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To: Mr Teggart

S 83/92

FROM: R C WEST  
SIL  
28 FEBRUARY 1992

cc Mr Kirk, RIR Bill Team, MOD  
Mr Minnis, DED, Arches  
Mr Cooke  
Mr Leach - B  
Mr Fisher - B

MR BELL - B

ROYAL IRISH REGIMENT: APPLICATION OF FAIR EMPLOYMENT ACT

I attach a short discussion paper for the meeting which you have arranged for Tuesday 3 March at 10.30am in the VCR.

(SIGNED)

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28 FEBRUARY 1992  
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SC/SIL/19115

## ROYAL IRISH REGIMENT : APPLICATION OF FAIR EMPLOYMENT ACT

### The Problem

1. To what extent, and how, should the relevant provisions of the Fair Employment Act 1989 apply to members of the new Royal Irish Regiment, which will come into existence under Royal Warrant on 1 July 1992.

### Relevant legislation

2. The relevant legislation is summarised at Annex A.

### The options

3. Assuming that HMG's policy is that the Fair Employment Act should (continue to) apply at least to the exclusively Northern Ireland-based battalions of the new regiment - and it would appear to be politically indefensible that the Act should not so apply - the main options are to:

- (i) treat the whole regiment as a single unit for the purposes of monitoring;
- (ii) distinguish between the Home Service and General Service battalions; monitor only HS battalions (and administrative backup);
- (iii) monitor the whole regiment administratively; but apply provisions of the Act only to the Home Service battalions;
- (iv) apply the Act to Home Service Battalions and General Service battalions when they are serving in Northern Ireland.

## Discussion

4. Option (i) would seem to be a non-starter. Although it does not appear that the legislation would actually prohibit this option, the Act repeatedly makes reference to those employed, or in employment, in Northern Ireland, and extends to Northern Ireland only. It would, on the face of it, be a legal nonsense to oblige the public authority (the Secretary of State for Defence) to include those employed outside of Northern Ireland during the relevant period to which the monitoring return relates. And the Fair Employment Commission would have no authority to exercise its powers to rectify any imbalances which became apparent outside Northern Ireland.

5. An important consideration applies to all of the options. Monitoring for the purposes of the Act is of those born in Northern Ireland; it is intended to establish the "composition" in any workforce of those drawn from the Protestant community, or Roman Catholic, in Northern Ireland. The principal recommended method of monitoring is by reference to the school attended. It follows from this that a significant proportion of the members of the General Service battalion (s) (which will mainly be ex-Royal Irish Rangers) will not count for the purposes of monitoring under the Act. Thus, Catholics born in the Republic or in GB will fall outside the two main categories in monitoring returns.

6. The purpose of monitoring is to allow the employer and Commission to assess the level of "fair participation", and progress towards "fair participation" where an imbalance exists, over a period of time. Option (iv)- which might be awkward to define in statutory terms - would make that more difficult to do, at least if the figures were presented in aggregate. Given that the figures for the GS Battalion may not (for the reasons given above) be very revealing, the effect could simply be to confuse the figures that are submitted on a yearly basis to the FEC.

7. A further consideration is that the new regiment is intended to be treated for most purposes like the rest of the army. Roulement and resident battalions of the regular army are not monitored for fair employment purposes - although, for example, the Scottish regiments may have many members from strongly Protestant or Catholic backgrounds - Therefore in principle it might be wrong to treat the General Service battilion of the new regiment differently when it serves in Northern Ireland.

8. The advantage of option (iii) over option (ii) is that it would allow aggregate figures to be presented publicly eg in answer to PQs and more generally. That would underline the integrity of the new Regiment; and, in crude political terms, would be likely to show a better balance between Catholic and Protestant (although it is a ploy which could be seen through easily enough). However, it must be largely a matter for the MOD whether they would wish to conduct administrative monitoring of this kind; there may, for various reasons, be some reluctance to do so.

#### Timing

9. It is clearly desirable that an amendment to the Fair Employment (Specification of Public Authorities) Order should be made before the regiment comes into existence on 1 July. The order would be subject to negative resolution. It is suggested that an amending order could refer to the defence council regulations mentioned in the Army Bill. If a distinction is made between HS and GS battalions, it might therefore refer to "any member of the armed forces whose service is restricted to Northern Ireland under Defence Council regulations". Some provision may be needed to ensure the continuity of monitoring returns for the UDR this year.

SECURITY AND INTERNATIONAL DIVISION  
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## SUMMARY OF RELEVANT LEGISLATION

- (a) Fair Employment (Specification of Public Authorities) Order (NI) 1989

Under the Order, the Secretary of State for Defence is specified as a "public authority" for the purposes of monitoring under the Fair Employment Act; all "reservists" are to be treated as employees of there authority; and "reservists" are defined to mean "any member of the Ulster Defence Regiment, or of any Reserve Force, who serves wholly or mainly in Northern Ireland, other than a person whose service normally involves less than sixteen hours weekly."

- (b) Fair Employment (Northern Ireland) Act 1989

Under the Act, a registered employer must prepare for each year a return "for the purpose of enabling the composition of those employed in a registered concern in Northern Ireland to be ascertained." "Composition" means the number of employees who are to be treated for the purposes of monitoring as belonging to each community; "community" means the Protestant community, or the Roman Catholic community, in Northern Ireland. The principal method of monitoring is by reference to the school attended in Northern Ireland.

The employer is obliged periodically to review the composition of his concern; consider whether "fair participation" by each community exists; and, if not, determine (where practicable) the period or periods against which progress towards "fair participation" can be measured.

A "public authority" is to be treated for the purposes of the relevant provisions of the Act as an employer where any employees of the authority are employed or serve in Northern Ireland.

(c) Army Bill

When enacted, the Bill will provide for membership of the UDR to cease; and transfer current members of the UDR to "another corps" (the Royal Irish Regiment) under broadly the same current terms and conditions of service. The Regiment will be created on 1 July by Royal Warrant. The Bill enables the Defence Council to make regulations governing the terms of service of members of the new regiment, including limiting their service to Northern Ireland.