

## **Proposed Amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 - Analysis of Consultation Responses**

1. The consultation period commenced on 16 June 2008 and ended on 12 September 2008. The consultation paper was circulated to a wide range of consultees and advertised in the local press and published on the Department's website plus the Northern Ireland Departments' Consultation Register. At the closing date 19 related responses had been received, and a further 1 was received around a month later.
2. The respondents consisted of elected representatives, a business organisation, district councils, government departments / public bodies, statutory advisory councils and other individuals and organisations as set out in the table below.

<i>Respondent type</i>	<i>Respondents (19)</i>	<i>Total Responses (20)</i>
Elected Representatives	1 MLA (Mr James H Wells) The Alliance Party (2 responses) The Labour Party	4
Business	Outdoor Media Association	1
District Council	Antrim Borough Council Larne Borough Council Lisburn City Council Strabane District Council	4
Government Departments / Public Bodies	DRD Roads Service DETI Northern Ireland Environment Agency Northern Ireland Tourist Board Northern Ireland Judicial Appointments Commission	5
Statutory Advisory Councils	Council for Nature Conservation and the Countryside Historic Buildings Council Historic Monuments Council	3
Other	Derryhale Residents' Association Ulster Architectural Heritage Society Mr David Farrell	3

3. Most comments received referred directly to the proposed amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 and 16 of the 20 replies were supportive of, or had no objections to, the new provisions.
4. One of the 16 responses in favour of the proposals indicated that the amendments reflected a forward thinking approach by the Department which will replace the current out of date Regulations. Another response welcomed the proposals stating that they provided a balanced method of refining and simplifying the Department's approach to enforcement action against longstanding unauthorised advertisements.
5. Four respondents were not supportive of the proposed amendments. The main concerns raised by respondents can be summarized into 9 general issues, some of which were not specific to the amending Regulations. The issues are outlined below, along with the Department's response.

## **Issue 1: Concern over existing enforcement activity**

6. The four respondents that opposed the new provisions all expressed concerns over the level of unauthorised signage already on display across Northern Ireland, and the need for urgent action for this to be removed. One suggested that to provide deemed consent for unauthorised advertisements displayed for over 10 years would provoke additional difficulties when added to the numerous abuses which become unenforceable due to the present 4 year and 10 year time limits for enforcement against breaches of planning control. It was suggested enforcement teams in the Department's Planning Service had failed to address unauthorised signage effectively due to a lack of dedicated resources.
7. Specific concerns included mobile advertisements on roadsides, estate agent or other residential offer signs used permanently to advertise businesses, and that public notification seemed to be the accepted norm to instigate enforcement action. A respondent asked how the acceptability of advertisements erected under deemed consent was monitored. One political party stated the Regulations should be appropriately enforced with regards flags and emblems, including those of a political and/or paramilitary nature. Another stated the current system does not require clarification as all stakeholders are fully aware of the process for acquiring advertising consent and enforcement powers. The existing Regulations were considered to be wholly adequate to enforce against long standing advertisements.

## **Department's Response**

8. The new provisions do not represent a fundamental review of advertisement control but rather a focus on one area of enforcement. The display of an advertisement in contravention of the Regulations continues to be an offence under Article 84 of the Planning (Northern Ireland) Order 1991. The Department's Planning Service takes all alleged breaches of planning control very seriously and will continue to investigate all alleged breaches of advertisement control whether or not they have been notified by the public. Where there is inappropriate display of advertisements the Planning Service's initial approach is to work with the individual responsible to remedy any breach of control voluntarily. Should this approach fail then formal enforcement action to penalise the offender through the Courts may be taken. The Planning Service is fully committed to taking such action where it is appropriate to do so, taking into account the individual circumstances of each case. Enforcement by its very nature can be a complex and lengthy process and cases can remain live for some considerable time. There are certain procedures, in line with planning policy and reflecting the Department's legal obligations, that must be followed and it is important to recognise these must be adhered to in order to reach a positive outcome.
9. The Department places significant emphasis on its enforcement role and each Divisional Planning Office and Planning Service Headquarters has dedicated enforcement teams. In addition changes were made to legislation in 2003 and 2006 which brought the enforcement powers in Northern Ireland planning law largely into line with those in GB. These included provisions in the Planning Reform (Northern Ireland) Order 2006 which increased fines for unlawful advertisements, raising the penalties for breaches of advertisement control from level 3 on the standard scale of fines (£1,000) to level 4 (£2,500) with daily fines raised from up to £100 to a maximum of £250.
10. The new provisions in Northern Ireland introduce deemed consent for advertisements which have been displayed on the same site for the past ten years or more without the required express consent. Currently to be immune from enforcement action an advertiser must establish an

