



# Proposed Amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992

## Consultation Paper

June 2008



INVESTORS IN PEOPLE



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## **1.0 INTRODUCTION**

- 1.1 The purpose of this paper is to obtain the comments and views of the public and all interested parties on the introduction of a statutory rule to amend the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992.
- 1.2 The proposed amendments are not a fundamental review of advertisement control but rather a focus on one area of enforcement. The Department, in line with legislation already in place in England, proposes to introduce deemed advertising consent for advertisements on sites used for the preceding ten years or more for the display of advertisements without the required express consent. It is also proposed to introduce discontinuance provisions which would allow (on an exceptional basis) the removal of any advertisements in the deemed consent category that cause a substantial injury to the amenity of the locality or a danger to public safety.
- 1.3 The Department considers the new proposals will go some way towards bringing the Northern Ireland legislation broadly into line with the current provisions in England. In addition they will provide clarification as to the status of long standing unauthorised advertisements; align with time limits for enforcement action against certain other breaches of planning control; and provide a measure of deregulation for the advertisement control regime.

## **2.0 BACKGROUND**

- 2.1 The legislative framework for the control of advertisements is the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 (S.R.1992 No. 448) (as amended), (the Regulations) made under Article 67 of the Planning (Northern Ireland) Order 1991. Article 67 provides that the Department shall make regulations restricting or regulating the display of advertisements so far as it appears to the Department to be expedient in the interests of amenity or public safety. Planning Policy Statement (PPS) 17 "Control of Outdoor Advertisements" sets out the Department's planning policy and guidance for the display of outdoor advertisements while section 14 of PPS 9 "The Enforcement of Planning Control" outlines the general approach the Department will follow in taking enforcement action against

unauthorised advertisements in Northern Ireland. The Planning Appeals Commission (PAC) is responsible for administering the advertisement appeal system.

2.2 There are three different types of advertisement:

- Advertisements which may be displayed provided they comply with certain conditions: e.g. election posters and most non-illuminated advertisements displayed inside shops;
- Advertisements for which the Regulations give a “deemed consent”. Provided certain conditions are complied with, the advertisements may be displayed without having to apply to the Department for consent: e.g. small plaques on business premises and certain fascia signs; and
- Advertisements for which the Department’s “express consent” is always needed. These would include large commercial advertisements with illumination and moving displays.

2.3 When dealing with advertisements the Department’s policy objectives are to ensure that outdoor advertisements respect amenity and do not prejudice public safety, including road safety. When considering whether to grant consent the key considerations are therefore public safety (for example, would the advertisement distract motorists) and amenity (for example, would the advertisement have an unacceptable effect on the urban scene or rural landscape).

2.4 The Department’s aim is to provide a system of advertisement control that is both responsive to the needs of the outdoor advertising industry and sensitive to the environment in cities, towns and the countryside.

2.5 The current proposals focus on one area of enforcement and in particular the proposal to provide deemed consent in relation to advertisements on sites

which have been used for the preceding ten years for the display of advertisements without the required express consent.

- 2.6 A number of local elected representatives, on behalf of the Outdoor Media Association (the trade association for commercial advertisement companies) (OMA), have supported the case for introducing amendments to the Regulations in order to refine and simplify the Department's approach to enforcement action against longstanding unauthorised advertising hoardings. Under current control an unauthorised advertisement may be immune from enforcement action if it can be demonstrated that the site has been used for the continuous display of advertisements from before October 1973 when comprehensive advertisement control was brought into operation. In individual cases where a long standing unauthorised advertisement is brought to the attention of the Department the person displaying the advertisement will be given adequate time to provide evidence as to the length of time the site has been used for the display of advertisements. This information will be taken into account in deciding whether it is expedient to proceed with enforcement action.
- 2.7 The introduction of deemed consent for advertisements on sites which have been used for the preceding 10 years for the display of advertisements without the required consent, in addition to bringing Northern Ireland broadly in line with legislative provisions in England, will provide clarification; align with time limits for enforcement action against certain other breaches of planning control; and provide a measure of deregulation for the advertisement control regime.

