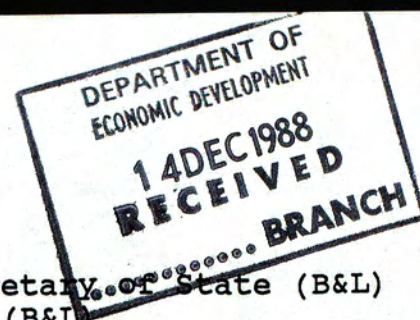


COVERING RESTRICTED



PS/Mr Viggers (B&L)

From: P Carvill

cc PS/Secretary of State (B&L)
PS/PUS (B&L)
PS/Sir K Bloomfield
Mr Fell
Mr Semple
Mr Burns
Mr Gowdy
Mr Hodges
Mr O Miles
Mr Blackwell
Mr Minnis
Mr Wolstencroft
Mr McConnell (PAB)
Mr A Wood
Ms Jackson
Mr Templeton
Mr Jelly
Mr Cornick
Mr Lavery
Dr Smyth
Mr Taggart
Mr McAleer
Mr Treharne
MC

Mr Carson
Could I have a copy please
16/12/88
you of 14/12/88

FAIR EMPLOYMENT BILL: PRESS CONFERENCE

1. Attached is supplementary briefing material on possible lines of attack which may be raised at tomorrow's press conference. The defensive lines have been given an approximate order of importance.
2. In regard to line I - Progress in the Public Sector - Department of Finance and Personnel have emphasised their strong preference for as little information as possible being divulged on the progress being made by any body other than the NICS. Some questioning in this area may be unavoidable, but the defensive line has tried to curtail detailed enquiries into the activities of sensitive groups - particularly the District Councils.

P Carvill

P CARVILL

14 December 1988

DEFENSIVE BRIEFING (SUPPLEMENTARY) - POSSIBLE AREAS OF ATTACK

- I. Public Sector (Progress)
- II. SACHR Report
- III. Affirmative Action
- IV. Influence of ROI
- V. Read-across
- VI. Public Sector (Definition)
- VII. Northern Ireland Electricity
- VIII. Harland and Wolff
- IX. Shorts
- X. DED Discrimination (Shields Case)
- XI. Catchment Areas
- XII. Statistical Basis of Policy

I. PUBLIC SECTOR (PROGRESS)

NB: No information should be volunteered, other than in response to a specific line of questioning

Attack

- (a) what evidence is there of public sector progress?
- (b) no progress evident other than in NICS
- (c) what are Area Boards and District Councils doing?

Rebuttal

- . steady progress being made towards introduction of both equal opportunities policies and monitoring systems in public sector
- . NICS has published two reports (1986 and 1987)
- . if pressed - monitoring also underway in NI Court Service; NI Housing Executive; UK Civil Service Departments in NI
- . if pressed - the Education and Health Boards are developing suitable monitoring systems
- . if pressed - the Local Government Staff Commission supports monitoring; it is devising a system for use by District Councils

[Note: There has been very steady but purposely low key progress in the public sector. There is apprehension than publication of the Bill could inhibit that progress by exciting political interest. If possible Ministers should try to confine examples of public sector progress with monitoring to that of the NICS; but if pressed on other examples (particularly Area Boards and District Councils) they should try to limit comment to the above.]

II. SACHR REPORT

Attack

- . some important recommendations made by SACHR have not been adopted

Rebuttal

- . Government has gone on record as saying that SACHR Report was valuable
- . approximately 90 of SACHR's 123 recommendations have been adopted either wholly or in part
- . most major recommendations have been incorporated in the Bill -
eg monitoring; economic sanctions; industrial tribunal
mechanism for individual complaints; prohibition on indirect
discrimination
- . not accepted have been recommendations in respect of -
 - . new Declaration of Practice
 - . burden of proof
 - . definition of indirect discrimination
 - . religion-specific training
 - . appointment of commissioners to defaulting public bodies
 - . grounds and route of appeal against directions
 - . abolishing statutory maximum on awards in individual cases
 - . third party right of initiating complaints
 - . appeals to the Parliamentary Commissioner in section 42
cases
- . they have not been adopted because they are inappropriate or
have been replaced by more effective provisions
- . no basis for any allegation that insufficient attention was
paid to SACHR report

