



## Head of the Civil Service

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*From the Private Secretary*

**HCS/1676/01**

Dr Peter Smyth  
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**6 August 2001**

Dear Peter,

As you know, last month in Washington Mr Loughran discussed MacBride issues with HMA. Mr Loughran agreed to re-issue guidance on the handling of MacBride. The final version is attached. I am copying to relevant interests but you might wish to circulate more widely, as you consider appropriate.

Yours sincerely  
Bernie

**BERNIE ROONEY (Mrs)**



## MACBRIDE – GUIDANCE NOTE

### 1.0 Responsible Department

- 1.1 The MacBride Principles were developed in America in 1984 as a set of nine equal opportunity/affirmative action principles designed to increase employment opportunities for members of under-represented religious groups in Northern Ireland. The principles address issues of 'employment' in Northern Ireland, which is a devolved function. Therefore, responsibility for policy and strategy on MacBride is devolved to the Northern Ireland Executive and lies with the Equality Unit of the Office of the First Minister and Deputy First Minister (OFMDFM) following transfer from the then Department of Economic Development at the time of devolution in December 1999.

### 2.0 The MacBride Principles

- 2.1 A copy of the Principles is attached at Annex 1 (also included, in italics is the amplification to the Principles issued in 1986).
- 2.2 The MacBride Principles in their amplified form appear to be largely unobjectionable. However, being very general statements they do not make good law and create problems when proponents seek to include them in legislation. They contain no detailed guidance on how employers should actually go about improving their employment practices and, as formulated, some of the Principles are impractical and could be of doubtful legality.

### 3.0 MacBride Legislation in the US

- 3.1 Although no federal legislation has been passed, MacBride legislation has been adopted in 18 US States and over 30 cities and counties. In general, State legislation has required that State funds (usually specified pension funds) should not be invested in companies with operations or subsidiaries in Northern Ireland unless they subscribe to the MacBride Principles.
- 3.2 In February 2001, 46 companies in Northern Ireland had agreements on implementing the MacBride Principles. 64 agreements have been reached altogether since 1989 but some companies no longer have ties to Northern Ireland.

### 4.0 Effects of the MacBride Campaign

- 4.1 Fair employment with equality of opportunity for all has been an essential element of Government policy in Northern Ireland. This continues to be the case and Northern Ireland has implemented the most powerful legislation in Europe, whose positive effects have been



clearly demonstrated. It is not the aims of the MacBride Principles themselves but rather the potential damaging effects of the campaign surrounding them which has been of concern, since the message of the importance of investment, and the success of the Fair Employment legislation in Northern Ireland is not explained in many of the campaigns.

- 4.2 The most destructive effect of the MacBride campaign is that it can lead to the misguided impression that Northern Ireland is 'not a good place' to invest and potential investors may think twice about the possible nuisance value of shareholder provisions and contract compliance. Their response may be to take investment elsewhere denying Northern Ireland the jobs that would do most to ensure fair employment. There is, however, no evidence to suggest that adoption of MacBride legislation into State (or City/County) law has had a detrimental effect on individual firms in Northern Ireland.

## **5.0 The "Call" for Fair Employment and Investment**

- 5.1 The "Call" which was an initiative by the four main Churches in Ireland and their counterparts in the United States was launched simultaneously in Washington and Belfast in January 1994. It took the form of a "Call" or declaration on fair employment and investment.
- 5.2 The "Call" aimed to promote fair employment in a positive way by linking it to investment. It emphasised the need for more job opportunities in Northern Ireland and rejected the imposition of quotas and reverse discrimination. Creating jobs for both communities is critical in achieving fair employment for all. The "call" was endorsed by President Clinton.

## **6.0 Fair Employment Legislation**

- 6.1 When the MacBride Principles were launched in 1984 Northern Ireland's Fair Employment Legislation only outlawed direct discrimination. In 1989, the Fair Employment (Northern Ireland) Act was passed and this considerably strengthened the legislation, outlawing indirect discrimination and introducing the promotion of affirmative action as a cornerstone of the legislation.
- 6.2 In 1998 following the Standing Advisory Commission on Human Rights (SACHR) report and the Employment Equality Review, the Fair Employment legislation was further strengthened. The main changes, included in the Fair Employment and Treatment (Northern Ireland) Order 1998, were the extension of the legislation to cover the provision of goods, facilities, services and premises, broadening the scope of monitoring and the introduction of additional affirmative action provisions.