advertisement has been in place from before comprehensive advertisement control was introduced. The time that has passed from when comprehensive advertisement control was brought into operation in 1973 has made it increasingly difficult to establish whether a site had in fact been in continual use since then. The change to a rolling ten-year period is much more certain and would not go out of date. This provides clarity simplifying the enforcement regime for all those involved in enforcement including both enforcement officers and advertisers; brings Northern Ireland broadly into line with legislative provisions in England; is a more practical and up to date approach; is consistent with time limits for enforcement action against certain other breaches of planning control; and provides a measure of deregulation of the advertisement control regime.

11. Introduction of accompanying discontinuance powers aims to act as a necessary safeguard and 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. In such cases the Department will set out the reasons for discontinuance action. The reasons will be specific to the site/advertisement and leave the advertiser in no doubt as to why the display is unacceptable. Such powers are in line with safeguards in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the 2007 English Regulations) and the Department considers they provide a balanced approach.
12. The new provisions should result in a more efficient system of control and greater clarity in dealing with unauthorised cases. Turning to specific concerns and in particular, mobile signage adjoining roadsides, these can quickly be moved to evade enforcement action and this can hinder action being taken against the landowner. The Department, however, continues to focus enforcement action on the person, business or company given publicity by the advertisement and action will continue to be taken where it is expedient to do so. In addition to the Department's planning legislation there are separate provisions within the Department for Regional Development's roads legislation for the control of advertisements e.g. Article 87 of the Roads (Northern Ireland) Order 1993 makes it an offence to display any advertisement on a public road, footway or verge or on any tree or structure in or on a public road. These provisions together with the provisions contained in Article 21 of the same Order make it an offence to erect or exhibit any advertisement or notice sited or designed primarily to be visible from a special road or which is likely to prejudice the safety of traffic using a special road.
13. In relation to estate agent and other residential offer signs the Department is aware of the issues raised and where such signage does not fall within any of the Classes of deemed advertising consent or fails to meet the conditions of a relevant Class, enforcement action may ensue. Planning Service has dealt with and is currently taking action in a number of such cases.
14. As regards flags and emblems, under the Planning (Control of Advertisement) Regulations (Northern Ireland) 1992, the national flag of any country can be displayed on a single flagstaff without the need to apply to the Department for consent to display provided it complies with standard conditions. Other types of flags and emblems of a political nature are not included in the exemption.
15. If flags have been erected without the necessary consent being sought, they can be subject to enforcement action, however, if Planning Service cannot establish who is responsible for erecting them, enforcement action may be difficult to pursue.

## **Issue 2: Private Interests are put ahead of Public Interests**

16. One political party stated the amending Regulations put the needs of the private advertising industry ahead of the greater public interest and provide an unwarranted amnesty for offenders. The party considered previously illegal and unacceptable advertisements which can currently be enforced against at any time would now be deemed acceptable. The dilution of the principal Regulations through the amending Regulations is viewed as a reward for those responsible for committing the offences in the first instance. It was suggested the private sector will increase their profits through a greater use of previously illegal advertising, and that there is little evidence of public benefit to the proposals. The party was also concerned with the “costs” section of the Regulatory Impact Assessment (RIA) and did not accept that advertisers who unwittingly display adverts without consent would continue to experience unexpected prosecution costs.

### **Department’s Response**

17. The Department received correspondence from elected representatives and others supporting the case for the introduction of amending Regulations in order to refine and simplify the Department’s approach to enforcement action against longstanding unauthorised advertisements and bring in provisions similar to the 2007 English Regulations.
18. The role and policy objectives of the Department are to ensure outdoor advertisements respect amenity and do not prejudice public safety. The Department will continue to provide a system of advertisement control that is both responsive to the needs of the outdoor advertising industry and sensitive to the environment and the wider public interest.
19. The Department believes the new proposals provide a balanced approach to enforcement and do not undermine the existing advertisement control as any advertisements with deemed consent which cause a substantial injury to the amenity of the locality or a danger to public safety can be discontinued. Enforcement action will continue to be taken where it is expedient to do so and the Department will continue to investigate all alleged breaches of planning control.
20. The “costs” section of the RIA will be amended to ensure it more accurately reflects the situation regarding prosecutions and the costs associated with these.

