



cc PS/PUS (B&L)
PS/Sir D Fell
Mr Spence
Mr Legge
Mr Hamilton
Mr Bell
Mr Steele
Mr Watkins
Mr Wood (B&L)
Mr Beetoa
Mr Capavan *u.d.*
Mr Hill
Mr McCabe
Mr McCormick
Mr Perry
Mr Stephens

FROM: M F T Finnegan (Miss)
Local Government Division

DATE: 20 March 1996

TO: PS/Minister

PA 296/95
Mr Carson

WAR MEMORIALS

INTRODUCTION

1. The Chief Executive of Down District Council has written to the Secretary of State about a resolution passed by the Council, seeking a change in the legislation to allow the names of local soldiers killed in the 'troubles' to be added to war memorials. PS/Mr Moss has been asked to reply.
2. The Council's action results from the campaign by Mrs E Cochrane to have the name of her son, a UDR soldier killed by an IRA landmine, put on the local war memorial in Downpatrick. Mr Moss may recall that in February he wrote to Mrs Cochrane, who had requested a meeting with the Secretary of State and himself to discuss the matter. (copy attached).

3. The Chief Executive states that he has been given to understand that the legislation here is out of step with that in GB, where local authorities have a general power to alter war memorials by adding the names of soldiers killed in Northern Ireland.

4. As we were already aware from media reports, Down District Council is copying its letter to other Councils, seeking support for its proposal. It is worth noting that Down District Council is Nationalist controlled and is almost guaranteed of the backing of Unionist Councils.

5. In February, David Trimble raised with the Secretary of State, once again, the question of some form of public memorial for security force personnel killed during "the troubles". His earlier approaches were in January and February 1994. A reply has just recently issued from the Secretary of State.

BACKGROUND

6. The Northern Ireland legislation relating to war memorials is very old. It is similar to existing provisions in Great Britain which date from 1923 as amended in 1948. A news report a few weeks ago indicated that the Great Britain legislation had recently been amended but the Home Office has confirmed this is not so.

7. The two relevant pieces of Northern Ireland legislation are:-
 - the Local Government Act (NI) 1923, Section 7, which provides that Councils may incur reasonable expenditure in the maintenance etc of any war memorial; and

- the Public Health and Local Government (Miscellaneous Provisions) Act (NI) 1955, Section 8 and Schedule, which extended the power of Councils to incur expenditure in the alteration of any war memorial "... so as to make it serve as a memorial in connection with any war subsequent to that in connection with which it was erected".

8. There is no definition of 'war' in either the Northern Ireland or the GB Regulations. Informal advice from DOE (L) to the Prime Minister's office in 1988 was that the addition of names to war memorials is a matter for decision by the authority concerned. It is our understanding that most local authorities in Great Britain treat the Falklands conflict as a 'war' even though neither side declared a state of hostility. The NI 'troubles' have never been recognised as a 'war'.

9. A further piece of legislation which may be of significance in this debate is

- the Public Health Acts Amendment Act 1890 - Section 42, which authorises Councils to erect a statue or monument within their district.

10. In responses to date, the line taken with regard to adding names to war memorials has been firm, in that Councils have no powers to do this under existing legislation. We have resisted requests to change the legislation and to consider doing so ahead of Great Britain would be unusual.

11. Last year, in response to a campaign, led by Mr Brian Bethell from Runcorn, Cheshire, for a national monument in recognition of all those who lost their lives as a result of the 'troubles' during the last 25 years, the Prime Minister asked the relevant Whitehall Departments to take this idea forward. Following two meetings involving officials towards the end of last year, it was agreed that:

- even though there had been some months of relative peace, the time was still not right to erect a national memorial;
- if there were to be a memorial it should be a symbol of reconciliation;
- any memorial should be sited in Belfast; and
- any memorial should not have names or even an inscription.

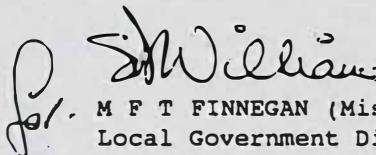
PS/Prime Minister was advised of these conclusions on 17 January 1996. With an end to the ceasefire and a return to violence in recent weeks, there can be no question of moving on this policy issue for some time.

12. The Department has not drawn to the attention of Councils the legislation outlined at paragraph 9 above in any of the responses to date. However, if Councils are going to get involved in canvassing support for changing the legislation relating to war memorials (1923 and 1955 Acts) they may have to be reminded that they have discretion to erect monuments etc. In addition to the sensitivity involved, this would have initial and ongoing cost implications for Councils. The reference in the (incorrect) news

report about amended legislation in Great Britain may be related to the successful campaign of Mr Brian Bethell, the step-father of Paul Worrall, a soldier who was killed while serving in Londonderry in 1990. When Mr Bethell found a clause in the Local Authority Powers Act, authorising local authorities to raise cash for the erection and maintenance of memorials, Halton Borough Council agreed to erect a plaque with Paul Worrall's name inscribed on it. It was placed alongside the names of the dead of the two world wars on the stone cross of Runcorn Cenotaph in late 1993.

