

FLAG FLYING

Briefing Paper on Human Rights Compliance and Commission Policy



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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© Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA

Tel: (028) 9024 3987

Fax: (028) 9024 7844

Textphone: (028) 9024 9066

SMS Text: 07786 202075

Email: information@nihrc.org

Online: nihrc.org ■ twitter.com/nihrc

facebook.com/nihrc ■ youtube.com/nihrc

Introduction

1. This briefing paper has been prepared in the context of requests for advice from public authorities in relation to the human rights implications of local Councils flying national flags. The paper provides an outline of the human rights framework as regards flag flying and summarises the advice provided by the Northern Ireland Human Rights Commission to date.
2. The Equality Commission is likely to deal more frequently with requests by public authorities for advice in relation to flag flying. This is due to fair employment legislation and the statutory duty to promote equality under section 75 of the Northern Ireland Act 1998 and its equality impact processes. Equality legislation does not specifically reference flag flying, but in the fair employment context relates to the issue of creating a harmonious working environment. In relation to the Fair Employment and Treatment Order 1998 (as amended), complaints could be brought to a Tribunal that displays of flags at the workplace constitute sectarian harassment.¹ This does not mean displaying flags will in all cases constitute harassment. That depends on the reasons and context for displaying the flags. It is a matter for a Tribunal to establish this by objectively examining the purpose and effect of the display in light of all the circumstances.

The Human Rights Commission's general position

3. The Commission has not developed a specific policy position on public authorities' usage of flags. It did, however, within its advice to the Government on the scope for a Bill of Rights for Northern Ireland, address the broader issue of equality of treatment by public authorities of the Irish nationalist/British unionist communities within the "identity and culture" section of the advice. The Commission recommended:

Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this

¹ Under Article 3A of the 1998 Order, as amended in 2003 to introduce the standalone protection against discriminatory harassment (further to EC directive 2000/78/EC). Prior to this, complaints would have been made (as they still could) under protections against discriminatory detriment.

provision may do so in a manner inconsistent with the rights and freedoms of others.²

4. While this provision could be interpreted as compatible with a 'no flags' or 'two flags' policy, this has not been explicitly advocated by the Commission. In the absence of a Bill of Rights, the advice given to date by the Commission therefore reflects a framework of policy considerations which flow from existing human rights standards.

Human rights and flying flags

5. In general terms the flying, or non-flying, of flags is unlikely to engage, let alone breach, human rights standards in most circumstances. However, there is European Convention on Human Rights (ECHR) jurisprudence which indicates that the motivation and intent of expression linked to flag flying (rather than the flag *per se*) may engage the 'rights of others', giving rise to positive duties under the ECHR to regulate flag flying by public authorities in certain limited circumstances. In this sense the human rights framework does not differ from that provided by domestic equality legislation, as its focus is on reasons and contexts rather than flag flying *per se*.³
6. Human rights instruments are mostly framed in terms of the rights of the individual person in relation to 'the state' (broadly defined, that is, any public authority such as a Council). Most formulations of such rights fall into two categories: the rights of the person not to have wrongs done to him/her by the state (for example, the rights not to be

² NIHRC (2008) A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008. The 'identity and cultural rights' section of Chapter 3, p100, also includes provision for the protection of other minorities in addition to the two "main communities".

³ The jurisprudence covers a range of circumstances relating to Article 10 and its limitations. There appear to be few ECHR cases that relate to flag flying *per se*. In one case, *Osmani and Others v the Former Yugoslav Republic of Macedonia* (admissibility decision of 11 October 2001), a local Council had flown both the Albanian and Turkish flags. Following a ruling from the Constitutional Court that both had to be removed, the applicant (the elected Mayor) held a meeting at which he called on ethnically-Albanian citizens to prevent the removal of the Albanian flag and, following attempts by other citizens to remove the flag, he organised an armed militia to protect it. He was subsequently convicted *inter alia* of advocacy of racial hatred, and complained his conviction violated his right to freedom of expression. The case was found inadmissible, the Court holding that the interference had been justified under the permitted limitations clause in Article 10(2).

tortured, arbitrarily arrested or deprived of life), and the rights of the person to have certain needs secured for him/her by the state (for example, the rights to food, access to health care, freedom of movement).

