

EQ A 17/00



Ken Walker
09/11/2000 10:43

To: Gerry Madden/OFMDFM/DFP@DFP, Pat Osborne/OFMDFM/DFP@DFP, Margaret Glass/OFMDFM/DFP@DFP, Robert Gray/OFMDFM/DFP@DFP

cc:

Subject: FLAGS (NI) REGULATIONS 2000

For information.

Ken

----- Forwarded by Ken Walker/OFMDFM/DFP on 09/11/2000 10:54 -----



● **Karen Bell** 09/11/2000 09:45

To: Ken Walker/OFMDFM/DFP@DFP, Deirdre Kenny/OFMDFM/DFP@DFP

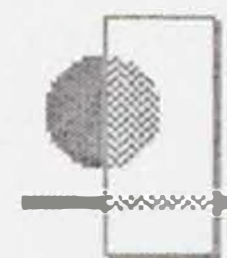
cc:

Subject: FLAGS (NI) REGULATIONS 2000

To see for information.

Patricia

----- Forwarded by Karen Bell/OFMDFM/DFP on 09/11/2000 09:56 -----



Irena Elliott 08/11/2000 18:13

To: Ps Ministers/OFMDFM/DFP@DFP
cc: Gerry Loughran/OFMDFM/DFP@DFP, Will Haire/OFMDFM/DFP@DFP, Tony Canavan/OFMDFM/DFP@DFP, Dick Mackenzie/OFMDFM/DFP@DFP, Peter May/OFMDFM/DFP@DFP, Linda Johnston/OFMDFM/DFP@DFP, Angela Dullaghan/OFMDFM/DFP@DFP, Anne Rainey/OFMDFM/DFP@DFP, Emma Croot/OFMDFM/DFP@DFP, Julie Hill/OFMDFM/DFP@DFP, Heather Johnston/OFMDFM/DFP@DFP, Terry Smyth/OFMDFM/DFP@DFP, Linda Devlin/OFMDFM/DFP@DFP, Chris Stewart/OFMDFM/DFP@DFP, Susan Robinson/OFMDFM/DFP@DFP, Ruth Childs/OFMDFM/DFP@DFP, Maggie Smith/OFMDFM/DFP@DFP, Patricia McAuley/OFMDFM/DFP@DFP, Pamela Stewart/OFMDFM/DFP@DFP, Jenny Conway/OFMDFM/DFP@DFP, Fiona Dynes/OFMDFM/DFP@DFP, Valerie Parkinson/OFMDFM/DFP@DFP, Geoff Beattie/OFMDFM/DFP@DFP, George Gray/OFMDFM/DFP@DFP

Subject: FLAGS (NI) REGULATIONS 2000

Please see attached from Denis McCartney



281-11-00 Flags (FM & DFM 8 Nov 00)

Many thanks.

Irena.

PLANNING REGULATIONS 2000

1. On 14 March 2000, the Secretary of State has sought leave to apply for judicial review of the exercise of the Secretary of State's powers to make these Regulations under Article 14(1) of the Planning (NI) Order 2000. The application for leave will be heard at the High Court tomorrow morning. It is anticipated that the leave will be granted.

2. The grounds of challenge are:

- as the power to make the Regulations is contained in an Order in Council made during suspension under the Northern Ireland Act 2000, it is invalid and improper to exercise the power during restoration that overrides the Northern Ireland Act 2000 (Provisional Order 2000), which expressly states that Orders in Council made during suspension are valid.
- the Regulations are inconsistent with sections 75 and 76 of the Northern Ireland Act (prohibition of discrimination on grounds of religion or political opinion);
- the Regulations are inconsistent with the CFA;
- the Regulations are incompatible with the Applicant's ECHR rights and the Human Rights Act 1998;
- in making the Regulations, the Secretary of State has failed to exercise his discretion properly, that his decision is unlawful, unreasonable and unfair, and that he has acted in bad faith and perversely; and
- that contrary to the legitimate expectations (of whom?) that the policy on flags would be decided by the locally elected representatives in Northern Ireland.

I will let you know if leave is granted.

Denis McCartney

DENIS MCCARTNEY

To: PS/First Minister
PS/Deputy First Minister

cc: copy distribution list below

Date: 8 November 2000

From: Denis McCartney

FLAGS (NI) REGULATIONS 2000

1. Connor Murphy MLA has sought leave to apply for judicial review of the exercise of the Secretary of State's powers to make these Regulations under Article 3(1) of the Flags (NI) Order 2000. The application for leave will be heard in the High Court tomorrow morning. It seems likely that leave will be granted.
2. The grounds of challenge are:
 - as the power to make the Regulations is contained in an Order in Council made during suspension under the Northern Ireland Act 2000, it is invalid and improper to exercise the power during restoration (this overlooks the Northern Ireland Act 2000 (Modification) Order 2000, which expressly saves Orders in Council made during suspension);
 - the Regulations are inconsistent with sections 75 and 76 of the Northern Ireland Act (promotion of equality of opportunity and discrimination on the ground of religious belief or political opinion);
 - the Regulations are inconsistent with the GFA;
 - the Regulations are incompatible with the Applicant's ECHR rights and the Human Rights Act 1998;
 - in making the Regulations, the Secretary of State has failed to exercise his discretion properly, that his decision is unlawful, unreasonable and unfair, and that he has acted in bad faith and partially; and
 - acted contrary to the legitimate expectation (of whom?) that the policy on flags would be decided by the locally elected representatives in Northern Ireland.
3. I will let you know if leave is granted.

Denis McCartney

DENIS McCARTNEY