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Mr. Pile

I thought I should report the present stage of our discussions on the position of the Crown Estates, the Duchies of Cornwall and Lancaster and The Queen's Household, in the light of the decision that the Race Relations Bill should in general bind the Crown.

2. The attached note summarises the meeting we have had with representatives of the Crown Estates Commissioners and the Duchies. You will see that, provided that a limited exemption, on the lines envisaged for the Diplomatic Service, can be secured for the Duchies no serious problems are likely to arise.

3. The position of The Queen's Household, which Mr. Cairncross, Mr. Platt and I discussed with Lord Tryon (Keeper of the Privy Purse), his deputy and their legal adviser on Friday last is more difficult. Lord Tryon and his colleagues saw no difficulty in complying with the general principles of the Bill to the same extent as e.g. the Diplomatic Service and they fully appreciated the risk of criticism which any specific provision to exclude the Household would involve. They suggested that the staff of the Household could be regarded as falling into three categories: (a) senior posts, which were not filled by advertising or by any overt system of appointment and which would presumably be accepted as outside the scope of the Bill; (b) clerical and other office posts, to which it was not, in fact, the practice to appoint coloured immigrants or foreigners; and (c) ordinary domestic posts for which coloured applicants were freely considered but which would in any event be covered by the proposed general exemption for domestic employment. It seemed doubtful if this exemption would be in terms wide enough to cover appointments at (a) or (b), though this could not be finally determined until the draft of the Bill emerged.

4. They were particularly concerned, however, that if the proposed legislation applied to The Queen's Household it would for the first time make it legally possible to criticise the Household. Many people do so already, but this has to be accepted and is on a different footing from a statutory provision. Moreover, apart from the scope which this might offer to individual critics, the Race Relations Board would be able to criticise in their report the way in which the Household had dealt with either any specific complaint or any general allegation that discrimination was being practised. (The machinery for investigation would presumably be for the Board to refer any complaints to Lord Tryon and for him to report to them the outcome of his inquiries). It would not be possible for the Household to reply publicly to such criticism.

5. One possible solution might be for the Crown application clause in the Bill to be drafted in terms of persons in the public service of the Crown, (and of the Duchies if this was also considered appropriate). It would not then apply to The Queen's Household. There would still, however, be a risk that the position of the Household might be raised in the press or in the course of the debates.

6. The outcome was that we undertook to send Lord Tryon a print of the Bill as soon as it becomes available and that there should be a further discussion after he and his colleagues had been able to consider the matter further in the light of this. There is no doubt that, while few genuine difficulties are likely to arise in connection with The Queen's Household, it could, if the Bill applied to it, be placed in a particularly vulnerable position, and that there might well be people ready to take advantage of this. One would hope that the Race Relations Board itself would not go out of

/their

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their way to criticise the Household, but we could not guarantee that they would always act with discretion; and we could presumably influence what they say in their annual reports to only a very limited extent.

T. G. WEILER.

20th February, 1968.

Copies to: Mr. Cairncross
Sir Kenneth Jones

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H(68) 35

COPY NO. SPARE

21st March, 1968.

CABINET

HOME AFFAIRS COMMITTEE

RACE RELATIONS BILL:

THE ROYAL ESTATES AND THE ROYAL DUCHIES

Memorandum by the Secretary of State for the Home Department

On 12th March 1968 (H(68) 7th Meeting, Minute 1, Conclusion 2(1)) the Committee invited me to report the outcome of my consultations about the application of the Bill to the Royal estates and the Royal Duchies, and I am circulating this memorandum for the information of my colleagues.

2. Discussions have taken place with the Crown Estate Commissioners, the two Duchies and the Palace authorities.

3. The Crown Estate Commissioners will be automatically covered by the fact that the Crown is to be bound, and no difficulty is felt about this.

4. It is proposed that the Duchy of Lancaster and the Duchy of Cornwall should be specifically included in the definition of the Crown for the purposes of the Bill, which will accordingly apply to them as it does to government departments and the armed services, that is, they will have the benefit of the equivalent of the nationality rules in appointing staff, and the investigation of complaints against them will be the subject of special arrangements made with the Board by me. I understand that this is acceptable to the Duchy authorities.