7. The flying of flags by public bodies is not a matter explicitly referred to in any human rights instrument. In this sense, there is no direct human right to have a flag 'flown for you', nor is there a direct human right *not* to have a flag 'flown at you'. However, the regulation of flag flying is a matter which engages freedom of expression which is protected under Article 10(1) of the European Convention Human Rights.⁴ This right is not absolute, and can be subject to certain limits or exceptions set out in Article 10(2).⁵ Under section 6 of the Human Rights Act 1998 public authorities must act in a manner compatible with ECHR rights. ECHR rights themselves are to be interpreted in accordance with the broader binding human rights framework in relation to matters such as freedom of expression and minority rights.
8. Most of the requests for advice summarised below relate specifically to policy relating to flags flown by district Councils themselves.⁶ While similar principles apply, there are significant material differences in relation to the proportionality of the impact of policy where public authorities seek to regulate (through prohibition or obligation) the use of

⁴ The full text of Article 10(1) is "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".

⁵ "...The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

⁶ An Equality Impact Assessment by Belfast City Council in 2004 examined the then policies of the 26 Councils in relation to flag flying. This recorded that 12 Councils flew the Union Flag every day, six did so on a number of designated days and eight did not fly the Union Flag. No Councils flew the Tricolour. Seven Councils, in addition to the Union Flag, also flew the flag of the Stormont Parliament (also known as the Northern Ireland flag, although it has no current legal status). Some Councils flew Council flags or banners with the Council coat of arms (for example, Down, Omagh and Castlereagh – the latter alongside the Union Flag). Some Councils flying the Union Flag restricted this to the Council Headquarters building (for example, Ards, Limavady). Others flew the Union Flag on all premises, including leisure centres (for example, Newtownabbey, Ballymoney). Some Councils (for example, Belfast) that fly the Union Flag all year round at their headquarters also fly it on designated days at other premises.

flags by third parties, at events held by or sponsored by the Council, on Council property, or elsewhere.

9. The requests for advice in relation to flags have to date related to references to the Union flag and the Irish Tricolour in their dual roles as official national flags of states and as a badge of British and Irish national identity respectively. Requests did not refer to Council crests or flags where (provided that the imagery is not contentious) the human rights issues discussed are unlikely to arise.
10. Recent requests for advice have not dealt with emblems analogous to flags, where similar considerations would apply. The Commission has been clear that the promotion or regulation of other forms of expression by public authorities where there are other explicit human rights obligations, such as minority languages, should not be regarded as analogous to flags and emblems.⁷

Legal certainty of policy

11. Article 10 of the ECHR requires that restrictions on expression (including flag flying in this context) be adequately “prescribed by law”. This means that public policy should be made within the relevant body’s powers and should be clearly set out. An unwritten policy regulating flag flying or display (for example, an oral instruction from a Chief Executive) is unlikely to constitute an adequate legal basis for intrusion on Article 10 rights. In this context, the Commission has advised Councils that they should ensure legal certainty through written policy.
12. As well as being proportionate, limitations under Article 10(2) must follow one of the legitimate aims it sets out. These aims include public safety and the prevention of disorder, along with the protection of the rights of others.

Balancing ECHR rights with minority rights

13. In the context of a Council with a policy of flying the Union Flag on its main buildings 365 days a year, the Commission has been asked: “*How can Council balance the Right to*

⁷ See NIHRC (June 2010) *Minority Language Rights: The Irish Language and Ulster Scots, Briefing paper on the implications of the European Charter for Regional or Minority Languages, European Convention on Human Rights and other instruments*, Belfast, section 4.

Freedom of Expression in ECHR Article 10 to any duty we as a Council have to a minority who may actually and genuinely be offended by the practice?"

