

FROM: A J ADAMS
REL
21 NOVEMBER 1995

*Mr. Harrison
Could you look at this, pl.
AJ
23/11*

*1.4 in language
2 Mrs Brooker
23.4*

Both of you might cast

ASST/ SEC
24/1/11
23 NOV 1995
C.C.R.U.

920/11

cc: Mr Bell *an eye over the*
Mr Steele
Mr Watkins *'civil' anti-discrimination*
Mr Brooker *measures & their*
Mr Bramley *descriptions.*
Mr Stephens
Ms Checksfield
Ms Marson
Ms Miller

*HJ
Li...*

Miss Harrison -B

INTERNATIONAL BODY - BRIEFING MATERIAL

I attach in response to Mr Brooker's note to you, a note on future protection of human rights, focussing on the relevant Frameworks passages.

2. You also asked for a neutral note for inclusion in the International Body's briefing material on measures to protect human rights since the time of the civil rights movement. The Annex attached to my note, geared to the agenda of the civil rights movement, is not a comprehensive review of the full range of measures and limitations affecting human rights protection. To some extent it overlaps with Key Facts and Figures which I see is also to be supplied to the International Body. But it does provide a reference document that you may find useful as part of the briefing pack.

2. Please let me know if this requires amendment or editing to meet your needs.

(signed AJA)

A J ADAMS
Rights and European Division

BM/REL1/159

FUTURE PROTECTION OF HUMAN RIGHTS

The Frameworks Documents identify common ground on which agreement on the future protection of rights can be founded; the willingness of the two Governments to take parallel action to further enhance the protection of human rights; and to take account of the views which the parties will bring to future talks.

2. Frameworks reaffirms the Government's pledge to rigorous impartiality in exercising its jurisdiction on behalf of all the people living in Northern Ireland. Its proposals give a strong commitment to parity of esteem, the upholding of human, civil, political, social and cultural rights, and freedom from discrimination.

3. The Government has said for a long time that it would be prepared to enhance protection for human rights. The question of what specific rights require added protection, and the means of protection, are a matter for discussion. While a latent threat from terrorism still remains the Government must retain appropriate powers to deal with it. The possibility of suspending those powers is kept under review and there is to be a wide-ranging and totally independent review of the emergency legislation. It is too early to forecast what the outcome might be.

Background

4. In the 1992 Talks the following issues were raised:

- maintenance of a fair and impartial electoral system;
- safeguards against the future application of anti-terrorist laws;
- possible measures against indirect discrimination;

- equity of treatment and parity of esteem; and
- respect for cultural traditions.

Since the ceasefires there has been considerable interest in policing reform and the future of counter-terrorist legislation. There is however uncertainty within the parties which have raised human rights issues as to what specific changes they might wish to see. Though there is widespread interest in having some kind of instrument of entrenched and justiciable rights there is little common ground as to its form, scope or content.

Special provisions already in place

5. Both before and since the institution of Direct Rule Northern Ireland has had a number of separate and different provisions relating to human rights. Special provisions in Northern Ireland include;

- the Northern Ireland Constitution Act 1973 making it unlawful for central and local government or other statutory bodies to discriminate on grounds of religious belief or political opinion;
- fair employment legislation (currently under review) creating the duty of promoting equality of opportunity and affirmative action, and working towards the elimination of unlawful discrimination;
- proportional representation in local government and European Parliament elections;
- an education system which protects the freedom of parents to choose;

- Diplock courts in which there is a statutory obligation on judges to give reasoned judgements, and from which there is a statutory right of appeal without leave;
- separate provisions in respect of inferences from a suspect's silence;
- an appointed police authority;
- Independent Commissioner for Police Complaints;
- Independent Assessor of Military Complaints Procedures;
- Independent Commissioner for Holding Centres;
- Codes of Practice governing the use of stop and search powers and the treatment of suspects.

In future talks the parties are likely to seek additional guarantees in respect of the powers of new institutions and other public bodies in Northern Ireland, constraints on the exercise of legislative or executive power by central government, and perhaps constraints on the actions of private individuals and organisations.

The Frameworks proposals:

6. Paragraph 12 of "A Framework for Accountable Government" envisages that under a new political settlement

"Protection for specified civil, political, social and cultural rights would be reinforced in respect of a range of matters including those for which the new political institutions would have responsibility, on a basis arrived at in consultation with the parties. The means of such protection would accord with the constitutional arrangements of the United Kingdom, and could build on existing safeguards."

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7. Paragraph 50 of "A New Framework for Agreement" envisages that a new agreement between the two Governments will include an undertaking to ensure in each jurisdiction the systematic and effective protection of common specified rights, and re-affirms that they are to discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be specified and how they might best be further protected.