### **3.0 APPROACH**

- 3.1 The Department has examined the relatively new Advertisement Regulations which came into force in England on 6 April 2007 i.e. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the 2007 Regulations). The 2007 Regulations replace, update, and consolidate the Town and Country Planning (Control of Advertisements) Regulations 1992 (the 1992 Regulations) (S.I. 1992/666) (as amended) and are designed largely to clarify existing legislation and guidance and to make the current system operate more effectively. In England it was considered that the 1992 Regulations were outdated and no longer achieved the correct balance between protection of the environment and support to the advertising industry.
- 3.2 The 2007 Regulations include a provision granting deemed consent, subject to certain conditions and limitations, for advertisements on sites used for the preceding ten years for the display of advertisements without express consent. Although there was a similar provision in Class 13 of Schedule 3 to the 1992 Regulations it related to an advertisement displayed on a site which was used for the “display of advertisements without express consent on 1st April 1974”. With the passing of time since 1974 it had become increasingly difficult to establish whether a site had in fact been in continual use from then. It was considered, therefore, that the change to a rolling ten-year period is much more certain for enforcement purposes and will not go out of date. A site owner now has to prove that the site has been in continuous use for the display of advertisements for the past 10 years from the date of challenge by a local planning authority.
- 3.3 Similar to the 1992 Regulations the 2007 Regulations also include provisions for the discontinuance of deemed consent. These powers enable a local planning authority to serve a notice requiring the discontinuance of the display of an advertisement or the use of a site for the display of advertisements with deemed consent in the interests of public safety and amenity.

- 3.4 Prior to the introduction of the 2007 Regulations in April 2007 there were already a number of differences between the advertising control regulations in Northern Ireland and those in England. These have existed since 1992, still remain and have been slightly extended by the 2007 Regulations. Many differences are variations unique to the Northern Ireland planning system and while there are a small number of more significant differences, the current Northern Ireland provisions appear to be operating adequately. The only significant gaps would appear to be deemed consent for advertisements on sites used for the preceding ten years and discontinuance provisions.
- 3.5 As well as proposing to provide similar powers as Class 13 of the 2007 Regulations (see Class 12 of the proposed draft regulations at Annex 3) the Department is also proposing to introduce powers to discontinue deemed consent (across all classes of deemed consent) in certain exceptional circumstances. This means that where an advertisement has deemed consent it is not immune from the Department's control. The Department may take action against the display of an advertisement by making a discontinuance order. A discontinuance order may require the discontinuance of the display of a particular advertisement or the use of a particular site for the display of advertisements for which there is deemed consent. A discontinuance order would only issue where the Department is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or [the advertisement is] a danger to public safety.
- 3.6 As in England the Department proposes to have the powers to take discontinuance action against either a specific advertisement (or advertisements) in the position where they are actually displayed, or against the use of a site for the display of advertisements which is to be specified in the discontinuance order. When using the power in relation to a site, the Department will define precisely the site, or part of the site, to which the order relates, so as to avoid discontinuing the display of any advertisements which are considered acceptable; and to be satisfied that complete removal of deemed consent rights for a defined area of land is fully justified in the interests of amenity or public safety. A discontinuance order made to remove

deemed consent from advertisements displayed under Class 12 may also be used to remove deemed consent from the site.

- 3.7 When the Department decides to take discontinuance action and make a discontinuance order, a discontinuance notice must first be served on the owner and occupier of the site on which the advertisement is displayed and on any other person who in the Department's opinion would be affected by the order. Such persons may request the Department within the period specified in the notice to afford them an opportunity to appear before and be heard by the Planning Appeals Commission. A discontinuance notice must contain a statement of the reasons why the Department considers it necessary to make the order and why it considers that a substantial injury has been caused to the amenity of the locality or public safety. As substantial injury to the amenity of the locality is a more rigorous test than the interests of amenity the Department will need to justify this in its statement of reasons.
- 3.8 Draft regulation 6 provides that a discontinuance order must specify the period within which the display or the use of the site must be discontinued. The Department will always consider the particular circumstances and allow a reasonable time for discontinuing a display, or use of a site.
- 3.9 The order required by regulation will provide detailed information specific to the site or the advertisement. The Department will include in the discontinuance order the name and address or a list of the names and addresses of the persons who have been served with a notice of the discontinuance order.
- 3.10 Although the proposed discontinuance provisions will have wider application beyond advertisements on sites without express consent for 10 years (or longer) the Department considers such powers provide a balanced approach for control of advertisements including longstanding unauthorised advertising hoardings and sites.

## **4.0 Summary of Proposed Changes to the Regulations**

### **Draft Regulation 1**

- 4.1 This will confirm the date on which the Regulations will come into operation. The intention is for the Regulations to come into operation on a date to be agreed. The draft regulation also explains that “the principal Regulations” means the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992.

