
Council Policy on Flag Flying

Report by Depute Chief Executive for Place

SCOTTISH BORDERS COUNCIL

25 June 2015

1 PURPOSE AND SUMMARY

- 1.1 **This report presents a set of proposals for Council to consider with regards to developing a revised Flag protocol for Scottish Borders Council which meets the requirements of the Equality Act 2010 and providing a modern approach reflecting today's society.**
- 1.2 Following a significant number of enquiries and requests to fly alternative flags, the Convener requested that the Chief Executive undertake a review of the current Flag Flying protocol. A small Working Group of Council Officers was set up to review the current protocol and produce a set of 17 recommendations for Members to consider.
- 1.3 The options the Working Group has identified as available to the Council are:
 - 1) **No changes to existing policy;**
 - 2) **Modify the current protocol to take account of the guidance and practices from the UK Government and the precedent set by the Scottish Government by adopting a protocol for flying other flags. This would see the flags which promote equality and diversity within the policy;**
 - 3) **As option two but with three ground level flagpoles located at the front of Council HQ replacing the single flag pole on the tower of the Council Headquarters to allow additional flags to be flown more regularly; and**
 - 4) **No Flag option.**

2 RECOMMENDATIONS

- 2.1 **I recommend that Council agrees, subject to a suitable location being agreed, to adopt Option 3.**
 - a) **Amend and update the current Flag Protocol to take account of the guidance detailed within this report.**
 - b) **Locate 3 ground level flagpoles at the front of Council HQ replacing the single flag flown at the top of the tower.**

3 CURRENT CONTEXT

3.1 Following a significant number of enquiries and requests to fly alternative flags, the Convener requested that the Chief Executive undertake a review of the current Flag Flying protocol. A small Working Group of Council Officers was set up to review the current protocol and produce a set of recommendations for Council to consider.

4 SCOTTISH BORDERS COUNCIL CURRENT PROTOCOL

4.1 Currently Scottish Borders Council's Flag Flying protocol covers 14 buildings which are:

1. Council Headquarters*
2. Gateway Centre, Coldstream
3. Leitholm Playpark
4. Council Offices, Duns
5. Council Offices, Eyemouth (Former High School)
6. Council Offices, Galashiels
7. Town Hall, Hawick
8. Council Offices, Innerleithen
9. Town Hall, Jedburgh*
10. Town House, Kelso*
11. Town Hall, Melrose
12. Council Offices, Peebles
13. Chambers Institute, Peebles
14. Victoria Hall, Selkirk

Three of these buildings fly flags on a daily basis (indicated with *).

There are other Council buildings which also fly flags. These are;

- **Schools; and
- **Common good/other Council buildings during local Festivals

**The Flag protocol does not apply to the flying of flags at these buildings/during these festivals.

4.2 The current protocol (Appendix 1) set out to standardise the flying of flags and to outline responsibilities in relation to books of condolence. The protocol takes account of national guidance but some compromises have been made between the formal rules of flag etiquette and tradition/practices which have become accepted locally. The current protocol was revised in March 2012 and updated July 2014 to incorporate the flying of the Commonwealth Flag.

5 LEGAL POSITION

5.1 When the Equality Act 2010 was introduced a duty was placed upon Public Bodies. The duty requires public bodies throughout the exercise of their functions to pay due regard to the need to:

- Eliminate discrimination, victimisation, harassment and any other unlawful conduct under the act;
- Promote Equality of Opportunity between those who have an equality characteristic and those who do not; and

- Foster good relations between those who have an equality characteristic and those who do not.
- 5.2 Within Scotland public bodies have a set of specific statutory duties, designed to assist them to meet the general duty outlined above. Amongst these duties is a requirement to assess the impact of the Council's policies, practices and functions on those who have an equality characteristic against the requirements of the general equality duty to ensure we are meeting the requirements of the Act.
- 5.3 Scottish Borders Council has been approached on a number of occasions by equality groups from the local community requesting the flying of their representative flag or challenging the current Flag Flying protocol. Following the introduction of the Equality Duties, Scottish Borders Council is required to equality impact assess the Flag Flying protocol to ensure it is compliant with the act and consider flying additional flags.

