

Title: Deregulation of the consent regime for flying flags IA No: DCLG 0081 Lead department or agency: DCLG Other departments or agencies: DCMS, MOD	Impact Assessment (IA)		
	Date: 11/09/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Robert Segall / Tom Winter			
Summary: Intervention and Options			RPC: Green

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.6m	£0.2m	- £0.02m	Yes Out

What is the problem under consideration? Why is government intervention necessary?

The Government believes that planning controls over the display of flags are unnecessarily onerous, and a barrier to individuals and communities being able to express their identity and to businesses wishing to display flags. Reducing this burden requires changes to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The proposed changes are aimed at finding a way of preserving and encouraging valued flag-flying traditions, and at removing other barriers to the use of flags, while at the same time maintaining safeguards against the unregulated display of flags that could harm local amenity or cause offence.

What are the policy objectives and the intended effects?

The objective is to allow a wider range of flags to be flown, without consent, by individuals, institutions and businesses, to the extent that this is possible without causing harm to local amenity or causing offence. The effect is that a wider range of flags would be permissible without having to obtain the express consent of the local planning authority. This will reduce time and cost barriers for those wishing to fly flags, and could also encourage those who are presently dissuaded from flying flags to do so. Individuals and institutions are likely to be the principal beneficiaries, but some businesses and third sector organisations will benefit as well.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As the regime for flying flags is contained in the Control of Advertisements Regulations, these need to be amended if the regime is to be reformed.

Option 1 (the preferred option) is to extend the specified range of flags that may be flown without express consent, broaden the range of flags that have deemed consent and relax the conditions and limitations for flags with deemed consent.

Option 2. Do nothing and retain the existing regime for flag flying.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: No later than 10/2017					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: n/a		Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ **Nick Boles** _____ Date: _____ **14/09/2012** _____

Summary: Analysis & Evidence

Policy Option 1

Description: is to extend the specified range of flags that may be flown without express consent.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.2m	High: £1m	Best Estimate: £0.6m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	-	-
High	n/a	-	-
Best Estimate	n/a	-	-

Description and scale of key monetised costs by 'main affected groups'

None identified

Other key non-monetised costs by 'main affected groups'

It is possible that the proposed relaxations of the flag flying regime could lead to pressure for local planning authorities to make use of their enforcement powers. However, given the nature of the proposals and the additional changes taken forward in light of consultation responses, the risk of local authorities needing to do so is considered to be very low, and therefore the likely additional costs are negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	£0.03m	£0.2m
High	n/a	£0.12m	£1m
Best Estimate	n/a	£0.07m	£ 0.6m

Description and scale of key monetised benefits by 'main affected groups'

The direct beneficiaries will be people and organisations who would otherwise have submitted an application for express consent to fly a flag that would now be permitted. They would save on application fees (currently £335) plus associated preparation costs (£35). Based on assumptions of the number of applications affected (see below), the average annual benefit is estimated to be in the range £30,000 to £130,000 nationally.

Other key non-monetised benefits by 'main affected groups'

There will be some people and organisations who have been deterred from flying some types of flag by the need to apply for express consent, and for whom that barrier will now be removed. The benefits are largely non-monetary, although some businesses may gain commercially, through being able to more easily advertise their business by using flags on their premises. However the extent of this commercial benefit will be limited by the retention of certain conditions and limitations in sensitive areas such as areas of special control, conservation areas and National Parks.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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We have no definitive evidence of how many applications would no longer be required under this option relative to option two. In 2010-11 there were 19,900 applications for advertisement consent, these are assumed to increase in line with economic growth – a standard assumption used in planning analysis. To inform the range: Westminster had the most applications (1,237 - 6% of the total), of which 2% concerned flags. Westminster is likely to have the highest percentage of flag applications, so represents the top of the range. Most other authorities have fewer than 100 advertisement consent cases a year, of which a minority will be for flags, therefore the bottom of the range is assumed to be 0.5% of total applications for advertising consents. Indeed, the consultation response received from Hull City Council confirmed that the majority of flags displayed in Hull are done so without the need for express consent or with deemed consent. Since 1985 Hull City Council have received 30 applications for express consent, an average of less than two flag applications per year. Hull received 95 applications for advertisement consent in 2010-11 so this represents 1 to 2% of advertisement consent applications and supports our range of 0.5% to 2%. Not all flag applications would be for the types of flag that would be permitted by Option 1 and we assume that 30% would continue be made even under a deregulated regime to avoid overstating benefits.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	One-in, One-Out?	Measure qualifies as
Costs: 0	Yes	Out
Benefits: £0.02m		
Net: -£0.02m		

