

An Chartlann Náisiúnta
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Reference Code:	2022/47/44
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Report of the Assembly's Ad-Hoc Committee on Flags

1. On 8 September the Secretary of State asked the Assembly to consider his draft regulations on the flying of flags over government buildings in the North and to report back to him by 20 October. On 11 September the Assembly established an Ad-Hoc Committee for this purpose (comprising 4 UUP MLAs, 4 SDLP, 3 Sinn Féin, 3 DUP and one each from Alliance, Women's Coalition, PUP, UUAP and the NIUP) and asked it to report back by 16 October.

2. The Committee met on 6 occasions - with varying degrees of rancour. It invited submissions from the public and asked the Secretary of State, Gerry Loughran, as head of the Northern Ireland Civil Service, and the Equality Commission to give oral evidence. The Secretary of State and Gerry Loughran declined the invitation.

3. Unsurprisingly, and like the Executive before it, the Committee was unable to reach a consensus view on a way forward, splitting along predictable lines. It did however, manage to compile an report which sets out party positions without making any recommendations. This was agreed by the Assembly on 17 October and has now be sent to the Secretary of State who is obliged to "consider" it and to "have regard to the Belfast Agreement" in bringing forward final regulations which will require the approval of both Houses at Westminster. It is anticipated that he will move as quickly as possible in the expectation that the regulations will be seen as a 'win' for Trimble.

Submissions to the Committee by Parties

4. The **SDLP** stated a willingness to consider four options - a) no flags b) both the union flag and the tricolour c) new consensual symbols d) acceptance of both flags flying jointly or separately as appropriate - in a "creative and constructive manner". As an "interim step" it proposed the flying of no flags until a resolution is achieved. If the Secretary of State remained determined to press ahead, however, the SDLP recommended that the union flag should be displayed only on a restricted number government buildings and days. The regulations should have a one-year time limit and should be kept under periodic review. The SDLP also recommended the flying of both flags at meetings of the NSMC and the BIC.

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5. The **UUP** welcomed "the spirit" of the regulations, but took issue with some questions of detail. It called for other flags, ie. the flags of visiting Heads of State and the European flag, to be flown lower than the union flag lest a visit by the President give the impression of joint sovereignty. It called for the inclusion of Parliament Buildings in the list of designated buildings and for the regulations to be extended to cover "future" government buildings, to provide for the eventuality of the headquarters of departments being relocated. It found the absence of sanctions for non-compliance "unsatisfactory". It contended that flying the union flag honours nationalists' obligation under the Agreement to show "sensitivity" and to "promote mutual respect rather than division".

6. **Sinn Féin** challenged the right of the Secretary of State to "put himself forward as a neutral referee", observing that his intention to "restrict the exercise of authority by Ministers" was "bad faith" on the part of the British Government. The British flag "whatever political allegiance to Britain it may convey" has been used by unionism "as a symbol of political dominance, and a tool of sectarian coat-trailing". The approach to flags should be "firmly within the context of the Good Friday Agreement". It regretted that no formal arrangement for monitoring these issues, as suggested in the Agreement, had been put in place.

7. Sinn Féin argued that the draft regulations contravene fair employment legislation and section 75 of the Northern Ireland Act and concluded that "where British cultural symbols are involved in public life, equivalent Irish cultural and political symbols should be given equal prominence. If agreement or consensus cannot be found on this, then a responsible alternative, which fits the required criteria, is to suspend the flying of flags until such agreement or consensus can be found". In summary an "equality scenario" or a "neutrality scenario".

8. The two-page **DUP** submission found the fact that the matter was being debated was evidence of the folly of the Agreement and proposed: the inclusion of Parliament Buildings; that it be made a duty of the "premises officer" of each building to ensure that the flag is flown; that there be no prohibition on the flying of the flag on other occasions; and that no other flag (including the European Flag) be flown without express Assembly approval.