## **Issue 3: Enforcement will be hampered**

21. Concern was expressed that individuals could avoid enforcement action by simply stating their advertisement had been displayed, or site used, for over ten years.

### **Department’s Response**

22. A site owner would need to prove that the site has been in continual use for the display of advertisements for the past ten years from the date of challenge by the Department.

## **Issue 4: Road Safety concerns**

23. One respondent expressed concern that roadside advertising increases the likelihood of instigating road accidents and that deemed consent should not be allowed. The question was asked if “public safety” as a reason for seeking discontinuance includes “road safety”.

## **Department's Response**

24. Regulation (3)(1)(b)(i) of the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 sets out how the Department exercises its powers in the interests of amenity and public safety. In the case of public safety account is taken of road users. The amending Regulations do not change this position. In addition to the Department's planning legislation there are separate provisions within the Department for Regional Development's roads legislation for the control of advertisements – see paragraph 12 above.

## **Issue 5: Criteria for discontinuance of deemed consent**

25. The practicalities associated with the use of the discontinuance powers raised concerns, and one respondent considered them impractical. Another asked for the terms “substantive injury” and “interest of the amenity” to be defined and quantified. One respondent questioned whether discontinuance provisions would allow the deemed consent to be revoked for clusters of signage if individually they are acceptable but collectively cause injury to amenity.

## **Department's Response**

26. The Department's policy objectives will continue to be to ensure that outdoor advertisements, including clusters of signage, respect amenity and do not prejudice public safety. The new discontinuance powers can require the removal of any advertisement causing substantial injury to the amenity of the locality or a danger to public safety. They are in line with safeguards in English provisions and the Department considers they provide a balanced approach to enforcement. In cases where discontinuance powers will be exercised, the Department will set out the reasons for discontinuance action, covering “substantive injury” and “interest of the amenity”, which will be specific to the site/advertisement and leave the advertiser in no doubt as to why the display is unacceptable.

## **Issue 6: Role of District Councils**

27. It was considered by one respondent that the role of district councils in this area should be continued and enhanced.

## **Department's Response**

28. The role of district councils in advertisement control will be reviewed as part of the ongoing Reform of the Planning System, including the Review of Public Administration transfer of functions.

## **Issue 7: Appeals against Discontinuance Notice**

29. One respondent stated that appellants should have the opportunity to seek legal settlement through the courts.

## **Department's Response**

30. In relation to draft Regulation 6A and “appeals” it should be noted the provisions state that “the Department shall afford...an opportunity of appearing before and being heard by the planning appeals commission”. However, the final decision is made by the Department. In addition there is opportunity for those receiving discontinuance orders to make a challenge by application to

the High Court for Judicial Review.

### **Issue 8: Drafting Amendments**

31. One respondent outlined three drafting amendments which were suggested should be made to ensure the legislation is clear and easily applied. The first was a similar power to that in the 2007 English Regulations which requires the local planning authority to have due regard to any material change in circumstances in considering whether to serve a discontinuance notice.
32. The second was an amendment to reflect a further provision in the 2007 English Regulations for a planning authority to commence discontinuance proceedings “if it is satisfied that it is necessary to do so” rather than the Northern Ireland provision “if it appears to the Department”.
33. Thirdly, it was suggested the amending Regulations should include a requirement for the discontinuance notice to be served on the “advertiser” which would be given a specific definition along the same lines as that contained in the 2007 English Regulations.

### **Department’s Response**

34. Following further consideration and legal advice, the Department has decided that the first suggested amendment will be included in the Northern Ireland amending Regulations.
35. The Department considers the form of words contained in the Northern Ireland amending Regulations to indicate when discontinuance powers will be used is no less certain than those contained in the 2007 English Regulations and no change is proposed.
36. The Department considers the definition of a person displaying an advertisement already contained in Regulation 2(2) of the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 is appropriate and practical. Indeed it provides a broader definition than that contained in the 2007 English Regulations as it incorporates the business to which the advertisement refers.

### **Issue 9: Monitoring Requirements**

37. One response requested the arrangements for the monitoring and review of the amendments be clarified in the RIA.

### **Department’s Response**

38. Amendments have been made to the final RIA to reflect this request.