Evidence Base (for summary sheets)

Problem under consideration and rationale for intervention;

The Government believes that planning controls over the display of flags are unnecessarily onerous, and a barrier to individuals and communities being able to express their identity and to businesses wishing to display flags. Reducing this burden requires changes to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (“the Regulations”). The proposed changes are aimed at finding a way of preserving and encouraging valued flag-flying traditions, and at removing other barriers to the use of flags, while at the same time maintaining safeguards against the unregulated display of flags that could harm local amenity or cause offence.

Policy objective;

The objective is to allow a wider range of flags to be flown without consent by individuals, institutions and businesses, to the extent that this is possible without causing harm to local amenity or causing offence. The effect is that a wider range of flags would be permissible without having to obtain the express consent of the local planning authority. This will reduce time and cost barriers for those wishing to fly flags, and could also encourage those who are presently dissuaded from flying flags to do so. Individuals and institutions are likely to be the principal beneficiaries, but some businesses and third sector organisations will benefit as well.

The Regulations currently permit the display of certain categories of flag without the express consent of the local planning authority. Flags for which **no consent is required** are set out in **Class H of Schedule 1** to the Regulations, which includes:

- any country’s national flag;
- the flag of the Commonwealth, the European Union or the United Nations;
- the flag of any English county; and
- the flag of any saint, but only in the county with which the saint is associated.

Flying of these is conditional upon neither the flag nor the flagstaff displaying any advertisement or subject matter additional to the design of the flag.

In addition, **Class 7 of Schedule 3** to the Regulations sets out the following flags which may be flown with **deemed consent** (i.e. their display could be subject to discontinuance action if they caused a substantial injury to the amenity of the area or a danger to members of the public):

- flags with the name and/or the device of any person occupying a building; and
- flags referring to a specific event (other than the offering of named goods for sale) of limited duration, which is taking place in the building, for the duration of that event

Flying such ‘house flags’ is conditional upon the flag being flown from a single vertical flagstaff on the roof of a building, having no character/symbol higher than 0.75m or 0.3m in an area of special control.

Consultation

A Discussion Paper was published for consultation in January 2012 which set out a number of proposed changes to the secondary legislation in order to deliver the Government’s policy objectives for flag flying. The consultation period lasted from 6 January 2012 to 30 March 2012.

A total of 54 responses were received. Individuals provided just over 50% of all the responses received; local authorities and non-governmental organisations accounted for around 35%, and the remaining few came from government departments and private business. A summary of the key messages and subsequent amendments to the proposals are set out below:

Flags that can be flown without consent

The majority of respondents supported the proposed additions. Some representations made detailed suggestions for refining the categories of flag for which express consent is not required, for the purposes

of clarity. These included adding patron saints' flags which are not in use as national flags; providing greater precision around the descriptions of Civil and Military Ensigns; including the Armed Forces Day flag; and allowing for use of a black mourning ribbon/cravat where a flag cannot be flown at half-mast.

In light of representations received, the proposal to permit any heraldic banner of arms or flag granted by Her Majesty's heraldic authorities to be displayed without consent has not been taken forward within the final Regulations. This retains the current position, whereby displaying such flags (where they are not displayed as house flags at the appropriate buildings) requires the express consent of the local planning authority.

