

EXPLANATORY MEMORANDUM TO
THE PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS
(NORTHERN IRELAND) 2015

S.R. 2015 No. 66

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly
- 1.2 The Statutory Rule is made under section 130 of the Planning Act (Northern Ireland) 2011 (the 2011 Act) and is subject to negative resolution procedure before the Assembly.

2. Purpose

- 2.1 The Regulations are being made to replace, with amendments, the Planning (Control of Advertisements) (Northern Ireland) Regulations 1992 (the 1992 Regulations).

3. Background

- 3.1 These Regulations provide a self-contained set of procedures relating to the display of advertisements in Northern Ireland.
- 3.2 The Regulations exclude certain classes of advertisements from control, i.e. those specified in Schedule 2 of the Regulations, and grant consent for the display of certain classes of advertisement (“deemed consent”) i.e. those specified in Part 1 of Schedule 3 of the Regulations. The classes of advertisements which are excluded from control, and granted deemed consent, correspond to those specified in the 1992 Regulations.
- 3.3 The right to display certain classes of advertisement with deemed consent is subject to the council’s discretion. Where the council consider it necessary, they may issue a discontinuance notice requiring the display of an advertisement to cease (regulation 7 of the Regulations). The Department had a corresponding power under the 1992 Regulations.
- 3.4 If an advertisement is not excluded from control, and the regulations do not grant deemed consent for its display, express consent is required before it may be displayed. The procedure for making an application for express consent is comparable to that for making an application for planning permission. Provisions relating to the manner in which applications for express consent are to be made, the information and documents which applicants must provide and the consideration and

determination of applications are carried over from the 1992 Regulations with minimum changes.

4. Consultation

4.1 The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1” between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they were not made subject to public consultation. The Planning (Control of Advertisements) (Northern Ireland) Regulations 2015 was one of those Statutory Rules.

5. Equality Impact Assessment

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately.

6. Regulatory Impact

6.1 A regulatory impact assessment was carried out on the Regulations. These Regulations do not make any significant changes to the advertisement control system in Northern Ireland. Therefore, the commencement of these Regulations should not adversely impact on those who wish to display an advertisement, councils or others.

7. Financial Implications

7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the proposed Order is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 There are no EU implications.

10. Parity or Replicatory Measure

10.1 Equivalent Regulations have been made in England [Town and Country Planning (Control of Advertisements) (England) Regulations 2007], Wales [Town and Country Planning (Control of Advertisements) Regulations 1992] and Scotland [Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1992].

11. Additional Information

11.1 Not applicable.

REGULATORY IMPACT ASSESSMENT (Final)
Planning (Control of Advertisements) Regulations (Northern Ireland) 2015

1. Title of Proposal

The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 [“the 2015 Regulations”]

2. Purpose and intended effect of measure

i) The objective:

The objective of the Statutory Rule is to set out the legislative framework for the control of outdoor advertisements in Northern Ireland under the Planning Act (Northern Ireland) 2011 [“the 2011 Act”].

ii) The background:

The present legislative framework for the control of outdoor advertisements is the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 (SR 1992 No 448 as amended) [“the 1992 Regulations”], made under powers in Article 67 (control of advertisements) of the Planning (Northern Ireland) Order 1991.

The 2015 Regulations are made under powers in section 130 (control of advertisements) of the 2011 Act. After the commencement of section 130, councils will be responsible for the day to day operation of the advertisement planning control system, which includes deciding whether a particular advertisement should be permitted or not. The Planning Appeals Commission is responsible for administering the advertisement appeal system.

Broadly, there are three different groups of outdoor advertisement as follows:

- Advertisements which may be displayed provided they comply with certain conditions: e.g. advertisements displayed on enclosed land (such as railway stations).
- Advertisements for which the regulations give a “deemed consent”. Provided certain conditions are complied with, these advertisements may be displayed without having to apply to the council for consent: e.g. static illuminated advertisements on business premises and directional advertisements to new residential development. Councils have powers to remove the “deemed” consent (discontinuance).
- Advertisements for which the council’s “express consent¹” is always needed: these would include large commercial advertisements with illumination and moving displays.

The criteria for providing consent are public safety (for example, would the advertisement distract motorists) and amenity (for example, would the advertisement have an unacceptable effect on the urban or rural landscape).

