

To: Executive Committee

FLYING OF FLAGS

1. At the Executive Committee meeting on 11 January there was a brief discussion about the question of the flying of the Union Flag from government buildings. It was agreed at that meeting that the matter would be raised again at the Executive Committee.
2. The Executive Committee Secretariat has taken legal advice on two occasions from the Department's Solicitor and these are attached together with some background papers provided by the Department of Culture Arts Media and Sport (DCMS).
3. Whilst the Executive Committee had requested that a paper should reflect an overview of the use of symbols and emblems throughout the public service, that has not been possible in the time available. The issue of the flying of flags has, however, been raised on a number of occasions both in the media and in the Assembly, and as the next day notified by DCMS for the flying of the Union Flag is 6 February, it was considered that Ministers would wish to consider the issue again in the context of the legal advice now available.
4. The Good Friday Agreement at paragraph 5 in the section on Rights, Safeguards and Equal Opportunity (economic, social and cultural issues) provided that

cc: Mr McGuire
Mrs Brown
Mrs Flanagan
Mr. [unclear]

FROM: [unclear]
DATE: [unclear]
SUBJECT: FLYING OF THE UNION JACK

"all participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating new institutions to ensure that such symbols and emblems are used in the manner which promotes mutual respect rather than division.

Arrangements will be made to monitor this issue and consider what action might be required."

5. In the light of the above, the Executive Committee is invited to:

- consider the legal advice from the Departmental Solicitor in relation to the flying of the Union flag on government buildings; and
- seek to agree an executive policy on this issue.

EXECUTIVE SECRETARIAT

TO: PS/MR SEMPLE

cc: Mr McCusker
Mrs Brown
Mrs Flanagan
Mr Fitzsimmons

FROM: MR McCARTNEY

DATE: 14 JANUARY 2000

FLYING OF THE UNION FLAG FROM GOVERNMENT BUILDINGS

1. This is a note on the question of whether there is any legal basis for the flying of the Union flag from government buildings on specific or any other days.
2. The sources of power and authority for government and its departments are Parliament, the prerogative and the common law. I have not been able to find any statutory provision relating to the flying of the flag.
3. From researches carried out by Terry Smyth last year in the Public Record Office it would appear that the flying of the Union flag was regarded as a prerogative matter. A letter of 18 October 1927 from the secretary to the Northern Ireland cabinet to the Ministry of Finance refers to correspondence between the Home Office and the private secretary to the Governor of Northern Ireland on the approved days for flying the Union flag from Government House, Hillsborough (which I understand to be a property of Her Majesty in right of the Crown). The Governor's secretary was asked by the Home Office "to inform the Government of Northern Ireland of the arrangements made with a view to them considering whether the days selected should be adopted for their Government Buildings". Mr Blackmore's letter asked the Ministry of Finance to "issue instructions accordingly".
4. That the Home Office regarded the matter as one for the Northern Ireland Government, rather than the Governor himself, accords with the provisions of the Government of Ireland Act 1920. Section 8(2) provides that, as respects Irish services (transferred matters), the Governor shall exercise any prerogative or other executive power of His Majesty the exercise of which may be delegated to him by His Majesty. Subsection (3) then provided that

the powers so delegated shall be exercised in Northern Ireland through the Northern Ireland departments. The decision on when to fly the Union flag was a decision of the Northern Ireland cabinet. In 1933 the cabinet included the twelfth of July as a day on which the Union flag should also be flown from government buildings in Northern Ireland.