14. Any restriction on Article 10 freedom of expression must be proportionate and justified under one of the 'legitimate aims' set out under Article 10(2). The most relevant legitimate aim in this instance would be the 'rights of others'. Therefore, the 'balance' test in this instance would be in weighing up the recognised rights of minorities against those of protected freedom of expression in the particular local context.⁸
15. It should be first noted, in relation to the suggestion of persons taking offence at a flag, that there is no 'right to be offended' that can be derived from the ECHR. Article 10 protects expression which can shock, offend or disturb. Therefore, if the issue being dealt with is that persons are 'offended' by particular flags this would not be a legitimate basis for their restriction. It is, in fact, generally accepted that it is precisely those instances of expression that are unpopular and/or could cause offence that are most in need of, and (with certain limits) entitled to, protection under human rights law.
16. There are circumstances, however, where such expression is not protected and restrictions can be justified or required. In this instance, key indicators include the contextual questions of intent (motivation) and impact of particular expression (including on a minority) rather than just the expression (that is, the flag flying) *per se*. For example, the present inter-agency protocol on flag flying in public areas lists four purposes for which flags are often displayed: the 'celebration of cultural identity', 'marking of a festive event', 'sectarianism or intimidation' or 'marking out territory'.⁹ The latter two motivations can be regarded as forms of sectarian expression, which can be, and often should be, legitimately restricted under Article 10. In this instance there would be an onus on the public authority to consider proportionate restriction of the display of the flag. For the avoidance of doubt, however, while such evidence may create a presumption in favour of

⁸ The 'rights of others' does not refer to any rights that anyone chooses to assert that they have, but rather to ECHR rights and other human rights where there is an indisputable imperative for their inclusion.

⁹ Joint Protocol in relation to the display of flags in public areas: PSNI, DSD, DRD, NIHE and OFMdFM, para 1; see below, para 33.

restriction, its absence does not mean that a public authority is *obliged* to display one or other flags.¹⁰

17. In relation to how government has legislated for public authorities flying flags in Northern Ireland – and effectively decided where the ‘balance’ should be struck – there are two main frameworks, one for government departments and the other for the Police Service of Northern Ireland (PSNI).
18. The first, relating to government departments, is the Flags (Northern Ireland) Order 2000. This applies to buildings occupied by Northern Ireland Executive Departments and agencies, and not to local government. Prior to this it had been a matter of custom or practice to fly the Union Flag on designated days over government buildings. However, after Sinn Féin ministers in the new Northern Ireland Executive declined to fly the Union flag at their Departments, an Order in Council was passed through Westminster empowering the Secretary of State to make Regulations on the matter.
19. The Flags Regulations (Northern Ireland) 2000 were subsequently approved, and these generally require that no flag should be flown from government buildings except where the Regulations require or permit it to be. The main exception is a requirement to fly the Union Flag from seven government buildings on fifteen designated days (most of which relate to birthdays and other anniversaries connected with the British royal family). Any amendment to the Regulations is subject to approval by Westminster, not the Assembly – but the Secretary of State does have to lay a draft of the Regulations before the Assembly which can forward a report on its views. The Secretary of State must also have regard to the Belfast (Good Friday) Agreement when making Regulations. The report of the Ad Hoc Committee of the Assembly that considered the 2000 Regulations sets out the differing views of the parties on the Regulations and on the interpretation of the Belfast (Good Friday) Agreement.¹¹

¹⁰ The Commission had seen no evidence for, and offered no view as to, the motivation for or impact of the flying or preventing the flying of particular flags by this Council, but rather outlined, as requested, the Article 10 legal framework under which such matters should be assessed.

¹¹ Available: <http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-00r.htm> [accessed 7 January 2011]. In relation to interpreting the Agreement’s implications for flag flying, Unionist parties tend to emphasise the affirmation of the constitutional status of Northern Ireland within the UK, and nationalists and others the provisions for parity of esteem and impartiality of the state. The Agreement itself in relation to ‘symbols and emblems’ (without specifically referring to flags) states: “All participants acknowledge the sensitivity of the use

20. The other legal provisions affecting a public authority in Northern Ireland are the Police Emblems and Flags Regulations (Northern Ireland) 2002. The balance struck here was that the PSNI is not permitted to fly the Union Flag or any other national flag, but should only fly the PSNI service flag.
21. In 2007, the UK government published the *Governance of Britain* Green Paper, in which measures were proposed for Great Britain to increase the flying of the Union Flag with the stated aim of addressing concerns that the Union Flag has become "the preserve of political extremists". Guidance was subsequently issued to GB departments that they could choose to fly the Union Flag for more than the designated days. Government was clear, however, that the existing regulations would continue in Northern Ireland, stating: "*There are particular sensitivities in Northern Ireland. The flying of flags there is governed by the Flags Regulations (Northern Ireland) 2000. The Government believes that this is the most appropriate way to deal with the matter*".¹²

