



Parliamentary Under Secretary of State

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The Lord Alderdice
House of Lords
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Dear Lord Alderdice

I thought it would be helpful if I once again wrote to you to give you an account of the government's remaining amendments to the Northern Ireland Bill. I fear they are again numerous, and we have had to put some of them down at a late stage (because they were still being refined: we thought it preferable to get them as nearly right as possible, rather than to risk creating further work for the House if we were obliged to amend them further at Report).

We are bringing forward a number of amendments in the area of equal opportunities, reflecting intensive consultation with the Northern Ireland political parties, and with other interested groups and individuals, since the introduction of the Bill. Our amendments to Clause 59 and to Schedule 9 change the title of members of the Commission to "Commissioner", for parity with the Human Rights Commission. Otherwise they are largely technical. But a change of some significance comes in the amendments (below) to Schedules 2 and 3, by which most of the provisions of the Bill relating to the Commission and to the statutory duty are made reserved matters. This reflects the fact that the Assembly will necessarily have a close involvement in the equality area, the anti-discrimination legislation itself being under the terms of the Agreement a transferred matter.



In the light of consultation, we are proposing that there should be a direct obligation on public authorities to produce equality schemes under Schedule 10 (these schemes are the means by which the statutory equality duty in clause 60 is implemented).

We are proposing technical and drafting amendments to clauses 61 and 62.

We shall of course seek to delete clauses 64-67 (on the North-South and East-West bodies, as well as the Civic Forum), because they have been replaced by new clauses after clause 43, approved by the House last week.

We are proposing a new clause after Clause 68, to provide for legislative powers to remedy ultra vires acts. This clause is directly equivalent to Clause 94 of the Scotland Bill: we have closely followed that Bill in areas of this sort. An Order under this Clause would be subject to affirmative resolution (by amendment 205 in Clause 78) . Amendment 190 in Clause 70 picks up a recommendation of the Committee on Delegated Powers and Deregulation that an Order under that clause should be subject to a the negative resolution procedure (we will deal with the Committee's other recommendation, in respect of Schedule 6, at Report).

The amendments after Clause 71 cut back the powers in that Clause to make Orders in Council about reserved matters, and subject them to consultation requirements. This follows from our discussions with the parties over the summer.

The amendments to clauses 73 and 74, and the new clause inserted after them, represent a further working through at the technical level of the co-ordination arrangements between the Social Security, child support and pension systems in Northern Ireland after devolution. Under the Agreement, social security will continue to be a transferred matter, but is one in respect of which parity has



generally been maintained, and the two social security systems are closely interlinked.

There are also a number of new clauses after Clause 74 to give effect to new arrangements about acts done under the Bill for the purpose of safeguarding national security or protecting public safety or public order. Following the decision of the European Court of Human Rights in the case of *Tinnelly and McElduff*, the present provisions in Clause 80 of the Bill would raise questions of conformity with the European Convention. We propose the setting up of a Tribunal to consider such cases, which derives inspiration from the Special Immigration Appeals Tribunal. These arrangements will be extended under subsequent legislation on equality to other areas of the anti-discrimination law.

We have a number of technical and drafting amendments to the remaining clauses of the Bill, many of which we already have considered in connection with earlier amendments on which they are consequential.

We have a substantial number of amendments to schedules 2 and 3, about excepted and reserved matters. I will explain our general approach to these schedules in presenting the amendments. We are quite closely tied by the Agreement, which is set against the background of the 1973 constitutional legislation, and in particular requires to be transferred to the devolved institutions all those matters within the responsibility of the Northern Ireland departments, that is, substantially the whole of the transferred field under the 1973 Act. Most of our amendments are by way of tidying up, for example to reflect developments in legislation since 1973.

We have also proposed a number of amendments to schedules 2, 3 and 4 about the complex questions of excepted or reserved status of the subject-matter of the Bill,



and of entrenchment. Our starting point remains that the main provisions of the Bill must generally be safeguarded against alteration of substance by the Assembly. But as I have mentioned we are, following consultation, proposing the transposition to the reserved field of the new equality issues covered in this Bill, along with several others, such as the Assembly Commission, and Assembly property. Partly also our proposed changes reflect technical considerations, their rationale being to avoid the Assembly being inadvertently deprived of power to do things it is intended it should be able to do, by their being brought within the definition of excepted matters. We have largely abandoned the concept of entrenchment (schedule 4) for the provisions of the Bill, since it does not add to the safeguards of exception and reservation, but may introduce unwelcome rigidities.

We are proposing a number of technical amendments to schedules 12 to 15.

I hope this summary may be helpful. I am conscious there is little time before the debate, but if any recipients of this letter have technical questions, we will of course try to help with them in the course of the day.

L. Hodges

PP LORD DUBS