8. In addition there is an undertaking in paragraph 50 to introduce legislation to give effect to whatever agreement is reached:

"Each Government will introduce appropriate legislation in its jurisdiction to give effect to say such measure of agreement."

9. Additional protection could draw from a range of possibilities, such as: the appointment of individual commissioners or bodies to oversee particular areas of potential concern; the introduction of machinery to ensure that draft legislation conforms to existing international obligations; or the model of the Northern Ireland Constitution Act 1973 to make invalid future attempts to discriminate on the ground of religious belief or political opinion.

10. The Government sees the needs of Northern Ireland differently from those of the rest of the UK; but there is a need to avoid creating future constitutional arrangements which might fail to buttress the acceptability or credibility of a future settlement. The Government is not ruling any particular solution in or out: it has a genuinely open-minded approach to the form and scope of whatever new measures can be agreed.

RIGHTS AND EUROPEAN DIVISION

NOVEMBER 1995

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MEASURES TO PREVENT DISCRIMINATION AND PROTECT HUMAN RIGHTS

Since 1969, key measures to protect human rights and to prevent discrimination in both the public and private sectors have included:-

The Northern Ireland Constitution Act 1973, which renders void Northern Ireland legislation that discriminates on the ground of religious belief or political opinion, and makes such discrimination by public authorities illegal. The 1973 Act also established the **Standing Advisory Commission on Human Rights**. Its role is to monitor the effectiveness and adequacy of the law against discrimination and advise on other human rights issues.

The Electoral Law Act (Northern Ireland) 1969 introduced universal adult suffrage for local council elections. The franchise had previously been limited to rate payers. The Local Government Act (Northern Ireland) 1972 established an independent Local Government Boundaries Commissioner to make recommendations on the boundaries of district electoral divisions and local government administrative areas and provided independent procedures for their review. The District Electoral Areas Commissioner (Northern Ireland) Order 1984 provided independent procedures for recommending the grouping of wards into electoral areas. The Electoral Law (Northern Ireland) Order 1972 created the independent post of Chief Electoral Officer with responsibility for the conduct of all elections. This Order and subsequent legislation introduced proportional representation for local government elections and elections to the European Parliament. The Elected Authorities (Northern Ireland) Act 1989 extended the local authority franchise to bring it into line with that for Parliamentary elections.

The Parliamentary Commissioner Act (Northern Ireland) 1969 established the office of the Northern Ireland Parliamentary Commissioner for Administration with powers to investigate complaints of maladministration (including discrimination on the grounds of religious belief or political opinion) by Government Departments. Unlike her Westminster counterpart, the Northern Ireland Parliamentary Commissioner was subsequently charged with responsibility to investigate complaints affecting personnel matters in the Northern Ireland Civil Service.

The Commissioner for Complaints Act (Northern Ireland) 1969 established the Northern Ireland Commissioner for Complaints with powers to investigate grievances arising out of action taken by or on behalf of local councils and public bodies, in the exercise of their administrative functions. Where the Commissioner for Complaints finds injustice in consequence of maladministration the matter may be referred to the county court for the purposes of an action for damages by the complainant.

The Prevention of Incitement to Hatred Act (Northern Ireland) 1970 made it a criminal offence wilfully to stir up hatred against a section of the community including any section distinguished by race or religious belief, colour or ethnic or national origins. This legislation was subsequently consolidated into the Public Order (Northern Ireland) Order 1981. This was replaced by the Public Order (Northern Ireland) Order) 1987 which inter alia repealed the Flags and Emblems (Display) Act (Northern Ireland) 1954 and amended the legislation to prohibit the use of words or behaviour or displays of any written material likely or intended to provoke hatred based on religious belief, colour, race or ethnic or national origins against any section of the public.

The Housing Executive Act (Northern Ireland) 1971 provided that all public authority house-building and its allocation on the basis of an objective points system should become the responsibility of a central housing authority, the Northern Ireland Housing Executive. This measure was in part designed to meet allegations that some local authorities had discriminated in the location and allocation of housing.

The Prosecution of Offences (Northern Ireland) Order 1972 set up the office of an independent Director of Public Prosecutions for Northern Ireland. The Director is the sole prosecuting authority in Northern Ireland responsible for the consideration of facts relating to all indictable and certain other offences with a view to initiating or continuing criminal proceedings. The Chief Constable is required to furnish the Director with facts and information relating to alleged indictable offences and any other alleged offences as the Director may specify.

The Education & Libraries (Northern Ireland) Order 1973 makes provision for a staff commission to promote fairness in personnel practices in the Education and Library Boards. Similar provision is contained in the Local Government Act (Northern Ireland) 1972 for District Councils.

The Fair Employment (Northern Ireland) Act 1976 made direct discrimination on religious or political grounds unlawful in employment. A Fair Employment Agency was made responsible for receiving and investigating complaints of discrimination and for conducting investigations into the extent of equality of opportunity. A further initiative was brought into operation in 1982; tenders for Government contracts would not normally be accepted from firms unless they held an equal opportunity employment certificate issued under the 1976 Act.