III. AFFIRMATIVE ACTION

Attack

- . Bill does not contain specific examples of acceptable affirmative action

Rebuttal

- . impossible for Bill to set out courses of action applicable to every situation
- . Guide to Effective practice contains examples of affirmative action measures: Code will do same
- . Commission will be available to advise employers who are in doubt
- . examples of affirmative action will include -
 - . setting goals and timetables for both applications and/or appointments
 - . ending word-of-mouth recruitment
 - . ending preferential treatment for relations of existing employees
 - . advertising vacancies in media accessible by both communities
 - . schools liaison programmes
 - . removing employment conditions which are not job-related
 - . ending displays of offensive emblems and flags
 - . training programmes exclusive to areas of exceptionally high unemployment, or to the long-term unemployed
 - . appointing a senior manager with responsibility for employment equality
- . general aim: to encourage and assist applicants to come forward and take up job opportunities

IV. INFLUENCE OF ROI

Attack

- (a) ROI pressure responsible for anti-employer bias of legislation
- (b) dictated by Dublin

Rebuttal

- . legislation does not have bias against employers
- . employers have the key role in promoting job equality - so inevitable that legislation centres on their practices and procedures
- . also recognises importance of employer co-operation with new FEC (i) provision for voluntary undertakings (ii) duty on FEC to advise employers with their review functions if requested (iii) strong educational and promotional role for FEC (iv) appeal mechanism to ensure that commission's directions are reasonable, appropriate and necessary
- . HMG determined policy and framed legislation; not "dictated" by Dublin
- . a proper subject for discussion in the Inter-Governmental Conference
- . ROI certainly consulted closely; but so were CBI, EEF, NICCI and the NIC/ICTU - so both employers and trade unions have made important contributions to new policy and legislation

V. READ-ACROSS

Attack

- (a) if HMG so committed to equality should do same for women/ethnic minorities/disabled
- (b) this legislation will establish a precedent to be followed

Rebuttal

- . religious issue in Northern Ireland is unique and distinctive
- . has political dimension not replicated in any other area of the UK
- . job equality central to political problem in NI; so unique measures needed
- . equality for women/disabled traditionally tackled in common with rest of UK because it is broadly based national issue - religious equality in jobs is regional problem specific to NI
- . problem of ethnic minorities in some GB inner city areas is not replicated in NI
- . so no question of setting any precedent in other areas
- . because legislation is quite specific to unique NI problem and tailored to it

VI. PUBLIC SECTOR (DEFINITION)

Attack

- (a) why are public authorities not defined on face of the Bill?
- (b) why is power to define such authorities vested in the Department?

Rebuttal

- . amendments to list of public bodies will be necessary from time to time - easier to accomplish by order
- . list will include all significant public bodies -

NI Departments

UK Departments with staff in NI

District Councils

Education and Library Boards

Health and Social Services Boards

Northern Ireland Electricity

NI Housing Executive

Police Authority

Ulster Defence Regiment

Police Complaints Commission

- . Department given wide discretion to add to this list if a body exercises functions of a public nature
- . this function is appropriate to Department's general responsibility for fair employment, and will be exercised in a manner fully consistent with the intention of the Bill

VII. NI ELECTRICITY

Attack

- (a) still discriminating; only 18% Catholic
- (b) allows intimidating flags/emblems
- (c) Tinnelly case proves discrimination by NIE

Rebuttal

- . recent Tavistock Report found no evidence of discrimination in NIE selection/recruitment
- . it showed recent increase in recruitment of Catholics; and that appointments over last two years reflected community representation in relevant catchment areas
- . it suggested improvements - NIE responding positively
- . NIE appointing new senior manager to head up an Equal Opportunity Unit
- . NIE now made joint commitment with unions to employment equality
- . NIE stood firm on flags/emblems issue; NIE policy now is that Union flag will only be flown permanently at the 4 power stations, 6 area offices and the HQ Building
- . outcome of judicial review in Tinnelly case not known: case remains sub judice and cannot be commented on

