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PSDED 15/89

Mr Bohill
DR Hester

NO. 237/1
RECEIVED
11 JAN 1989
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TO: 1. PS/Mr Viggers (B&L)
2. PS/Secretary of State (B&L)

FROM: D Fell, DED

DONNELLY BILL

Purpose of Submission

1. Congressman Donnelly is visiting the Province this week and is scheduled to lunch with the Secretary of State on Wednesday. Advice from the FCO in connection with the visit indicates that Mr Donnelly recently re-introduced his legislative proposals to Congress and that they seem likely to emerge as an issue in the course of discussions with him. I and other officials will be discussing the Bill in detail with Mr Donnelly following the Secretary of State's lunch and this submission is therefore simply intended to bring the Secretary of State up to date on the Donnelly situation and to provide a line to take in general discussion with the Congressman.

Background

2. My submission* of 25 May 1988 to the Secretary of State provided an account of the results of a study which officials had made, in consultation with HMT and FCO, of Mr Donnelly's 1988 Bill. A line to take proposed in the submission was approved by the Secretary of State, but with the Congressman subsequently appearing to have seen little or no political advantage at that time in persisting with his efforts, the need for Ministers to comment on the matter did not arise.

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* Attached.

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Analysis of the New Bill

3. The new Bill continues to provide:
 - (a) tax incentives in the form of removal of the limitation on foreign tax credits on Northern Ireland income for US companies which are located in certain areas of high unemployment and which have workforce numbers at least 40% Catholic; and
 - (b) a sanction in the form of withdrawal of foreign tax credits on Northern Ireland revenue for US companies which are in breach of fair employment standards which Mr Donnelly would regard as in line with the proposals in HMG's own legislative proposals.
4. Comparison of the new Bill against the 1988 Bill shows that:
 - (i) the taxation provisions remain in all essential respects the same as in the 1988 Bill; and
 - (ii) there has been some limited amendment and amplification of the fair employment standards in this year's Bill.
5. Regarding the tax situation, the Inland Revenue have advised that US and UK corporation tax rates remain at 34% and 35% respectively and that there has been no tax development in the US (or UK) that would necessitate any change to the briefing and line set out in my submission of 25 May 1988. Effectively, therefore, it remains likely that the Bill would provide only limited benefit to companies and would certainly be unlikely to achieve Mr Donnelly's objective of encouraging investment in areas of high unemployment in Northern Ireland. The net effect, together with the potential penalties for companies which fail to match up to the required standards, is that the Bill would do little to add to the attractiveness of Northern Ireland as an investment location. Indeed, the likelihood is that penalties would in practice constitute a deterrent to investment.
6. The only changes of significance in the original Bill's fair employment standards are the inclusion of a reference to the setting of goals and

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timetables in the context of affirmative action programmes and the insertion of a new stipulation that failure to comply with any standard in the Northern Ireland Fair Employment Commission's Code of Practice will provide conclusive evidence of a violation of a fair employment standard. The latter change provides a welcome though limited acknowledgement of Northern Ireland legislative proposals and of the new Commission in particular. It would however be a great deal more satisfactory to see the Bill's provisions brought fully into line with the key requirements of our legislation.

7. There is unfortunately some cause for concern in the public stance that Mr Donnelly has been taking on the Bill since his arrival in this country. This was well evidenced in his comments in a BBC radio interview on Sunday when he averred that US companies which acted in a way that was incompatible with US law should know that they would lose tax subsidy and that " ... it's the American Congress talking to American companies and saying very simply wherever you do your business in the world and most especially Northern Ireland you should follow the laws of the United States in terms of hiring ...". I will be taking the opportunity in the discussion at official level to seek clarification of Mr Donnelly's position in this important area.

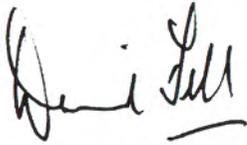
Line to Take

8. I would suggest that in discussion with Mr Donnelly the Secretary of State might wish -
 - (a) to assure the Congressman that Government welcomes his approach on fair employment standards which is generally in line with Government's own proposals set out in the White Paper;
 - (b) to encourage Mr Donnelly at the same time to keep in mind the desirability - in terms of avoiding unnecessary difficulty or burdens for US companies in Northern Ireland - of keeping his Bill's provisions closely in line with the key requirements of NI legislation;

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- (c) to point out that companies which default on their responsibilities under NI legislation will expose themselves to severe penalties for failure to reach the same fair employment standards as are embraced by his Bill's proposals; and
- (d) to suggest, finally, that the benefits arising from the proposed tax concessions are likely to be modest and might well - on account of the additional burdens of accounting and reporting involved - detract from the attractiveness of Northern Ireland as an investment location.



D FELL

10 January 1989

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