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**MEMORANDUM FOR THE JOINT COMMITTEE ON STATUTORY
INSTRUMENTS FROM THE SECRETARY OF STATE FOR NORTHERN
IRELAND**

DRAFT FLAGS (NORTHERN IRELAND) ORDER

The purpose of this Memorandum is to advise the Committee that it is intended to introduce a draft Flags (Northern Ireland) 2000 to Parliament as soon as possible under powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000.

During the period of direct rule in Northern Ireland ending in December 1999, Orders in Council made under paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 were exempted from reference to the Joint Committee on Statutory Instruments. No such exemption applies to Orders in Council made under the 2000 Act.

The draft Order in Council (copy enclosed) confers powers on the Secretary of State to regulate the flying of flags at government buildings in Northern Ireland.

There is no statutory provision for the flying of flags at government buildings in the UK. In GB, in terms of public buildings, the flying of the Union flag is by Royal command. This is an exercise of the Royal Prerogative. Under the

Northern Ireland Act 1998, prerogative powers on transferred matters can be exercised by any Northern Ireland Minister.

Since the flying of flags is a transferred matter, it should be dealt with by the Executive Committee of the Northern Ireland Assembly. However, in light of the political sensitivities concerning this matter, the Secretary of State has decided that he should take the authority now to regulate the flying of flags on NI government buildings, should the need arise.

The draft Order provides a regulation making power for the Secretary of State in relation to the flying of flags on government buildings in Northern Ireland. The draft Order provides for commencement by the Secretary of State. Until that Order is made, the Secretary of State has no statutory power to make regulations. Until then, the prerogative or executive power of the Northern Ireland Ministers to make directions on flags remain and once the Commencement Order is made, the matter of flags is placed on a statutory footing and the prerogative is abrogated. The power to fly flags can then only be exercised in accordance with such Regulations as are made by the Secretary of State.

The draft Order provides for a staged commencement, to enable the procedures for making the regulations (consultation with the Assembly) to be undertaken by the Secretary of State. Commencement of the Regulation making power can

they be made in conjunction with the making of the Regulations. This avoids the lacuna during which no-one has power to decide on the flying of flags on government buildings because the Order has been commenced but the Regulations have yet to be made.

The order provides that where the Secretary of State proposes to make regulations to regulate the flying of flags, a draft of those regulations shall be referred to the Northern Ireland Assembly who in turn will report to the Secretary of State the views expressed by the Assembly. The regulations would then be subject to approval by both Houses of Parliament.

While we would have liked to have full consultation on the proposals this was not possible if the legislation was to be in place before the anticipated restoration of powers to the Northern Ireland Assembly, on 22 May 2000.

Secretary of State for Northern Ireland

DRAFT FLAGS (NORTHERN IRELAND) ORDER 2000

Question: Why do we need this legislation?

Answer: There is currently no statutory provision on flying of flags from government buildings. The flying of the flag is by Royal command and is an exercise of the Royal prerogative. Under the Northern Ireland Act 1998 prerogative powers on transferred matters can be exercised by any Northern Ireland Minister. Thus, one Minister could decide that the Union flag should not be flown while another could decide that it be flown every day. Consequently, policy on flying the flag from government buildings in Northern Ireland could differ from department to department.

Question: How does the Secretary of State propose to regulate the flying of flags?

Answer: Regulations would be drafted and referred to the Northern Ireland Assembly. The Assembly would consider the proposed regulations and report back on their views to the Secretary of State who, in considering those views, would have regard to the Belfast Agreement. The regulations would then be subject to affirmative resolution of each House of Parliament.

Question: Will the Union flag no longer be flown on government buildings in NI?

Answer: The purpose of this Order is to give the Secretary of State power to regulate the flying of flags on government buildings in NI should agreement on this issue not be reached by the NI Executive Committee. The detail on flying the flag will be contained in regulations on which the Assembly will be consulted and which will be subject to affirmative resolution in both Houses of Parliament.

Question: Who decides the dates on flying of flags in the rest of the UK?

Answer: The days are notified by the Lord Chamberlain.