Flags that can be flown with deemed consent

The proposed inclusion of flags for official environmental award schemes was generally welcomed. Nevertheless, some responses questioned why only 'environmental' awards were included in the proposals and not other categories of award scheme. Accordingly, the scope of this category has been expanded to enable Investors in People and Queen's Awards for Enterprise flags to be flown with deemed consent as well as Eco-Schools award flags and Blue Flag and Green Flag award scheme flags (from sites that form part of a beach or marina, or park, garden or other green space, as appropriate).

A number of individuals commented on the potential impact of giving deemed consent to flags of sports clubs being displayed by people other than the clubs themselves. Some comments were related to proliferation, public order issues and potential abuse by sponsors. We do not consider that the flying of sports flags will lead to public order issues and the regulations are quite clear that the flags must be for sports clubs, so the risk of abuse by sponsors is low. In addition, the proposed regulations maintain clear limits on the number of flags allowed for each property, and in the light of consultation responses, the range of areas where the new freedoms will apply has been reduced from the draft proposals consulted upon. In the light of these considerations, this element of the proposals has been taken forward (subject to some additional restrictions). In the unlikely event that concerns do arise, local planning authorities and the Secretary of State have existing powers in the Regulations to restrict deemed consent for specific categories of flag or in specific cases (see further commentary below).

As an internationally recognised and widely displayed symbol, the proposed inclusion of the rainbow Pride flag within the category of flags with deemed consent was welcomed. A number of respondents suggested that flags associated with other protected groups should also be included. Taking into account the responses to the Discussion Paper, the Department is not aware of demand or pressure from groups with protected characteristics to fly any such flags. Furthermore, many flags of protected groups can already be flown with deemed consent as 'house flags' at the relevant premises. The Regulations will nevertheless be kept under review should demand arise for including additional flags.

Conditions and limitations for flags with deemed consent

The Discussion Paper proposed the removal of current conditions and limitations which control the siting and size of flags with deemed consent. A comparatively large number of responses commented that residential amenity, public safety as well as the character of sensitive locations (such as conservation areas, areas of special control, National Parks, Areas of Outstanding Natural Beauty and the Broads) could be adversely affected by the proposals. In the light of the responses to the consultation, a number of changes have been made to the proposed regulations. In response to concerns about residential amenity and public safety the size of flag permitted to be flown on a flag pole projecting from a building will be limited (alongside the proposed restrictions on the number of flags allowed with deemed consent). In addition, in response to concerns about the impact of the proposals on sensitive areas, the revised final proposals, that are the subject of this Impact Assessment, restrict the application of the new deemed consents and the relaxation of conditions and limitations in sensitive areas. These changes, therefore, address the principal points raised in the consultation responses.

As well as restricting the application of the new deemed consents and the relaxation of conditions and limitations in sensitive areas, local planning authorities and the Secretary of State will retain powers to control the display of advertisements which have deemed consent. If an individual flag (or flags on one site) causes "a substantial injury to the amenity of the locality or a danger to members of the public", the local planning authority may serve a discontinuance notice which would require the advertisement to be removed or the site to stop being used for the display of advertisements. This is subject to appeal to the Secretary of State in a similar way to a refusal of planning permission.

If there is an unacceptable proliferation of a particular class of advertisement in an area, the local planning authority may apply to the Secretary of State for a direction which would require the display of such advertisements to obtain the express consent of the authority. Only about ten directions have been given in the last six years (for local planning authorities across England), all for the restriction of estate agents' boards, but they could be used against any deemed consent class (other than Classes 12 or 13).

The cost to the public of these procedures is negligible. Members of the public may complain to or lobby their local authorities and respond to consultation on directions. There would be some limited administrative costs to local authorities in pursuing a discontinuance notice or a direction but, given the rarity of these being made or applied for (particularly in the light of the steps we have taken to address the points raised in consultation), the annual costs to local authorities across England are also likely to be negligible.

