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FROM: D C KIRK
CPL DIVISION
16 NOVEMBER 1989

302/11

cc Mr Burns - B
Mr Thomas - B
Mr Gowdy, DED - Mufax
① Mr Spence - B
Mr Masefield - B
Mr G Lavery, DED - Mufax

MR WOLSTENCROFT DED - By Mufax

~~Mr Walker~~
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FAIR EMPLOYMENT - IRISH CONCERNS

Since I had to leave Tuesday's meeting rather hurriedly, I thought I might jot down some points which I would otherwise have raised with you orally afterwards.

2. I am not sure whether it will be a comfort to you, or just as you would expect, to know that many of the responses which the DED team made to the Irish comments on the draft Code (which we of course received only the day before) matched the advice which John Fisher had jotted down for me on the Irish paper. It is helpful that we were able to agree that many of the detailed points could be taken on board, or, alternatively, the Irish side agreed with us that they were mistaken. I do, however, go along with the thrust of a number of the Irish comments to the effect that it is not necessarily in our interest to appear to be watering down the effect of the new statutory provisions and thus "softening the focus". There is obviously, as you indicated, a balance to be struck here: we do not want to frighten off employers, but neither do we want to leave them, or, just as significantly, the wider audience, with the impression that we are not, in reality, introducing a tough new regime. There is no need to be in any way shame-faced about the incisiveness or toughness of the new Act, as you yourself made very clear in some of your comments. I agree with you of course that we should not be looking for "bodies from lamp-posts", nor should the Irish, but the fact is that a few such bodies would effectively demonstrate that we mean business.

3. The Irish were concerned that the draft says so little about Flags and Emblems. I feel sure that they will not be the only ones to make this complaint. I think you are right to regard Bob Cooper's view - basically, "the less said the better" - as decisive, provided you are satisfied that you will have a sufficient answer to the critics at home and abroad who will argue that a crucial issue has been inadequately addressed. I think Mr Cooper's view is probably also decisive in respect of the monitoring arrangements; and, I suggest, in respect also of the question whether we should (or should not) have a "Chinese Wall" around the advisory section of the Commission; and references to the "merit principle" and

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"indirect discrimination". From the time that was taken in discussing it, the monitoring regime is clearly a matter which has exercised the Irish not a little. I confess that I had not previously focused on this potential area of difficulty (and, if a copy has not reached us already, I should be grateful if you could send me the latest draft of the Monitoring Regulations as soon as possible). I have no reason to doubt that the approach we have adopted is the correct one, but, while Mr Lavery was very persuasive, I have to say that at times I also found Mr O'hUiggin to be persuasive, even if he kept shifting his ground slightly. I am sure that I would be convinced that our approach is the right one, if I saw the arguments set out on a couple of sheets of paper. But it is not me that you have to convince. I would not mind betting that, if the Irish are so exercised about this, the SDLP may be, and the Labour Party almost certainly will be. There must be a risk that the draft Monitoring Regulations will be prayed against, as you have acknowledged, and the Government would no doubt wish to find time for a debate. I have not seen any advice to Ministers on this, and I feel sure that we need to set out for Ministers the Irish position on this matter, as we understand it, and the counter-arguments which lead us to believe that our approach is the right one, and perhaps, indeed, the only one. The arguments may need to be debated across the floor of the House.

4. I noted also the Irish concern, which you largely shared, that major employers should not easily be able to get away with aggregating their total work forces across a number of different locations. On the merits of the case, we may, I think, need to think a little further about how we deal with the monitoring returns for the Government, certainly in respect of the Home Civil Service, and perhaps in respect of the NICS. I am asking Mr Fisher to pursue this. I have also asked him to consider whether there might be merit in arranging for the Secretary of State fairly soon to minute appropriate Cabinet colleagues, reminding them that the Fair Employment Act is about to come into force, and it will be particularly important that the Government sets a good example, in monitoring, in its recruitment and promotion practices, and in complying with the provisions of the Act on the placing of contracts. The same is of course true in respect of NI Departments, and it might also be helpful for the Secretary of State to minute his NIO Ministerial colleagues to encourage Ministerial interest in fair employment practices across the board. If you have not heard already, you will soon be learning that concern has been expressed in NIO(B) as to whether the new arrangements for the placing of Government contracts are being addressed with sufficient urgency - I am aware, of course that a meeting is planned next month.

5. I have one final comment on the draft Code. I missed the part of the discussion relating to the first page of the draft. I am not sure that we have yet got this right, or that the Irish comments got it quite right. These opening paragraphs are clearly very important, and I should welcome the opportunity to consider them together with you. (Any "introduction" or "foreword" is clearly also relevant here.) I imagine you will also wish to consider, in the light of others' comments, my earlier suggestions about the

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length and ordering of the Code. (I am glad to see, incidentally, that you are receiving some compliments on the draft, as well as the expected volume of criticism.)

6. At the end of our meeting, Mr Spence referred in general terms to the fact that we were starting to plan for the review of the Act. I think that this intervention was prompted by Mr Masefield's minute to you of 3 November, and it was helpful to put down a marker with the Irish in this way, although they did not show very much interest (perhaps because Mr O'hUiggin had left the meeting by this point). It seems entirely right that we should discuss the review process with the Irish, and we could not expect to avoid it in any case. (I do not think, however, that there can be any question, as Mr Masefield suggested, of "direct involvement by Irish officials, either inside or outside the Conference, at review discussions with the Commission or other interested bodies such as SACHR".) What is not clear is whether we can expect the Irish to want to discuss this matter, or re-play any of the discussion about the draft Code, at the next Conference meeting (now a little way off). For my own part, I think we do not want for the moment to encourage a substantive discussion of Fair Employment matters, certainly not of the draft Code or of the Review, but we would like Mr Brooke to raise the subject, if only to demonstrate that he personally has taken on board the importance of Fair Employment and we know that it is an issue to which both Governments will want to return. In other words, I do not think that there is much that we need to add to the briefing already prepared; but I think we can refer to a "helpful and constructive" discussion between officials about the draft Code.

(SIGNED)

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16 November 1989

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