### **Draft Regulation 2**

- 4.2 Provides for the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 to be amended in accordance with the amendments set out in regulations 3 to 7.

### **Draft Regulation 3**

- 4.3 Draft regulation 3 provides a definition of “amenity”.

### **Draft Regulation 4**

- 4.4 This draft regulation adds certain limitations (discontinuance of deemed consent where it appears to the Department that a substantial injury to the amenity of the locality or a danger to public safety needs to be remedied) to granting deemed consent for the display of an advertisement.

### **Draft Regulation 5**

- 4.5 Under regulation 6 of the principal Regulations the Department has powers to direct that express consent is required before certain advertisements may be displayed, for which deemed consent would otherwise be available. Directions may not, however, be given in respect of advertisements in Class 10 (advertisements inside buildings) and under these amending Regulations (regulation 5) the new Class 12 (Advertisements on sites used for preceding ten years for display of advertisements without express consent).

### **Draft Regulation 6**

- 4.6 Draft regulation 6 introduces new provisions to enable the Department to remedy what appears to the Department to be substantial injury to the amenity of the locality or a danger to public safety, by making a

discontinuance order. A discontinuance order may require the display of a particular advertisement for which there is deemed consent, or the use of a particular site for the display of advertisements for which there is deemed consent, to be discontinued.

### **Draft Regulation 7**

- 4.7 This draft regulation introduces deemed consent in relation to advertisements on sites used for preceding ten years for display of advertisements without express consent (Class 12, Part 1 of Schedule 3 to the principal Regulations).

## Responding to this Consultation Paper

Please note that responses to this consultation should be received by the Department no later than **12<sup>th</sup> September 2008**.

There are a number of ways in which you can respond:

1. You can send your response to:

Irene Kennedy  
Planning Service Headquarters  
Control of Advertisements  
3<sup>rd</sup> Floor  
Millennium House  
17-25 Great Victoria Street  
Belfast  
BT2 7BN

2. The consultation paper is also available in Microsoft Word format for downloading from the Planning Service website at [www.planningni.gov.uk](http://www.planningni.gov.uk)
3. You can e-mail your response to [planningcontrolofadvertisements@doeni.gov.uk](mailto:planningcontrolofadvertisements@doeni.gov.uk)  
Responses may also be sent by **fax to (028) 9041 6960**.

We look forward to receiving responses to the proposals contained within this consultation document. Additional copies of the consultation document and copies in alternative formats, if desired, are available from the address above and may be requested by **Telephone 028 9041 6966**, **Fax 028 9041 6960** or **Textphone 028 9054 0642**.

If you have any comments or complaints about the consultation process itself (rather than the content of this document), these should be directed to the postal or e-mail addresses above.

## Freedom of Information Act 2000 – Confidentiality of Consultations

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
  - the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
  - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>).

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 STATUTORY RULES OF NORTHERN IRELAND
 

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**2008 No. xxx**

**PLANNING**

**The Planning (Control of Advertisements) (Amendment) Regulations  
(Northern Ireland) 2008**

*Made* - - - - *xxx 2008*

*Coming into operation* - *xxx 2008*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by Articles 67(1) and (2) of the Planning (Northern Ireland) Order 1991<sup>(a)</sup>.

**Citation, commencement and interpretation**

1.—a) These Regulations may be cited as the Planning (Control of Advertisements) (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on xxx 2008.

(2) In these Regulations “the principal Regulations” means the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992<sup>(b)</sup>.

**Amendment of principal Regulations**

2. The principal Regulations are amended in accordance with regulations 3 to 7.

**Insertion of definition**

3. In regulation 2 (interpretation) after the definition of “the 1991 Order” insert -  
““amenity” includes aural and visual amenity;”.

**Deemed consent for the display of advertisements**

4. In regulation 5 (1) for “regulation 6” substitute “regulations 6 and 6A”.

**Directions restricting deemed consent**

5. In regulation 6 (1) for “other than Class 10,” substitute “ other than Class 10 or 12,”.

**Discontinuance of deemed consent**

6. After regulation 6, insert the following regulation—

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<sup>(a)</sup> 1991/1220 (N.I. 11)

<sup>(b)</sup> S.R. 1992 No. 448, relevant amending Regulations are S.R. 1998 No.147 and S.R. 2006 No.276

**“Discontinuance of deemed consent**

**6A.**—(1) If it appears to the Department that to remedy a substantial injury to the amenity of the locality or a danger to public safety—

- (a) the display of a particular advertisement for which there is deemed consent should be discontinued; or
- (b) the use of a particular site for the display of advertisements for which there is deemed consent should be discontinued or that any conditions should be imposed on the continuance of a use of the site,

the Department may by order require the discontinuance of that consent or use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance of the use, as the case may be.