Description of options considered (including do nothing);

Do nothing

This has been considered and discounted, in light of the Government's view that a desirable degree of deregulation can be achieved without giving rise to costs for individuals or organisations, and without harming local amenity or causing offence. This view has been supported by the thrust of the responses to the Discussion Paper.

Option 1 (preferred approach)

In addition to those flags which can already be displayed without express consent or with deemed consent (set out above), Option 1 would also permit the following:

Can be flown without express consent

- The flags of Crown Dependencies and the British Overseas Territories;
- Civil Ensigns and the Civil Air Ensigns;
- The flag of any international organisation of which the United Kingdom is a member (this will widen the scope to other international organisations of which the UK is a member such as NATO; it will also permit the flags of international organisations which the UK may join in the future to then be flown without the need for additional changes);
- The flag of any island, county, district, borough, burgh, parish, city, town or village within the United Kingdom;
- The flag of the Black Country, East Anglia, Wessex, any Part of Lincolnshire, any Riding of Yorkshire or any historic county within the United Kingdom;
- The flag of any recognised administrative area in countries outside the UK (e.g. Australian states);
- The flags of UK patron saints - St David and St Patrick – that are not in use as national flags (the flags of St George and St Andrew are recognised as the national flags of England and Scotland).
- The Armed Forces Day Flag;
- Allow for use of a black mourning ribbon where a flag cannot be flown at half-mast; and
- Flags and ensigns of HM armed forces.

Can be flown with deemed consent

- Award scheme flags (Investors in People, Queen's Awards, Eco-Schools, Blue Flag and Green Flag award scheme flags);
- Flags of sports clubs (by people other than the clubs themselves, such as their members and supporters); and
- The rainbow "Pride" flag.

Conditions and limitations for flags with deemed consent

Option 1 would also relax certain conditions and limitations for flags that have deemed consent, including 'house flags' and the new categories of flag with deemed consent listed above (i.e. sports club flags, rainbow flags etc). The Regulations giving deemed consent currently require flags to be flown from 'a single flagstaff projecting vertically from the roof of a building'. Option 1 will give additional freedom for the siting, size and number of flags, so that in future a total of two flags (rather than one) would have deemed consent, comprising:

- A single flag attached to a flagstaff projecting from a building
 - *If projecting vertically:*
 - No size limit apart from in a conservation area, an Area of Outstanding Natural Beauty, a National Park, the Broads or an area of special control where no symbol/character may exceed 0.75 metre in height, or 0.3 metre in an area of special control.
 - *If projecting other than vertically:*
 - No larger than 2 square metres; and
 - Not permitted in area of special control and other sensitive areas.

- No more than two flags attached to free-standing flagstaffs within the curtilage of a building
 - No limit on the size of the flag.
 - No part of the flagstaff may exceed 4.6 metres.
 - Not permitted in area of special control and other sensitive areas.

In summary, the proposals will remove the requirement that flagstaffs project vertically from the roof of a building; remove the size limits on flags attached to flagstaffs projecting vertically from a roof; and permit an additional flag to be displayed. To safeguard amenity in sensitive areas, these relaxations would not apply in an area of special control, a National Park, the Broads, an Area of Outstanding Natural Beauty or a conservation area.

Monetised and non-monetised costs and benefits for option 1 (including administrative burden);

Costs

Option 1 is deregulatory and is not considered likely to give rise to additional costs for businesses or organisations. It is possible that the proposed relaxations of the flag flying regime could lead to pressure for local planning authorities to make use of their enforcement powers. However, given the nature of the proposals and the additional changes taken forward in light of consultation responses, the risk of local authorities needing to do so is considered to be very low, and therefore the likely additional costs are negligible.

