

DISPLAY OF FLAGS AND EMBLEMS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Paula Bradshaw MLA (the Bill Sponsor) to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Bill seeks to tackle the persistent issue of public property being abused for the display of flags or emblems which are designed to exclude or intimidate. To address this, the Bill will place a duty on the Department for Infrastructure (the Department) to remove flags or emblems that are harmful, exclusionary, discriminatory or associated with proscribed organisations from public or sensitive places. It will also provide a clear and fair legal framework governing the circumstances under which other flags or emblems may be displayed – striking a balance between respect for cultural expression while preventing intimidation, territorial marking, and the coercive use of symbols in public places. The Bill Sponsor understands that at times this assessment will be fact-specific and subjective in the absence of appropriate principles underpinning legislative duties.
4. The Bill Sponsor has adopted a streamlined approach, which imposes statutory responsibilities to remove flags or emblems, which is felt to be more targeted and proportionate. In that respect, a Code of Practice is relevant for the consideration of whether flags and emblems ought to be removed. This includes duties to consult relevant bodies on the content of a Code of Practice and establishing a rebuttable presumption that certain conditions will trigger removal of such items.
5. The Flags Protocol of 2005 itself set out a range of principles around the purpose and duration of the flying of flags as well as controlling their erection in certain areas e.g. interface areas or near areas of shared amenities and arterial routes. The Bill Sponsor notes the voluntary nature of the Protocol and emphasis on working with communities but considers that legislation is required to establish clear legal principles that determine when the display of flags and emblems is not in the public interest. This enshrines the lead responsibility for the Department for Infrastructure, whilst recognising the important role of the PSNI in supporting enforcement. The report of the Commission on Flags, Identity

and Cultural Expression (FICT) described the Protocol as wholly ineffective and this supports the need for legislative intervention, backed up by clear statutory guidance.

6. In part, this reflects that there is a broad diversity of flags and emblems displayed regularly across Northern Ireland for a range of purposes. The Bill Sponsor has no desire to stifle the legitimate expression of cultural identity or celebrations, and recognises the importance of a statutory framework, which is sufficiently flexible to accommodate this practical reality, whilst establishing a duty to act in specific circumstances where displays are causing harm and damage to community relations. This also recognises the need for a practical approach and the application of resources to deal with the matter should be targeted and proportionate. If it was drawn too widely, it would be unworkable and unfairly restrict cultural expression; for example, recognition of traditional periods of celebration and commemoration will be central to this approach. Equally, there is a need for clear statutory expression of the types of circumstances in which flags and emblems are abusive, threatening and constitute demarcation of territory.
7. The Bill reflects that the removal of flags and emblems from public furniture may not always be in the public interest and notes the importance of protecting identity and cultural expression. As its core guiding principle, it adopts the agenda of ‘respect for the flag, respect for the community and respect for the event’ as set out in Paragraph 11.48 of the final FICT report. The report noted that current legislation does not give authority for citizens to place flags on lampposts and, although there was no consensus on whether new legislation should be taken forward to create new exemption(s) to the Roads (Northern Ireland) Order 1993, the Commission did articulate a number of principles within a possible Code of Practice which could inform the application of any such legislation. The duty in clause 4 could use this Code of Practice as a starting point and is required to consult with interested parties in order to arrive at a workable approach.
8. The Bill Sponsor recognises the challenges in achieving political agreement on these matters. Equally, there is a need to take a sensitive and inclusive approach, which is not arbitrary or over-extended in application. This is why the factors within the Bill which inform the circumstances around when it would be in the public interest to remove a flag or emblem from street furniture are heavily informed by the deliberations of the Commission. The requirement under clause 4 to produce a Code of Practice for the Display of Flags and Emblems is intended to supplement the exercise of judgement required by the Bill by setting clear expectations around what constitutes respectful display of flags and emblems for legitimate commemoration, celebration and cultural expression. It also identifies DfI as a lead department, as they are responsible for most street furniture, and the lack of a lead agency is a key criticism of the approach to date.
9. In the public interest test, there is a rebuttable presumption that certain displays or flags or emblems are not in the public interest, e.g. where it is offensive and abusive, displayed in the vicinity of a sensitive place etc. The factors in clause 1(4) are designed to ensure that before a flag or emblem is removed, it is considered against a range of factors. Again, the intention behind a developed Code of Practice is to provide guidance for communities in displays, whilst establishing a procedure to provide views provides equal access to those making representations. The Bill Sponsor recognises that DfI will need to take a targeted and prioritised approach, which addresses instances of concern and that the Code of Practice and guidance will have an important role in ensuring that proportionate time and resources are expended.