5. The fact that the Crown is to be bound in the Bill will mean that The Queen will be bound in her private capacity. In so far as any of her establishments is a private household, for example Sandringham or the truly domestic staff at Buckingham Palace, the general exemption in the Bill relating to domestic employment will apply. That part of The Queen's household which annot be held to be a private domestic household will be regarded in this context as equivalent to a Department of State and therefore subject to the special provisions of the Bill referred to in paragraph 4 above which apply to government departments generally and the armed forces. The effect of this would be that if the Race Relations Board received a complaint in respect of employment in The Queen's household they would refer it to me. I would arrange for it to be discussed with the Palace authorities and would then make an appropriate report to the Board. If the Board wished for further information it would be open to them to come back to me but, subject to this, they would not be able to take the matter further, other than by commenting on it in their annual report. I understand that these arrangements are likely to be acceptable.

6. I shall now seek The Queen's approval to her interests in this respect being placed at the disposal of Parliament under the arrangements described in this paper.

L.J.C.

Home Office,
S.W.1.
21st March, 1968.

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Mr. Weiler, Mr. Cairncross and I went to Buckingham Palace again on 19th March to discuss the position of The Queen with the Palace authorities. They were satisfied with the arrangements provided for in the second print of the Bill and agreed that the way was now open for the Secretary of State to seek The Queen's consent to place Her interest at the disposal of Parliament for the purposes of the Bill.

2. A paper was therefore prepared for Home Affairs Committee and circulated as a memorandum on 21st March. I have been asked by Cabinet Office to whom the "arrangements are likely to be acceptable" (last sentence of paragraph 5 of the note). I said that we meant the palace authorities; we did not know whether they would be acceptable to the Race Relations Board but it seemed unlikely that they would raise any objection.

3. Mr. Cairncross sent me a copy of an earlier letter to Sir Michael Adeane seeking The Queen's consent to placing Her interests in a Bill at the disposal of Parliament; I discovered that we had already obtained two other models from E. Division.

4. I have now placed within a draft letter to Sir Michael Adeane.

? 1. To Mr. Cairncross for any observations.

2. To P.S. with draft within.

28th March, 1968.

Mr. Cairncross. NK. 28/3/68

? as proposed. I think Mr. Weiler will wish to see before the papers go to the Private Office. A print later than the 3rd print should be sent - the 5th, which will be the version circulated to Legislation Cttee. will be available on Friday.

28/3.

Mr Weiler.

? As at (2) above.

29. iii. 68

Lieut. Colonel The Rt Hon Sir Michael Adeane GCB GCVO
Private Secretary to Her Majesty The Queen
Buckingham Palace
LONDON SW1

13 January 1970

I attach the second draft of a Bill on equal pay.

You will notice that in clause 6, sub-section (3), the application of the Act is extended to Crown servants except members of Her Majesty's [illegible], but that persons employed by Her Majesty in Her private capacity are specifically excluded. I might also mention that, while we envisage Crown servants generally being able to complain to an industrial tribunal (sub-sections (3), (4) and (5) of clause 2), we are not quite sure yet how to provide that the awards of a tribunal in such cases should be made enforceable. In the ordinary case, the award would become an implied term of the contract of employment of the individual concerned and the individual could (if necessary) sue her employer in the County Courts to get him to carry out the implied term.

I should be grateful to know if you agree with the treatment in the Bill of persons employed by Her Majesty in Her private capacity. The obvious difficulty is that such a provision may run into criticism in Parliament on the ground that there seems no good reason why persons employed by Her Majesty should not enjoy equal pay like everyone else. If you consider the provision is right as it stands, it would be helpful to us if you could suggest how we might best reply to any such criticism.

I am sending copies of this letter and of the draft Bill to The Secretary, Duchy of Cornwall Office, and to the Clerk of the Council, Duchy of Lancaster Office, in case they have any comments.

P J H EDWARDS
Private Secretary

Enc.

E.R.

SEX DISCRIMINATION BILL: POSITION OF THE CROWN

1. It is necessary to consider the position of the Crown (particularly The Queen's Household, the Duchies of Lancaster and Cornwall and the Crown Estate Commissioners) under the Sex Discrimination Bill, by reference to the policy embodied in the Race Relations Act 1968 and the Equal Pay Act 1970. This memorandum explains the relevant provisions of the two Acts, and considers their implications for the Bill. By way of background, it should be noted that the White Paper indicates (as did the HA Memorandum) that the Bill would bind the Crown; and that on 14 October the Palace was so informed, with the qualification that the Bill would not bind Her Majesty in Her private capacity.

Position of the Crown under the Race Relations Bill

2. As introduced, the substantive provisions of the Race Relations Bill (ie those which rendered discrimination unlawful) applied to the Crown as employer, as the provider of services and as landlord; and they accordingly bound Government Departments, the Duchies of Lancaster and Cornwall, the Crown Estate Commissioners and Her Majesty in Her private capacity. Of course, the exceptions to the substantive provisions would also have applied to the Crown, so that employment in those parts of The Queen's household which were genuinely private (Sandringham and the truly domestic staff at Buckingham Palace) would not be covered by the Bill.

