

Briefing for the Public Petitions Committee

Petition Number: [PE1569](#)

Main Petitioner: George McKenzie

Subject: Scottish Red Ensign

Calls on the Parliament to urge the Scottish Government to seek a warrant from the UK Government in terms of Part 1, Section 2(3)(a) of the Merchant Shipping Act 1995, for the re-introduction of the Scottish Red Ensign as an 'informal or voluntary' ensign for Scottish vessels.

The petition

The Petitioner would like to see the re-introduction of the Scottish Red Ensign as an option for Scottish vessels to wear in place of the current UK Red Ensign. The Scottish Red Ensign is similar to the UK Red Ensign except that it bears a St Andrew's Cross in the canton (top left quarter) rather than the Union Flag. In the Petitioner's view, this option would help to restore flag etiquette amongst leisure and small vessel users, which he argues has deteriorated markedly in recent years.

The Petitioner has received advice from the UK Department for Transport that this can be achieved by the granting of a warrant under Section 2 of the [Merchant Shipping Act 1995](#).

History

The origins of the Scottish Red Ensign are uncertain but it is thought to have been worn by Scottish vessels, including ships of the Royal Scots Navy, as far back as the Fourteenth Century. For some years after the Treaty of Union in 1707, Scottish vessels continued to wear the Scottish Red Ensign while English ships, including those of the Royal Navy, wore a similar ensign but with a St George's Cross in the canton.



In 1854, the Red Ensign (with a Union Flag in the canton) was adopted for use by all British merchant vessels not entitled to wear a special ensign. However, until 1864, the Red Ensign was also worn by ships of the Royal Navy's Red Squadron. The Royal Navy also used the Blue and White Ensigns to designate ships from its Blue and White squadrons, respectively.

In 1864, the Admiralty ruled that the White Ensign would be used exclusively by the Royal Navy as their only standard. The Red Ensign was allocated to British merchant ships and private craft and the Blue Ensign was allocated to ships of the naval reserve and to naval auxiliary vessels.

The Royal Yachting Association (RYA) describes the rules governing the use of national ensigns as follows:

"A UK flagged vessel must wear her ensign as required by the Merchant Shipping Act, which includes when entering or leaving a foreign port and on demand. It is recommended that the ensign is worn at all times in daylight, especially when near to or in sight of land or another vessel. A UK registered vessel should wear the national maritime flag, the Red Ensign, unless entitled to wear a special Ensign. Wearing anything other than an authorised Ensign is a violation of British and International Law". (RYA)

Statutory position

The subject matter of the [Merchant Shipping Act 1995](#), including regulations for the wearing of flags and ensigns on British ships, is reserved to the UK Parliament under Section E3 (Marine Transport) of Schedule 5 of the Scotland Act 1998.

The 1995 Act, at Section 2, provides that every British ship (except a Government ship) is entitled to fly an undefaced and unmodified Red Ensign. A "British ship" includes any vessel registered in the UK, a Crown Dependency (Isle of Man, Guernsey and Jersey) and the UK Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and the Turks & Caicos Islands) or UK Overseas Territory. Such vessels are described as belonging to the "[Red Ensign Group](#)". (DfT, Statistical Data set FLE04).

The British Red Ensign is also worn as a courtesy flag by foreign private vessels in UK waters.

The 1995 Act (at Section 2 (3)(a)) provides for the wearing of other national colours (as "proper national colours") where these have been granted by warrant from Her Majesty the Queen or from the Secretary of State. Section 2(3)(b) of the 1995 Act allows British ships registered in a relevant British possession, to wear any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty by Order in Council

States of Jersey Defaced Red Ensign

In the background information accompanying the petition, the Petitioner points to the recent example of the States of Jersey being granted its own 'informal or voluntary' Red Ensign in 2010 (illustrated below).



States of Jersey Defaced Red Ensign

The website of the Government of the States of Jersey provides the following information about the States of Jersey Defaced Red Ensign.

“On 23 June 2010, the States Assembly unanimously approved the use of the Jersey Defaced Red Ensign by all ships registered at the Port of Jersey. The design has also received the approval of Her Majesty the Queen.

The Jersey Red Ensign may be flown on board all Jersey registered vessels, up to 400 tons, that are:

- registered as 'full' (Part 1) under the Shipping (Jersey) Law 2002; or
- registered on the Small Ships Register (SSR) under the Shipping (Jersey) Law 2002

The use is entirely optional, with the plain red ensign still applicable according to an owner's wishes”.

Defaced or modified Red Ensigns – statutory position

As noted earlier in this briefing, the statutory provision regulating the awarding and use of defaced red ensigns are sections 2(3)(b) and 2(4) of the 1995 Act which provide that, as an alternative to the undefaced Red Ensign, British ships may also wear:

- 2 (3)(b) in the case of British ships registered in a relevant British possession, any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty by Order in Council.
- 2(4) Any Order under subsection (3)(b) above shall be laid before Parliament after being made.

It should be noted, however, that rather than a British Red Ensign defaced in the fly as for the Jersey Red Ensign, the Petitioner is seeking an optional alternative to the current British Red Ensign with a Scottish Saltire replacing the Union Flag in the canton, rather than a defaced Red Ensign. As a consequence, sections 2(3)(b) and 2(4) would not apply in this case.

The Petitioner considers that section 2 (3)(a) of the 1995 Act could be the appropriate mechanism for the Scottish Government to seek a warrant from

Her Majesty or from the Secretary of State for a Scottish Red Ensign. This section states:

2 (3) The following are also proper national colours, that is to say:

- (a) any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State

The Petitioner also suggests that, as a member of the Privy Council the First Minister may be in a position to put this issue to the Privy Council for discussion and agreement by way of a warrant from Her Majesty.

Alternatively, the Petitioner considers that, because this section of the 1995 Act refers to the authority of the Secretary of State to approve such a warrant, the Secretary of State should be in a position to issue the appropriate warrant without recourse to the UK Parliament.

Scottish Government Action

Transport Scotland are aware of the petition and are seeking to clarify the position with the UK Department for Transport on what procedure would apply should the Scottish Government decide to support the reintroduction of the Scottish Red Ensign.

Scottish Parliament Action

The Scottish Parliament has not considered this matter previously.

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Denis Oag
26 August 2015

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