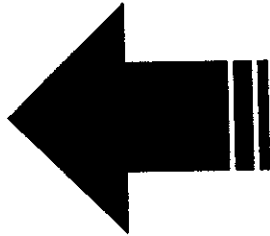


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Landscape Feed

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Circular 5/92
(Department of the Environment)

Circular 14/92
(Welsh Office)



Joint Circular from the
Department of the Environment
Tollgate House, Houlton Street, Bristol BS2 9DJ.

Welsh Office
Cathays Park, Cardiff CF1 3NQ

23 March 1992

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992

1. The Secretary of State for the Environment and the Secretary of State for Wales have made the Town and Country Planning (Control of Advertisements) Regulations 1992 (SI 1992/666) which come into force on 6 April 1992. These amending and consolidating regulations replace the Town and Country Planning (Control of Advertisements) Regulations 1989 (SI 1989/670), the Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1990 (SI 1990/881), and the Town and Country Planning (Control of Advertisements) (Amendment) (No. 2) Regulations 1990 (SI 1990/1562). The Regulations apply to England and Wales.

Explanatory Memorandum

2. The explanatory memorandum annexed to this Circular provides a general outline of the present system of advertisement control and incorporates relevant advice, given in Circulars now being cancelled, about advertisement applications to local planning authorities (LPAs), appeals to the Secretary of State, and dealing with unauthorised advertisements. Further policy guidance is given in Planning Policy Guidance (PPG) Note 19, entitled "Outdoor Advertisement Control" which is available from HMSO Bookshops as a priced publication.

Main changes made by the Regulations

3. Following representations made to the Secretary of State about certain provisions of the 1989 Regulations, a number of amendments were made to these Regulations by the 1990 Amendment Regulations. The 1990 No. 2 Regulations made further changes as a consequence of the consolidation of planning legislation in the Town and Country Planning Act 1990. The present Regulations incorporate these amendments and further consequential changes. The main changes are summarised in the following paragraphs.

Some further minor drafting amendments are also made. The format of the Regulations corresponds to the 1989 Regulations.

Definition of "advertisement"

4. The definition of "advertisement", in section 336(1) of the Town and Country Planning Act 1990, has been amended by section 24 of the Planning and Compensation Act 1991. That section was commenced on 6 April 1992. There should no longer be any doubt that certain modern forms of outdoor advertisement (such as rotating poster panels, or advertisements displayed on permanently fixed blinds or canopies at fascia level on business premises) are within the definition; and are thus subject to advertisement control by LPAs. Because specific powers are available to LPAs to control these, and all other types of advertisements, within the scope of the statutory definition, the Secretary of State considers it is normally inappropriate for LPAs to control the display of advertisements by other means, eg by issuing an enforcement notice.

Power of LPA to decline to determine applications

5. Section 17 of the Planning and Compensation Act 1991 inserts a new section 70A into the Town and Country Planning Act 1990, and makes consequential amendments to section 78(2) of that Act. Regulation 13 of, and Parts I and II of Schedule 4 to, the 1992 Regulations apply these new provisions, with certain modifications, to applications to LPAs for express consent under the Regulations. These provisions are explained in paragraphs 28 to 32 of the Annex to this Circular and will apply to all applications outstanding on 6 April 1992 or received thereafter, even if the previous proposal was refused or dismissed by the Secretary of State before that date.

Dismissal of appeals in cases of undue delay

6. Section 18 of the Planning and Compensation Act 1991 inserts a new section 79(6A) into the Town and Country Planning Act 1990. Regulation 15 of, and Parts III, IV and V of Schedule 4 to, the 1992 Regulations apply this new provision to advertisement appeals (including appeals against discontinuance notices) made to the Secretary of State. These provisions are explained in paragraphs 47 to 49 of the Annex to this Circular. They will apply to all appeals outstanding on 6 April 1992 and any new appeals lodged thereafter.