¹ “Express consent” is consent granted by the council on an application

iii) Risk Assessment and Rationale for Government Intervention:

The Department as the unitary planning authority is presently responsible for the day to day operation of the advertisement control system. However, as part of the two tier planning system, the 2015 Regulations will transfer this responsibility to councils².

The 2011 Act merely sets the framework. The 2015 Regulations are required to provide a complete code for the planning control of all advertisements by councils. In addition the 2015 Regulations provide the Department with the power to oversee the advertisement control system.

3. Options Appraisal

Option 1 – Do Nothing

The current provisions in the 1992 Regulations would continue to apply i.e. the Department will continue to be responsible for the day to day operation of the advertisement control system.

This is not considered an appropriate option as it is not consistent with the decision of the Northern Ireland Executive to transfer responsibility for the majority of planning functions to councils³.

Option 2 – transfer responsibility for the day to day operation of the advertisement control system to councils and give the Department powers to oversee its operation

Under this option the current advertisement control system (under 1992 Regulations), would be transferred to councils subject to the following amendments:

- the procedure for making a direction restricting deemed consent would be revised to align with the approach in other jurisdictions of the UK⁴, where local authorities have responsibility for the day to day operation of the advertisement control system and
- the Department would have:
 - the power to give directions to a council, either generally or in relation to a particular case or class of case, specifying the kinds of particulars, plans or information that are to accompany an application for express consent;
 - the power to direct that an application be made to it where the council itself requires consent to display an advertisement within its own district;
 - a reserve power to make a discontinuance order in respect of advertisements displayed with deemed consent;
 - the power to make a discontinuance order in respect of an advertisement displayed with deemed consent by a council.

²Section 130 (control of advertisements) of the 2011 Act

³Section 130 (control of advertisements) of the 2011 Act

⁴ Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (2007 No.783)

4. Costs and Benefits

Option 1: Do Nothing

Costs:

This option would not incur any additional costs. However, this is not considered a viable option as it does not fulfil the statutory requirement to transfer responsibility for the day to day operation of the advertisement control system to councils⁵.

Benefits:

No economic, social or environmental benefits are derived from doing nothing.

Option 2 – transfer responsibility for the day to day operation of the advertisement control system to councils and give the Department powers to oversee its operation

Under this option the advertisement control system, under the 1992 Regulations, would be transferred to councils subject to the following amendments:

1) Power to make direction removing deemed consent to display an advertisement:

the Department would have the power to make a direction, following the council's proposal to it, that the display of advertisements of a Class or description in Schedule 3 of the 2015 Regulations [except for advertisements inside buildings or advertisements on sites used for preceding ten years for display of advertisements without express consent] may not be undertaken in any particular area, or in any particular case, without express consent for the display. Before making any direction for this purpose, the Department must provide an opportunity for objections to it against the council's proposal; and, in deciding whether to make a direction, it must take into account any objections made. There are provisions for bringing the proposal to the attention of anyone likely to be affected by the proposed direction, either by publishing details of it, or by notifying those who are immediately concerned. Where objections to a proposed direction are received, the Department may decide to offer the council and objectors the opportunity of being heard by the Planning Appeals Commission. The corresponding regulations in other jurisdictions of the UK also contain this provision. As such, the Department considers that this is an appropriate approach to adopt when responsibility for the day to day operation of the advertisement control system transfers to councils.

2) Department's power to make a direction requiring additional information to accompany applications:

- the Department would have the power to make a direction regarding the additional information, i.e. beyond that specified in the 2015 Regulations, which applicants must provide to councils.

The aim of this provision is to ensure that councils have the information necessary to determine applications.

⁵ Section 130(2)(b) of the 2011 Act

3) Department's reserve power to make a direction calling-in an application made by a council:

- the Department would have the power to call in applications made by a council for consent to display an advertisement, within their own district, for determination by the Department.

The aim of this provision is to provide transparency and safeguard the integrity of the planning process.

- the Department would have the power, following consultation with the relevant council, to make a discontinuance order in respect of advertisements displayed with deemed consent.

Councils will be responsible for the day to day operation of the advertisement control system; as such the Departments policy would be to treat this power essentially as a reserve power and to use it only in exceptional circumstances.

4) Department's reserve power to make a discontinuance order in respect of advertisements displayed with deemed consent:

- the Department would have the power to make a discontinuance order in respect of advertisements displayed, by a council in their own district, with deemed consent.

This provision will ensure that where a council displays an advertisement with deemed consent, the procedures for discontinuance would apply to the council as they apply to any other person displaying an advertisement with deemed consent.