Rights and having a Union Flag flown

22. Dealing with the issue of whether there are obligations to fly flags, the Commission has also been asked, in the same context: "*What grounds could a local ratepayer have for taking Council to court for refusing to fly the Union Flag?*"
23. The Commission responded that if a Council chose to move its policy in the direction of limiting the flying of the Union Flag it is difficult to foresee how a successful challenge to such a policy could rely on human rights law. The regulatory framework set out above deals with the limited circumstances when (in giving due weight to the 'rights of others') there would be an onus on the Council to restrict existing (or additional) flag flying. This does *not* mean that a positive obligation to fly a national flag can be derived from freedom of (political/cultural) expression. That is to say, the concept of *freedom* of expression is inherently incapable of containing an *obligation* to express something.

of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division" (Rights, Safeguards and Equality of Opportunity, para 5).

¹² CM 7170, p58.

24. Other District Councils have 'no flag' policies, and the Commission has advised that such policies do not contravene Article 10. Such policies do not appear to have been subject to successful challenge. The Commission has advised that the situation would be different if the Council chose to discontinue the flying of the Union Flag, and instead to fly, for example, the Tricolour. In that instance the test, whilst not dealing with minority rights, would otherwise follow that outlined above in response to the first question (that is, requiring assessment of intent and impact).
25. A related question posed has been the "*secondary issue... of equality, where British citizens have diminished or restricted rights because of their residence in Northern Ireland as opposed to another part of the United Kingdom*". Again, notwithstanding the aforementioned test on limitations, a positive obligation to fly a national or any flag cannot be derived from freedom of expression. Nor is it apparent that any other rights of British citizens are engaged by a Union Flag not being flown for them.¹³

Framework Convention for National Minorities

26. Separately, the Commission has also advised in relation to the contention that an obligation can be derived from Article 20 of the Framework Convention on the Protection of National Minorities that Irish nationalists, as a national minority, must accord respect to the Union flag as a symbols of the state having sovereignty over the territory.¹⁴ The Commission has advised that it does not regard this interpretation of the Framework Convention as sustainable and that human rights law does not oblige anyone to honour any symbol.¹⁵

¹³ It was not clear whether this question referred only to a 'no flags' policy or whether it is also asserted that the rights of British citizens would be affected by a 'two flags' policy. The Commission has not examined the practice of local authorities in Great Britain in relation to flying the Union Flag or other flags.

¹⁴ See *Hansard* Northern Ireland Assembly, 6 June 2000, Dermot Nesbitt MLA: "Article 20 of the Framework Convention is unambiguously clear in stating... that there is a fundamental principle upon which all other rights are to be based, and it is something that is supported by every international expert in human rights. Majorities and minorities should respect national law and the constitution, which means respecting the constitutional position of Northern Ireland as demonstrated by the flag". Available: <http://www.niassembly.gov.uk/record/reports/000606.htm> [accessed 14 January 2011].

¹⁵ Article 20 is a general limitation clause which states that "*In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect*

27. It has also been asserted that the display of the Irish Tricolour by a public authority alongside the Union Flag would contravene Article 21 of the Framework Convention “in that it would not recognise the territorial integrity of Northern Ireland and the independence of the United Kingdom as a whole”.¹⁶ Article 21 provides that “Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.” The flying of any flag does not necessarily, and does not usually, constitute an activity that challenges the territorial integrity of the state in whose territory the flag is flown, least of all where it is flown alongside the state’s own flag.

“No Flags” policies

28. The Commission has also given advice to Councils that have policies of not flying any flags, and concluded that this is a relatively easy position to defend in human rights terms (for the Council itself to decide not to fly a flag can be an exercise of freedom of expression, and this may also serve such legitimate reasons as to protect its own property, staff and third parties from violence or disorder). This advice was given with the caveat that the consistency of such a ‘no flags’ policy with human rights was easier to establish from the international human rights standards in relation to a rights-based rationale for *maintaining* an existing ‘prohibition’, than it would be in a case for *adopting* or *abandoning* a flags policy, even one that instituted a ‘no flags’ approach. That is, a settled policy that prohibited any flags, if based on rights

the *national legislation and the rights of others*, in particular those of persons belonging to the majority or to other national minorities” (emphasis added). This refers only to situations where minorities – not public bodies or majorities - are exercising rights that are set out in the Convention, and it does no more than establish that this must not be done in a manner incompatible with the rights of others, or incompatible with national legislation. As stated above the ‘rights of others’ does not encompass a right to have a flag ‘flown for you’. The reference to national legislation (which includes a constitutional framework) also needs to be considered in the context that such legislation should be compatible with the Framework Convention and other international human rights standards; no legislation imposes, nor could any rights-compatible legislation impose, a duty on minorities to respect a particular flag.