VIII. HARLAND AND WOLFF

Attack

- (a) privatisation will mean job losses for Protestants
- (b) privatisation is short-term alternative to early closure

Rebuttal

- . objective of privatisation is to safeguard viable jobs, not sacrifice them
- . public ownership no guarantee of job security (jobs down from 9,500 in 1975 to 3,700 at present)
- . no question of creating opportunities for Catholics at expense of Protestants
- . pointless to speculate about effect of privatisation on employment levels - new owner could bring new orders and more jobs
- . privatisation would bring to H&W commercially-driven discipline, plus flexibility to respond to difficult market conditions
- . Government has indicated to prospective owners a willingness to make generous transitional arrangements
- . also ready to provide intervention assistance to privately-owned yard

IX. SHORTS

Attack

- (a) Shorts are still discriminating against Catholics
- (b) privatisation means job losses for Protestants
- (c) Shorts discriminate against Protestants by setting "quotas" in negotiating the Super Sherpa contract, and by setting aside \$5 million of this contract for Catholic sub-contractors

Rebuttal

- . independent Tavistock Report (1986) found no statistical evidence of discrimination
- . Catholics (September 1988) 11.2% of total workforce (only 5% in 1979) and level of Catholic appointments has risen steadily - now stands at over 20%
- . privatisation designed to safeguard viable jobs, not to sacrifice them
- . too early to speculate about effects of privatisation on job levels
- . Bill does not include "quotas", or "reverse" discrimination; based on appointment on merit, and equal opportunities for Catholics and Protestants alike
- . details of Shorts' negotiations on Super Sherpa contract are commercially confidential, but Shorts have not set "quotas" in negotiating this contract
- . sub-contractors to Shorts are selected on merit and on ability to compete, and not on basis of workforce composition
- . setting of goals/timetables is matter for Shorts management, but perfectly reasonable when recruitment takes place on merit

X. DED DISCRIMINATION (SHIELDS CASE)

Attack

- (a) DED discrimination "proved"
- (b) impossible to have faith in legislation produced by discriminatory DED
- (c) this case fully endorses worry about DED Training Division
- (d) Mr Shields "forced" to take early retirement

Rebuttal

- . if no decision to appeal by 15 December - FEA Report being studied; DED concerned at the findings; merit careful analysis
- . if pressed on whether DED to appeal - matter still being considered
- . if decision to appeal by 15 December - DED has decided to appeal; does not accept findings of FEA in this particular case
- . if alleged that appeal sets bad example - DED, like any employer, entitled to appeal
- . fact that FEA can find against DED shows full independence of FEA
- . Bill strengthens existing law considerably, this proves DED not influenced by this particular case
- . NICS Equal Opportunity Unit currently reviewing the experience of Training Division; its findings will be made known in due course
- . early retirement recently offered to any volunteer in particular grades; Mr Shields volunteered before FEA report submitted

XI. CATCHMENT AREAS

Attack

- (a) cannot be accurately defined, so no way of assessing whether employers are providing equality
- (b) Government should supply labour availability estimates

Rebuttal

- . defining catchment areas not easy; different catchments for different jobs
- . but "Guide" sets out the factors involved - wage rates; shift patterns; travel to work patterns; transport availability; location of factory
- . by assessing such factors employers will be in position to make informed and realistic assessment of the catchment for the jobs on offer
- . present FEA and future FEC stand ready to give advice to employers on this matter
- . more refined statistics will be helpful and Government working on this; but informed judgement by the individual employer and the Agency/Commission usually the best guide to catchment area for a particular job

XII. STATISTICAL BASIS OF POLICY

Attack

- (a) Government's policy based on incomplete statistics from 1981 census
- (b) breakdown of those in employment is close to overall balance of religious population

Rebuttal

- . policy not based only on 1981 census; used other statistical measures including the Continuous Household Survey and Labour Force Survey
- . key point is that all these sources indicate that Catholics under-represented in employment and over-represented in unemployment
- . for example Catholic male unemployment rate is approximately 17%; Protestant rate is almost 7% - a differential of around 2:5:1