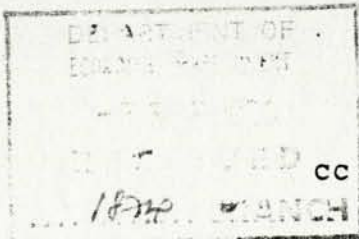


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~~E.R.~~

Dr Cooper take
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Mr Gilliland

- cc PS/Secretary of State (B&L)M
- PS/Ministers (B&L) - M
- PS/PUS (B&L) - M
- PS/Mr Bloomfield
- NI Permanent Secretaries
- Mr Brennan - M
- Mr Stephens
- Mr Innes O/R
- Mr Ferneyhough
- Mr Palmer
- Mr Chesterton - M
- Miss Pease - M
- Mr McConnell
- Mr Bell - M
- Miss Elliott - M
- Mr Shannon
- Mr G Hewitt
- Mr R E Templeton
- Mr Wood - M
- Mr D J R Hill

cc Miss Secretaries

Miss Cooper

Miss R. Lyambler

3/4

UNDERSTANDING THE FLAGS AND EMBLEMS ACT

1. As you know there has been considerable comment within NIO (B) at the widespread misunderstanding both in the media and among many public spokesmen about the powers that exist in the Flags and Emblems (Display) Act (NI) 1954 and what the effect would be if it were repealed.

2. LOB have therefore produced the attached note on the Act for your consideration as the possible basis of a note for editors which might dispel some of the myths and misunderstandings about this piece of legislation in the press and broadcasting media.

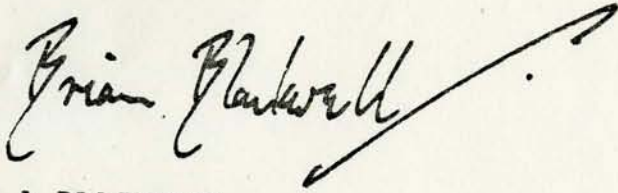
3. I am also giving the note wide distribution throughout the NIO and including the NI Permanent Secretaries to help set an

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atmosphere for informed discussion when the subject of the possible repeal of the Act is considered by the Secretary of State.

A handwritten signature in cursive script that reads "Brian Blackwell". The signature is written in dark ink and features a long, sweeping flourish that extends to the right and then curves back down.

B A BLACKWELL

Law and Order Division

2 September 1986

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THE FLAGS AND EMBLEMS (DISPLAY) ACT (NI) 1954

This Act is widely misunderstood and misrepresented by both communities in Northern Ireland. Many believe that it makes illegal the flying of the Irish tricolour in the Province. Some Loyalists have claimed that its repeal will result in the act of flying the Union flag becoming illegal.

The Act was passed by the Stormont Parliament in fulfillment of a Unionist Party election campaign pledge to give the protection of the law to anyone wishing to fly the Union flag in Northern Ireland; this pledge apparently arose from an incident in Dungiven during the Coronation celebrations. There have been no prosecutions under the Act since at least 1969 (records for earlier years are not available) and the RUC have long accepted that it is not required for public order purposes.

Section 1 makes it an offence for any person to prevent or threaten to interfere by force with the display of a Union flag by another person on or in any land or premises lawfully occupied by that other person. This section does not protect the display of the Union flag on premises illegally occupied, nor by marchers or others in a public place.

Section 2(1) empowers a police officer to require the person displaying any emblem to discontinue its display if he 'apprehends' that having regard to the time, place and circumstances the display may cause a breach of the peace. Refusal or failure to comply with such a requirement is an offence.

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Section 2(2) empowers a police officer to enter any lands or premises to remove and seize an emblem if a requirement under section 2(1) is not complied with, if the person responsible for the display is not readily available or is not present.

Section 2(3) protects a police officer or constable from any civil or criminal proceedings in respect of action performed in good faith in carrying out the provisions of the Act.

Section 2(4) defines an "emblem" as including a flag of any kind other than the Union flag.

Section 3 provides penalties.

Section 4 requires the consent of the Attorney-General for prosecutions.

The effect of Section 1 and 2 taken together is that the police have no power under the Act to require or effect the removal of a Union flag from lawfully occupied land or premises even if its display is likely to cause a breach of the peace. They do however have such powers in relation to other flags. The effect of repeal will be to leave the police to rely for the protection of public order on Article 6 of the Public Order (NI) 1981 under which it is, inter alia, an offence in any public place or at or in relation to any public meeting or public procession to display anything or do any act or, being the owner or occupier of any land or premises to cause or permit anything to be displayed or any act to be done thereon, with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned. Under common law the police have a power of entry without warrant to deal with or prevent a breach of the peace. (This power is retained in Great Britain in section 17(6) of the Police and Criminal Evidence Act and it is proposed that it should be retained in the NI equivalent legislation).