5. Similar constitutional provisions on prerogative and executive powers were conferred on the Secretary of State by section 7 of the Northern Ireland Constitution Act 1973. By subsections (2) and (3), as respects transferred matters, the Secretary of State exercised through the Northern Ireland departments such prerogative and executive powers of Her Majesty in relation to Northern Ireland as may be delegated to him by Her Majesty. A delegation of all prerogative and executive powers in relation to Northern Ireland as respects any matter which is for the time being a transferred matter within the meaning of the 1973 Act was made on 19 December 1973.
6. Under the Northern Ireland Act 1974, the functions of Northern Ireland departments were discharged subject to the direction and control of the Secretary of State. The practice of the Northern Ireland cabinet seems to have been adopted by the Secretary of State, and yearly directions were issued centrally to the Northern Ireland departments.
7. There is nothing in the Government of Ireland Act 1920, the Northern Ireland Constitution Act 1973 or the Northern Ireland Act 1998, to suggest that the flying of flags from the buildings of the Northern Ireland administration is other than a transferred matter.
8. The constitutional arrangements for Northern Ireland under the Northern Ireland Act no longer contain gubernatorial powers. Section 23(2) provides that, as respects transferred matters, the prerogative and other executive powers of Her Majesty in relation to Northern Ireland (other than as respects the NICS and the Commissioner for Public Appointments for Northern

Ireland) shall be exercisable on Her Majesty's behalf by any Northern Ireland Minister or Northern Ireland department.

9. I have to say I have doubts on whether the flying of the Union flag is truly a matter the authority for which relies on the prerogative or other executive powers of Her Majesty, exercisable by Northern Ireland departments. Any person may fly any flag, including the Union flag, (in which there does not appear to be any ownership) on their property, and a department's decision to do so may simply be a matter of lawful administration, rather than an exercise of a prerogative or executive power delegated to Ministers and departments under section 23.
10. Whatever the source of authority, be it section 23(2) or the common law, it is clear that this, as a transferred matter, is for decision of Ministers, rather than a legal imperative by direction of Her Majesty. Accordingly, subject to any agreement which may be made in the Executive Committee, the issue of the flying of the Union flag from government buildings is for individual Ministerial discretion.

DENIS McCARTNEY

TO: MR McCUSKER

From: Denis McCartney

Date: 25 January 2000

**cc PS/Mr Semple
Mrs Brown
Mrs Flanagan
Mr Fitzsimons
Mrs McGivern**

FLYING THE UNION FLAG

1. I have seen Mr Lavery's note of 20 January, which suggests that there may exist in the Crown some residual power by which government departments in Northern Ireland can be commanded by Her Majesty to fly the Union flag.
2. The attached regulations, issued by the Department of Culture, Media and Sport, are certainly issued in the language of command of Her Majesty. The list of days for hoisting flags on government buildings is also clearly intended to apply on a UK-wide basis; note 1 of AM32 refers to the flying of national flags in a subservient position to the Union flag, and the accompanying notes refer variously to nationwide flag flying.
3. Whatever the status of this command in Great Britain, it is drafted in terms which disregard the constitutional arrangements for Northern Ireland. The prerogative only exists to the extent that it is not removed or constrained by Parliamentary intervention, and that Parliamentary intervention is now contained in the Northern Ireland Act 1998. Under the Act, if a matter is not excepted or reserved it is transferred. Those classifications apply to powers comprised in statute, in the common law, and in what is left of the Crown's ancient prerogative powers; no sources of legal authority fall outside the ambit of what is excepted, reserved or transferred.
4. Assuming that the flying of the Union flag is truly a matter regulated by the royal prerogative then, not being excepted or reserved by Schedules Two or Three of the Northern Ireland Act, it is a transferred prerogative matter.

Transferred prerogative powers (other than those relating to the NICS and the Commissioner for Public Appointments) are expressly dealt with by section 23(2), and are exercisable on Her Majesty's behalf by Northern Ireland Ministers and departments. Having been assigned by Parliament to those Ministers and departments they cannot be retrieved by Her Majesty other than by Act of Parliament. There is no provision in section 23 by which Her Majesty can direct and control how the prerogative powers are to be exercised on Her behalf. The provisions of the Northern Ireland Act preclude Her command on flags or any other transferred prerogative matter having any legal effect in Northern Ireland.

5. I have discussed this briefly and informally with Home Office lawyers. They agree that, whatever the status of the command on flags in GB, it is without legal authority in Northern Ireland.