6 UK GOVERNMENT POSITION

- 6.1 The flying of flags is not the subject of statute in England, Wales or Scotland. Advice is issued by the Department for Culture, Media and Sport (DCMS) on the flying of national flags on Government buildings, apart from those which are the responsibility of a Devolved Administration. The advice relates to Government buildings only, but many Councils also follow the advice on a voluntary basis.
- 6.2 The Flag and Heraldry Committee of the UK Government produced a Flag Flying Guidance in 2010. The guidance covers simple rules which apply to flying flags in a variety of situations and aim to ensure flags in the UK are flown correctly and treated with dignity and respect.
- 6.3 In January 2012, the Department for Communities and Local Government (DCLG) published a discussion paper aimed at liberalising the regime for flying flags. The outcome from that paper was a number of proposals aimed at modernising and relaxing Government flag protocols. Notably the recommendations included:
- Adding in both the Armed Forces Flag and the Pride (Rainbow Flag); and
 - Extending the category of flags which can be flown with consent to include certain officially sanctioned award schemes which have an approved flag such as Investors in People and Eco-Schools.
- 6.4 In November 2012, the Department for Communities and Local Government published a *Plain Guide to Flying Flags* which provided a summary of new liberalised regulations.

7 SCOTTISH GOVERNMENT POSITION

- 7.1 The Government Flag Flying policy in Scotland is a matter for the Devolved Administration. The Scottish Government issued its revised Flag Flying Guidance in January 2013 (see Appendix 2). Many Local Authorities in Scotland have voluntarily chosen to follow this guidance.
- 7.2 This year the Scottish Government set a new precedent by relaxing its Flag Flying protocol to allow the Rainbow flag to fly on its Government buildings. This happened first of all on 29 May 2014, to mark the historic milestone for

civil rights, when the first same sex weddings took place in in UK and then again for the duration of the Commonwealth Games.

8 LOCAL GOVERNMENT POSITION

- 8.1 The matter of flag flying on Local Government buildings is not bound by any specific directive. It remains for individual Local Authorities to establish their own flag flying protocols.
- 8.2 The Flag Flying protocols of the other Local Authorities in Scotland vary in their content, formality and the number of flagpoles available on each Council building. However, a growing number of Local Authorities are adopting the approach of the Scottish Government by both formalising their policy and relaxing the traditional stance in order to allow additional flags to be flown.
- 8.3 When asked if they flew flags which were representative of equality and diversity approximately half of those who responded said they did and of those who said they did not, the majority said that if a request was made they would consider it.

9 OPTIONS FOR CONSIDERATION

- 9.1 Having considered the above drivers and examined available information and data including the Flag Flying protocols of the other local authorities and public bodies in Scotland, the Officer Working group considers that the Council have the following options available to it;

Option 1	No change to existing protocol.
Detail	Remaining with the status quo would mean that the Council would continue to fly the Saltire on a daily basis from Council HQ. There would continue to be three occasions on which special flags would be flown during the calendar year - Commonwealth flag on Commonwealth Day (in March), the European flag on Europe Day (9 th May) and the Armed Forces Day Flag on (27 th June). The Union Flag would be flown on three occasions throughout the year (The Queen's birthday, Official birthday and Armistice Day & Remembrance Sunday).
Benefits	<ul style="list-style-type: none"> • No administrative changes to make. • Reflects some balance between flag flying etiquette and local tradition.
Risks	<ul style="list-style-type: none"> • Risks challenges and affront with regards to not fully taking into account Scottish Government guidance on flying flags and formal etiquette for flag flying. • Opens up risk of challenge on grounds of Equality as the current protocol could be perceived as non-compliant with the Equality Act and Scottish Borders Councils Equality Duties.
Cost Impact	Status Quo – Current spend approx £600 per year on replacing damaged flags (Saltire at HQ requires to be replaced monthly on average due to wind damage)
Equality Impact	This option does little to further Scottish Borders Council's equality duties and may not be perceived to promote equality of opportunity or meet the duty to foster good relations. Furthermore this option raises potential for challenge relating to equality and diversity and may not represent a modern approach reflecting today's society .

