15th December, 1967

CABINET

RACE RELATIONS LEGISLATION

Memorandum by the Secretary of State for the Home Department

Introduction

On 19th July, 1967, the Home Affairs Committee approved my predecessor's proposals to extend the Race Relations Act 1965 to employment, housing, insurance and credit facilities and to a wider range of public places. The Government's intention to introduce an amending Bill this Session was announced in The Queen's Speech.

Scope of the Bill

2. Since the Home Affairs Committee discussion, there have been extensive interdepartmental discussions at official level and a number of informal meetings between interested Ministers. In view of the controversial and novel nature of some of the proposals, I think it right to consult my colleagues at this stage about the scope of the Bill.

3. I accordingly attach a summary of the provisions in Annex I. Their main effect would be:

(a) To make discrimination on the grounds of colour, race, ethnic or national origin unlawful in places which are open to the public at large or in the provision of services which are available to the public at large.

(b) To make discrimination by an employer or a trade union unlawful. Domestic employment in a private household and, initially, employment by employers with ten or less employees, will be exempt. A special provision will enable an employer to refuse temporarily to recruit employees of a particular race for the purpose of preserving a balance between different racial groups.

(c) To make discrimination in disposing of a house or other property unlawful. The Bill will apply to all local authority housing, to those who make a business of selling and letting property and to the private owner-occupier, with certain exemptions for shared accommodation and lodgings.

(d) To make discrimination in the provision of insurance and credit facilities unlawful, with certain safeguards for the exercise of commercial judgment.
(e) To make all discriminatory advertisements unlawful.

(f) To make special provision in the field of employment for industry to establish its own voluntary machinery to attempt conciliation in the first instance.

(g) To strengthen the role and status of the Race Relations Board and to empower it to seek injunctions or damages in specially designated county courts sitting with assessors in England and Wales (with corresponding arrangements in Scotland).

(h) To bind the Crown, with appropriate exceptions.

(i) To replace the National Committee for Commonwealth Immigrants by a statutory board.

Enforcement

4. Many of the provisions set out in Annex I will be difficult to enforce. But the enforcement of sanctions is not the primary aim of legislation in the delicate field of race relations. Its main purpose is more general: to proclaim that racial discrimination is not in the public interest and that the Government are opposed to it on grounds of public policy; to educate public opinion; to lend support to those who do not want to discriminate but are under pressure from others to do so; and to make available effective conciliation machinery.

5. To achieve these aims the legislation must be as comprehensive as possible. If we avoid the central issues because they are sensitive and controversial, many people including the coloured communities themselves, will doubt our sincerity. We shall then have the worst of both worlds.

6. I consider that most complaints of discrimination under the Bill will be settled by conciliation and that few of them will reach the courts. There will, however, be some cases where conciliation fails and where there is clear evidence of discrimination, perhaps accompanied by financial loss. For them a remedy should be available in the courts, both as a matter of justice and as an ultimate sanction to give the necessary backing to the conciliation procedures of the Race Relations Board and industry.

7. The enforcement arrangements I am proposing differ from those under the existing Act. Discrimination will be defined to include a single act, and not only a course of conduct. The power to seek an injunction in the courts, which at present rests with the Attorney-General in England and Wales, would instead rest with the Race Relations Board itself which would be empowered to seek both injunctions and damages on behalf of complainants in specially designated county courts sitting with assessors. Individual plaintiffs would not be able to institute proceedings before the courts. The county court limit on damages would not apply. I hope it will be possible to make comparable arrangements in Scotland.
The Private Owner-occupier

3. Probably the most difficult and controversial issue is the proposal to include the sale of a house by a private owner-occupier in the provisions of the Bill, and it is in respect of this that I seek my colleagues' views. This will be attacked by those who will consider it unacceptable to restrict the right of an individual to dispose of his private property as he wishes. They will argue that people can have good reasons for deciding not to accept a particular offer for their house and that such people may feel that they will at the least attract adverse publicity, if nothing worse, in refusing an offer from a coloured person. It will be said that the legislation is entering the field of private and personal transactions and moving away from overt and public conduct, that the private citizen will be required to satisfy an outside body about a private transaction, that injunction procedures will seldom be effective and that damages will be difficult to quantify.

9. On the other hand, there is widespread agreement that the question of housing sales is the touchstone against which our genuineness in the field of race relations will be tested. About 50 per cent of all accommodation is owner-occupied and it is this type of property that the coloured communities most want. A big threat to community relations is the development of residential ghetto areas occupied not only by new immigrants but also by second generation coloured citizens of this country. Any measure we can take to prevent this development or to make it easier for those already in segregated areas of bad housing to move elsewhere will be valuable. Since most people obey the law, the inclusion of private housing in the new legislation would be an important contribution. I therefore propose that it should be included.

