CABINET

RACE RELATIONS BILL - CONCILIATION MACHINERY

Memorandum by the Secretary of State for the Home Department

Clause 1 of the Race Relations Bill as it stands makes it a criminal offence, punishable on summary conviction by a fine, to practise discrimination on grounds of colour, race or ethnic or national origins in any of the places of public resort described in the section. This provision has been attacked by the Opposition, and widely in the press, on the grounds that it introduces criminal sanctions into a field more appropriate to conciliation. There is also a considerable body of opinion among Government supporters and the organisations representing immigrant communities that some form of conciliation machinery should be introduced as a preliminary to any proceedings in the courts.

In the debate on Second Reading on 3rd May I undertook that we should listen closely to the arguments advanced in favour of a conciliation process and that, if we considered it practicable and in the public interest to do so, we should amend the Bill at Committee Stage to give such effect as we felt able to the wishes of the House. The subsequent debate served to confirm the general feeling in favour of conciliation machinery, with a preference that any proceedings that might follow failure of conciliation should be of a civil rather than a criminal nature.

The draft amendments annexed to this memorandum provide for the establishment of conciliation machinery and for enforcement by civil proceedings when conciliation has failed.

The proposed new clause A provides for the constitution of a Race Relations Board, which will be required to appoint local conciliation committees. It will be the duty of the committees to receive and enquire into individual complaints of discrimination in public places within the ambit of Clause 1 of the Bill, and to attempt to secure a settlement of the differences between parties and, where appropriate, to obtain assurances against any repetition of discriminatory acts. The committees will work informally and will not be armed with powers to summon witnesses. In any case in which conciliation fails the committee will be required to make a report to the Board; and if in such a case the Board is satisfied that a course of discriminatory conduct has taken place and that such conduct is likely to continue it will be able to take proceedings for enforcement.
Court proceedings are dealt with in the proposed new Clause B. Proceedings will be taken in the county court or High Court, which will be empowered to grant an injunction restraining the defendant, on pain of committal for contempt of court, from any further acts of discrimination either against specified individuals or against specified classes of persons. I would expect very few cases in practice to reach the courts.

Clause A has been drafted so as to leave the Board with considerable latitude in deciding the number, distribution and composition of conciliation committees. If, as I propose, the Board is itself to be responsible for enforcement it ought not in any case to be directly responsible for conciliation. This means that there must be conciliation committees covering the whole country. While conciliation by people familiar with the local situation will be desirable wherever possible, it may be found best in some parts of the country to have a single committee serving a comparatively large area in which few cases are likely to arise. The separation of the processes of conciliation and enforcement will also be effected by the provision in clause B that any statement made during the course of conciliation shall not be admitted in court proceedings except with the consent of the party by whom it was made.

It is apparent from the debate on the Second Reading, and from amendments which have already been tabled, that there will be strong pressure during the Committee stage for the Bill to be extended to deal with discrimination in such wider fields as employment and housing. It will be urged that these are the fields where the worst abuses occur and where attempts at conciliation by local committees of the kind we propose to set up would be particularly effective. I assume however that it will still be the wish of my colleagues that this pressure should be resisted.

It is only after the most careful consideration and consultation with my colleagues principally concerned that I have decided in favour of enforcement by civil rather than criminal proceedings. An arrangement whereby criminal proceedings would be taken in the magistrates courts, with offences punishable by fines as in the present clause 1, has some attraction. But conciliation and criminal proceedings are difficult to reconcile in principle and there are serious procedural difficulties in attempting to combine them. One of the advantages of proceeding by civil action will be to free the police from all responsibilities in the matter.

I understand that the Secretary of State for Scotland supports these proposals and would like the scope of the proposed Race Relations Board to extend to Scotland. It would accord better with the Scottish system of law enforcement for proceedings in Scotland to be taken by the Lord Advocate instead of by the Board, and the draft new clause C provides for this.

I seek the approval of my colleagues to the tabling of the Committee stage of the Race Relations Bill of amendments giving effect to these proposals.

F. S.

Home Office, S. W. 1.
18th May, 1965 -2-
DRAFT AMENDMENTS

Clause 1, page 1, line 5, leave out from beginning to " being " in line 6 and insert " it shall be unlawful for any person ".

Clause 1, page 1, line 7, leave out " he discriminates " and insert " to practise discrimination ".

Clause 1, page 1, line 9, leave out " any person " and insert " persons ".

Clause 1, page 2, line 7, leave out subsection (4) and insert—

(4) The provisions of this section may be enforced by civil proceedings under the following provisions of this Act and not otherwise: but nothing in this subsection affects the enforcement by civil or criminal proceedings of any duty or obligation to which a person is subject otherwise than by virtue of this section.

To move the following Clauses:

A.—(1) For the purposes of securing compliance with the provisions of section 1 of this Act and the resolution of difficulties arising out of those provisions, there shall be constituted a board to be known as the Race Relations Board, consisting of committees, three members of whom one, being a barrister, [advocate] or solicitor, shall be appointed by the Lord Chancellor and the others by the Secretary of State.

