Practice

10. The Report suggests a number of practical ways in which the Government might be able to help employers to provide equality of opportunity. We are now about to introduce a private sector support scheme, a measure of the kind envisaged by the Commission, and the Government will keep the scope for further measures under review.

11. As regards monitoring and the adoption of targets and timetables, the Government fully shares the Commission's assessment of their value. Indeed, we propose that monitoring by most private sector employers - and by all public sector employers - should be compulsory, with returns submitted annually to the new Fair Employment Commission (FEC) (see below). Targets and timetables related to the composition of the pool of applicants are already strongly commended in the Guide to Effective Practice, published last September. However, we share the Fair Employment Agency's caution about their use in relation to actual appointments - although such use is legal under current arrangements and will remain so - because it may put undue pressure on the merit principle at point of selection.

12. We have considered particularly closely the Commission's proposed Declaration of Practice, which is itself derived from the Declaration proposed in the Government's Consultative Paper. The Consultative Paper suggested that the Declaration of Practice

should operate only in the private sector. We now believe that a rather different structure would be more effective. We believe that a legal requirement should be placed on all public sector employers and all private sector employers of ten or more staff to register with the Fair Employment Commission (for a transitional period, the limit for private sector employers will be set at 25, the threshold proposed by the Commission); to monitor annually the religious composition of their workforce; and to submit a return to the FEC each year. Failure to do so would be a criminal offence. Furthermore, the existing arrangements - under which tenders for Government contracts are not normally accepted from companies who have not signed the existing Declaration of Principle and Intent - would be linked with the new registration requirement. In addition, eligibility for certain Government grants would depend on registration.

13. The main effect of registration would be to provide the FEC with the data required to check employers' practice, and help it to determine where further investigation might be most appropriate. It would also be beneficial in enabling employers themselves to determine whether they are providing equality of opportunity. Furthermore, much of the time of the Fair Employment Agency is at present taken up with gathering this information in the course of their inquiries. There are clear advantages in its being made available on a regular basis.

Guide to Effective Practice

14. The Report also made recommendations concerning a new Guide to Effective Practice. I am pleased with the favourable response which the Government's revised Guide published last September has received. As was made clear on its publication, however, the Guide was prepared under existing legislation. It has always been our view that, following new legislation, it would require revision.

15. We broadly accept the Report's suggestions for the production of a new Guide, and for its status. We would therefore propose to give the FEC the duty to prepare a Code of Practice within a prescribed period, subject to Governmental and legislative approval, setting out the specific affirmative action procedures required in order to ensure the effective practice of equality of opportunity and the operation of the merit principle at the point of selection. Pending the preparation of the Code of Practice, the Commission would draw on the advice contained in the existing Guide. In addition, the FEC would be able to issue legally enforceable Directions relating to good employment practice.

Individual Complaints of Discrimination

16. I note the Report's arguments for dealing with individual complaints of religious or political discrimination by means of the procedures of the industrial tribunals, and I accept that an arrangement of this kind would be appropriate. I agree that an aggrieved individual should be able to seek the assistance of the FEC in bringing a case, in much the same way as the help of the Equal Opportunities Commission may be sought in cases of sex discrimination but, in the absence of such assistance, should still be able to bring his or her case to a tribunal. The tribunal would, of course, be quite separate from the FEC itself and would follow the procedures already successfully used for employment matters in the existing Industrial Tribunal structure, including a right of appeal on points of law to the Court of Appeal. The tribunal would also have the power to award compensation where unlawful direct or indirect discrimination has been found. We are considering what measures may be appropriate for persistent offenders.

Strategic Investigations

17. I am pleased to note the extent to which the Report's recommendations endorse many of the Fair Employment Agency's current powers and procedures in carrying out such investigations. I agree that the FEC should be able to seek the enforcement of its directions by applying to the tribunal for an Order of Compliance. Where such an Order is not obeyed, there will be provision for application to the High Court for the exercise of its contempt jurisdiction. The High Court will be able to impose unlimited fines or a term of imprisonment.

Institutional arrangements

18. It is clear to me that the existing Fair Employment Agency has performed most creditably in difficult circumstances. As the Report says, some have criticised it for doing too little and other for doing too much. I place on record my regard for the dedication of its staff and its real achievements, particularly in the carrying out of strategic investigations. Peter Viggers has already stated publicly our intention to build on what the Agency has achieved to date.