The Crown

10. I think it essential presentationally and politically that the Crown, both as an employer and as the provider of public services, should be seen to be bound in the Bill. There would be suitable safeguards for security and the nationality rules for the public services. I would also propose to exclude the Crown from court proceedings though there will no doubt be pressure not to do so.

Finance and Staff

11. Details of finance and staff are given in Annex II.

Conclusion

12. I think the principal weakness of the legislation is that enforcement in the courts will usually be difficult; but against this, the legislation must be comprehensive if it is to influence public opinion and must include a legal sanction if the procedures for conciliation are to have a chance to succeed. It is against this background that I invite my colleagues to endorse the proposals in the attached summary.

L. J. C.

Home Office, S. W. 1.

15th December, 1967

CONFIDENTIAL
Discrimination, as further defined in subsequent paragraphs, on the grounds of colour, race, ethnic or national
origin will be unlawful.

2. The Bill will extend the present definition of discrimination as a course of conduct to include a single
act of discrimination.

3. It will be unlawful for any person or organisation covered by the Bill to discriminate through an agent or to
incite, coerce or seek to persuade another person to discriminate. It will be unlawful for an agent* to
discriminate.

Places and Services open or available to the public at large

4. A person will be held to discriminate against another if, being the proprietor or manager of a place which is open
to the public at large or to a recognised section of the public, he refuses or neglects to afford him on grounds of
colour, race, ethnic or national origin access to the place in question or to any facilities or services in the like
manner and on the like terms to those available to other members of the public.

5. The provision is to be wide enough to include:

   (a) Places which offer food, drink and/or overnight accommodation to the public at large with an
       exception for establishments which provide sleeping accommodation for four persons or less and where
       facilities, other than means of access, are shared with the householder or proprietor.

   (b) Places of entertainment or recreation open to the public at large on payment or otherwise.

   (c) Premises, vehicles, vessels or aircraft used for transport services available to the public.

* including estate agents. Agents for principals overseas will not be included. See paragraph 6 for a special
provision about employment agencies.
(a) Persons and places offering goods, services or facilities to the public at large or to a particular section of the public, including services which are not offered at a particular place, e.g. mail order firms.

(e) Commercial undertakings offering goods and services to the public at large or to a particular section of the public.

(f) Places of public resort maintained by a local authority or other public authority.

(g) Places offered for hire to members of the public for their own functions.

Employment

6. An employer will be held to discriminate if he refuses on grounds of colour, race or ethnic or national origin to employ, or continue to employ, a person or class of persons or refuses or neglects to afford a person the same conditions of employment or opportunities of promotion as other employees in like circumstances.

7. A trade union or an employers' organisation will be held to discriminate if, on grounds of colour, race or ethnic or national origin, it refuses to admit persons, who are otherwise qualified, to membership or to the benefits of membership on equal terms with other members or fails to take action on behalf of a group of its members.

8. Notwithstanding any general provision about agents, an employment agency will be held to discriminate if, on grounds of colour, race or ethnic or national origin, it refuses to register persons who are suitable for employment of the type dealt with by the agency, or to submit them to such employment (whether or not in consequence of instructions from employers utilising the services of the agency) save where the employment is of an excepted kind.

9. The Bill will apply to all employment in Great Britain except domestic employment in a private household.
10. The Bill will not apply to employers with ten or less employees. It will contain a provision for amending or rescinding this figure by statutory instrument.

11. Existing statutory restrictions on the employment of aliens will be preserved.

12. Refusal to engage a person on grounds of colour, race or ethnic or national origin will not be regarded as unlawful discrimination by an employer if he can establish that, having regard to the racial composition of an existing labour force, his action was in order to preserve a balance between the different racial groups in that labour force and that he was not otherwise pursuing a discriminatory policy. (This provision should enable an employment exchange or employment agency to act on the instructions of an employer to whom it applies.)

Housing and other property

13. Subject to paragraph 14, a person disposing of housing or other property will be held to discriminate against another person if he refuses or neglects to afford him on grounds of colour, race or ethnic or national origin like treatment in the like manner and on the like terms to that afforded to other members of the public.

14. The Bill will apply to all the housing functions of local authorities, to the housing functions of New Towns Development Corporations, the Commission for the New Towns and the Scottish Special Housing Association and to the activities of Housing Associations.
Local authorities and these other bodies will be held to discriminate if in the discharge of their statutory functions they refuse or neglect to afford a person on grounds of colour, race, or ethnic or national origin like treatment in the like manner and on the like terms to that afforded to other members of the public.