(2) Before making an order under this regulation, the Department shall serve notice on the person displaying the advertisement and on any other person who in its opinion would be affected by the order; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(3) A notice under paragraph (2) shall contain a statement of the reasons why the Department—

- (a) considers that a substantial injury to the amenity of the locality or a danger to public safety, as the case may be, has been caused; and
- (b) considers it necessary to make an order under paragraph (1).

(4) Where the Department makes an order under this regulation it shall serve a copy of the order on the person displaying the advertisement to which the order relates and on any person who in its opinion would be affected by the order.”.

**Advertisements on sites used for preceding ten years for display of advertisements without express consent**

7. In Part 1 of Schedule 3 after CLASS 11 insert—

“CLASS 12      *Advertisements on sites used for preceding ten years for display of advertisements without express consent*

Description	An advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent.
Conditions	<ul style="list-style-type: none"><li>(a) The advertisement does not fall within this description if, during the relevant 10-year period, there has been either a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in the manner in which it has been so used.</li><li>(b) If any building on which such an advertisement is displayed—<ul style="list-style-type: none"><li>(i) is removed in compliance with a requirement of, or under, any statutory provision;</li><li>(ii) is removed in any other circumstances; or</li><li>(iii) is destroyed by any means;</li></ul>the erection of any building to continue the display is not permitted.</li><li>(c) Illumination is not permitted unless—<ul style="list-style-type: none"><li>(i) the advertisement is displayed with illumination on xx xxxx 2008; or</li></ul></li></ul>

- (ii) the advertisement is first displayed after that date, and the advertisement most recently displayed was illuminated.
- (d) An advertisement that—
  - (i) comprises sequential displays; or
  - (ii) otherwise includes moving parts or features; or
  - (iii) features intermittent lighting in a manner designed to give the appearance of movement,is not permitted unless—
  - (aa) it is displayed on xx xxxx 2008 and falls within the description specified in any of sub-paragraphs (i) to (iii); or
  - (bb) it is first displayed after that date, and the advertisement most recently displayed fell within any such description.”.

Sealed with the Official Seal of the Department of the Environment on xxx 2008



A senior officer of the Department of the Environment

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 (“the principal Regulations”).

The main changes made by the Regulations are—

- (a) Regulation 3 provides a definition of “amenity”;
- (b) Regulation 4 adds certain limitations (discontinuance of deemed consent where it appears to the Department that a substantial injury to the amenity of the locality or a danger to public safety needs to be remedied) to granting deemed consent for the display of an advertisement;
- (c) In the principal Regulations, regulation 6 enables the Department to direct that express consent is required before certain advertisements may be displayed, for which deemed consent would otherwise be available. Directions may not be given in respect of advertisements in Class 10 (advertisements inside buildings) and under these amending Regulations (regulation 5) the new Class 12 (Advertisements on sites used for preceding ten years for display of advertisements without express consent);
- (d) Regulation 6 introduces new provisions to enable the Department to remedy what appears to the Department to be substantial injury to the amenity of the locality or a danger to public safety, by making a discontinuance order. A discontinuance order may require the display of a particular advertisement for which there is deemed consent, or the use of a particular site for the display of advertisements for which there is deemed consent, to be discontinued;
- (e) Regulation 7 introduces deemed consent in relation to advertisements on sites used for preceding ten years for display of advertisements without express consent (Class 12, Part 1 of Schedule 3 to the principal Regulations).

## DOE Section 75 Equality of Opportunity Screening Analysis Form

1. **Brief description of policy/ legislation, including the title and all main aims and objectives**

Title: The Planning (Control of Advertisements) (Amendment) Regulations (Northern Ireland) 2008.

Aims: To introduce provisions whereby advertising consent is deemed to be granted subject to certain conditions and limitations for advertisements on sites used for the preceding ten years for the display of advertisements without express consent. The Regulations also introduce discontinuance powers which would allow the removal of advertisements in the deemed consent category which cause a substantial injury to the amenity of the locality or a danger to public safety.

