



Briefing #3

Flying the European Flag on Buildings

Last updated 29 November 2005

(This briefing applies to non-Government buildings, including local authority buildings.)

1. National flags do not require consent (ie. planning permission) to be flown:

**Town and Country Planning (Control of Advertisements) Regulations 1992
Statutory Instrument 1992 No. 666**

Schedule 2 – Classes of advertisements to which Parts II ('Deemed consent') and III ('Express consent') of these regulations do not apply

- | | |
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| Class I | The national flag of any country. |
| 1. | Each flag is to be displayed on a single vertical flagstaff. |
| 2. | Neither the flag nor the flagstaff may display any advertisement or subject matter additional to the design of the flag. |

Only national flags are exempt from requiring consent. Unfortunately there is no more precise definition of what constitutes a national flag than the text above.

It is our understanding that the EU flag is not, in this context, regarded as a national flag, and therefore flying it requires consent.

(Non-national flags may be exempt from requiring consent if they satisfy some other condition, such as being incorporated into the fabric of a building, or displayed on a vehicle – see Schedule 2 in full).

However –

2. Local authorities have day-to-day responsibility for the operation of the advertisement control system. When an advertisement is displayed in contravention of the above regulations, enforcement is at the discretion of the local authority:

Town and Country Planning Act 1990

Part VII – Enforcement *Enforcement notices*
Section **172**:

Where—

- (a) it appears to the local planning authority that there has been a breach of planning control after the end of 1963; and
- (b) the authority consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations,

they may issue a notice requiring the breach to be remedied.

(Local authorities have enforcement powers under section 225 of the Act to “remove or obliterate” any such item, having first to give at least two days’ written notice of their intention to the displayer).

3. There are proposals to

- i) include the European flag in Class I
(ie. national flags, exempt from the need for consent)
- ii) lift the restrictions on how flags in Class I are flown
(each flag must currently be displayed on a single, vertical flagstaff)

Recommended amendments to the Town and Country Planning (Control of Advertisements) Regulations 1992

News Release 29 June 2000, Department for Transport, Local Government and the Regions

17. [new proposal]

Adopt the new proposal that as well as national flags being flown without having to apply for consent, the European flag should also be included in Class I.

16. [no change from the proposal of paragraph 4.14 of consultation paper*]

Adopt the proposal to amend legislation to exempt from control national flags however they are flown from a flagstaff.

Upon placing these proposals in the Library of the House in 2000, Angela Smith MP, Parliamentary Under Secretary of State Beverley Hughes said:

"The Department is now preparing the necessary statutory instruments and guidance to implement the changes."

These statutory instruments have not yet been before the House. Their preparation, and the issuing of guidance for implementation has been delayed until now.

A "mini-consultation" will be held later this year on these amendments first proposed in June 2000.

It is expected that they will go before the House, and come into force, in Spring 2006.

Summary

1. The EU flag, like all flags other than national (Class I) flags, is currently categorised as requiring consent to be flown, according to the Town and Country Planning (Control of Advertisements) Regulations 1992.

2. Enforcement of the 1992 regulations is at the discretion of local authorities – ie. whether action is considered expedient with regard to certain considerations – according to the Town and Country Planning Act 1990.

3. If, as expected, amendments proposed in June 2000 are adopted, and come into force in Spring 2006

The European flag will, in this context, be treated as any national flag, and therefore its flying will not require consent, regardless of how it is flown from a flagstaff.

* - Proposed amendments released in October 1999 to the 1992 regulations, following a consultation paper of July 1999, included, in section 4.14, the lifting of the 'vertical flagstaff' restrictions, since "This requirement is proving somewhat restrictive because some buildings cannot accommodate vertical poles thus making it necessary for application for consent to be made."

The Verdict from the Office of the Deputy Prime Minister

Minister for Housing and Planning, Yvette Cooper MP, draws the same conclusions.

She writes: "When new Advertisement Control Regulations are introduced in 2006, any country's national flag, however they are flown, as well as the European Union flag may be flown without having to apply for permission provided nothing is added to the flag. At present the European Union flag may be flown provided express consent to fly the flag has been given by the local planning authority.

It is for the local planning authority to determine whether the European Union flag should be permitted and whether they consider it necessary to take enforcement action. Government buildings benefit from Crown immunity."

Latest attempts to keep the EU flag furled-up

Latest attempts to intimidate those flying the EU flag seem to rest upon flippant referral to "Section 19 of the Local Authority Guidelines on Publicity", which purportedly asserts that such activity is an abuse of public money.

Upon closer inspection, it is clear that the cited guideline does not affect the flying of the EU flag.

The Code in full can be found at <http://www.odpm.gov.uk/index.asp?id=1133861>

The set of guidelines is called, in full, the "Code of Recommended Practice on Local Authority Publicity", and, according to its introduction, it "sets out principles of good practice to ensure that local authority decisions are properly made."

The introduction to the Code states

"Local authorities are required by section 4(1) of the [Local Government Act 1986] as amended by section 27 of the Local Government Act 1988 to have regard to the Code in coming to any decision on publicity."

The relevant passage is the conclusion of Section 19:

“local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.”

This is not in any way relevant to the question of flying the EU flag - The EU flag does not advocate a view on policy, therefore it cannot hope to persuade the public to take on a particular view on policy. Regardless, the primary purpose of flying the flag could only be to make the public more aware that the UK is a member state of the EU, and this is plainly a fact, not a view.

Wear Valley Council took down its EU flag this autumn following protests of this sort. The Council has since restored the flag.

More information on this story can be found at <http://news.bbc.co.uk/1/hi/england/4468924.stm>