15. Apart from an exemption for persons sharing accommodation with tenants or lodgers, the Bill will apply to all persons including owner-occupiers, selling or letting property, including houses, flats, land and premises, such as shops and factories.

16. The exemption will apply to the selling or letting of any living accommodation in which the vendor or lessor, or any member of his immediate family, remains in part occupation.
and shares any part (other than a part used for purposes of access only) with the other occupant. Where a person shares his house with lodgers or tenants, the exemption will only apply to those householders who accommodate not more than four lodgers or tenants.

**Insurance**

17. An insurer will be held to discriminate if, on grounds of colour, race or ethnic or national origin he:

(a) refuses insurance cover which he is prepared to provide to other persons in like circumstances;

(b) limits the extent of the cover to less than he is prepared to provide to other persons in like circumstances and:

(c) requires a higher premium than he charges other persons for the same cover in like circumstances;

unless, in the case of ordinary long-term insurance or industrial assurance (i.e. "life" insurance) he has reasonable grounds for supposing that persons of the race, ethnic or national origin of the applicant might create a risk that claims would arise at an earlier date than would other persons.

**Credit Facilities**

18. Persons or organisations holding themselves out as willing to lend to the general public will be held to discriminate if on grounds of colour, race, ethnic or national origin, they:

(a) refuse to enter into financial transactions or to lend money which they would be prepared to lend to other persons in like circumstances;

(b) refuse to fix the same terms and conditions as for other persons in like circumstances.

**Advertisements**

19. A person will be held to discriminate if he publishes or allows to be published any advertisements containing discriminatory conditions based on colour, race, ethnic or national origin.
Race Relations Board and Procedure for Investigating Complaint

20. As under the present Act, the Race Relations Board will be required to appoint such local conciliation committees as it considers necessary. These committees will retain their existing functions in relation to all complaints of discrimination under the Bill other than those in employment. In addition the Board will be required to establish machinery which, in the opinion of the Home Secretary, will be competent to deal with cases which cannot be satisfactorily settled at the local level either by the conciliation committees or in employment cases, by appropriate voluntary conciliation machinery within industry.

21. The Board will be given powers:

(a) to direct a local conciliation committee as to which complaints or classes of complaints other than complaints in employment it should deal with;

(b) to perform conciliation functions on the same lines as a local conciliation committee either

(i) where a conciliation committee or the voluntary machinery within industry has failed to secure a settlement, or

(ii) where the Board itself decides to investigate a complaint other than a complaint in employment and has directed a conciliation committee accordingly;

It is proposed that the following undertakings should be given during the passage of the Bill through Parliament:

(a) At least three members of the Board will have experience of industrial relations and will be appointed after consultation with the C.B.I., the T.U.C. and the Minister of Labour.

(b) At least one member will have special knowledge of local authority housing and will be appointed after consultation with the Local Authority Associations and the Minister of Housing.

(c) The Home Secretary will ensure that the machinery of the Board is such that the members who deal with employment and housing cases will include those with special experience of industrial relations and of housing respectively.
to make enquiries where it has reason to believe that discrimination is being practised (otherwise than on receipt of a specific complaint) and, where it appears to the Board that discrimination has occurred, to try to secure a settlement or to proceed further as provided by the Bill;

to appoint assessors to assist it in the consideration of particular cases, such assessors to have special knowledge and experience as appropriate of the circumstances in which discrimination is alleged to have occurred and of relevant local circumstances.

22. Where the Board or a local conciliation committee receives a complaint of alleged discrimination by an employer, a trade union or an employers' organisation, it will be required to refer it to the Minister of Labour. The Minister will consider whether there is, in his opinion, any suitable voluntary conciliation machinery established by agreement between organisations of employers and organisations of workers which can appropriately consider the matter. If such suitable machinery exists, the Minister will refer the complaint to it. If no such machinery exists, the Minister will refer the case to the Board.

23. The voluntary machinery will make such enquiries as it thinks necessary with respect to the facts alleged in the complaint, and will endeavour to reach a settlement. If it is unable to reach a settlement within four weeks of receiving the complaint itself, or fails to reach agreement, it will report the facts to the Minister, at the same time informing him whether, in its opinion, discrimination within the terms of the Bill has taken place.