Option 2	Modify the current policy to take account of the Scottish Government guidance on flag flying and adopt a protocol for flying other flags.
Detail	<p>This option would see the Council follow the Scottish Government guidance (Appendix 2) on flag flying and would liberalise the current protocol to enable other flags to be flown which represent equality and diversity.</p> <p>It is proposed that the Rainbow flag is formally included within the policy and flown either on a certain week of the year in celebration of equality and diversity or on a specific appropriate day of the year e.g. International Day Against Homophobia and Transphobia (17th May).</p> <p>This would result in the following flags being flown (when appropriate)</p> <ul style="list-style-type: none"> • Saltire – Flown continuously except for the times below when other flags are flown as below. • Union Flag (HM the Queen’s birthday (21st April)) • Union Flag (HM the Queen’s official birthday (mid June-varies)) • *Commonwealth Flag (Flown on 10th March) • *European Flag (Flown on 9th May) • Armed Forces Day Flag (Flown for a week from the Monday prior to 27th June) • Union Flag (Armistice Day/Remembrance Sunday – Flown between 11th November and Remembrance Sunday) • Others (detailed below) <p>This option would also see the inclusion of an others section (in line with other Local Authorities in Scotland). This section would allow for additional flags to be flown out with the named flags within the protocol at the discretion of the Convener or Vice Convener in consultation with the Chief Executive.</p> <p>* Denotes flags only flown at Council HQ</p>
Benefits	<ul style="list-style-type: none"> • Progressive and in line with practices from both the UK and Scottish Government • Ensures Scottish Borders Council demonstrates dignity and respect for the tradition of flag flying within the United Kingdom. • Enables Scottish Borders Council to actively and visibly promote equality of opportunity and foster good relations and inclusion. • Encourages flag flying which allows Scottish Borders Council to promote positive messages including; pride, inclusiveness, respect and celebration.
Risks	<ul style="list-style-type: none"> • Additional flags and formalising the Council protocol may prove contentious with some members of the public.
Cost	<p>The additional cost to Option 1 could be in the region of £250 for the purchase of additional 4yd Flags. Ongoing costs to replace flags.</p>
Equality Impact	<p>This option allows Scottish Borders Council to actively and openly demonstrate its commitment to equality of opportunity, to celebrate the diversity within the borders community and promote inclusion. In doing this Scottish Borders Council will be actively undertaking its Equality Duties and meeting the requirements of the Equality Act 2010.</p>

Option 3	Multiple Flagpole option
Detail	<p>This option would follow the protocol set out in option 2 but instead of flying only one flag at Scottish Borders Council Head Quarters an additional three flag poles would be erected at the front of the building at ground level. This option would allow multiple flags to be flown at all times but would discontinue the use of the flagpole on the top of the Tower. This flagpole would however need to be retained due to the flagpole housing a radio antenna.</p> <p>It is proposed that the Rainbow flag is formally included within the policy and flown either on a certain week of the year in celebration of equality and diversity or on a specific appropriate day of the year e.g. International Day Against Homophobia and Transphobia (17th May).</p> <p>This would result in the Union Flag and the Saltire being flown continuously from two flagpoles with the remaining flagpole flying (when appropriate):</p> <ul style="list-style-type: none"> • Armed Forces Day Flag (Flown for a week from the Monday prior to 27th June) • *Commonwealth Flag (Flown on 10th March) • *European Flag (Flown on 9th May) • *Others (detailed below) <p>This option would also see the inclusion of an others section (in line with other Local Authorities in Scotland). This section would allow for additional flags to be flown out with the named flags within the protocol at the discretion of the Convener or Vice Convener in consultation with the Chief Executive.</p> <p>It is suggested that for "others" the requestor's supply their own flag in the instance of flag flying requests being accepted.</p> <p>* Denotes flags only flown at Council HQ</p>
Benefits	<ul style="list-style-type: none"> • Progressive and in line with practices from both the UK and Scottish Government • Ensures Scottish Borders Council demonstrates dignity and respect for the tradition of flag flying within the United Kingdom. • Enables Scottish Borders Council to actively and visibly promote equality of opportunity and foster good relations and inclusion. • Encourages flag flying which allows Scottish Borders Council to promote positive messages including; pride, inclusiveness, respect and celebration.
Risks	<ul style="list-style-type: none"> • Adding additional flags and formalising the Council protocol may prove contentious with some members of the public. • More expensive initial cost. • Risk of vandalism of the flagpoles at low level • Loss of visibility of the flag from the A68 and surrounding roads as the flags would only be able to be seen from a relatively small area in front of Council HQ affecting the presence the Council currently has in the area.
Cost	<p>The additional cost to option 1 would be the cost of 3 new flagpoles installed at Council HQ. Anticipated cost £4000 plus ongoing costs to replace flags when damaged.</p>
Equality Impact	<p>This option allows Scottish Borders Council to actively and openly demonstrate its commitment to equality, to celebrate the diversity within our community and promote inclusion. In doing this Scottish Borders Council will be actively undertaking its Equality Duties and meeting the requirements of the Equality Act 2010.</p>