10. The Bill Sponsor is acutely conscious of the need for the Bill to operate in robust compliance with the ECHR and observe a careful balance between competing rights; for example, Article 10 of the ECHR under the Human Rights Act 1998 expressly upholds freedom of expression, e.g. expressions of cultural identity forms part of this discussion and Article 11 on freedom of Assembly, e.g. where this takes place for the purpose of celebration of cultural expression. The nuanced approach set out in the Bill and the anticipated Code of Practice should clearly and carefully distinguish legitimate from unlawful displays of flags and emblems. Equally, Article 8 ECHR protects the right to a family life, and the Bill Sponsor notes the importance of living free of fear and harassment. Communities subjected to the intimidating display of flags and emblems also require protection.
11. Article 14 ECHR sets out that there should be no discrimination between persons on the enjoyment of rights and freedoms. This fastens an important obligation on public authorities to exercise their responsibilities in a reasonable, proportionate and fair manner. The Bill Sponsor considers the appropriate definition of cultural displays and celebrations, etc., as an important part of recognising the realities of differing cultural identities in Northern Ireland and traditional celebrations, whilst providing a clear responsibility to deal with egregious displays which are not for these purposes. The importance of this approach is further underpinned by the duty to promote equality of opportunity between the nine equality categories set out in section 75 of the Northern Ireland Act 1998.
12. Taken together, the Bill Sponsor considers that the balance of a public interest test in this legislation, underpinned by a Code of Practice will result in a careful and balanced statutory regime for the display of flags and emblems. This means that the least restrictions are placed on the Article 10 ECHR rights as possible whilst protecting Article 8 ECHR rights. The inclusion of a new criminal offence to prevent the obstruction of the Department or a person acting on behalf of the Department is clearly linked to a set of established conditions, which warrant intervention. It will only occur when the threshold of removal in the public interest is met. The Bill Sponsor notes the importance of an approach which does not exacerbate tensions and directs enforcement action to those circumstances which warrant it, but which provides a clear signal that obstruction of enforcement is not acceptable.
13. The Bill Sponsor considers that the Bill is designed to recognise that communal celebrations and expressions of identity are important, whilst ensuring that displays of flags and emblems are neither excessive nor exclusionary. The Bill applies only to public street furniture located in a public place. It does not apply to private property, social housing managed by the Northern Ireland Housing Executive (NIHE) nor Housing Associations, nor to commercial premises. This is important in preventing the Bill becoming more cross-cutting and complex in policy terms and respecting property rights of individuals.
14. For the purposes of the Bill, “public street furniture” means publicly-owned infrastructure such as lampposts, bus shelters, trees, rubbish and recycling bins, street signs, bollards, railings and fences; a “public place” means any street, road, highway and any place that the public has access to; and a “sensitive place”, as referred to in Clause 1(3)(b) and in Clause 2, includes a place where public services are provided, a shared communal place, an interface area, a new housing development or a place of worship. A fuller set of definitions used in the Bill is set out in Clause 7.
15. The Department is typically the relevant landowner for public street furniture where issues around displaying flags and emblems most commonly arise.

