

cc PS/Secretary of State (B&L)  
PS/Dr Mawhinney (B&L)  
Mr Erskine (OLC)  
Mr Kirk (CPL)  
Mr McCartney (DFP Solrs Br)

PS/PUS (B&L)  
PS/Sir K Bloomfield

EDUCATION REFORM (NORTHERN IRELAND) ORDER 1989  
INTEGRATED SCHOOLS PROVISIONS : JUDICIAL REVIEW

**NOTE FOR INFORMATION**

Cardinal O'Fiaich has written to the Secretary of State to advise him formally that application is to be made on behalf of the Northern Bishops for a Judicial Review of certain provisions of the Order.

So far, no papers specifying either the statutory provisions alleged to be discriminatory or the precise grounds upon which Judicial Review is to be sought have been served on the Crown Solicitor. As yet, therefore, we are unable to address the issues in detail, or indeed clarify the procedures to be followed.

The main purpose of this note is therefore to alert recipients to the action which the Bishops have taken. I am also taking the opportunity to register our initial views below.

First, on the matter of procedures, it seems likely that Section 17 of the 1973 Constitution Act is to be invoked rather than Section 19; that is, that an order of Certiorari will be sought declaring void certain provisions of the Order itself, rather than quashing an administrative action. If so, I understand that there are no precedents.

Information from Press reports indicates that the application refers to two of the integrated schools provisions in Part VI of the Order. Broadly speaking, the grounds for the application appear to be firstly, that the 100% capital building grant rate for integrated schools discriminates against Catholic schools, which receive 85% grants; and secondly, that the legislation offers the theoretical prospect that a Catholic school may be taken into integrated status by means of a majority parental vote, against the wishes of its

trustees.

We ourselves sought advice from the Home Office Legal Adviser's Branch on the question of possible discrimination at the time when we were embarking on the integrated schools initiative. We were reassured then that what was proposed did not appear to offend against the Constitution Act.

The principles underlying this advice were subsequently confirmed on two occasions. The first was in the wake of concerns expressed by SACHR in September 1989 that certain provisions contained in the proposal for a draft Order might have a discriminatory effect and the second following the issue of the Bishops' statement in November 1989 last overtly alleging that the draft legislation was discriminatory.

I should also record that Ministers received the Cardinal and the Northern Bishops twice last year, when these issues were discussed in an open and constructive manner and certain assurances about the operation of the legislation were given. It is perhaps therefore all the more surprising that the Bishops should have decided to proceed with the application for Judicial review.

While this remains sub-judice, it is unlikely to be possible to pursue as a separate issue any proposals for a change in the 85% capital grant rate.

Given the earlier involvement of the Home Office legal advisers with the relevant aspects of the 1989 Order, it would be helpful if Mr Kirk could let them know of the legal challenge and keep them informed of developments as we become clearer about the basis of that challenge.

JHP

J H PARKES

23 March 1990