2. **On whom the policies/legislation will impact? Please specify**

There will be an impact on the outdoor advertising industry and those displaying outdoor advertisements. The proposed amendments contained in the Planning (Control of Advertisement) (Amendment) Regulations Northern Ireland 2008 will apply equally to all operators in Northern Ireland. There will also be an impact on the Planning Service as the amendments should reduce the number of retrospective advertising consent applications received and also the need to instigate enforcement action.

3. **Who is responsible for (a) devising and (b) delivering the policy, e.g. is it a DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?**

- (a) The Department of the Environment's Planning Service
- (b) The Department of the Environment's Planning Service

4. **What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?**

The Planning Appeals Commission will have responsibility for hearings relating to discontinuance orders.

5. **What data is available to facilitate the screening of this policy/ legislation?**

No data is available to indicate what impact, if any, the policy/legislation would have on Section 75 groups. However, as the policy applies equally throughout Northern Ireland and seeks, in part, to improve the amenity of the locality and reduce the danger to public safety, the Department considers this will be beneficial to all Section 75 groups. The legislation will be subject

to public consultation, the results of which may influence the ongoing EQIA screening.

**6. Is additional data required to facilitate screening?**

No

**Screening Analysis**

**7. Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

**Please give details**

N/A

**8. Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

**Please give details**

N/A

**9. Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

**Please give details of any consultations carried out, and any problems identified**

There have been no consultations with specific Section 75 groups. The proposed amendments to the legislation are being subjected to a general public consultation which will provide an opportunity for Section 75 groups to identify differential impacts (if any). In the absence of any quantitative evidence the Department's pragmatic view, informed by its understanding of the policy issues and subject matter, is that there is and will be no differential impact on any of the Section 75 groups.

- 10. Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?**

Yes                      No X

**Please give details**

N/A

- 11. It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below.**

N/A

- 12. Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.**

**Please give details**

The Department believes that the proposals to amend the Planning (Control Of Advertisements) Regulations (Northern Ireland) 1992 will apply equally to all Section 75 groups and that there is therefore no scope for changes that would promote better equality of opportunity or good relations.

### EQIA Recommendation

13. Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			X
Effect on people's daily lives			X
Effect on economic, social and human rights			X
Strategic significance			X
Financial significance			X

### Please give details

N/A

14. In view of the considerations in the Screening Analysis and EQIA Recommendation do you consider that this policy/legislation should be subject to a full EQIA?

No. The Department does not anticipate that the amendments contained in the Planning (Control of Advertisements) (Amendment) Regulations (Northern Ireland) 2008 will have any differential impact upon Section 75 groups.

15. If an EQIA is considered necessary please comment on the priority and timing in light of the prioritisation factors in table 13.

N/A

16. If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?

N/A

### Endorsement

I can confirm that the proposed policy has been screened for equality of opportunity and good relations implications and has been screened out for equality impact assessment.

Signed: 

**Agency/Division:** DOE Planning Service

**Date:** 3 June 2008

**Amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 – Human Rights Act 1998**

1. The purpose of this Annex is to review the proposals to amend the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 which will provide deemed consent, in relation to advertisements on sites which have been used for the preceding ten years for the display of advertisements without the required express consent. In addition they will introduce discontinuance provisions which would allow (on an exceptional basis) the removal of any advertisements in the deemed consent category that cause a substantial injury to the amenity of the locality or a danger to public safety.

**Human Rights Assessment**

2. The Department considers that the proposals set out in this consultation paper are fully compliant with the Human Rights Act 1998.

## PRELIMINARY REGULATORY IMPACT ASSESSMENT

### 1. Title of Proposal

The Planning (Control of Advertisements) (Amendment) Regulations (Northern Ireland) 2008.

### 2. Purpose and Intended Effect of the Regulations

#### i. **The objective**

The introduction of an amending statutory rule whereby advertising consent is deemed to be granted, subject to certain conditions and limitations, for advertisements on sites used for the preceding ten years for the display of advertisements without express consent is intended to provide a system of advertisement control that is both responsive to the needs of the outdoor advertising industry and sensitive to the needs of the environment in cities, towns and the countryside. It is proposed to also introduce discontinuance provisions. Discontinuance powers would allow the removal of any advertisements in the deemed consent category which cause a substantial injury to the amenity of the locality or a danger to public safety.

