



"Whysall, Alan"

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To: <Denis.McCartney@ofmdfmni.gov.uk>

Subject: RE: MISCELLANEOUS ISSUES

21/05/2004 18:14

Denis/Mary: thanks.

-----Original Message-----

From: Denis.McCartney@ofmdfmni.gsi.gov.uk  
[mailto:Denis.McCartney@ofmdfmni.gsi.gov.uk]  
Sent: 21 May 2004 17:04  
To: alan.whysall@nio.x.gsi.gov.uk  
Cc: Mary.Bunting@ofmdfmni.gsi.gov.uk;  
Rosalie.Flanagan@ofmdfmni.gsi.gov.uk  
Subject: DUP: MISCELLANEOUS ISSUES

Alan

As requested in your minute of 18 May to Rosalie, I attach a background note and letter/speaking note on flags and emblems prepared by Mary Bunting and myself.

Happy to discuss.

Denis.

(See attached file: 160-04 Flags and Emblems - Background Note (A Whysall) 21.05.04.doc) (See attached file: 160-04 Draft Letter-Speaking Note - Flags Order and Regulations (A Whysall) 21.5.04.doc)

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**Denis McCartney**

To: alan.whysall@nio.x.gsi.gov.uk

Sent by: Irena Elliott Subject: DUP: MISCELLANEOUS ISSUES

21/05/2004 17:03

Alan

As requested in your minute of 18 May to Rosalie, I attach a background note and letter/speaking note on flags and emblems prepared by Mary Bunting and myself.

Happy to discuss.

Denis.



160-04 Flags and Emblems - Background Note (A Whysall) 21.0!



160-04 Draft Letter-Speaking Note - Flags Order and Regulations (A Whysall) 2

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### BACKGROUND NOTE

#### FLAGS AND EMBLEMS

1. The Flags (NI) Order 2000 and the Regulations made under it apply only to government buildings wholly or mainly occupied by Northern Ireland civil servants. The Regulations provide that flags (meaning principally but not exclusively Union flags) may only be flown from those buildings on specified dates or occasions. The compatibility of the Regulations with the Belfast Agreement's obligations of a proper regard for "partnership, equality and respect" was upheld by the High Court in an application for judicial review brought by Conor Murphy MLA.
2. The flying of flags from other buildings, whether publicly or privately owned, is not expressly regulated by statute. However, the display of politically sensitive flags and emblems in the workplace may raise issues under the Fair Employment and Treatment (NI) Order 1998 of unlawful discrimination in employment, and in the delivery of goods, facilities and services by district councils and other public sector bodies.
3. Also, the Code of Practice, Fair Employment in Northern Ireland the Equality Commission's Guidance Notes on the Working Environment require employers to promote a good and harmonious working environment. In *Brennan v Shorts* the FET held that the display of flags (by employees) was intimidating, and, the employer having failed to deal with the matter, discriminatory. In the *Johnston v Belfast City Council* case which related to the display of a portrait of Her Majesty the Queen the Tribunal found that "the display of the portrait is capable in our society of causing offence to certain sections of the workforce. We accepted that there are circumstances where the display of the portrait is appropriate for example at certain ceremonial functions, however we did not consider that its display was appropriate in an office in a cleansing depot with the religious and political make-up of the workforce that existed there. There was no apparent reason for the portrait to

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be displayed in that setting, other than a purely historical one”.

4. In addition, section 75 of the NI Act 1998 requires district councils and other public bodies to have due regard to the need to promote equality of opportunity between inter alia persons of different religious belief or political opinion and to have regard to the need to promote good relations between persons of different religious beliefs, political opinion or racial group.
5. Arising from the statutory obligations many Councils have reviewed the equality and good relations impacts of their policies on flying flags a table outlining Council practices is attached. This is drawn from a draft Report of research commissioned by OFMDFM which will inform new policy and strategy on good relations. **The Report is not yet in the public domain.** The table provides evidence that those Councils which do not fly the Union flag are mainly Nationalist controlled, a number of Councils have already adopted the Flags Order “designated days approach” and a number of other Councils, mainly Unionist controlled fly the Union Flag more often. Castlereagh Council flies the Union Flag, the Ulster (or Northern Ireland) flag and the Council Coat of Arms every day. In the past – 2-3 years ago, the Equality Commission provided advice to Castlereagh Borough Council in relation to its advice on flying flags particularly relating to the flying of the Ulster (or Northern Ireland) flag.
5. Orthodox legal advice to district councils on the official display of British flags and emblems appears to be that adoption of the government’s flag days would be appropriate and defensible, and that more extensive or permanent display might not be legally justifiable. That advice may well be cautious, but these are untested matters, and certainty is not possible.
5. The extension of the flags legislation to district councils and other public bodies would regulate (principally) the display of the Union flag, and would restrain those bodies which fly that flag permanently. It would also have the effect of prohibiting a council or other body from flying any other flag, including the Ulster flag and the Irish flag. The flying of the Irish flag could therefore become an issue, which at present it is not. (DN: Denis to insert reference to implications for Councils who currently fly no flags.)

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### DRAFT – NOT IN PUBLIC DOMAIN

#### District Councils - Policy Overview on Official Flags

- 4.33 With Regard to the flying of flags on Council buildings Belfast City Council in part of its Equality Impact Assessment document produced the following table.