DENIS McCARTNEY

AM32

01712112040



DAYS FOR HOISTING FLAGS ON GOVERNMENT BUILDINGS

From 8 am till sunset

6 February	Her Majesty's Accession
19 February	Birth of the Duke of York
1 March	St David's Day (<i>in Wales only, see note 1</i>)
10 March	Birthday of The Earl Of Wessex
March	Commonwealth day (<i>second Monday</i>)
21 April	Birthday of Her Majesty the Queen
23 April	St George's Day (<i>in England only, see note 1</i>)
9 May	Europe Day (<i>see note 5</i>)
2 June	Coronation Day
June	Official Celebration of Her Majesty's Birthday (<i>see note 2</i>)
10 June	Birthday of The Duke of Edinburgh
4 August	Birthday of Her Majesty Queen Elizabeth The Queen Mother
15 August	Birthday of The Princess Royal
21 August	Birthday of the Princess Margaret
November	Remembrance Day (<i>second Sunday, see note 3</i>)
14 November	Birthday of The Prince of Wales
20 November	Her Majesty's Wedding Day
30 November	St Andrew's Day (<i>in Scotland only, see note 1</i>)
Also	The day of the opening of a Session of the Houses of Parliament by Her Majesty (<i>see note 4</i>)
Also	The day of the prorogation of a Session of the Houses of Parliament by Her Majesty (<i>see note 4</i>)

- Notes**
- Where a building has two or more flagstaffs the appropriate National flag may be flown in addition to the Union Flag but not in a superior position.
 - Date to be notified
 - Flags should be flown right up all day.
 - Flags should be flown on this day even if Her Majesty does not perform the ceremony in person. Flags should only be flown in the Greater London area.
 - The Union Flag should fly alongside the European Flag. On Government Buildings that only have one flagpole, the Union flag should take precedence.
 - The Royal Standard is never hoisted when Her Majesty is passing in procession. If the Queen is to be present in a building, you should get in touch with the Department for Culture, Media and Sport, Buildings, Monuments and Sites Division, 2-4 Cockspur Street, London SW1Y 5DH. (Telephone 020 7211 2115 - Facsimile 020 7211 2040).



RULES FOR HOISTING FLAGS ON GOVERNMENT BUILDINGS

The Following Regulations are Circulated by
Her Majesty's Command
to the Government Offices Concerned

How the Union flag shown be flown

The broader diagonal white stripe should be at the top left hand side of the flag nearest the flagpole.

Dates on which flags are to be flown

The dates named on the accompanying Schedule.

The Department for Culture, Media and Sport will inform you of any other occasions where Her Majesty has given a special command.

Provincial buildings

The Schedule applies to Provincial as well as to London Buildings (please see notes 1 and 4). Where it has been the practice to fly the flag daily, as in the case of some Custom Houses, this may continue.

Occasions on which flags are to be flown at half mast (Half mast means the flag is flown two-thirds up between the top and bottom of the flagstaff)

- (a) From the announcement of the death up to the funeral of the Sovereign, except on Proclamation Day, when they are hoisted right up from 11 am to sunset.
- (b) The funerals of members of the Royal Family, subject to special commands from Her Majesty in each case.
- (c) The funerals of foreign Rulers, subject to special commands from Her Majesty in each case.
- (d) The funerals of Prime Ministers and Ex-Prime Ministers of the United Kingdom, subject to special commands from Her Majesty in each case.
- (e) The Department for Culture, Media and Sport will inform you of any other occasions where Her Majesty has given a special command.

Rules when days for flying coincide with days for flying flags at half mast

To be flown

- (a) although a member of the Royal Family, or a near relative of the Royal Family, may be lying dead, unless special commands are received from Her Majesty to the contrary;
- (b) although it may be the day of the funeral of a Foreign Ruler.

If the body of a very distinguished subject is lying at a Government Office the flag may fly at half-mast on that office until the body has left (provided it is a day on which the flag would fly) and then the flag is to be hoisted right up. On all other Public Buildings the flag will fly as usual.