#### ii. **The background**

The current legislative framework for the control of outdoor advertisements is the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 (S.R.1992 No. 448) (as amended) (the 1992 Northern Ireland Advertisement Regulations), made under Article 67 of the Planning (Northern Ireland) Order 1991. Article 67 provides that the Department shall make regulations restricting or regulating the display of advertisements so far as it appears to the Department to be expedient in the interests of amenity or public safety. The Planning Policy Statement

(PPS) 17 “Control of Outdoor Advertisements” sets out the Department’s planning policy and guidance for the display of outdoor advertisements. Section 14 of PPS 9 “The Enforcement of Planning Control” sets out the general approach the Department will follow in taking enforcement action against unauthorised advertisements in Northern Ireland. The Planning Appeals Commission (PAC) is responsible for administering the advertisement appeal system.

The inclusion in the 1992 Northern Ireland Advertisement Regulations of these new provisions is intended to support the future economic and social development needs of Northern Ireland and manage development in a sustainable way, by ensuring that advertising control is delivered at the right level with streamlined processes. In addition, the proposed amendments will bring the legislative framework broadly in line with legislative provisions in England; align with time limits for enforcement action against certain other breaches of planning control; and will provide clarification and a measure of deregulation for the advertisement control regime.

### **iii. Risk assessment**

Whilst the current advertising regulations are generally adequate the new proposals will streamline and clarify the Department’s approach to enforcement action against longstanding unauthorised advertisements. The inclusion of discontinuance provisions provides a balanced approach towards enforcement action against longstanding unauthorised advertising hoardings and sites, although the provisions have a wider application than just for advertisements on sites without express consent for 10 years (or longer).

## **3. Options**

Two options have been identified:

**Option A** – continue to rely on the current controls and guidance, as set out

in the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992, and the accompanying Planning Policy Statement (PPS) 17 "Control of Outdoor Advertising" and PPS 9 "The Enforcement of Planning Control".

**Option B** – revised regulations and guidance which is up to date and will be easier to administer and seeks to ensure a balanced advertisement control system.

#### 4. Benefits

A balance needs to be struck between:

- the need to preserve and where possible enhance the character of the environment;
- the need to provide a system of control that does not place undue burdens on industry, or those who administer the system i.e. the Planning Service; and
- the commercial freedom of advertisers.

**Option A:** There would be no additional start-up costs for the Department or the Planning Appeals Commission. The legislative framework is well established and familiar to key stakeholders.

**Option B:** This would result in a more efficient system of advertising control because:

- a. It could be less costly to administer;
- b. It could lower the cost to firms of applying for consent for certain advertisements;
- c. It reduces the amount of harmful advertising taking place;
- d. Greater clarity will assist decisions on appeal;
- e. It aligns with time limits for enforcement action against certain other breaches of planning control; and

- f. It provides a measure of deregulation for the advertisement control regime.

## **5. Business Sectors Affected**

Advertising is a multi-million pound industry which is part of our every-day culture. Outdoor advertising is a key element of the industry and contributes to the creation of a vibrant and competitive economy. Compliance costs (if any) will fall on this sector as a result of the proposed changes. Although the bulk of the costs fall on the commercial sector, all businesses that use outdoor advertising could potentially be affected to a greater or lesser extent.

## **6. Other Impact Assessments**

The proposals have been subject to scrutiny as part of an Equality Impact Assessment and would not appear to discriminate unlawfully, unfairly, or unjustifiably - directly or indirectly – against any sections of the community specified in Section 75 of the Northern Ireland Act 1998. The policy areas have also been screened to consider their potential impact over a wide range of Government initiatives including rural, health and environmental issues. At present, it would appear that the proposed provisions will apply uniformly to all groups with no adverse impact in these areas.

## **7. Costs**

### **Option A**

Costs to the Department of continuing with the current regime and of advertisers' compliance would remain the same. There would also be prosecution and appeals costs for cases taken to court. As no changes would take place in terms of increasing the number of deemed consent classes, advertisers who unwittingly displayed adverts without applying for consent would continue to experience unexpected prosecution costs.

### **Option B**

The proposed amendments are designed largely to clarify existing legislation and guidance, to make the current system operate more effectively. The

outdoor advertising industry would find the control system more user-friendly and responsive to the legitimate interests of the industry. There are likely to be some savings to businesses resulting from the amendments e.g. if, businesses choose to replace like with like, or otherwise operate within the new deemed consent conditions, they could avoid any new costs as they would not need to apply for express consent for the replacement advertisement. The Department will be able to implement and operate a fairer and more balanced system of control that aligns with time limits for enforcement action against certain other breaches of planning control. Discontinuance powers will enable the Department to have the safeguard of making an order discontinuing deemed consent if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to public safety.