6.3 Northern Ireland's Fair Employment and Treatment legislation is now the most powerful such legislation in Europe. It is a very tough body of law which covers the main elements of the MacBride Principles, is much more extensive, applies to all employers in Northern Ireland and is legally enforceable.

6.4 A comparative analysis of the MacBride Principles and corresponding provisions in the Fair Employment and Treatment legislation is attached at Annex 2.

## 7.0 MacBride Strategy

7.1 The MacBride strategy was last reviewed in 1997. The review was conducted by the then Department of Economic Development and options were put to Ministers in September 1997. Ministers decided that since the Principles were largely irrelevant particularly in the light of developments in fair employment law, the approach previously adopted no longer served a useful purpose. In future, the irrelevance of the campaign would be publicised as would legislation and programmes being implemented in Northern Ireland to remedy imbalances in employment and unemployment. The level of opposition to the campaign would be run down and only legislation which carried the risk of real and substantial damage to Northern Ireland interests would be lobbied against. There has been no change in this position.

7.2 The revised strategy was based on an approach which rested on the irrelevance of the MacBride Principles in Northern Ireland at that time in the light of the strong fair employment legislation already in force and the programmes (such as Targeting Social Need) being implemented to remedy imbalances in employment and unemployment.

## 8.0 Current Position

8.1 The arguments in support of this strategy have strengthened since 1997. The Fair Employment and Treatment (NI) Order 1998 is now law. In addition the Targeting Social Need Policy has been re-focussed and the "New Targeting Social Need" policy encompasses tackling the problems of unemployment and increasing employability; tackling inequalities in areas such as health, housing and education and the problems of disadvantaged areas; and promoting social inclusion. Other programmes such as New Deal have also contributed to tackling unemployment.

8.2 The equality agenda has been further strengthened by developments since 1998:

- equality and human rights is an important strand in the Belfast Agreement. In its Programme for Government, the Northern Ireland Executive has included a number of actions on equality and human



rights including a commitment to bring forward a Single Equality Bill for Northern Ireland;

- a Taskforce on Employability and Long Term Unemployment has been established to prepare an Action Plan, by 31 March 2002 which integrates actions across Government Departments and Agencies to help those out of work to get a job;
- equality of opportunity has also been strengthened by the provisions of Section 75 of the Northern Ireland Act 1998 which require a public authority, in carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between certain categories (nine in total) including persons of different religious belief/political opinion. In addition, and without prejudice to the above, a public authority, in carrying out its functions relating to Northern Ireland, shall have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group;
- the Equality Commission for Northern Ireland was established under Section 73 of the Northern Ireland Act on 1 October 1999. It has taken over the functions of the former Fair Employment Commission for Northern Ireland, Equal Opportunities Commission for Northern Ireland, Commission for Racial Equality for Northern Ireland and the Northern Ireland Disability Council. The Commission has specific responsibilities in relation to the Statutory Duty placed on public bodies under Section 75 of the Northern Ireland Act. The work of the Commission continues to be a priority and it will continue to receive adequate resources to allow it to fulfil its statutory role and functions.

## 9.0 Lines to take

9.1 The lines to take in Annex 3 should be used in relation to MacBride.

10.0 Annex 4 provides contact details of key civil servants in Belfast.



## THE MACBRIDE PRINCIPLES FOR NORTHERN IRELAND

The full text of the MacBride Principles is reproduced below. Also below, in italics, is the amplification to the Principles issued in 1986.

In light of decreasing employment opportunities in Northern Ireland and on a global scale, and in order to guarantee equal access to regional employment the undersigned propose the following equal opportunity/affirmative action principles:

1. Increasing the representation of individuals from under-represented religious groups in the workforce including managerial, supervisory, administrative, clerical and technical jobs.