Benefits

The direct beneficiaries will be people and organisations who would otherwise have submitted an application for consent to fly a flag that would now be permitted. They would save on application fees (currently £335)¹ plus the associated costs entailed in preparing an application (£35) - please see details of the assumptions below. Based on the number of applications affected (see below), **the average annual benefit is estimated to be in the range £30,000 to £120,000 nationally.**

There is no definitive evidence at present to form a precise judgement about the extent to which the savings will accrue to individuals, organisations or businesses. Overall, however, the savings will be modest given the limited scale of overall benefits.

There will be some people and organisations who have been deterred from flying some types of flag by the need to apply for consent, and for whom that barrier will now be removed. The benefits are largely non-monetary, although some businesses may gain commercially (by a very modest amount), through being able to more easily advertise their business by using flags on their premises. However the extent of this commercial benefit will be limited by the conditions proposed – in particular the proposed restriction on no more than two additional flagstaffs being used to display advertisements on any premises, without consent being necessary. As the benefits are likely to be modest no specific assessment has been made of the likely scale of this benefit at this stage, in relation to either option.

Rationale and evidence that justify the level of analysis used in the Impact Assessment (proportionality approach);

This is a deregulatory measure, but one with relatively modest monetised and non-monetised benefits. In addition there is little available evidence about the extent to which proposals to fly flags comprise a proportion of all applications for advertisement consent (other than anecdotal evidence that it is very low), or of the extent of 'suppressed demand' from those wishing to fly flags but who are dissuaded by the current regulatory regime. Consequently, broad assumptions have been used to establish high and low estimates of potential benefits.

Risks and assumptions;

In 2010-11 there were 19,900 applications for advertisement consent nationally, which is assumed to grow in line with economic growth (using the Office for Budget Responsibility forecast). This is a standard assumption used in planning analysis.

To inform the range of applications that might be affected we have conducted some primary research. Westminster had the most applications (1,237 – some 6% of the total), of which 2% concerned flags (figures supplied by Westminster Council). However, Westminster is likely to have a higher percentage of flag applications than other authorities, given the large number of diplomatic and other institutional premises within its area. Consequently, these figures have been used to establish the top of the range of benefits that these reforms might yield.

Most other authorities have fewer than 100 advertisement consent cases a year, and of these, well below 2% are likely to involve flags. Hull City Council's consultation response confirmed that the majority of flags displayed in Hull are done so without the need for express consent or with deemed consent. The Council's response stated that since 1985 there have been 30 applications seeking express consent for

¹ *The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 have been made in draft and laid before Parliament. As drafted, this legislation will increase the cost of an application for consent to display a flag to £385. Whether the Regulations will be made as drafted is subject to the will of Parliament, however. As such, our calculations reflect the current application fee of £335. The Impact Assessment may therefore underestimate the monetary benefits arising from a reduction in applications for express consent, should application fees rise.*

the display of flags, an average of less than 2 per year. In 2010-11 Hull City Council determined 95 applications for advertisement consent². Based on the figures set out in Hull's consultation response, flag applications represent around 1 to 2% of advertising consents. For this reason an estimate of 0.5% of advertisement cases has been used to establish the lower end of the range of benefits.

Even with the liberalisation proposed by Option 1, not all flag applications made currently would be exempted from the need to obtain consent in future and we have sought to reflect this in our estimates set out below.

Preparatory costs for submitting a flag application are likely to be very low given the simple nature of an application to fly a flag; an assumption of £35, on average, for an application has been made for the purpose of this impact assessment. This reflects the relative simplicity of this type of planning application (relative to other applications) and equates to around 1 to 2 hours of time depending on the wage rates for town planners and developers.³

In estimating the likely benefits of the proposal we have taken into account that the number of flags will vary from area to area and also that not all flags will be exempt from planning control following the introduction of this measure. Evidence from consultation responses suggests that between 0.5% and 2% of applications for advertisement consent relate to flags – which equates to 1,100 to 4,500 over the 10 year appraisal period. Assuming this results in savings of £370 per instance, owing to reduction in planning application fees and associated preparation costs, total benefits are estimated at between £0.4m and £1.4m (present value) over the period. To avoid overstating the benefits of the policy, we have then applied a reduction factor to this range to allow for the fact that not all flags will be exempt from planning control. Although there will be considerable variation between individual authorities, a proportion of each local authority area will be subject to protective designation which means that not all the new freedoms and flexibilities introduced by this measure will apply. We have therefore applied a reduction factor of 30%, to the estimated number of applications, to arrive at our best estimate of £0.6m total benefits (the midpoint of the range £0.2m to £1m).

