

SUBMISSION ON BEHALF OF THE OUTDOOR MEDIA ASSOCIATION

CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE PLANNING
(CONTROL OF ADVERTISEMENTS) REGULATIONS (NORTHERN IRELAND) 1992

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1. Introduction

This submission is made on behalf of the Outdoor Media Association ('OMA') which is a representative body made up of the vast majority of outdoor media providers in Northern Ireland, namely JCDecaux, CBS Outdoor and Clear Channel. The OMA has actively pursued equal treatment for businesses in Northern Ireland, by comparison with Great Britain. The OMA therefore broadly welcomes the proposed amendments recommended by the consultation paper which Planning Service issued in June 2008 (the 'Consultation Paper').

The OMA does however wish to make detailed comments on the draft regulations which are proposed within the Consultation Paper (the 'Draft Regulations') as it is anxious to ensure that the legislation will be clear and easily applied to ensure business certainty.

The Consultation Paper refers to the Town and Country Planning Control of Advertisements (England) Regulations 2007 (the 2007 English Regulations). Paragraph 3.4 of the Consultation Paper recognises that the significant gaps between the Northern Ireland and English legal positions relate to the deemed consent for advertisements on sites used for the preceding ten years and discontinuance provisions and the Draft Regulations set out to address those gaps. The OMA welcomes this aspiration, but unfortunately, it is the view of the OMA that although the Draft Regulations go a fair distance in addressing those gaps, they create further gaps which could result in further uncertainty and be counter-productive. We set out below the OMA's detailed comments on the Draft Regulations .

2. Detailed comments on Draft Regulations

2.1. Draft Regulation 6A - change in circumstances

There is a requirement in the 2007 English Regulations on the local planning authority to have regard to any material change in circumstances that has occurred in considering whether to serve a discontinuance notice. No similar provision exists in the Draft Regulations and a provision to this effect should be included, both in the interests of administrative and business certainty, as it should be clear why a change in approach has become necessary. We are concerned that the creation of a distinction between the English and Northern Irish regimes would be construed at some later date as intentional and that therefore, the Northern Irish position could be seen as clear recognition that there was no need to have regard to any material change in circumstance that has occurred. The OMA considers that a material change in circumstances is of critical importance and this should be expressly included. We suggest that there should be a new sub-paragraph at the end of draft Regulation 6A as follows:-

'(5) in considering whether to serve a discontinuance notice, the Department shall have regard to any material change in circumstances that has occurred.'

2.2. Draft Regulation 6A - Discontinuance of Deemed Consent

Regulation 8 of the 2007 English Regulations (and previously its predecessor Regulations, the Town and County Planning (Control of Advertisements) Regulations 1992) empowers the local planning authority to commence discontinuance proceedings '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...'. Draft Regulation 6A requires the Department to commence the discontinuance proceedings where 'it appears to the Department' that the display should be discontinued to remedy a substantial injury to the amenity of the locality or a danger to public safety. The proposed Northern Irish provision is much less certain than the provision within the 2007 English Regulations and provides a very wide discretion which is lacking the controls envisaged by the 2007 English provisions. This will result in a lack of clarity on the part of the OMA members and is likely to result in a greater number of challenges of attempts by the Department to commence discontinuance proceedings. Although the Department may argue that the test is intended to be the same as in England in that regulation 6A(3)(b) provides that a notice has to provide a statement of reasons as to why the Department **considers it necessary** to make an Order, the clear test which the Department has to apply should be contained within regulation 6A(1) and we therefore suggest that it should be reworded as follows, to reflect the 2007 English regulations:-

'6A - (1) The Department may, 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, serve a notice requiring the discontinuance of - (a) ...'

2.3. Draft Regulation 6A(4) - service of Notice

The Draft Regulations make provision for the copy order to be served on the person displaying the advertisement and any other person which in the opinion of the Department would be affected by the Order. This is potentially ambiguous and the situation in the 2007 English Regulations is preferable in that service is required on the 'Advertiser' which has a specific definition as follows:-

'advertiser' in relation to an advertisement, means -

- (a) the owner of the site on which the advertisement is displayed;
- (b) the occupier of the site, if different; and

(c) any other person who undertakes or maintains the display of the advertisement;
and any reference in these Regulations to the person displaying an advertisement shall be construed as a reference to the advertiser

It is important, for example, that the owner and occupier of a site is given an opportunity to make representations in relation to such notices as they are parties which will be directly affected by the loss of opportunity which results from the discontinuance proceedings. The OMA considers that an indication in Departmental Guidance that such bodies should be served is insufficient as it lacks the certainty which a reference in the Regulations themselves would provide and could result in different treatment, depending on which Divisional Planning Office were involved. It is in all parties' interests to ensure that the process to be adopted is clear.

We suggest that the Draft Regulations should be amended to include the requirement at Regulation 6A(4) for the Notice to be served on the 'advertiser' and that the definition set out above should be incorporated.

3. Conclusion

It is the OMA's position that as the merit of equal treatment between GB and Northern Ireland is recognised, it should be delivered as far as is practicable. It is recognised that this is in the interests of business, administrative and legal certainty in that where possible, gaps between the jurisdictions should be minimised, to enable Northern Ireland businesses, planning officers and practitioners to learn from the practice, experience and case law in England. If there is a lack of consistency in terminology between Northern Ireland and England, it will mean that hard fought precedent in England will be of no benefit in Northern Ireland and the Department, the industry and the public will have to create its own legal precedents, at the expense of both the Department, the industry and the community. It is therefore the OMA's position that the Draft Regulations should be amended as set out above, which is based on the 2007 English Regulations amended as is necessary for application in Northern Ireland.

Dated this 9th day of September 2008

Signed

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This Submission is prepared by Cleaver Fulton Rankin, Solicitors, Belfast on behalf of the Outdoor Media Association.