3. Sub-sections (4) and (5) of Clause 25 of the Bill provided a special exception for the Crown, the police and certain prescribed public bodies from the investigation, conciliation and enforcement provisions of the Bill (Part II), and provided that the Home Secretary should, after consultation with the Race Relations Board, make arrangements for the handling of complaints against the Crown. The justification for excepting the Crown in this way was that, at least in relation to Government Departments, Ministers were accountable to Parliament and their actions could be debated. (One result of excluding the Crown from court proceedings was that a complainant would not be in a position to secure damages where these would be appropriate, but it was felt that such cases would be few, and consultations with the Treasury were set in hand to consider the possibility of claims being settled by way of *ex gratia* payments.)

E.R.

4. The arrangements which were contemplated for the investigation of complaints against the Crown were that the Race Relations Board would refer a complaint, in the case of a complaint concerning The Queen's household, to the Home Secretary who would arrange for it to be discussed with the Palace and make an appropriate report to the Board; and in other cases to the Secretary of State (eg in the case of the Scottish police to the Secretary of State for Scotland) who would arrange for it to be investigated and report the outcome to the Board. It was to be open to the Board to comment on such complaints and on the report on them in their annual report.

Position of the Crown under the Race Relations Act

5. Sub-sections (4) and (5) of Clause 25 were deleted in Committee in the House of Commons by an amendment (moved by Mr Alexander Lyon) which had all-party support. The debate on the amendment revealed that the Committee was simply not prepared to agree to the privileged position which the sub-section would secure for Government Departments. No reference was made to the position of Her Majesty in Her private capacity. The Home Secretary decided that he should accept the views of the Committee and not seek to replace the deleted sub-sections during Report Stage.

6. The effect of the amendments was that the Crown would be subject to the ordinary investigation and enforcement procedures set out in the Bill. However it was proposed to secure the same result as under subsections (4), (5) in respect of investigations into complaints concerning The Queen's household, the Duchies of Lancaster and Cornwall and the Crown Estate Commissioners through Clause 13(3) of the Bill which required the Board to discharge their functions in accordance with arrangements approved by the Home Secretary. (In the event it was felt to be stretching Clause 13(3) too far to impose procedures on the Board, but negotiations with them secured a relatively detailed procedure for handling complaints against the Duchies and the Commissioners, and a rather simpler one for complaints against The Queen's household).

7. However these procedures could not bite on enforcement proceedings in the courts, but the likelihood of the Board finding it necessary to pursue a case to the point of instituting proceedings was regarded as so remote that it could be disregarded.

E.R.

It was decided however to apply the "normal" provisions of the Crown Proceedings Act, so that there could be no question of The Queen being sued in her personal capacity.

8. The treatment of the Crown under the Race Relations Act sets an important precedent for the Sex Discrimination Bill, and any departure from that precedent in the Bill will be unlikely to pass without notice. However the safeguard for The Queen's household, the Duchies and the Crown Estates Commissioners which were agreed with the Race Relations Board all related to and hinged upon the special enforcement arrangements which gave the Board a monopoly of investigation and access to the courts. These safeguards /which are/are not a matter of public knowledge/ are not available in relation to the Bill because the Equal Opportunities Commission will have no such monopoly. The only protection provided in the 1968 Act which could similarly be provided in the Bill would be that afforded by the Crown Proceedings Act which would prevent The Queen from being sued in Her personal capacity.

The position of the Crown under the Equal Pay Act

9. The other relevant precedent for the Bill is the Equal Pay Act, of which section 1(8) simply excludes The Queen in Her personal capacity /and also the Duchies and the Crown Estate Commissioners/

/DE contribution on the passage of the Equal Pay Bill (? any difficulties on the application of the Bill to the Crown); and on discussion with the Palace, the Duchies and the Crown Estate Commissioners./

/Position of NHS employees under both the Equal Pay and the Race Relations Acts./

/Recommendations/.

Mrs Littler

cc: Mr Howard-Drake
Mr Harvey
Mr O'Meara
Mrs Hyde
Mr Fulton

SEX DISCRIMINATION BILL: POSITION OF THE CROWN

I attach the second (though still substantially incomplete) half of the draft memorandum on the above, together with a copy of the DE papers on the Crown Application Clause of the Equal Pay (No 2) Bill. These papers are clear as to the position of Her Majesty and the Duchies, but not as regards the Crown Estate Commissioners, who appear not to have been consulted at any stage. One complication as regards the Equal Pay Act precedent is that Parliamentary Counsel has proposed an amendment of s1(8) (see Schedule 1 of the Bill), but this could perhaps be considered separately.