CONSULTATION

16. The Bill Sponsor conducted an online public consultation on the policy objectives and proposed legislative options between 6 January and 31 March 2025. A total of 8,030 responses were received. There were widely divergent views on the subject and different considerations, but it was possible to glean a few important themes and principles which can attract a modest consensus. The Bill Sponsor noted the importance of engaging widely on this matter, as it is an issue with which a range of public agencies have been involved in different settings.
17. Direct engagement took place with a wide range of stakeholders (including but not limited to: the Department for Infrastructure, The Executive Office, Queen's University Belfast, Ulster University, Police Service of Northern Ireland (PSNI), the Committee on the Administration of Justice, the NIHE, the Parades Commission, the Grand Orange Lodge of Ireland, Amnesty International and the Northern Ireland Office) before, during and after the online consultation period. This engagement led to the initial proposal for a more formally regulated system of consents being simplified into a judgement for the department and the relevant factors they must take into account on the face of the Bill. This change is aimed at addressing concerns of over-regulation and ensuring that scarce resources are not deployed in situations where such deployment is not warranted.
18. Part of the reason for the original approach was to balance clear evidence from engagement that the display of flags and emblems for the purposes of community celebrations and commemorations create a space for legitimate expression of national and cultural identity, whilst there was a recognition that some displays can have negative effects, including exclusion, intimidation and demarcation of territory. The Bill Sponsor benefitted from the significant evidence base and reasoning set out in the FICT Report on this balance between the relevant considerations which should be taken into account.
19. In so doing, it was clear that an approach which created a presumption against displays of flags and emblems is impractical. The Bill Sponsor has targeted an approach which is the least invasive way of achieving the policy objective, i.e. fleshing out strong statutory presumptions with a supporting Code of Practice. This will allow communities to be clear on what expectations are and that this will not result in over-regulation but will target certain abuses of the display of flags and emblems. The nature and tenor of displays of flags and emblems have an important impact on public perception; for example, the consultation was clear that time-bound, non-paramilitary displays are viewed significantly differently than those which are enduring and paramilitary in nature. Similarly, community celebrations are considerably different than the display of flags and emblems in spaces where it is likely to cause intimidation.
20. Overall, the Bill Sponsor could identify the ingredients of the approach which went into the formation of the Bill but acknowledges there remain concerns around the practical issues of enforcement. The importance of setting clear expectations around interpretation and enforcement will clearly be crucial and this connects clearly to the Code of Practice and any guidance issued by the Department. The Bill Sponsor does not support the establishment of a new public body to deal with the issues and being proportionate is an important reason for the specific statutory framework which is proposed.
21. The Bill Sponsor shared the initial legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