#### **8. Consultation with Small Business: the Small Business Impact Test**

The Department has held pre consultation discussions with the Outdoor Media Association (OMA), the trade association for commercial advertisement companies. The OMA has indicated its support for the introduction of regulations whereby advertising consent is deemed to be granted, subject to certain conditions and limitations, for advertisements on sites used for the preceding ten years for the display of advertisements without express consent.

#### **9. Enforcement and Sanctions**

Under **Option B** the Department's existing enforcement regime for the bulk of unauthorised advertisements will remain unchanged. In addition a discontinuance order may require the discontinuance of the display of a particular advertisement or the use of a particular site for the display of advertisements for which there is deemed consent. A discontinuance order can only be made where the Department is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or [the advertisement is] a danger to public safety.

## **10. Monitoring and Review**

The Department will monitor the implementation of the proposal with its planning policies and their implementation, consulting where appropriate with interested parties.

## **11. Consultation**

### **i. Within Government**

Consultation at official level has continued throughout the drafting of the consultation paper, preliminary RIA, and advertising regulations.

### **ii. Public Consultation**

Public consultation is underway on the consultation document. That consultation will close on 12<sup>th</sup> September 2008, and the public responses may be published together with an Executive summary of the results of the consultation.

## **12. Summary and Recommendation**

The Department sees a continued need for a system that facilitates the display of outdoor advertisements but retains sufficient control to ensure that the interests of amenity and safety continue to be safeguarded. The present system achieves this but is now out of date in certain respects. The recommendation is therefore to pursue the adoption of Option B.

<b>Option</b>	<b>Cost (annual)</b>	<b>Benefit (annual)</b>
<b>A</b>	Costs to advertising operators in relation to prosecutions due to lack of clarity about advertisements and fewer deemed consent classes.  Continued impact on PAC	Familiarity with a system that is now well established.  No additional start-up costs to the Planning Service and Planning Appeals Commission.

	resources because of appeals.	
<b>B</b>	<p>Amendment to provide deemed consent class may result in some initial compliance costs for a limited number of advertisers. In addition some compliance costs may be incurred where the Department exercises discontinuance powers. These powers will, however, only be exercised exceptionally. There are no start up costs for the Department as the enforcement regime is well established.</p>	<p>A more efficient system of control because:</p> <ul style="list-style-type: none"> <li>a) It is less costly to administer;</li> <li>b) It lowers the cost to firms of applying for consent;</li> <li>c) It reduces the amount of harmful advertising taking place;</li> <li>d) Greater clarity will assist decisions on appeal;</li> <li>e) It aligns with time limits for enforcement action against certain other breaches of planning control; and</li> <li>f) It provides a measure of deregulation for the advertisement control regime.</li> </ul>

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**List of Consultees**

20:20 Architects  
Alexander Boyd Displays Ltd.  
Arcus Architects  
Arrow Poster Sites  
Association of Consulting Engineers  
Atlas Communications  
B9 Energy Services Ltd  
Bar Library  
BB Planning & Design  
BBC Engineering Information Department  
Belfast City Airport  
Belfast Civic Trust  
Belfast Harbour Commissioners  
Belfast Healthy Cities  
Belfast Hills Partnership  
Belfast International Airport  
Belfast Metropolitan Residents Group  
Belfast Solicitors Association  
Brennen Associates  
British Telecom (N.I.)  
British Wind Energy Association  
Bryson House  
Building Design Partnership  
Cable & Wireless  
Cabletel (NI) Ltd  
Catholic Bishops of NI  
Chartered Institute of Environmental Health  
Chartered Institute of Housing  
City of Derry Airport  
City TV Big Screen Advertising - Shaftesbury Square  
Civic Forum  
Civil Law Reform Division  
Clear Channel  
Coey Advertising Co. Ltd.  
Coleraine Harbour Commissioners  
Committee for the Administration of Justice  
Community Technical Aid (NI) Ltd  
Confederation of British Industry, NI Branch CBI  
Construction Employers Federation  
Council for Nature Conservation and the Countryside  
Countryside Access & Activities Network for NI  
Crown Castle UK Ltd  
David Allen Holdings Ltd.