Department for Culture, Media and Sport, Buildings, Monument and Sites Division.
2-4 Cockspur Street, London SW1Y 5DH. (Telephone 020 7211 2115 - Facsimile 020 7211 2040).

FLAG FLYING ON GOVERNMENT BUILDINGS

Rules for hoisting flags on Government Buildings are issued by this Department in consultation with the Lord Chamberlain's Office as the instructions to fly flags are a Command of Her Majesty the Queen. Under that Command flags can only be flown on certain appointed days (see DOE form AM32) and the flag to be flown must be the Union flag. There are currently 20 appointed flag flying days but flags may be flown additionally by Special Command of Her Majesty, for Royal Births and State Visits and at half mast for State Funerals or for the death of a Head of State of a Commonwealth country.

These rules only apply to Government Buildings and although there is no definition of a Government Building for this purpose it is generally accepted to mean a building owned or used by the Crown and predominantly occupied or used by Civil Servants or Her Majesty's Armed Forces; in other words buildings directly within the control of Central Government. Local Authorities, other public bodies, private companies and individuals are at liberty to fly whatever flags they wish on whichever day they wish as long as the flags do not carry an advertising slogan in which case they would be subject to Advertisement Control Regulations. Most organisations however choose to follow the Government line.

The rules for flag flying are very strict and the Lord Chamberlain's Office are always very reluctant to an increase in flag flying because they feel that flags should only be flown on very special and usually Royal occasions. Any increase, notwithstanding the kind of flags, reduces the impact and importance of these very special occasions. In addition to these notes see also DOE form AM33, "Rules for Hoisting Flags on Government Buildings" (attached) and Administration Circular 21/68 which even though old contains the basic guidelines for flag flying and acts as a good reference point (attached). See also Accommodation Managers Guide Section AQ607 Ceremonial Procedures and the District Works Office Code DW548.

General enquiries on flag flying protocol and policy are received from private companies and individuals in addition to other Government Departments. In the main these can be dealt with without reference to the Lord Chamberlain's Office for advice.

DOE form AM32 "Days for Hoisting Flags on Government Buildings" is issued on request but should already be in the possession of all Government Departments. It is for the individual Department to ensure that flags are flown on those buildings for which they are responsible, on these 20 appointed days, without separate instructions being issued by the Department. When Her Majesty issues a Special Command to fly flags the Lord Chamberlain passes the details to the Department. Letters are then forwarded to all those on the "Flag letter distribution list" (attached). Stick address labels are attached. For nationwide flag flying 125 letters need despatching but this is reduced by about 15 when it is limited to the London Metropolitan Area only. Despatches of this nature which can be anticipated each year are as follows:-

On the occasion of each State Visit - 2 or 3 times per year April and/or June and July and/or November, 2 London only plus one possibly London and Windsor.

The Queen's Official Birthday - June - Nationwide.

Prorogation and State Opening of Parliament - Usually November - London only.

Other occasions obviously cannot be predicted.

When the Command to fly flags falls outside normal working hours the Lord Chamberlain's Office will telephone one of the DOE Officers on the "Silent Hours flag flying List" (attached). That officer will then contact the Duty Clerk at Marsham Street and the Control Engineer at the Palace of Westminster to ensure they have advanced warning. The first

duty the following morning will be to arrange a telephone exercise letting all the contacts on the Flag Flying Emergency Telephone List of the arrangements to fly flags. The list is split into three, one section each being taken by the HEO, EO and AO - this is to speed up the dissemination of the information. Each Government department contact will transmit the instructions to their own network of contacts.

The Flag Flying Emergency Telephone List is updated as notified but letters requesting any changes in details are sent out to all those on the list on an annual basis.

As a matter of courtesy we have continued to pass on information about flag flying dates to certain private companies and non Governmental bodies who were on our original notification list.

Lord Chamberlain's Office:-

Mr Parker Hentley
Buckingham Palace
London SW1

071 930 4832.