22. The Minister for Infrastructure has stated that the Department has no intention to legislate in this area during the 2022-27 Assembly mandate. The then-Minister indicated concerns about enforcement and the safety of personnel in carrying out the work, arguing that external contractors would likely be required for the role. He raised the issue of financial implications for the Department as well as the risk of reprisals being an issue. The Bill Sponsor acknowledges the concern, and the Bill includes both a criminal offence of obstruction and the ability to request assistance from the PSNI in that regard. The intent is to deter attacks or intimidatory behaviour. Added to the safeguards of the Bill being directed to the most concerning and persistent displays, this is intended to target enforcement and set clear expectations around behaviour. The Bill Sponsor looks forward to engaging with the Minister on this Bill, but notes that the matter will never be effectively tackled without a clear legislative basis for enforcement.
23. The Member engaged with the PSNI around the current model of enforcement and the relevant issues that they take into account with enforcement action. The Bill makes a clear connection between the PSNI and the Department in terms of its implementation. Specifically, the ability to request PSNI assistance in enforcement under clause 6 if there is likely to be a breach of the peace or an offence of obstruction towards the attempted removal of the flag and emblem. This acknowledges that this will impose new responsibilities on DfI in the context of regulating displays on public street furniture and given the concerns of the then-Minister, this is a means of supporting enforcement.
24. The consultation, both online and in-person, directly informed the development of the Bill, particularly around the operational implementation of the proposals. It was very clear that consultees, regardless of their other views on the topic, were keen that any legislation should not come at significant cost to the public purse. Consequently, the Bill was streamlined to ensure it was not overly burdensome. The Code of Practice emerging from the legislation should aim to provide further assurance in this respect by expressly setting out the circumstances in which enforcement action should be expected. The aim is that giving some clarity around what does not constitute a public interest for removal will have the impact of settling matters down by removing any perceptions of over-regulation.
25. Information received and evidence gathered reinforced the breadth of concern around the display of flags and emblems and emphasised the need for legislative interventions to address those concerns and to deliver the Sponsor's policy objectives.
26. The legislation includes a consultative role on the Code of Practice for the new Office for Identity and Cultural Expression which has been established under the Identity and Language (Northern Ireland) Act 2022. Two of its statutory responsibilities are particularly relevant in relation to the balance between supporting expressions of culture identity and addressing the damaging impacts of the inappropriate use of flags and emblems in our society:
 - to promote social cohesion and reconciliation between those with different national and cultural identities; and
 - to support, and promote the celebration of, the cultural and linguistic heritage of all people living in Northern Ireland.
27. These obligations neatly encapsulate the balancing exercise that the Bill Sponsor is trying to achieve and makes their inclusion critical, alongside other statutory consultees the Northern Ireland Human Rights Commission, the Equality Commission, the PSNI, NIHE,

the Northern Ireland Community Relations Council, The Executive Office and District Councils.

OPTIONS CONSIDERED

28. Option One: Continue with the status quo, i.e. take no legislative action and rely on an existing Code of Practice which, since 2005, the Bill Sponsor is clear has been shown to be ineffective.
29. Option Two: Take no legislative action and rely on updates to public policy from Executive Departments and the PSNI. The Bill Sponsor considers that it is evident, not least given the lack of action on the recommendations of the FICT report to date, that this too is unlikely to happen in the short- to medium-term.
30. Option Three: Take forward focused legislative action.
31. Following consultation, advice and deliberation, the Bill Sponsor concludes that introducing and enacting a short, focused piece of primary legislation wholly within the devolved competence of the Assembly is the most appropriate and proportionate approach. The Bill will apply only to public property and will enable people to celebrate their culture while also promoting the objective of communities living free from intimidation.

COMMENTARY ON CLAUSES

32. The Bill has 9 Clauses. A commentary on each of the Clauses follows.

Clause 1: Removal of flags or emblems in the public interest

Clause 1 places a duty on the Department to remove flags or emblems that are displayed in a public place, if it is in the public interest to do so. The Clause details when a flag or emblem must be removed, and when it is considered appropriate to remove a flag or emblem. It also details what the Department must take into account when making a decision on whether or not to remove the flag or emblem.

Under this clause, there will be a presumption that it is in the public interest to remove flags or emblems under certain criteria, including when a flag or emblem is abusive or insulting, or it is displayed near a sensitive place and is not conducive to good community relations or demarcates the place as belonging exclusively to a particular national or cultural identity. However, the Clause concludes by clarifying that this part of the Bill does not apply if the flag or emblem has been displayed by a public authority.

Clause 2: Sensitive places

The Bill allows for the removal of flags or emblems from the vicinity of sensitive places. Clause 2 provides information on what is considered a sensitive place: a place where public services are provided (prominent examples of which include schools, medical facilities, leisure centres and libraries), and a shared communal place (including shopping centres, arterial roads and public parks). It should be noted that the sensitive places listed do not constitute an exhaustive list. The Bill therefore makes provision for, and applies to, any other place where public services are provided; and any other shared communal place that people could expect to have access to.