*A workforce that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable lawful effort to increase the representation of under-represented religious groups at all levels of its operations in Northern Ireland.*

2. Adequate security for the protection of minority employees both at the workplace and while travelling to and from work.

*While total security can be guaranteed nowhere today in Northern Ireland, each signatory to the MacBride Principles must make reasonable good faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable good faith efforts to ensure that applicants are not deterred from seeking employment because of fear for their personal safety at the workplace or while travelling to and from work.*



3. The banning of provocative religious or political emblems from the workplace.

*Each signatory to the MacBride Principles must make reasonable good faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.*

4. All job openings should be publicly advertised and special recruitment efforts should be made to attract applicants from under-represented religious groups.

*Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially under-represented in the workforce. This should not be construed to imply a diminution of opportunity for other applicants.*

5. Layoff, recall and termination procedures should not in practice, favour particular religious groupings.

*Each signatory of the MacBride Principles must make reasonable good faith efforts to ensure that layoff, recall and termination procedures do not penalise a particular religious group disproportionately. Layoff and termination practices that involve seniority solely can result in discrimination against a particular religious group if the bulk of employees with greatest seniority are disproportionately from another religious group.*

6. The abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

*Signatories to the MacBride Principles must make reasonable good faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favour relatives of current or former*



employees can, in practice, promote religious discrimination if the company's workforce has historically been disproportionately drawn from another religious group.

7. The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.

*This does not imply that such programs should not be open to all members of the workforce equally.*

8. The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement.

*This section does not imply that such procedures should not apply to all employees equally.*

9. The appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

*In addition to the above, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of these Principles.*

#### Signatories

Sean MacBride	-	Dublin, Ireland
Dr John Robb		Ballymoney, Northern Ireland
Inez McCormack	-	Belfast, Northern Ireland
Fr Brian Brady	-	Belfast, Northern Ireland



## ANNEX 2

### COMPARATIVE ANALYSIS OF THE 9 MACBRIDE PRINCIPLES AND CORRESPONDING PROVISIONS IN THE NORTHERN IRELAND FAIR EMPLOYMENT AND TREATMENT LEGISLATION

#### 1. Increased representation of individuals from under-represented religious groups at all levels of the workforce

The Fair Employment and Treatment (Northern Ireland) Order 1998 provides for affirmative action measures to counter imbalances and ensure fair participation by both communities. Employers are required to regularly review their workforce composition and employment practice to ensure that they are providing fair participation. The Equality Commission has power to require affirmative action measures to remedy under-representation. Employers and training providers may engage in religion specific training to encourage the under-represented community to avail themselves of job opportunities. Quotas are not permitted. All appointments must be made on the basis of merit.

#### 2. Provision of adequate security for the protection of minority employees both at the workplace and while travelling to and from work

Sectarian harassment in situations covered by Fair Employment legislation that amounts to less fair treatment on the grounds of religious belief or political opinion, and causes a detriment to the complainant is treated by the Courts as discrimination under Fair Employment legislation. Likewise the victimisation of a person because he has, for example, asserted his rights under the Northern Ireland legislation is unlawful. The Equality Commission has produced detailed Guidelines to assist employers develop a safe and dignified working environment. Under the Fair Employment legislation employers may be liable for discriminatory acts of their employees done in the course of their employment whether or not those acts were done with the employer's knowledge or approval.

The legislation does not require employers to provide protection for employees while travelling to and from work. Protection of a member of the public is a matter for the police. Indeed, employers should not seek to counter a threat of physical violence against their employees but should call on the police.

#### 3. Banning of provocative religious or political emblems from the workplace

The Fair Employment Code of Practice advises employers to "promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or



political opinion eg prohibit the display of flags, emblems, posters, graffiti or the circulation of materials, or the deliberate articulation of slogans or songs, which are likely to give offence or cause apprehension among particular groups of employees".

The failure by an employer to observe any provision of a Code of Practice does not render him liable to legal proceedings, but if proceedings are taken a Code of Practice is admissible in evidence and if any of its provisions are relevant to any question arising in the proceedings it shall be taken into account in determining that question.