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9. The **Women's Coalition** argued that the "long-term aspiration" was new shared symbols but that "it is not yet the right time to have this debate". It recommended acceptance of the draft regulations "as a holding measure for a twelve-month period only" and that the timeframe of the Committee be extended to match this. Its remit should be widened to look at the four options available. However, the status quo is not a long-term option and the number and purpose of flag days, and the implications of the Human Rights Act for flag flying, need to be examined. The rights of users of public buildings should also be looked at.

10. In a brief submission, the **PUP** suggests that no Committee was required to look at the question as the Union Flag should be flown on the same designated days as the rest of the UK.

11. The **Alliance** was broadly supportive of the draft regulations, welcoming the removal of 12 July from the list of designated days but approving of the inclusion of St. Patrick's Day.

12. The **UUAP** suggested that "the rights of the majority are being eroded or destroyed to satisfy the needs of a vociferous minority". "Northern Ireland is part of the United Kingdom and the flag of the UK is the Union Flag". The regulations should be extended to Parliament Buildings and sanctions should be available for non-compliant Ministers. Government buildings should include local government offices and other public authorities and no other flag should be flown without Assembly approval.

Submission by the Equality Commission

13. As mentioned above, the Equality Commission attended the Committee to provide it with oral evidence. In an interesting presentation, Chief Commissioner Joan Harbison, noting that the Fair Employment Tribunal rather than the Commission adjudicated on complaints, pointed to the case of Brennan v Short Bros. where the FET had stated that "anything which identifies community allegiance in the workplace, needs justifiication". That view had been endorsed in Johnston v Belfast City Council - the only case to date where a finding of discrimination was based solely on the display of an emblem, in this case a

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portrait of the Queen. The Tribunal found that while there are circumstances in which the display of a portrait is appropriate, for example at certain ceremonial functions, it did not consider that its display was appropriate in an office in a cleansing depot.

14. Looking at Section 75 of the Northern Ireland Act, Harbison stated that "the display of flags has clear implications for good relations for public bodies and for workplaces". In particular she pointed to the difference between the employment and customer base at the main headquarters of an organisation and that in more localised areas, where particular problems from a good relations perspective could result. A policy allowing flags at one facility but not another, would offend the idea of inclusivity. The Commission's preference was for workplaces free from the display of flags and emblems. She expressed particular concerned with clause 2.2 which based future practice on past practice. Given that past practice developed on the basis of acceptability to the local community, this provision "carries with it the danger of giving formal Government recognition to the marking out of territory".

15. Harbison also highlighted the need to ensure that the regulations are "human rights-proofed, equality-proofed and good relations-proofed" before enactment. She concluded that "the ceremonial use of the Union Flag on the main administrative headquarters" as envisaged in the regulations "may be capable of justification under fair employment legislation", however it would be for the Tribunal to decide. In a non-ceremonial context, display could, to varying degrees, involve an expression of sectoral community allegiance. This would be regarded as unacceptable.

Conclusion

16. The Committee's work did not really move the issue on - nationalists sought a no-flag compromise pending a longer-term resolution while unionists sought to broaden the regulations to include Parliament Buildings and to guard against the moving of departmental headquarters. The constitutional question, and the meaning of consent, remained fault-lines under the debate.

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17. The Equality Commission's intervention was interesting. While expressing a preference for no flags - and stating clearly that, in its experience this approach led to a more harmonious working environment - it suggested that a distinction could be made between the rights of users and employees at local, rather than headquarter, buildings and pointed to a distinction between "ceremonial" and "non-ceremonial" flag flying. While it did not define what circumstances could reasonably be described as "ceremonial", it did appear to leave scope for the Secretary of State to argue that the flying of flags at departmental headquarters was acceptable under the small amount of existing case law in this area. The Fair Employment Tribunal, however, might take a different view.

18. In the current political climate, the Secretary of State is unlikely to be prompted to rethink his regulations in a serious way. He is also likely to move quickly to seek to help Trimble. He could, however, reasonably go along with SDLP and Women's Coalition calls for a review mechanism, leaving the door open to the possibility (however distant) of local accommodation. He could also agree to a one-year time limit to the regulations as they both suggest.

Helen Blake
20 October 2000

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