RECOMMENDATION

13. It is recommended, in view of the above that:-
- i. we continue to take the line that no names may be added to existing war memorials;
 - ii. we correct the misunderstanding that the GB legislation has changed;
 - iii. we invite Down District Council to seek a formal legal opinion on the relevance of Section 42 of the Public Health Acts Amendment Act 1890 in addressing this problem.
14. A draft response to Down District Council, setting out the position outlined at 13 above, is attached for your consideration.
15. Colleagues in CPL, PAB, SPOB, and REL Divisions have been consulted on the contents of this submission.


for. M F T FINNEGAN (Miss)
Local Government Division

DRAFT

01232 540723

Owen P O'Connor Esq
Chief Executive
Down District Council
24 Strangford Road
DOWNPATRICK
BT30 6SR

Your Ref:

Our Ref: CS/22

Date: March 1996

Dear Mr O'Connor

Your letter of 29 February to the Secretary of State regarding war memorials has been passed to Mr Moss, as this Department is responsible for the legislation in question. Down District Council are requesting a change in the legislation to allow the names of local soldiers killed in the 'troubles' to be added to existing war memorials. The Minister has read your letter and he has asked me to reply.

As you rightly point out, the legislation only allows for the names of persons killed in a war to be added to existing war memorials and the 'troubles' do not constitute a war. You also refer to what you understand to be an anomalous situation, whereby local authorities in Great Britain have a general power to add to war memorials, the names of soldiers killed in Northern Ireland. This is not in fact the case. The legislation in Great Britain covering war memorials is similar to that which applies in Northern Ireland; it dates from 1923 and was amended in 1948.

Some recent media reports have referred to changes in the Great Britain legislation within the past few years. There have been no such changes. The misunderstanding may be related to a case where a Council in England decided to honour a soldier who was killed while serving in Northern Ireland. In this instance the soldier's name was not added to a war memorial, but was inscribed on a plaque erected alongside the existing war memorial.

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I have to advise you that the Department has no immediate plans to change the legislation which operates in Northern Ireland. However, with reference to the general issue of the erection of monuments and statues in your district, your Council may wish to obtain a legal opinion on the relevance of section 42 of the Public Health Acts Amendment Act 1890 in addressing this problem.

Yours sincerely

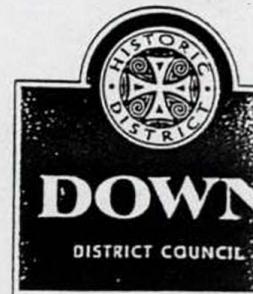
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2.

CJS

OWEN P. O'CONNOR
Clerk of the Council and Chief Executive

-4 M...
20/02/96/gk



Our Ref:
CS/22

Your Ref:

Date:
29 February 1996

Being dealt with by:

The Right Honourable Sir Patrick Mayhew QC MP
Secretary of State
C/O The Private Office
Stormont Castle
BELFAST
BT4 38T

Dear Secretary of State

The Council at a meeting held on 19 February 1996 resolved that I write to you requesting a change in the law relating to the powers of District Councils in Northern Ireland to have names of local soldiers killed in "the troubles" added to war memorials.

A resident of the District, whose son, a member of the then Ulster Defence Regiment was killed by a landmine explosion outside Castlewellan, has requested that an inscription bearing his name be placed on the local war memorial in Downpatrick at no cost to the Council.

The Council sought legal advice on the matter and has been informed that it could be leaving itself open to legal challenge by an aggrieved person in allowing such an inscription to be so placed. A District Council's powers at present are defined in Section 3 of the Local Government Act (NI) 1923, as amended by Section 9 of, and the schedule to the Public Health and Local Government (Miscellaneous Provisions) Act 1955, the Local Government (Modifications and ~~Repeals~~) Order (NI) 1973 and Schedule 3 to the Local Government (Miscellaneous Provisions) (NI) 1985. These various pieces of legislation permit District Councils to incur reasonable expenditure on the alterations to war memorials in various circumstances.

The advice given is that these powers relate specifically to alterations in relation to persons killed during a war and do not extend to persons killed in a civil disturbance such as we have experienced in Northern Ireland.

I have been given to understand that Local Authorities in the rest of the United Kingdom have a general power to alter war memorials by adding the names of soldiers killed in Northern Ireland, which then gives rise to an anomalous situation vis-a-vis a District Council in Northern Ireland.

I would request, on behalf of Down District Council, that you give immediate attention to this matter as it has caused grave concern within the District for a considerable period of time.

I have been requested to copy this letter to all other Local Authorities in Northern Ireland seeking their support to this proposal.

Yours sincerely

OWEN P. O'CONNOR
Clerk and Chief Executive

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