Clause 3: Procedure for / notification of, or giving views on, flags or emblems

Clause 3 requires the Department to put in place provision via an online portal for voluntarily notifying the display of flag(s) and/or emblem(s), and for this portal to allow members of the public to provide their views on the display of the flag or emblem, to ensure as far as practicable that displays remain in line with a Code of Practice based on that outlined in the report of the Commission on FICT. This information – both from those wishing to erect flags or emblems and those who have concerns about their erection – will provide the Department with details to be taken into consideration when weighing up the public interest test and cultural identity protections.

Clause 4: Code of Practice

Clause 4 places a requirement on the Department to issue a Code of Practice on the display of flags and emblems within twelve months of this part of the Bill coming into operation. This part of the Bill comes into operation twelve months from the date that the Bill becomes an Act. Therefore, the Code of Practice should be issued within twenty four months from the date that the Bill becomes an Act. It also places an obligation on the Department to consult key stakeholders (including the NI Human Rights Commission, the Equality Commission for NI and the PSNI) on the Code of Practice in advance of it being issued and, periodically, to review it.

In developing the Code of Practice, the Department is required to consider the Final Report of the Commission on Flags, Identity, Culture and Tradition.

The Clause concludes by identifying key areas that the Code of Practice should contain guidance on, including what constitutes an excessive period of time.

Clause 5: Offence of obstructing the Department in removal of flag or emblem

Clause 5 details the implications of obstructing the removal of a flag or emblem. The maximum penalty for such an offence is a fine not exceeding level 3 on the standard scale.

Clause 6: Request for assistance from police

Clause 6 permits the Department to request the assistance of the PSNI in the removal of a flag or emblem if the Department feels that there could potentially be a breach of the peace, or if there is a concern that a person acting on its behalf may be obstructed from removing the flag or emblem.

Clause 7: Interpretation

Clause 7 provides interpretations of the terms used in Clauses one to six of the Bill.

Clause 8: Commencement

Clause 8 relates to when the clauses of the Bill come into operation. Clauses 1, 5 and 6 will come into operation on 1 January 2029; and the remaining clauses will come into operation twelve months, or as soon as is practicable after this date, from the date that the Bill receives Royal Assent and becomes an Act.

Clause 9: Short title

Clause 9 sets out the short title of the Bill.

FINANCIAL EFFECTS OF THE BILL

33. It is anticipated that there will be resource and staffing implications, particularly for the Department and the PSNI. Anticipated administrative costs include the cost of developing or modifying a procedure, such as an online portal, to notify the Department of the display of a flag or emblem and the cost to the Department of developing a Code of Practice. There will also be administrative and operational resource implications to remove flags and emblems from street furniture, which may require the use of contractors, and enforcement costs, including policing costs, where assistance from the PSNI is required.
34. The cost implications of developing or modifying a procedure, such as an online portal, cannot be quantified, as the resource requirements can only be assessed once the overall process has been developed. While it is not possible to estimate the cost, it is anticipated that the resource implications of adapting the existing portal to include this function would be low. The amount of engagement with the process will also have a bearing on staffing time. Some worked examples of costs are provided below in relation to incidents - the Bill Sponsor notes these are not intended to be comprehensive or a forecast, but to illustrate contributing factors.
35. Removal of a flag or emblem by the Department will likely incur staff time and resources when determining whether to remove it, but at this time that cannot be determined as there is no way to know for sure what the number of reported incidents will be. The Bill Sponsor notes that the Department already receives complaints on the display of flags or emblems via correspondence (on average 165 complaints per year over the past 5 years). Complaints are also registered via the Public Information Portal (PIP) and from 2019 to 2023 there were on average 30 reports. Communications around the expectations of the Code of Practice and awareness of the new legislation may lead to an increase in reporting. This may increase enforcement and administration costs, at least in the short-term, but the longer-term is difficult to quantify. This underlines the importance of setting clear guidance and expectations about the conditions in which enforcement may come about and the way enforcement will be handled. This is important in terms of informing the public and being clear about the scope and application of the statutory duties in the Bill.
36. The PSNI does not centrally collate data relating to the number of incidents or callouts received associated with flags and emblems, so it is not possible to determine a cost associated with police time and resource. For illustrative purposes, if it is assumed that each removal requires one hour of time from two Constables and one hour of Inspector time (for operational and resourcing decisions), the estimated cost would be approximately £143 per removal, assuming no additional support is required. On that basis, and applying the above estimated 195 incidents per year, removals linked solely to correspondence-based complaints could amount to around £27,885 per year even if police assistance were required on every occasion. However, if the number of removals that would require police assistance is small, this theoretical figure may be significantly higher than it would be in actuality. If there is a spike in removals, pressure on this figure would increase. Much will ultimately depend on establishing clear public expectations and taking a targeted and justifiable approach to enforcement based on the provisions of the Bill and the Code of Practice issued under it.