24. On receiving this report from the voluntary machinery the Minister of Labour will refer it to the Board.

25. Where in the opinion of the voluntary machinery there has been no discrimination, there will be no obligation on the Board to re-hear the case, and no automatic right for
the complainant to have his case re-heard. Where, however, the complainant alleges to the Board that the voluntary machinery had dealt inadequately with his complaint, either because it has not given him a fair hearing or because it has reached a conclusion not justified by the facts, it will be open to the Board, if it sees fit, to discuss the case with the voluntary machinery, to refer the complaint back to them for further consideration, or alternatively, to make its own investigations. If, after receiving a further report from the voluntary machinery or after making its own investigations, the Board shares the view that there has been no discrimination, it will attempt to satisfy the complainant of this. If he persists in his charge, the Board will tell him that the case is closed.

26. Where the voluntary machinery reports that it has been unable to reach agreement among itself or to reach a settlement when in its opinion discrimination has occurred, or where after further investigation (as provided for in paragraph 25 above) the Board itself reaches this conclusion despite a report to the contrary by the voluntary machinery, the Board will attempt to reach a settlement with the employer or trade union concerned. If it fails it may take further action as appropriate under the provisions of the Bill.

27. Where the Board or a local conciliation committee receive a complaint of alleged discrimination by a private employment agency, the Board will, if the complaint does not appear to involve discrimination by an employer, deal with the complaint through its own machinery for handling employment cases. Where the complaint appears to involve discrimination by an employer rather than by the agency, the Board will refer the complaint to the Minister of Labour who will refer it to any suitable voluntary machinery covering that employer.

28. If complaints are made direct to the Minister of Labour he will refer them to any suitable voluntary machinery or, failing that, to the Board. If complaints are made direct to the voluntary machinery they will be considered by it and the outcome reported to the Minister.
29. In England and Wales, enforcement will be through designated County Courts, the presiding judges sitting with two assessors selected from a panel appointed by the Lord Chancellor.

30. Individual plaintiffs will not be able to institute proceedings before the designated Courts. The power to do so will lie solely with the Race Relations Board. Where the Board can establish that discrimination has occurred in contravention of the Bill it will be empowered to seek from the Courts an injunction to restrain further acts of discrimination or such other injunction as may in the opinion of the Courts, be appropriate. It will also be empowered to seek damages on behalf of someone against whom discrimination has been established for provable loss directly resulting from the act of discrimination.

31. The designated Courts will have sole jurisdiction, with the normal rights of appeal. The County Court limit on damages will not apply.

32. Comparable arrangements in Scotland will be necessary.

Community Relations Board

33. The Home Secretary will be empowered to appoint a Community Relations Board to replace the National Committee for Commonwealth Immigrants. Its terms of reference will be

(a) to promote and co-ordinate on a national basis efforts to secure harmonious relations between people of different race, colour or ethnic or national origin within the community and, in particular to

(i) provide a comprehensive advisory service for local organisations concerned with community relations, and

-8-
(ii) provide an information service, training courses and conferences;
(b) to advise on questions referred to them by the Home Secretary and to make recommendations to him on matters which they consider should be brought to his attention, and
(c) to make such grants to assist such local organisations concerned with race relations as the Home Secretary may with the consent of the Treasury, approve.

34. The Board will have power, subject to the Home Secretary's approval, to appoint such advisory bodies for such purposes as it considers necessary.

The Crown

35. The Bill will bind the Crown except that it will not be open to the Race Relations Board to proceed against the Crown in the Courts. The Bill will preserve the nationality rules for the Civil Service, the Diplomatic Service and the Armed Forces and the Crown's discretion in dealing with cases where security is involved; and will provide special machinery for dealing with cases affecting the Public Services.

Research

36. The Bill will provide that the Home Secretary may conduct or assist other persons in conducting research into any matter connected with race relations and that any expenditure incurred with the consent of the Treasury will be defrayed out of moneys provided by Parliament.
FINANCE AND STAFF

In his memorandum to the Home Affairs Committee (H(67)74) my predecessor estimated that the effect of his proposals would be to increase the staff of the Race Relations Board to about eight officers at Headquarters, 16 conciliation officers in the field and appropriate supporting staff, and that its current budget of £60,000 a year might rise to about £150,000 - £175,000. This is still the best estimate but the Treasury have now agreed to carry out an O & M enquiry into the future organisation of the Board to meet its new responsibilities and more precise figures should be available in due course. The Minister of Labour estimates that the proposals will not involve any increase in his departmental staff beyond those already engaged on race relations work. It is not possible at this stage to estimate the additional cost of the proposed enforcement procedures through designated County Courts since this will depend on the number of cases coming to the Courts.