Option 4	No Flags
Detail	This option would remove all flags and flagstaff from Scottish Borders Council's Buildings and no flags would be flown
Benefits	<ul style="list-style-type: none"> • In many ways this is the least contentious option and least likely to cause offence or upset. • This is the most cost effective option
Risks	<ul style="list-style-type: none"> • May inhibit Scottish Borders Councils ability to demonstrate respect or mark special occasions. • May cause offence to those groups already represented by the flag Protocol.
Cost	No Cost – potential saving of around £600 per year from not having to renew/replace flags.
Equality Impact	This option ensures that Scottish Borders Council does not discriminate against any equality characteristic through flag flying and so ensures that Scottish Borders Council acts within the law. However this option may inhibit Scottish Borders Council ability to actively demonstrate the two other elements of its equality duties (to promote equality of opportunity and to foster good relations) in relation to flag flying.

9.2 Option 2 and 3 would enable the Council to meet its statutory obligations whilst ensuring the traditions and etiquette of flag flying are preserved and respected. The Officer Working Group believes that both of these options are in keeping with a modern and progressive organisation.

9.3 After all consideration the Officer Working Group would see option number three as the preferred option and would recommend Council consider adopting this option.

10 IMPLICATIONS

10.1 Financial

(a) Option 1 – Little or no additional cost (approx average £600/yr for renewing flags).

Option 2 - £250 initial cost per additional flag plus marginally higher additional cost for renewing flags (approx average £700/yr).

Option 3 - £4000 initial cost of flagpoles and new flags plus marginally higher cost for renewing flags (approx average £700/yr).

Option 4 – Potential saving (approx £600/yr).

10.2 Risk and Mitigations

(a) The risks are:

Option 1: Risks challenges and affront with regards to not fully complying with the Scottish Government practices on flying flags and formal etiquette for flag flying. Risks challenge on grounds of Equality as the current protocol could be perceived as non-compliant with the Equality Act and Scottish Borders Councils Equality Duties.

Option 2: Adding additional flags and formalising the Council protocol may prove contentious with some members of the public.

Option 3: Adding additional flags and formalising the Council protocol may prove contentious with some members of the public. Although this option incurs the highest initial cost this option also provides the biggest visual impact that befits a Council Headquarters. Risk of public accessing the flagstaff and erecting their own flags. This could be mitigated by the use of anti-vandal paint on the flagpoles.

Option 4: May inhibit Scottish Borders Councils ability to demonstrate respect, and mark special occasions.

10.3 Equalities

- (a) The proposals within this report include consideration of Scottish Borders Council's Equality Duties. If the preferred option is adopted, the Council will be taking proactive steps to meet all elements of its Equality Duties under the Equality Act 2010.
- (b) If option one within the report is adopted the Council risks compliance with the Equality Act 2010 and may open risk to challenge.

10.4 Acting Sustainably

- (a) No impact

10.5 Carbon Management

- (a) No impact

10.6 Rural Proofing

- (a) No impact

10.7 Changes to Scheme of Administration or Scheme of Delegation

- (a) No changes are required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

11 CONSULTATION

11.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted and any comments received have been incorporated into this report.

11.2 In addition the following Officers were consulted –

- Corporate Equalities and Diversity Officer.
- Corporate Communications – if what you are proposing involves likely media interest or high public information dissemination.

Approved by

Depute Chief Executive - Place

Signature – Philip Barr

Author(s)

Name	Designation and Contact Number
Rosie Kennedy	Corporate Equality & Diversity Officer
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Background Papers: None

Previous Minute Reference: None

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

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