Belfast City Council  
Policy and Resources Committee Minutes 18 April 2003  
Appendix C (B1541-1542)

|    | Council                        | Location                                                            | Flags & Dates                                                                                                                                                                                           |
|----|--------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Antrim Borough Council         | On Council HQ & other civic buildings                               | Union Flag flown on Council HQ every day                                                                                                                                                                |
| 2  | Ards Borough Council           | On Council HQ, Town Hall & Queen's Hall                             | Union Flag flown on designated days                                                                                                                                                                     |
| 3  | Armagh City & District Council | On Council HQ                                                       | Union Flag flown on designated days                                                                                                                                                                     |
| 4  | Ballymena Borough Council      | On Council HQ & Town Hall                                           | Union Flag flown every day                                                                                                                                                                              |
| 5  | Ballymoney Borough Council     | Borough Offices, Riada House, Joey Dunlop Leisure Centre, Town Hall | Union Flag flown on all premises listed on designated days plus New Year's Day, Easter Sunday, 12 July & Christmas Day                                                                                  |
| 6  | Banbridge District Council     | On Council HQ                                                       | Union Flag flown on Council HQ every day                                                                                                                                                                |
| 7  | Carrickfergus Borough Council  | On Town Hall, Leisure Centre, Bentra Golf Club, Sullatober Depot    | Union Flag and Ulster Flag flown on all premises listed every day                                                                                                                                       |
| 8  | Castlereagh Borough Council    | On Council HQ                                                       | Union Flag, Ulster Flag and Council Coat of Arms flown every day                                                                                                                                        |
| 9  | Coleraine Borough Council      | On Council HQ (Cloonavin) and 3 Town Halls                          | Union Flag : Cloonavin every day the building is in use and ceremonial days if not in use, Coleraine Town Hall every day, Portrush and Portstewart Town Halls in July & August and some ceremonial days |
| 10 | Cookstown District Council     |                                                                     | No flags flown                                                                                                                                                                                          |
| 11 | Craigavon Borough Council      | On Civic Centre                                                     | Union Flag flown on designated days                                                                                                                                                                     |
| 12 | Derry City Council             |                                                                     | No flags flown                                                                                                                                                                                          |

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|    | Council                           | Location                                                    | Flags & Dates                                                       |
|----|-----------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------|
| 13 | Down District Council             | On Council HQ                                               | Council Flag flown every day – Union Flag not flown on any occasion |
| 14 | Dungannon District Council        | On Council HQ                                               | Union Flag flown on designated days                                 |
| 15 | Fermanagh District Council        |                                                             | No flags flown                                                      |
| 16 | Larne Borough Council             | On Council HQ and Leisure Centre                            | Union Flag flown every day                                          |
| 17 | Limavady Borough Council          | On Council HQ                                               | Union Flag flown on designated days                                 |
| 18 | Lisburn City Council              | On Council HQ                                               | Union Flag flown on designated days plus 1 July and 12 July         |
| 19 | Magherafelt District Council      |                                                             | No flags flown                                                      |
| 20 | Moyle District Council            |                                                             | No flags flown                                                      |
| 21 | Newry and Mourne District Council |                                                             | No flags flown<br>Council flag being considered                     |
| 22 | Newtownabbey Borough Council      | On all Council administrative buildings and leisure centres | Union Flag flown on all premises listed every day                   |
| 23 | North Down Borough Council        | On Town Hall                                                | Union Flag flown every day                                          |
| 24 | Omagh District Council            | On Council HQ                                               | Council Coat of Arms flown at all times – Union Flag not flown      |
| 25 | Strabane District Council         |                                                             | No flags flown                                                      |

- 4.34 There is a wide variety of approaches to the flying of flags on Council buildings. However, Section 75 of the Northern Ireland Act has made local authorities take a closer look at their policies. We know of Equality Impact Assessments being undertaken in Ards, Belfast and Newtownabbey. This has led Ards Borough Council to change its policy, although, judging by the Council minutes, it was legal advice that forced the change not good relations policy. An Equality Impact Assessment in Newtownabbey however did not lead to a change of policy and Union flags remain on all Council buildings at all times. For at least some Unionist controlled areas there is a movement towards flying the Union flag in accordance with the regulations for Government building designating flag days. This also seems to be the general legal advice and the advice given by the Equality Commission.

### Conclusions

- 4.35 It is clear that the response of councils is ad hoc. Not one local authority appears to have a written policy on the popular flying of flags. The flying of flags on Council buildings varies across the different Councils. Sections 75, of the Northern Ireland Act is forcing local authorities to reconsider policies in this area.

**DRAFT**

**LETTER/SPEAKING NOTE**

The Flags (NI) Order 2000 and the Flags (NI) Regulations 2000 apply only to government buildings wholly or mainly occupied by Northern Ireland civil servants. It is therefore a matter for district councils, other public bodies and the private sector to decide whether the Union or any flag should be flown. The Flags Order was introduced to provide for a common approach to the flying of flags in government departments in Northern Ireland. I do not consider that there is a need to ensure a similar consistency amongst district councils and other bodies. That is a matter for each body, having regard to its particular circumstances.

Any decision about flying the Union or other flag must take account of legislation governing equality and good relations and good employment practices. Councils and other employers may need to take legal advice on the matter, but it is not my understanding that, in the absence of express legislative authority, they would be at risk of successful legal proceedings if they were to display the Union flag on appropriate occasions, perhaps in line with the practice for government buildings.