**4. Public advertisements of all job openings and use of special recruitment efforts to attract applicants from under-represented groups**

The legislation permits affirmative action to counter under-representation through the encouragement of job applications from the under-represented community. Detailed guidance on systematic and objective recruitment and affirmative action is contained in the Code of Practice. The legislation also allows employers to provide religion specific training to non-employees to enable them to compete for employment.

**5. Establish layoff, recall and termination procedures which do not favour particular religious groupings**

Selection for redundancy on the basis of religious belief or political opinion is not permitted. In addition, employers need to take account of the impact of a redundancy practice on the religious composition of their workforce to avoid complaints of indirect discrimination.

**6. Abolition of job reservations, apprenticeship restrictions and differential employment criteria, which discriminate on the basis of religion or ethnic origin**

The Fair Employment and Treatment Order outlaws direct and indirect discrimination in employment procedures on the basis of religious belief or political opinion. The Race Relations Order similarly outlaws such discrimination on the basis of ethnic origin. In addition to producing a Code of Practice containing detailed guidance for employers on recruitment and selection procedures, the Equality Commission has a role of promoting affirmative action measures which are geared towards the changing or stopping of practices which restrict or discourage fair participation.



7. **Development of training programmes that prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees**

The Northern Ireland legislation specifically provides that training in pursuance of affirmative action designed to secure fair participation in employment by members of either community is not unlawful. Furthermore, employers and training providers may engage in religion specific training to encourage the under-represented community to avail themselves of job opportunities.

8. **Establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement**

Under the legislation employers are required to undertake periodic reviews of their recruitment, training and promotion practices and where necessary they must take appropriate affirmation action, including the setting of goals and timetables, to ensure there is fair participation in employment by both communities. Employers must recruit on merit not on the basis of religion.

9. **The appointment of senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles**

The Fair Employment Code of Practice recommends that to promote equality of opportunity employers should "allocate overall responsibility for policy and practice to a senior manager". Employers may give undertakings to the Commission on action necessary to promote equality of opportunity. If an employer declines to give an undertaking, or has not complied with an undertaking given, the Commission may issue a notice containing directions to the employer. The Commission may apply to the Fair Employment Tribunal for the enforcement of an undertaking or direction.



## LINES TO TAKE

- Fair employment for all is an essential element of policy in Northern Ireland;
- Northern Ireland's Fair Employment and Treatment Legislation is a very strong body of law – more radical and extensive than the MacBride Principles. In addition to outlawing discrimination in employment and in the provision of goods, facilities and services, it includes a regulatory regime to address under-representation in the workplace;
- The legislation is being vigorously enforced;
- The legislation is working and substantial progress has been made;
- The Roman Catholic share of the monitored workforce has risen from 34.9% in 1990 to 39.6% in 1999. Roman Catholics are estimated to make up about 42% of those available for work;
- Bringing about change in workforce composition takes time and legislation alone cannot redress imbalances. Resources are being directed towards areas and groups where social and economic disadvantages are greatest to encourage inward investment and provide training to ensure all can compete on equal terms;
- There is a high degree of compliance by employers with statutory duties under the Fair Employment legislation;
- A statutory duty to have due regard to the need to promote equality of opportunity has been placed on public authorities under Section 75 of the Northern Ireland Act 1998;
- Equality and human rights is an important strand in the Belfast Agreement. In its Programme for Government, the Executive has included a number of actions on equality and human rights;
- The MacBride Principles (in their amplified form) if implemented **within** Northern Ireland legislation would not present particular difficulties for employers. The California Bill passed in January 2000 incorporated references to "compliance with the law applicable in Northern Ireland";
- New job creating investment allied to strong fair employment legislation is the key to ensuring and speeding progress towards fair participation for all in employment;
- Jobs fairly distributed are essential to assisting the peace process;



- While the fair employment objectives of MacBride are widely supported, there is concern about the possible effects of the campaign;
- The campaign has the potential to be a disincentive to investment because shareholders resolutions, State legislation, threats of divestment and product boycotts raise doubts in corporations about the wisdom of investment in Northern Ireland, which may be only a small part of their worldwide interests. Locations with fewer "political" complications may appear more attractive;

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## ANNEX 4

### List of contacts (Key Civil Servants in Belfast)

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