The Fair Employment (Northern Ireland) Act 1989 amended and extended that legislation and established a Fair Employment Tribunal and a Fair Employment Commission, replacing the Agency. It provided for compulsory registration of employers, monitoring by employers of their workforces and applicants for jobs, regular reviews by employers of their recruitment, training and promotion practices, taking into account a new Code of Practice and use of affirmative action including goals and timetables, as directed by the Commission, in the absence of fair participation. The Act provided that indirect discrimination should also be unlawful. The Act also provided for criminal penalties for failure to register, monitor and conduct reviews; criminal penalties and loss of grants and contracts in instances of bad practice; and compensation for individual victims of discrimination.

The Sex Discrimination (Northern Ireland) Order 1976 made it unlawful to discriminate on grounds of sex in employment, training and related matters (where discrimination against married persons is also dealt with), in education, in the provision of goods, facilities, and services and in the disposal and management of premises. The Equal Opportunities Commission set up under the Order keeps under review the operation of the legislation and of the Equal Pay Act (Northern Ireland) 1970 which was amended in 1984 to incorporate the concept of equal pay for work of equal value. Equal Pay legislation requires employers to give equal treatment in respect of pay and other terms of their contracts of employment to men and women where they are doing the same or broadly similar work; or jobs which have been rated equivalent; or work of equal value. The Commission can investigate unlawful discriminatory practices and issue "non-discrimination notices", enforceable if necessary in the courts, by way of

injunction or order. The Sex Discrimination (Northern Ireland) Order 1988 extended the 1976 Order to cover equal retirement conditions and various other provisions.

The Police Act (Northern Ireland) 1970 set up a Police Authority as an independent body to maintain an adequate and efficient police force. One of the Authority's responsibilities under the Act is to keep itself informed as to the manner in which complaints against members of the force are dealt with by the Chief Constable. The Police (Northern Ireland) Order 1977 provided for the establishment of a Police Complaints Board for Northern Ireland. The Board was replaced under the Police (Northern Ireland) Order 1987 by the Independent Commission for Police Complaints (ICPC). The ICPC receives copies of complaints and, subject to any adjudication of the Director of Public Prosecutions, the relevant investigation reports. The ICPC is charged with ensuring that the investigation of complaints is carried out in a thorough and impartial manner and is required to supervise the investigation of all complaints involving death or serious injury and can supervise the investigation of any other complaints.

The Police and Criminal Evidence (Northern Ireland) Order 1989 reformed the law relating to the investigation and detection of crime and revised the law on evidence. The new powers introduced were accompanied by a range of safeguards to ensure that they were used fairly and responsibly. Codes of practice issued under the Order provided detailed rules and guidance to the police on the exercise of certain of their statutory powers, namely to search a person without first arresting him, and to search a vehicle without making an arrest.

The Northern Ireland (Emergency Provisions) Act 1991, introduced a number of new safeguards on the exercise of

emergency powers. The act also provides that the police and armed forces may only stop and question any person for a reasonable length of time to establish their identity and movements. An Independent Commissioner for Holding Centres monitors their procedures. There are Codes of Practice on the treatment of terrorist suspects in police custody. The Government has also established a new Office of Independent Assessor of Armed Forces Complaints Procedures in Northern Ireland. The role of the Assessor is to keep under review the system of complaints against members of the armed forces which fall short of allegations of criminal actions.

POLICY INITIATIVES

2. In order to secure equality of opportunity and equity of treatment for all the people in Northern Ireland the Government aims not only to eliminate unlawful discrimination or unjustifiable inequality but also to promote fair treatment through policy making and its implementation.

3. Guidance on Policy Appraisal and Fair Treatment (PAFT) has accordingly been issued to Government departments and agencies to encourage them to take positive steps to prevent discrimination or unfair treatment. The guidance aims to help departments and agencies to build in consideration for fair treatment from the outset, in their preparation of policy proposals, including legislation, other initiatives and strategic plans for the implementation of policy and delivery of services, and in reviews of the impact of policy.

4. Complementing PAFT is the Targetting Social Need (TSN) initiative, one of the effects of which should be to reduce unfair social and economic differentials by targetting resources more effectively on those people and areas in greatest need.

COMMUNITY RELATIONS

5. A Central Community Relations Unit within Government advises the Secretary of State on all aspects of the relationship between the two sides of the Northern Ireland community, and works to ensure that at the centre of the decision making process crucial community relations issues are given the fullest possible consideration.

6. In addition an independent Northern Ireland Community Relations Council provides support, facilities and recognition for local organisations which are concerned with the development of community relations, awareness of cultural diversity and resolution of conflict.