¹⁶ See submission by Lady Sylvia Hermon to the Assembly’s Ad Hoc Committee considering the draft Flags Regulations (NI) Order 2000. Available: <http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-00r.htm> [accessed 7 January 2011].

considerations such as the protection of property or the rights of others, and shown to have met those aims, would be easier to defend in human rights terms than the sudden introduction of a ban where none had existed. It has also been emphasised that it is not possible to state that any particular approach – one flag, two, none, many – is absolutely required by the human rights standards, but of all the possible approaches, it is easiest to show that a Council choosing to maintain a ‘no flags’ policy does not contravene international standards.

Displays of flags by third parties

29. The discussion above relates to the Council itself flying flags. The Commission has also advised on the display of flags by third parties at events on Council property or otherwise subject to some element of control or sponsorship by a Council (for example, at a bonfire or other event permitted on Council-owned land). In this instance the situation is different because the Council, as a public authority, has the duty to permit freedom of expression by others. The presumption must then be in favour of allowing private persons to display flags except where there is a compelling case, compatible with Article 10(2), for intervention, and where the Council has satisfied itself that it has the power or duty in law to do so. Any such intervention would of course have to be on a non-discriminatory basis.

30. The Commission has advised that Councils may find it difficult to justify routinely asking organisers to restrict or prohibit displays or if they uniformly condition support, permission or funding on such an agreement. Rather, Councils should only consider doing so where it is believed that legitimate Article 10(2) considerations are likely to arise (for example, if this is evidenced by behaviour on previous such occasions, or if the nature of the event causes the Council to expect forms of expression that engage 10(2)). It might be an initially attractive proposition that the Council should make permission or funding conditional on ‘no flags’, but even if applied even-handedly, this could constitute an unwarranted restriction of Article 10 rights. A no-flag rule would not always be a proportionate or reasonable requirement. Such a blanket rule may impose an unreasonable burden on particular organisations or events *per se* without consideration of context and circumstances. As emphasised above, the principle of legal certainty requires that any restriction on freedom of expression must be adequately prescribed by law.

Therefore, while Council stewards and other officials may wish to discourage persons from displaying flags, any attempt in a public place to restrict participation in an event or confiscate flags in the absence of a power in law to do so would conflict with ECHR rights.¹⁷

31. For most of Northern Ireland's existence the display of national flags by private individuals has been heavily regulated. Bans on displaying the Tricolour were first introduced through Special Powers regulations. Following their successful challenge in court in 1951 on a technicality by a Nationalist MP, the Regulations were repealed and the Stormont Parliament introduced new public order legislation and, subsequently, the Flags and Emblems (Display) Act (Northern Ireland) 1954. This legislation made it an offence to "interfere" with a Union Flag displayed anywhere other than one's own property. It also empowered the RUC (the then police force) to require the removal of any other flag or otherwise "provocative" emblem considered likely to cause a breach of the peace, created an offence of non-compliance and empowered the RUC without warrant to "remove and seize and detain" any such flag or emblem. The Union Flag was legally exempted from these provisions, in effect deemed by law not to have the capacity to cause a breach of the peace. The 1954 Act was not repealed until 1987, although there is some evidence of a (mistaken) popular belief until sometime after this that it was still an offence to fly the Tricolour.¹⁸
32. There is therefore at present no legislation directly regulating the display of flags by private individuals.¹⁹ Public order legislation does provide that in a public place (or at public meetings or parades) any person who "displays anything or does any act" with intent to "provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned" commits an offence.²⁰ This could capture the

¹⁷ At some Council-organised annual St Patrick's Day parades the practice is to discourage display of the Tricolour and to give out and encourage use of the St Patrick's Cross flag instead (a white flag with a red "X" which has since approximately the 18th century been used in some contexts by British institutions to represent Ireland and forms part of the Union Flag).

¹⁸ See submission by Ulster Unionist Party to the Assembly's Ad Hoc Committee considering the draft Flags Regulations (NI) Order 2000. Available: <http://www.niassembly.gov.uk/adhocs/flags/reports/adhoc1-00r.htm> [accessed 7 January 2011].