Costs [In relation to the Department]

After the commencement of the 2011 Act, councils will have primary responsibility for the day to day operation of the advertisement control system in their district. While the Department retains reserve powers as detailed above, in practice these will very rarely be used. As such, the Department's costs will be the minimum necessary to transfer this responsibility to councils, and to ensure public confidence in the planning system is maintained.

Benefits [In relation to the Department]

This option will ensure that the Department has sufficient powers to oversee the operation of the advertisement control system under the 2011 Act and to ensure public confidence in the planning system with regard to advertisements is maintained. In addition, this option will give effect to the 2011 Act since primary responsibility for the day to day operation of the advertisement control system will transfer to councils.

Costs [In relation to councils]

No additional cost envisaged beyond that required to give effect to the 2011 Act i.e. transfer primary responsibility for the day to day operation of the advertisement control system to councils. There will be some costs to councils in the processing of applications for advertising consent; however this forms part of their functions under

the new two tier planning system. The Department will provide councils with adequate funding to cover the lifetime costs of processing such applications.

Benefits [in relation to councils]

In effect this option will transfer the existing advertisement control system to councils. As such the main benefit of this option is the continuation of an existing, effective practice for the planning control of outdoor advertisements.

Costs [in relation to those who wish to display an advertisement]

No additional costs to those who wish to display an advertisement, since there is no change to the classes of advertisements which may be displayed without the need to apply for and obtain express consent.

Benefits [in relation to those who wish to display an advertisement]

As above i.e. no change to the classes of advertisements which may be displayed without the need to apply for and obtain express consent and as such no change in benefits to those who wish to display an advertisement.

Costs [in relation to the public]

In relation to amenity and public safety there are no significant costs in adopting this approach since advertisements are in practice controlled to the same extent i.e. no change to the current controls under the 1992 Regulations.

Benefits [in relation to the public]

No benefits identified in adopting this option since advertisements are in practice controlled to the same extent i.e. no change to the current controls under the 1992 Regulations.

5. Sectors and Groups Affected

The main sectors and groups affected by the display of outdoor advertisements are:

- those who wish to display an advertisement e.g. developers / businesses;
- councils - since they have responsibility for administering planning controls in relation to outdoor advertisements;
- others e.g. those who reside in, or visit, the area in which the advertisement is displayed.

6. Enforcement and Sanctions

With perhaps some minor differences, it is anticipated that the council's enforcement regime will operate similarly to that which is presently in place and operated by the Department.

Anyone who displays an advertisement in contravention of the regulations is guilty of an offence under section 175 (enforcement of advertisement control) of the 2011 Act and liable to a maximum fine of up to level 4 on the standard scale (currently £2,500). The defendant may be a landowner / occupier or those whose advertisement is being displayed.

The council also has the powers to compel anyone displaying an advertisement in contravention of the regulations to submit an application for consent⁶; subject to a right of appeal, to the Planning Appeals Commission⁷.

7. Consideration of Impacts

Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

Health Impact

No impact on health has been identified associated with compliance with the Regulations.

Small Firms Impact Test

These proposals will not impose any additional burden on small firms:

- who wish to advertise the goods they sell or the services which they supply; or
- who receive income from renting out space on outdoor advertising panels "outdoor advertising industry".

In relation to small firms who act as agents i.e. submit applications for consent to display an advertisement on behalf of others, the 2015 Regulations will ensure there is a basis for consistency across council planning departments.

Human Rights Assessment

The Department considers that the proposed 2015 Regulations are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

No significant differential impact is anticipated between urban and rural areas.

8. Monitoring and Review

The Department will continue to monitor and review the working of the 2015 Regulations as necessary through monitoring and correspondence with councils and

⁶ section 43 (notice requiring planning application to be made) of the 2011 Act as amended by the 2015 Regulations

⁷ Section 44 (Appeal against notice under section 43) of the 2011 Act as amended by the 2015 Regulations

industry stakeholders. Section 228 of the Act requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act and at least once in every 5 years after that.

9. Consultation

The Department consulted on its “Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1” between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation. The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 was one of those Statutory Rules.

10. Summary and Recommendations

Option 2 is the recommended option as it will:

- provide the legislative framework for the control of outdoor advertisements by councils in the interests of amenity and public safety; and
- provide the Department with the power to oversee the advertisement control system.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



.....
Date: 17 February 2015
Angus Kerr
Planning Policy Division
Department of the Environment
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG