

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS)
(ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 2372

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instruments**
 - 2.1 The Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2012 (“the 2012 Regulations”) amend the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (“the 2007 Regulations”) to substitute class H of Schedule 1 to the 2007 Regulations, which permits the display of certain flags without the local planning authority’s specific consent. The substituted class H permits a wider range of flags to be displayed. In addition the 2012 Regulations amend class 7 of Schedule 3 to the 2007 Regulations, which gives deemed consent to certain flag advertisements. Paragraph 7A is amended to permit a wider range of flag advertisements to be displayed and to relax outside certain areas the limitations on the size of characters and symbols on the flag. Four new paragraphs (7AA, 7AB, 7AC and 7AD) are inserted into Class 7. Paragraphs 7AA and 7AB permit flag advertisements in the form of a flag attached to a flagstaff projecting from a building (other than vertically from the roof) or erected within the curtilage of a building. Paragraphs 7AC and 7AD permit the display of Blue Flag and Green Flag award schemes flags on appropriate sites.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Under the 2007 Regulations an outdoor advertisement is permitted for display without the local planning authority’s specific consent if it falls within Classes A to I of Schedule 1 and complies with the conditions and limitations applicable to those classes, or it has deemed consent, as specified in Classes 1 to 16 of Schedule 3 to the 2007 Regulations, and again complies with the conditions and limitations applicable to those classes.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**

What is being done and why

- 7.1 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. The measures are aimed at finding a way of preserving and encouraging valued flag-flying traditions, and at removing other barriers to the use of flags.
- 7.2 The objective is to allow a wider range of flags to be flown without advertisement 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.

Consolidation

- 7.3 Not applicable.

8. Consultation outcome

- 8.1 A Discussion Paper setting out a number of proposed changes to the secondary legislation in order to deliver the Government's policy objectives for flag flying was open for comment 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 are set out below.

Flags that can be flown without consent

- 8.2 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 UK 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 the use of a black mourning ribbon. 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 2012 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

- 8.3 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).

- 8.4 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 2012 Regulations are quite clear that the flags must be for sports clubs, so the risk of abuse by sponsors is low. In addition, the 2012 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 unlikely event that concerns do arise, local planning authorities have existing powers in the Regulations to restrict deemed consent for specific categories of advertisement.
- 8.5 As an internationally recognised and widely displayed symbol, the 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 other groups with protected characteristics to fly such flags. Furthermore, many flags of protected groups could already be flown with deemed consent as 'house flags' under Classes 7A, 7AA and 7AB of Schedule 3 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

- 8.6 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, AONBs etc) could be adversely affected by the proposals. In the light of the consultation responses, a number of changes were made which are contained in the 2012 Regulations. These include limits on the size of flags and restrictions on siting within designated sensitive areas.
- 8.7 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 under Regulations 7 and 8 of the 2007 Regulations to control the display of advertisements which have deemed consent.

9. Guidance

- 9.1 The Department does not currently propose to publish any guidance on this instrument.

10. Impact

- 10.1 The amendments are considered to have a positive impact by increasing the ability of individuals, businesses and communities to fly flags without the time and cost associated with seeking advertisement consent. Further details are contained in the Impact Assessment which is attached to this Explanatory Memorandum.

11. Regulating small business

- 11.1 As noted in the Impact Assessment attached to this memorandum, the policy benefits all types of business, including small and micro businesses.

12. Monitoring & review

- 12.1 The 2012 Regulations will be kept under review should it become apparent that there is demand to relax planning controls for additional flags.

13. Contact

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