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Marie 140/99
file

From: Tony McCusker

cc PS/Mr Semple

Date: 21 December 1999

Mr McCartney

Mr Smyth

Mrs Brown

Mrs Devlin

Mr Woods

Mr Lavery

Mr May

Mr Campbell

Dr Gudgin

Mr Logue

Mr Larkin

Mr Barrington

Mrs Flanagan

Mr Fitzsimons

To: 1. PS/Mr Haughey

PS/Mr Nesbitt

2. PS/First Minister

PS/Deputy First Minister

Circulation

~~Mr Millen~~

~~Mr Rea~~

Mrs Hetherington

FLYING OF THE UNION FLAG ON GOVERNMENT BUILDINGS IN NORTHERN IRELAND

Summary

Issue: Flying of the Union Flag on Government
Buildings in Northern Ireland

Timescale: Urgent

Recommendation: That the First and Deputy First Ministers agree
that Departments should be advised as normal
about the days for flying the Union Flag in
2000.

DETAIL

1. Flag-flying is not based on Statute. The Department of Culture,
Media and Sport is responsible for promulgating the rules for flying
the Union Flag on Government buildings in Great Britain on

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Command of Her Majesty The Queen. It has been the invariable practice under direct rule to follow those rules for Northern Ireland Government Departments. However, in addition to the fifteen days so specified by that Department, there are five days – New Year's day, St Patrick's day, Easter Sunday, 12th July and Christmas day, which are unique to Northern Ireland. The practice of flying the flag on these additional days arose from decisions taken by the Stormont Parliament in the 1920s and 1930s.

2. The First and Deputy First Ministers will recall that the previous Secretary of State wrote to each of them on 12 February this year about her proposal to deschedule the five extra days on which the Union Flag is flown on Government buildings in Northern Ireland. The Secretary of State did not, however, reach a decision before devolution and so the issue of flag-flying on buildings occupied by the devolved administration is now a matter for Northern Ireland Ministers. In the absence of any agreement by the Executive Committee on the issue it would fall to individual Ministers as to whether or not a direction was given to staff to fly the Union Flag.
3. At this time of the year we would normally inform Departments of the flag-flying days for the incoming year, starting with New Year's day. A list of the days in 2000 is attached for your information. (Christmas day 1999 was already in last year's schedule). The Minister of Education has also now sought a direction from OFMDFM to Departments not to fly flags until such time as the Executive Committee has considered the matter and reached agreement.

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4. The legal position is straightforward. There is no legal requirement to fly the Union Flag, nor does the First Minister or the Deputy First Minister have the power of direction as suggested by Mr McGuinness. Mr McGuinness has also used the Good Friday Agreement as the basis for his argument to direct Departments not to do anything until an Executive Committee decision has been reached. It is however just as easy to argue a contrary position to the effect that the status quo should hold until the Executive Committee decides otherwise.

OPTIONS

5. Limited, but three broad options suggest themselves:
 - do nothing. Departments already know the key dates so it is a matter for Ministerial direction. Unless Departmental Ministers direct otherwise Departments would fly the Union Flag except on buildings in areas (West Belfast for example) where the issue is locally sensitive. There is standard practice for local offices to have discretion to cover a variety of circumstances;
 - advise the dates as usual, again leaving it to each Minister to accept or direct otherwise; and
 - if the First Minister and the Deputy First Minister agree that the status quo is a reasonable position in the absence of an Executive Committee decision, consider discussions with the

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Ministers of Education and Health, Social Services & Public Safety to agree the two holiday occasions on the basis of very early consideration by the Executive Committee, perhaps at the second or third meeting in January.

6. There is no easy answer here and the presentational risks for the Executive are considerable. A Ministerial direction not to fly the Union Flag is bound to attract considerable publicity, and perhaps some high profile incidents of staff refusing to follow a direction.
7. It might be possible to try and persuade the two Sinn Fein Ministers that to push this issue before it has come before the Executive Committee presents serious risks for the Executive as a whole and that it is politically defensible to argue that the status quo should hold until such time as there is agreement on the way ahead. To be frank, however, I doubt if we could persuade them to accept the status quo.
8. On balance, therefore, I think we should advise Departments of the dates for 2000 accepting that some Ministers will not implement the arrangements.

TONY McCUSKER

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