Question: What are the dates on which flags are flown in the rest of the UK?

Answer: The Lord Chamberlain announces 15 specified dates:

- 6 February - Her Majesty's Accession
- 19 February - Birthday of the Duke of York
- 10 March - Birthday of the Earl of Wessex
- 13 March - Commonwealth Day
- 21 April - Birthday of Her Majesty the Queen
- 9 May - Europe Day
- 2 June - Coronation day
- 10 June - Birthday of the Duke of Edinburgh
- 17 June - The Queen's Official Birthday
- 4 August - Birthday of Her Majesty Queen Elizabeth the Queen Mother
- 15 August - Birthday of the Princess Royal
- 19 August - Birthday of the Princess Margaret
- 12 November - Remembrance Day
- 19 November - Birthday of the Prince of Wales
- 20 November - Anniversary of her Majesty's Wedding

Question: What are the 5 extra days on which the flag is flown from government buildings in Northern Ireland?

Answer: New Year's Day
St Patrick's Day
Easter Sunday
12th July
Christmas Day.

Question: Why are there 5 extra days for flying the flag on government buildings in N Ireland?

Answer: These follow arrangements put in place by the former Northern Ireland Parliament.

Question: Why legislate in N Ireland only?

Answer: There is consensus of opinion on the flying of the Union flag in other parts of the United Kingdom and no opposition to the present arrangements. Flag flying is politically sensitive in Northern Ireland and for this reason it has been decided that the Secretary of State should have authority to regulate the flying of flags on NI government buildings.

Question: Is the Secretary of State prepared to bring NI into line with the rest of the UK?

Answer: This will be a matter for decision following consultation with the Assembly on the proposed regulations.

Question: Will the SOS continue to require the flag to be flown on 12th July?

Answer: This will be a matter for decision following consultation with the Assembly on the proposed regulations.

Question: Will the flag be flown on all NI government buildings or will there be discretion e.g. to fly the flag on HQ buildings only?

Answer: Again, this will be a matter for decision following consultation with the Assembly on the proposed regulations.

Question: Will the power to regulate apply to the flying of the flag at District Council offices?

Answer: No, that will remain a matter for District Councils.

The proposed regulating power in this Order will apply only to government buildings that are wholly or mainly occupied by members of the Northern Ireland Civil Service.

Question: What is the current practice for flying the Union flag at government buildings?

Answer: The practice is that the flag is flown on the 20 specified days at all government building where there is a flagpole. The responsibility for flying the flag rests with the department with main occupancy of the building. Each department is also responsible for notifying its NDPBs of the days on which the Union flag is flown. It is then a matter for each body to decide whether or not to fly the flag.

Question: Will the Secretary of State consult with the NI Assembly when making the Regulations?

Answer: The Order provides that where the Secretary of State proposes to make regulations to regulate the flying of flags, a draft of those regulations shall be referred to the Northern Ireland Assembly who in turn will report to the Secretary of State the views expressed by the Assembly. The regulations would then be subject to approval by both Houses of Parliament and the draft laid before the House would be accompanied by any report made to the Secretary of State by the Assembly.

Question: What is the statutory authority for making this Order?

Answer: The draft Order is to be made under powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000.

Question: What is the purpose of the Order?

Answer: The draft Order in Council confers powers on the Secretary of State to regulate the flying of flags in Northern Ireland.

Question: How will the power be exercised?

Answer: The draft Order provides a regulation making power for the Secretary of State in relation to the flying of flags on government buildings in Northern Ireland. The draft order provides for a staged commencement by the Secretary of State, to enable the procedures for making the regulations (consultation with the Assembly) to be undertaken by the Secretary of State

Question: Why does the Order need to be made before restoration?

Answer: The Order in Council needs to be made before restoration because the subject matter deals with "transferred" matters: matters for which the devolved administration has legislative responsibility which will on restoration once again become the responsibility of the devolved administration. The Secretary of State, therefore, has power to bring forward legislation in this area only while suspension is in place, when, under the Northern Ireland Act 2000, he has power to bring forward legislation in "transferred" matters. This means the necessary Order in Council must be made this week.