(2) The Board shall appoint committees, to be known as local conciliation committees, for such areas as the Board consider necessary for the purposes of this section; and it shall be the duty of every such committee—

(a) to receive and consider any complaint of discrimination in contravention of section 1 of this Act which may be made to them (or made to the Board and referred by the Board to them), being a complaint made by or with the authority of the person against whom the discrimination is alleged to have been practised;

(b) to make such inquiries as they think necessary with respect to the facts alleged in any such complaint; and

(c) where appropriate, to use their best endeavours by communication with the parties concerned or otherwise to secure a settlement of any difference between them and a satisfactory assurance against further discrimination contrary to the said section 1 by the party against whom the complaint is made.

The Race Relations Board and conciliation committees.
(3) In any case where the local conciliation committee are unable to secure such a settlement, or such a settlement and assurance, as aforesaid, or it appears to the committee that any such assurance is not being complied with, the committee shall make a report to that effect to the Race Relations Board; and if it appears to the Board, in consequence of such reports—

(a) that there has taken place in any place of public resort to which the said section 1 applies a course of conduct in contravention of that section; and

(b) that that conduct is likely to continue,

the Board may take proceedings under section B of this Act or, if that place is in Scotland, report the matter to the Lord Advocate.

(4) The provisions of the Schedule to this Act shall have effect with respect to the tenure of office and remuneration of members of the Board, the appointment and remuneration of their officers and servants, the payment of travelling and other allowances to members of local conciliation committees, and other ancillary matters; and any expenditure incurred under those provisions shall be defrayed out of moneys provided by Parliament.

(5) The local conciliation committees shall make to the Board such periodical reports with respect to the exercise of their functions as the Board may require, and the Board, shall, at such times as the Secretary of State may direct, make annual reports to the Secretary of State with respect to the exercise of their functions; and the Secretary of State shall lay before Parliament any report made to him under this subsection.

B.—(1) Civil proceedings for the enforcement of section 1 of this Act by injunction or other appropriate relief may be brought in England and Wales by the Race Relations Board; and notwithstanding anything to the contrary in any enactment or rule of law relating to the jurisdiction of county courts, such proceedings may be brought in a county court.

(2) If in proceedings under this section the court is satisfied—

(a) that the defendant has (by himself or by his servants or agents) engaged in connection with a place of public resort to which section 1 of this Act applies in a course of conduct in contravention of that section; and

(b) that he is likely, unless restrained by order of the court, to persist in such conduct,

the court may grant such injunction as appears to the court to be proper in all the circumstances, and in particular an injunction to restrain the defendant from committing or causing or permitting acts of discrimination in contravention of the said section 1 of such kinds, against such persons or against persons of such descriptions, as may be specified in the order of the court.
(3) In proceedings under this section, evidence of any communication made to the Race Relations Board, a local conciliation committee, or any officer of the Board or of such a committee, for the purpose of or in connection with the exercise of their functions under section A of this Act shall not be admitted except with the consent of the party by whom it was made.

C.—(1) Civil proceedings for the enforcement of section 1 of this Act in Scotland may be brought by the Lord Advocate in the Outer House of the Court of Session, or in the sheriff court.

(2) Proceedings under this section shall be by petition, and if in any such proceedings the court is satisfied—

(a) that the respondent has (by himself or by his servants or agents) engaged in connection with a place of public resort to which section 1 of this Act applies in a course of conduct in contravention of that section; and

(b) that he is likely, unless prohibited by order of the court, to persist in such conduct,

the court may make an order prohibiting him from committing or causing or permitting acts of discrimination in contravention of the said section 1 of such kinds, against such persons or against persons of such description, as may be specified in the order.

(3) An appeal shall lie against—

(a) an order made under the last preceding subsection;

(b) an order imposing a fine on the respondent, or committing him to prison, in respect of a breach of an order made as aforesaid;

as if the order appealed against were a final interlocutor in an ordinary action; [and where any appeal under this subsection is decided by the Court of Session a further appeal shall lie to the House of Lords with the leave of the Court or of that House].

(4) Subsection (3) of the last preceding section shall apply in the case of proceedings under this section as it applies [in the case of proceedings under that section].
ANCILLARY PROVISIONS AS TO RACE RELATIONS BOARD AND LOCAL
CONCILIATION COMMITTEES

1. The Secretary of State may appoint one member of the Race
Relations Board as chairman.

2. A person appointed to be a member of the Board shall hold and
vacate office under the terms of the instrument by which he is
appointed, but may at any time resign his office; and a member who
ceases to hold office shall be eligible for re-appointment.

3. The Board shall be a body corporate with perpetual succession
and a common seal.

4. The validity of any proceeding of the Board shall not be affected
by any vacancy among the members or by any defect in the appointment
of a member.

5. The Board may appoint such officers and servants as they may,
after consultation with the Secretary of State and with the consent
of the Treasury, determine.

6. There shall be paid—
   (a) to the members of the Board such remuneration and
       allowances as may be determined by the Secretary of State
       with the consent of the Treasury;
   (b) to the officers and servants of the Board such remuneration
       and allowances as the Board may, after consultation with
       the Secretary of State and with the consent of the Treasury,
       determine.

7. The Board may pay—
   (a) to members of local conciliation committees;
   (b) to persons assisting in or concerned with the carrying out of
       the functions of any such committee,

traveling or other allowances in accordance any such scales as
may be approved by the Secretary of State with the consent of the
Treasury.
CONFIDENTIAL
Race Relations Bill

DRAFT AMENDMENTS

CXIV—A (3)

18th May, 1965

172—3  07284  43/1