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20 FEB 2002
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**The Office of the First Minister
and Deputy First Minister**

Anti-Discrimination Division
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**FROM: Mrs Patricia McAuley
Anti-Discrimination Branch**

**cc: Mr McCartney
Mrs Flanagan**

DATE: 20 February 2002

Mrs Bunting

CRAIGAVON BOROUGH COUNCIL: FLYING THE UNION FLAG

1. Your note on Alison Coey's minute of 23 January to you refers. I have now received advice from Denis McCartney.
2. With regard to the issues raised by the First Minister:
 - (a) The Equality Commission indicates that it provided advice to Craigavon Borough Council in December 1999 on flying the Union flag. The Commission set out the current legislative background ie the requirements of the Fair Employment and Treatment Order and the guidance set out in the Fair Employment Code of Practice which states that employers should, "promote a good and harmonious working environment and atmosphere" and the requirements of s75 of the Northern Ireland Act. I understand that the Commission advised the Council to seek its own legal advice on the issue. The Commission has also advised that in meetings with Council

officials, it provided guidance on a range of circumstances where flying the Union flag may be unlawful.

According to press reports, the Council has now agreed to restrict flying the flag on those days on which, under the Flags Regulations (NI) 2000, the Union Flag is required to be flown from government buildings. Of course, the Flags Regulations do not apply to Council buildings.

- (b) I understand that the Commission is aware of the judgement in the application by Conor Murphy on the flying of flags from government buildings. In that judgment Mr Justice Kerr found that the Flags Regulations (NI) 2000 were compatible with the Belfast Agreement on the following grounds:

“The Union flag is the flag of the United Kingdom of which Northern Ireland is a part. It is the judgment of the Secretary of State that it should be flown on government buildings only on those days on which it is flown in Great Britain. By thus confining the days on which the flag is to appear, the Secretary of State sought to strike the correct balance between, on the one hand, acknowledging Northern Ireland’s constitutional position, and, on the other, not giving offence to those who oppose it. That approach seems to me to exemplify a proper regard for “partnership, equality and mutual respect” and to fulfil the Government’s undertaking that its jurisdiction in Northern Ireland “shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions”. I do not consider, therefore, that the Regulations have been shown to be in conflict with the Belfast Agreement”.

It is clear from that passage that the finding of compatibility of the Regulations with the Agreement is grounded on the flying of the flag on specific, ceremonial days, rather than permanently, which appears to have been the issue in Craigavon.

(c) The Equality Commission will take into account Mr Justice Kerr's judgement in providing advice to employers and service providers.

3. I suggest you respond to the First Minister and Deputy First Minister along the lines of the attached draft.

Patricia McAuley

P McAULEY

☎ 23156

DRAFT FOR M BUNTING'S SIGNATURE

FROM: Mary Bunting
Director, Equality Director

cc: See below

DATE: February 2002

PS/First Minister
PS/Deputy First Minister

CRAIGAVON BOROUGH COUNCIL: FLYING THE UNION FLAG

1. Alison Coey's minute of 23 January 2002 refers.
2. The First Minister has queried the advice provided by the Equality Commission to Craigavon Borough Council with regard to flying the Union flag. I understand that the Equality Commission provided advice on this issue to the Council in a letter in December 1999. The Commission has confirmed that they set out for the Council the legislative position as contained in s75 of the Northern Ireland Act 1998 and the requirements of the Fair Employment and Treatment (Northern Ireland) Order 1998 and the guidance in the Fair Employment Code of Practice. The Commission has advised that in meetings with Council officials on this issue, it provided guidance on a range of circumstances where the flying of the Union flag may be considered unlawful. The Commission also suggested that the Council should obtain its own legal advice.
3. The Commission is aware of the judgement in the application of Conor Murphy and is taking this into account in providing advice to employers and service providers, including District Councils, on flying flags.

4. I hope this answers the First Minister's queries.

M BUNTING

Patricia McAuley
Sent by: Pauline
Wilson

To: Sheila Bradfield/OFMDFM/DFP@DFP
cc: Denis McCartney/OFMDFM/DFP@DFP, Irena
Elliott/OFMDFM/DFP@DFP, Ruth Childs/OFMDFM/DFP@DFP
Subject: CRAIGAVON BOROUGH COUNCIL: FLYING THE UNION FLAG

02/20/02 02:58 PM



20 - M Bunting - Craigavon Borough Council - Flag Flyin