Direct costs and benefits to business calculations (following One In One Out methodology);

As outlined the beneficiaries of this policy are those who would have applied for planning consent to fly a flag in the counterfactual, and will no longer have to. This leads to modest savings of both the application fee and preparatory costs for individuals, institutions and businesses. The relaxations of conditions and limitations on the display of 'house flags' set out in Option 1 will have a particular benefit to businesses who may wish to use house flags as a means of advertising their presence. Under the new regime, a business will no longer require express consent to fly a flag from a non-vertical flagstaff attached to its premises or a freestanding flagstaff within the immediate vicinity of its premises. To reflect this we split the accrued benefits into three, apportioning the equal amounts across the three groups (individuals, institutions and business).

It is very difficult to obtain meaningful evidence on the profile of applicants currently seeking express consent to display flags which might support this apportionment. This is primarily because most local authorities receive very few applications for advertisement consent (less than 100), of which a small proportion (we estimate 0.5 - 2%) are for flags. As a starting point we have conducted a detailed analysis of the local authority which receives the most applications for advertisement consent in England. We estimate that over a three year period (2008-2010), businesses were responsible for submitting over 70% of applications for express consent to display flags. Although this is not a typical local authority and the figures represent the unique commercial pressures of central London, this nevertheless suggests that an equal apportionment of benefits between businesses, individuals and institutions is a conservative approach. This is substantiated by further information received from Hull City Council on the profile of applicants seeking express consent to display flags, although the sample size was much smaller. While we suggest that the estimated benefits to business are conservative, we have not sought to increase the apportionment given that we have only received information from two local authorities.

² DCLG Planning Live Table (2011) <http://www.communities.gov.uk/documents/statistics/xls/1929704.xls>

³ Average wage rate for town planners is estimated at £37.92 per hour (up-rated from basic wage of £16.21 per hour); Developer wages are assumed to be £52.21 per hour (up-rated from basic wage of £22.31 per hour). To estimate we have used a proxy of 'activities of head office; management consultancy services'. Both gross hourly wages are up-rated for National Insurance/pensions (1.3).

Benefits to business are therefore estimated at an average annual benefit in the range £10,000⁴ to £40,000 nationally (£0.1m to £0.4m over 10 years in present value terms).

The Equivalent Annual Net Cost to Business (2009 prices) is estimated to be - £0.02m.

Wider impacts

More flags are expected to be flown as there is likely to be limited pent-up demand from those deterred by the current fee and procedures for making an advertisement application. More flags of a type that already have deemed consent will be flown because of the relaxation of the restrictions on the angle and location of flagstaffs, and on the size of symbols and lettering. Flag manufacturers should benefit by selling more flags. Given the very modest scale of these likely impacts, and the lack of available evidence, we have not attempted to gauge their likely scale at this stage.

Summary and preferred option with description of implementation plan.

The Government believes that the current restrictions on the type of flags that can be flown without the express consent of the local planning authority are too restrictive, and a barrier to individuals and communities being able to express their identity and to businesses wishing to display flags.

The preferred Option 1 would add specified categories of flag to those that can already be flown without consent and with deemed consent. Restrictions on the location and angle of flagpole and of the sizes of symbols and lettering on flags would be loosened.

Implementation: The intention is to implement the change through amendments to the Regulations that would come into force in October 2012.

⁴ Figures may differ slightly due to rounding.