19. The FEC will, however, have considerably greater resources than the FEA, which as you will know is already being expanded. I have explained above that we envisage an amended procedure, on lines close to those suggested by the Commission, for hearing individual complaints. This will inevitably involve changes in the Agency's existing investigative structure which would ensure the clear separation of the Agency's investigative and judicial roles. The FEC will also inherit the Agency's investigative powers into patterns and practices of discrimination, and its equally important educational and promotional functions. We also

accept the Report's recommendations relating to the structure of the present Board.

20. I note the view in the Report that the FEC should report to me through the Northern Ireland Office, rather than, as at present, through the Department of Economic Development. I am not persuaded of this. The Department of Economic Development, as the Department primarily responsible for employment matters, including those relating to sex discrimination, appears to be the natural department to be concerned with the organisation's activities. Furthermore, legislation on fair employment is a "transferred matter" under the Northern Ireland Constitution Act 1973, and would be the responsibility of a devolved administration if one is established. It is therefore right that the powers should be vested in the Department of Economic Development, although, of course, under direct rule that Department comes under my direction.

21. I note that the Commission is content that for the time being there should be separate legislation and enforcement arrangements in relation to discrimination on grounds of religious belief, as I announced to Parliament last July. I share the hope that the enforcement agencies dealing with different forms of discrimination will co-operate as closely as possible.

Additional Methods of Promoting Equality of Opportunity

22. I accept the responsibility of Ministers to give a lead wherever possible in encouraging the promotion of equality of opportunity. I also accept the need to take account of how a wide range of policies may affect equality of opportunity. I hope that the new Central Community Relations Unit will undertake some of this role within the Government structure.

The Way Ahead

23. The Government are committed to new legislation at the earliest opportunity to strengthen the existing provisions on fair employment. I have set out in this letter an outline of our proposals. We are also publishing today a brochure setting out our policy on fair employment, and I enclose a copy. Some further discussion and refinement of the details will be required, as we embark on the drafting of the legislation, and there will be further discussions with the Standing Advisory Commission and other interested parties over the next few months. I intend to publish a White Paper in the late spring setting out our legislative proposals in greater detail.

24. Finally, I would like to repeat my and my Ministerial colleagues' appreciation of the work of the members and staff of the Standing Advisory Commission, and of yourself as Chairman, in preparing the Report on Fair Employment. It has had an important influence on the development of our thinking within Government, and has made an admirable contribution to the continuing public debate on the subject of fair employment.

TK

Similar letters sent to those on the attached list

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3 March 1988

Dear Mr McGraw

The Secretary of State for Northern Ireland yesterday announced new Government proposals for legislative action on fair employment and I thought you might find it helpful to have details. I am enclosing for your information a copy of the press statement issued on 2 March together with a copy of an explanatory brochure issued by the Secretary of State setting out the new Government proposals.

As part of the measures a new support scheme for employers who need assistance to improve their provision of equal opportunity has also been announced. If you feel that your company would benefit from advice and assistance in this area I hope that you will give serious consideration to making use of this scheme at your Northern Ireland undertaking.

As you will see from the enclosures, it is the Government's intention to put in place a legislative package which will significantly enhance the provision of employment equality in NI. The responsibility will be placed on all employers, in both the public and private sectors, not just to avoid discrimination, but to actively practise equality of opportunity. It is intended that employers will be required to monitor the religious balance in their workforce and provide annual returns to the central fair employment authority. Economic sanctions will be available against the small number of employees who do not comply with the requirements of the law and the new arrangements will allow the fair employment authority to enforce the legal requirements more effectively than is possible at present.

It is our belief that this package of measures will achieve true equality of opportunity in employment between the two communities in Northern Ireland. The timescale for implementation will be largely determined by the legislative process in Parliament but it is Government's intention to have the new legislation on the statute books at the earliest possible opportunity. In practise, we anticipate that this will be in the early part of 1989.

It is the Government's firm belief that these new proposals provide a more than adequate answer to the MacBride campaign. The new proposals are much more practicable, positive and even-handed than the MacBride Principles and they represent a firm commitment by Government to secure equality of opportunity in Northern Ireland for both communities.



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Mr Jim McGraw
Vice President Finance
Fruehauf Corporation

3 March 1988

In relation to the MacBride campaign, you may wish to know that we have had two significant successes recently in countering the campaign. A MacBride Bill in New Hampshire was soundly defeated in February and a Bill in California was withdrawn before the Committee stage in January due to lack of support. Other Bills are current in Pennsylvania, Illinois, Vermont, Maine, Minnesota, Maryland, Michigan and Ohio. We are continuing to present the case against the MacBride Principles in those States.

If you would like any further details of the new legislative proposals or any information relating to the MacBride campaign please do not hesitate to contact me.

We have written in similar terms to your plant in Northern Ireland.

Yours sincerely

R R WILSON