Derryhale Residents' Association  
DSD Housing Associations Branch  
E & S Rea Associates  
Enniskillen Aerodrome  
Environment and Planning Law Association of NI  
Equality Commission for NI  
Executive Council of the Inn of Court of NI  
Federation of Small Businesses  
Ferguson & McIlveen  
Fire Authority for Northern Ireland  
Fire IMC Ltd.  
Fisheries Conservancy Board for Northern Ireland  
Food Standards Agency NI  
Forest of Belfast  
Friends of the Earth  
General Consumer Council for NI  
Geological Survey of Northern Ireland  
Historic Buildings Council  
Historic Monuments Council  
HM Council of County Court Judges  
Human Rights Commission  
I Document Systems  
Image Zoo NI  
Inland Revenue  
Institute of Professional Legal Studies  
Institute Of Directors  
Institute of Historic Building Conservation  
Institution of Civil Engineers (NI Association)  
International Poster Management  
International Tree Foundation  
Invest Northern Ireland  
Iris Colour  
Kenneth Crothers, Deane & Curry  
Lagan Valley Regional Park Officer  
Laganside Courts  
Landscape Institute NI  
Larne Harbour Commissioners  
Law Centre (NI)  
Law Society of Northern Ireland  
Londonderry Port & Harbour Commissioners  
Lough Neagh and Lower Bann Management Committees  
LPG Association  
Marks and Spencer  
McClelland / Saulter Estate Agents  
Media Marketing  
Ministry of Defence  
Mobile Operators Association  
Mono Consultants Limited  
Mourne Heritage Trust  
Mournes Advisory Council  
National Grid Wireless Group  
National Trust

Newtownards Aerodrome  
NIC / ICTU  
NICOD  
North / South Ministerial Council  
North West Architectural Association  
Northern Ireland 2000  
Northern Ireland Advertisers Association  
Northern Ireland Amenity Council  
Northern Ireland Assembly Environment Committee  
Northern Ireland Association Engineering Employer's Federation  
Northern Ireland Association of Citizens Advice Bureau  
Northern Ireland Chamber of Commerce and Industry  
Northern Ireland Chamber of Trade  
Northern Ireland Council for Voluntary Action  
Northern Ireland Court Service  
Northern Ireland District Councils  
Northern Ireland Economic Council  
Northern Ireland Electricity Plc  
Northern Ireland Environment Link  
Northern Ireland Federation of Housing Associations  
Northern Ireland Government Departments  
Northern Ireland Housing Council  
Northern Ireland Housing Executive  
Northern Ireland Judicial Appointments Commission  
Northern Ireland Law Commission  
Northern Ireland Local Government Association  
Northern Ireland MP's, MEP's, Political Parties and MLA's  
Northern Ireland Office  
Northern Ireland Ombudsman  
Northern Ireland Quarry Owners Association  
Northern Ireland Quarry Products Association  
Northern Ireland Resident Magistrates' Association  
Northern Ireland Residents Coalition  
Northern Ireland Tourist Board  
NTL Cabletel  
O2  
OFCOM  
OFREG  
Orange  
Ostick and Williams  
Outdoor Media Association  
Participation & the Practice of Rights Project  
Phoenix Natural Gas Ltd  
Planning Appeals Commission  
Planning Magazine  
Policy Development Officer  
Poster Management (NI) Ltd.  
Pragma Planning  
Rapeleys LLP  
Research and Information Services  
RLA Group  
Robert Turley Associates

Royal Institution of Chartered Surveyors  
Royal Society for Protection of Birds  
Royal Society of Ulster Architects  
Royal Town Planning Institute  
RPS  
RTPI Irish Branch (Northern Section)  
Rural Community Network  
Rural Development Council for Northern Ireland  
School of Law  
Society of Local Authority Chief Executives  
Strangford Lough Advisory Council  
Strangford Lough Management Committee  
Strategic Planning  
Sustrans  
The Design Zoo  
The Mission  
The Participation Network  
Three  
T-Mobile  
Translink  
Transport 2000  
Ulster Anglers Association  
Ulster Architectural Heritage Society  
Ulster Society for the Preservation of the Countryside  
Ulster Wildlife Trust  
University of Ulster  
URPA  
UTV Engineering Information Department  
Vodafone  
Walker Communications  
Warrenpoint Harbour Authority  
WDR & RT Taggart  
Wildfowl and Wetland Trust  
Woodland Trust  
World Wildlife Fund (NI)