2. Before we can proceed much further (and as is indicated in the second half of the draft memorandum) we need legal advice:-

(a) as to the position of the Commissioners under the Equal Pay Act (see [(A)] in the draft memorandum: I have asked Mr O'Meara's advice on this); and

(b) as to the effect of translating the Crown Application provisions of the Race Relations Act into the Bill (see [(B)] in the draft memorandum).

3. We shall have to be sure moreover -

(c) that the position of the Duchies is truly analagous with that of The Queen in Her personal capacity;

and we shall have to ascertain -

(d) whether the position of the Commissioners is properly analagous with that of the Duchies.

4. Perhaps we could discuss these questions and the draft memorandum within the next day or so.

A J Butler
23 January 1975

SEX DISCRIMINATION BILL: POSITION OF THE CROWN (continued)

[Delete all after paragraph 7, and continue:-]

Position of The Crown under the Equal Pay Act

8. In its initial draft the Equal Pay(No 2) Bill contained a provision in what was Clause 6(3) which extended the Bill to Crown servants, except members of Her Majesty's forces; and there was a specific exclusion in respect of persons employed by Her Majesty in Her private capacity. This formula was not acceptable to the Palace, but the provision had in any event been redrafted on the lines of what is now section 1(8). This subsection provides that section 1 of the Act, which establishes the equal pay principle:

> "shall apply to persons employed under or for the purposes of a Minister of the Crown or government department, otherwise than as members of the naval, military or air forces of the Crown or of any womens service administered by the Defence Council, as it would apply if they were employed by a private person".

This wording was chosen so as to cover employees of the National Health Service but not (by implication) persons employed by the Queen in Her private capacity, or employees of the Duchies of Lancaster and of Cornwall. This subsection was acceptable to the Palace, largely because it did not explicitly single out persons employed by Her Majesty in Her personal capacity for special exception. It was clear that neither of the Duchies was a "government department" and Parliamentary Counsel (Sir John Fiennes) was of the opinion that "Minister of the Crown" (a term which was not defined in the Bill) did not include the Chancellor of the Duchy of Lancaster in his titular capacity. The Crown Estate Commissioners were not consulted as to their position in relation to the Bill, but legal advice is ... [(A): legal advice please].

9. Clause 1(8) was the subject of two amendments in Commons' Committee. The first amendment sought to probe the reasons for the exclusion of the armed and womens' services from the scope of the Bill; but the Committee was satisfied with the Government's explanation of this, to the effect that it was desirable to exclude these services, which have their own complaints procedures, from the enforcement provisions of the Bill; and

the amendment was withdrawn. The second amendment sought to apply the Bill to persons appointed to serve as members of any public boards of a commercial, regulative or advisory character or public finance corporation. Its purpose was to probe the underrepresentation of women on such boards and as chairmen of such boards, but the Member concerned (Miss Quennell) was confined by the Chair to the question of the remuneration of members of such boards, and having been given a satisfactory assurance that there was no discrimination, withdrew the amendment. No reference was made to the position of The Queen in Her personal capacity or to the Duchies.

Discussion

10. The argument in favour of excepting The Queen in Her personal capacity is that it is constitutionally inappropriate and derogatory to Her Majesty's position to make it possible for proceedings to be brought against Her in Her own courts.

[Application of the arguments in relation to the Duchies of Lancaster and Cornwall and the Crown Estate Commissioners.]

11. The treatment of the Crown under the Race Relations Act sets an important precedent for the Sex Discrimination Bill, and any departure from that precedent in the Bill will be unlikely to pass without notice. However it is an unfortunate precedent in that if the Government had known that the policy of applying the substantive provisions but not the enforcement provisions to the Crown generally would be unacceptable to Parliament, it is quite probable that it would have applied the Bill as a whole to the Crown, excepting The Queen in Her personal capacity, the Duchies [and the Crown Estate Commissioners]. The precedent is also unfortunate in that the only protection provided in the 1968 Act which could similarly be provided in the Bill would be (assuming it were necessary) that afforded by the Crown Proceedings Act which would prevent The Queen from being sued in Her personal capacity. The other safeguards which were eventually provided for Her Majesty, the Duchies and the Commissioners, would not be available in relation to the Sex Discrimination Bill since they hinged upon the special enforcement arrangements provided in the Race Relations Bill,

E.R.

which gave the Race Relations Board a monopoly of access to the courts.