¹⁹ For duties on employers and service providers under 'fair employment' legislation, see: para 2 of this paper.

²⁰ Article 19, Public Order (Northern Ireland) Order 1987.

use of any flag for such a purpose, and there is no exemption for the Union Flag. Under counter-terrorism legislation, it is an offence to display in a public place any 'article' in such a way or in which circumstances as to arouse reasonable suspicion that an individual is a member or supporter of a proscribed organisation.²¹ This provision captures the flags of proscribed organisations. Beyond this, public authorities will also have powers to remove flags which have been placed on their own property. Under planning legislation, the Department of Environment also has powers to regulate material considered to be an advertisement.²²

33. In relation to public policy, the PSNI has led an interagency "Joint Protocol in Relation to the Display of Flags in Public Areas" along with government departments – Office of First and deputy First Minister (OFMdFM), Department of the Environment (DOE) (planning service), Department for Social Development (DSD), Department for Regional Development (DRD) (roads service) and the Northern Ireland Housing Executive. The protocol, which references ECHR rights, sets out the position that the use of flags for celebration of cultural identity or marking a festive event is not normally an issue, but that the use of flags for "other more sinister purposes" (singling out "sectarianism or intimidation [and] marking out of territory") is "unacceptable in a peaceful and tolerant society".²³ District Councils are not parties to the protocol although "it is hoped that all local councils will examine this protocol and adopt it as a way forward."²⁴ The protocol sets out joint aims including adoption of a graduated response to flags involving community consultation, negotiation and where necessary, "proportionate and legal use of enforcement methods".²⁵ The protocol aims for the removal of all flags from arterial routes and town centres, control of flags in mixed and interface areas, and that flag flying for particular events is time bound.²⁶
34. OFMdFM commissioned research, conducted by Queen's University Belfast, to evaluate the 2005 Joint Protocol and a 'Shared Future' policy in relation to the display of flags and

²¹ s13 Terrorism Act 2000.

²² The Planning (Control of Advertisements) Regulations (Northern Ireland) 1992, introduced an exemption from the requirement for consent to "The national flag of any country" provided each flag is displayed on a single flagstaff and no additional subject matter is included.

²³ Paras 1.1-2.

²⁴ Para 1.6.

²⁵ Para 2.3.

²⁶ Para 2.4.

emblems in public places. During 2006-2010, the research quantified displays, concluding that the “vast bulk of political symbols displayed on arterial routes and town centres are flags”, with a consistent peak of around 4,000 flags in July each year, 80 per cent of which were “national and regional” flags. The research concluded that while the Joint Protocol “has been utilised well in some areas, evidence suggests that, in overall terms, it has been largely ineffective”. Among its recommendations were that the “...Protocol be restructured to include District Councils and we believe strong consideration should be given to District Councils being the lead agencies”.²⁷

35. In particular contexts, national flags being placed around, for example, a leisure centre, by private individuals may have the impact of ‘freezing out’ a local minority from accessing the service. It follows that the erection of the same flags at the vicinity by a public authority may have the same impact. The Commission addressed this in its response to the 2010 draft Programme for Cohesion, Sharing & Integration consultation document (“CSI strategy”) issued by OFMdfM. One of the identifiable commitments within the draft CSI policy is a review of the flags protocol. The issue of flag flying by public authorities was not addressed, and the Commission drew attention to this:

The issue of flag flying is referred to a number of times within the document, including a commitment to review the inter-agency Flags Protocol, and references to flags being used as territorial markers. However, it appears that this is only to address the flying of flags by private parties, but not by public authorities such as district Councils. This issue is not dealt with in CSI, although it would seem appropriate to address how the behaviour of public bodies in relation to flag flying might influence the conduct of private actors.²⁸

36. There is also the question of district Councils’ policies on the display of flags by third parties on Council property, or at events organised or sponsored by the Council. There appears to be less research into this aspect of public policy.

²⁷ Institute of Irish Studies (May 2010) *Public Displays of Flags and Emblems in Northern Ireland Survey 2006-2009*, Queen’s University Belfast, p6.

²⁸ Commission response to CSI strategy (October 2010) para 45. Available: [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Response_to_CSI_consultation_\(October_2010\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Response_to_CSI_consultation_(October_2010).pdf).