37. These above comments must be balanced against the implications of no action, which include the ongoing intimidation of citizens and the economic cost caused by the presence of flags and emblems designed to exclude people of a different culture, identity or tradition. The Bill Sponsor acknowledges that these costs are often hidden and dispersed, however the wider social costs of this must not be understated. A key policy objective is to positively influence displays of flags and emblems by clearly signalling in the bulk of cases these can be recognised under the Code of Practice, and it is the circumstances which create damaging social effects which is the challenge being tackled by this Bill.
38. In summary, there is currently no comprehensive data on the total number of complaints relating to flags and emblems and the total number of complaints regarding flags and emblems that are reported to the PSNI annually is unknown. As such, the level of resources currently expended to address complaints and removals remains unclear. This Bill could conceivably increase the volume of complaints received, relative to current levels, but it is not possible at this stage to reliably estimate the level of resources that could be required to administer any additional complaints or to undertake the removal of flags or emblems under the provisions specified in the Bill.

HUMAN RIGHTS ISSUES

39. The provisions of the Bill are considered to be compatible with the European Convention on Human Rights and with Article 2(1) of the Windsor Framework. It is acknowledged that the Bill needs to carefully balance ECHR Rights, for example under Articles 8, 10 and 14 ECHR in relation to the design of the legislation and the proposed enforcement model. The Bill Sponsor has sought to do this in a measured, proportionate and transparent manner.

EQUALITY IMPACT ASSESSMENT

40. The Bill Sponsor is satisfied that the provisions of the Bill do not discriminate against any of the equality groups. Engagement between the Bill Sponsor and the Equality Commission on the outline proposal did not raise any potential adverse effects and suggested that the Bill may positively affect some groups.
41. The Bill Sponsor is satisfied that the Bill will not have an adverse effect on any of the groups identified in section 75 of the Northern Ireland Act 1998. It is noted that public authorities need to exercise their functions under Section 75 in a manner which is conducive to equality of opportunity across the equality categories. Adherence with section 75 principles will inform the development of the Code of Practice and enforcement model. That should be done with a view to creating confidence in communities that the legislation is applied proportionately, fairly and consistently.
42. The performance of the functions that the Bill imposes on the Department will be subject to its obligations under section 75.

LEGISLATIVE COMPETENCE

43. The provisions of the Bill relate solely to Northern Ireland and therefore do not have any extra-jurisdictional effect. They do not deal with any matters that have not been devolved to the Northern Ireland Assembly, and they do not seek to modify any entrenched

enactments. Therefore, in these regards, the Bill meets requirements in terms of legislative competence.

44. The Bill has been drafted to ensure that none of its provisions are incompatible with the European Convention on Human Rights as incorporated by the Human Rights Act 1998.
45. The Bill could have potentially discriminated on the grounds of religious belief or political opinion. The Bill has been drafted to ensure that it does not result in such discrimination and the principles underpinning enforcement must match that commitment.

At Introduction, Paula Bradshaw MLA made the following statement under Standing Order 30:

“In my view the Display of Flags and Emblems Bill would be within the legislative competence of the Northern Ireland Assembly.”