12. It would be prudent to assume that there will be some pressure for the inclusion of a provision in the Bill on the lines of the Crown application section in the 1968 Act. Since, as has been explained above, there is no scope in the Bill for arrangements comparable with those compared with the Race Relations Board, this would leave open the theoretical possibility of ...

[(B): Legal advice, please, as to the position as regards (a) legal proceedings, (b) EOC investigations and non-discrimination notice against:

(i) Her Majesty in Her personal capacity,
(ii) the Duchies, and
(iii) the Crown Estate Commissioners.

NB It might be possible in relation to (b) and (c) to come to some arrangement with the EOC.]

[(C) Likely acceptability of (b) to those elements of the Crown listed.]

13. However the Crown application provision in the Equal Pay Act is also available as a precedent, and is likely to prove acceptable to the Palace, and to the Duchies (and to the Commissioners) in relation to the Bill. The provision has the substantial merit that it deals explicitly with government departments - the principal bone of contentention as regards the provision in the Race Relations Bill; and that it was acceptable to Parliament in 1970 in the case of the Equal Pay (No 2) Bill.

Conclusion

14. As a matter of policy, it seems right to except Her Majesty in Her personal capacity, the Duchies [and the Commissioners] and to except them unequivocably, following the Equal Pay Act rather than the Race Relations Act. In any event, as has been explained above in paragraph 11, the Crown application provision

of the 1968 Act could not afford sufficient protection in the context of the Sea Disposal Bill either for Her Majesty or for the Duchies [and the Commissioners].

15. The next step would appear to be to consult the Palace, the Duchies and the Commissioners, with a view to making a recommendation to the Home Secretary.

E.R.

Note for the Record

Application to the Crown: the position of the Queen in her personal capacity.

The 1968 Act

It was originally intended that the Race Relations Act 1968 should apply to the Crown, and that it should bind Government Departments, the Duchies of Lancaster and Cornwall, the Crown Estate Commissioners and the Queen in her private capacity. Genuinely private employment in the Queen's household would be excepted, in accordance with the general exceptions in the Act. It was proposed to make a special exception for the Crown, the police and certain prescribed public bodies from the investigation, conciliation and enforcement provisions of the Act, and to provide for special arrangements, made by the Home Secretary after consultation with the Race Relations Board, to deal with complaints against the Crown. This policy was unacceptable to the Commons, and Mr Lyon moved an amendment, with all-party support, which had the effect of making the Crown subject to the normal procedures set out in the Bill.

It was, however, thought necessary to protect the Queen's household, the Duchies of Lancaster and Cornwall, and the Crown Estate Commissioners, from the normal procedure, and a special procedure was agreed with the Race Relations Board for dealing with complaints against these bodies.

The Sex Discrimination Bill

Although it was the intention that the SDB should bind the Crown, it was not possible to follow the precedent of the RRA in protecting the Queen in her personal capacity because the EOC, unlike the Race Relations Board, will not handle all complaints from individuals, which will instead be dealt with by the industrial tribunals or the courts. Thus it was not possible to negotiate a special procedure for any complaints against the Queen in her personal capacity. It was decided to follow the precedent of the Equal Pay Act 1970, which excepts from its scope the Queen in

her personal capacity, the Duchies of Lancaster and Cornwall, and the Crown Estate Commissioners. It does this not expressly but by defining the category of employment under the Crown to which the Act applies. Government departments are clearly seen to be within the scope of the Act (and therefore the main criticism of the original provisions of the Race Relations Bill is met) whilst attention is not specifically directed to the position of the Sovereign (which apparently was particularly acceptable to the Queen).

Proposed race relations legislation

We shall want to follow the general precedent of the 1968 Act in applying the provisions of the legislation to the Crown, but we shall not be able to rely on a special arrangement with the Race Relations Commission, because like the EOC it will not handle all complaints from individuals. The solution found for the Sex Discrimination Bill would, however, seem to meet the needs of the Race Relations Bill. It will exempt from the Bill the Queen in her personal capacity, the Duchies of Lancaster and Cornwall, and /to some extent/ the Crown Commissioners. We shall not want to exclude service, etc., in the armed forces from the scope of the Bill, as the SDB does; we should here follow the RRA 1968, which makes no exemption. Otherwise there would seem to be no essential difference between the SDB and the RRB which would make the SDB formula inapplicable, and in view of the close parallel being maintained between the two Bills, we should follow SDB.