

## FINAL REGULATORY IMPACT ASSESSMENT

### 1. Title of Proposal

The Planning (Control of Advertisements) (Amendment) Regulations (Northern Ireland) 2009.

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

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

The amending statutory rule is being introduced to grant deemed advertising 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 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. Discontinuance provisions are also being introduced to 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. The Department considers this is a balanced approach to enforcement.

#### 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 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 amendment regulations 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 Advertisements" 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 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 do not 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. The 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 appeals costs and prosecution costs for cases taken to court.

### **Option B**

The new provisions 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**

A number of elected representatives on behalf of the Outdoor Media Association (OMA) have supported the case for introducing amendments to the Regulations and the Department has held pre consultation discussions with the 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**

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 continue to operate the advertisement control system, utilising the new provisions brought forward in the amendment Regulations, for tackling any advertisement displayed without the necessary consent. The Department's Planning Service Headquarters will monitor and review the working of the amendment Regulations, as necessary, by correspondence with local Planning Divisions and industry stakeholders.

## **11. Consultation**

### **i. Within Government**

Representatives of other Northern Ireland Government Departments and the administrations of England, Scotland and Wales have been consulted on the new amendments.

## ii. Public Consultation

A full public consultation, including draft regulations, on the new measures was carried out in Northern Ireland and ran from 16 June 2008 to 12 September 2008. This Regulatory Impact Assessment was also part of that consultation. The consultation paper was circulated to a wide range of bodies and was also advertised in local newspapers and on the Department's website. There were 20 responses received and most comments referred directly to the provisions with 16 replies supportive of, or having no objections, to the new measures. Only 4 respondents were not supportive of the new measures. The public responses together with a summary of the results of the consultation will be available on the Department's website.

## 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.

Option	Cost (annual)	Benefit (annual)
A	<p>Costs to advertising operators in relation to prosecutions due to the difficulty of proving the advertisement has been in place since 1973.</p> <p>Continued impact on PAC resources because of appeals.</p>	<p>Familiarity with a system that is now well established. The enforcement process for unauthorised advertisements, which have now been in place since 1973, would remain unchanged. Retaining the current Regulations would allow the Planning Service to address such problems with illegal advertisements.</p> <p>No additional start-up costs</p>

		to the Planning Service and Planning Appeals Commission.
<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>

**DECLARATION**

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Signed by a Senior Officer of the Department of the Environment

.....*Marianne Fleming*.....

Date.....*19 January 2009*.....

Contact point:

Irene Kennedy

Department of the Environment

Planning Service

Millennium House

17-25 Great Victoria Street

Belfast BT2 7BN

Tel: 028 9025 6506

E-mail: Irene.Kennedy@doeni.gov.uk