Receipt and transmission of advertisement applications

7. Section 19 of the Planning and Compensation Act 1991 amends the provisions in paragraphs 3 and 4 of Schedule 1 to the Town and Country Planning Act 1990 by repealing those parts which required that planning and certain other applications should first be submitted to the appropriate district council, even if the application was to be determined by another authority. Regulation 9 of the 1989 Regulations repeated this requirement. In place of these repealed provisions, section 19 inserts a new section 74(1A) into the Town and Country Planning Act 1990, enabling replacement provisions to be made by a development order. Amended Regulation 9 of the 1992 Regulations now therefore requires that all advertisement applications be

made direct to the LPA in whose area the application site lies. These provisions are explained in paragraph 25 of the Annex to this Circular.

Contravention of Regulations—Regulation 27

8. Paragraph 38 of Schedule 7 to the Planning and Compensation Act 1991 increases the maximum daily penalty for a continuing offence, specified in section 224(3) of the Town and Country Planning Act 1990, from £40 to one-tenth of “level 3” on the standard scale. The Criminal Justice Act 1991 increases the amounts on the standard scale of penalties from October 1992 when “level 3” will be raised from £400 to £1,000. Regulation 27 is amended to be consistent with the 1990 and 1991 Acts.

Classes 4A, 4B and 5 in Schedule 3 (signs on “business premises”)

9. The description of advertisements which may be displayed under the “deemed consent” provisions applicable to Classes 4A, 4B and 5 in Schedule 3 to the 1992 Regulations is, in each case, amended to make clear that such advertisements may display as few, or as many, of the specified matters as the advertiser wishes, and still comply with the relevant Class. Consequently, advertisements in these Classes may display matters relating to the business carried on, the goods or services provided, *and/or* the name and/or qualifications of the person carrying on the business, or supplying the goods or services.

Town and Country Planning (Control of Advertisements) Direction 1992

10. The Secretary of State has made the Town and Country Planning (Control of Advertisements) Direction 1992, which supersedes the 1989 Direction. A copy of the Direction is at Appendix E to the Annex.

Explanatory booklet about outdoor advertisement control

11. Because the statutory provisions for planning control over outdoor advertisements are comparatively detailed, and officers in LPAs sometimes have difficulty in explaining to enquirers how a proposed advertisement is affected by a specific provision in the Control of Advertisements Regulations, explanatory booklets are made available by the Departments. A revised edition of the booklet “Outdoor Advertisements and Signs—A Guide for Advertisers” is being produced. As before, this is a comprehensive guide to the advertisement control system. Copies of the booklet will be distributed in due course to all LPAs in England and Wales. They are intended to be available to enquirers at LPAs’ offices and at enquiry points where people may seek information about outdoor advertisements.

Effects on local government manpower and expenditure

12. This Circular re-states and up-dates the existing advice to LPAs about outdoor advertisement control, LPAs’ functions and the procedure for appeals to the Secretary of State. It should not involve any increase in local government manpower or expenditure. Some savings to LPAs may result from the new provisions enabling them to decline to determine repetitive applications, and from the Secretary of State’s power to dismiss an appeal summarily where the appellant causes unnecessary delay.

Cancellation of Circulars

13. DOE Circular 15/89 and Welsh Office Circular 28/89 are now cancelled.

D N DONALDSON, *Assistant Secretary*

H R BOLLINGTON, *Assistant Secretary*

Distribution

The Chief Executive
County Councils } in England and Wales
District Councils }
London Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer
Lake District Special Planning Board
Peak Park Joint Planning Board
The Chief Executive, Broads Authority

The Chief Executive, Urban Development Corporations

The General Manager, New Town Development Corporations

For information:

The Chief Officer, the Residuary Bodies

The Secretary, London Planning Advisory Committee

[DOE PDC2/238/15]

[WO P75/67/01pt4]

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ANNEX

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992

Explanatory Memorandum

Part I: the main statutory provisions

The Secretary of State's power to make Regulations

1. The Secretary of State's powers to make regulations for the control of outdoor advertisements are in sections 220, 221, 223 and 224 of the Town and Country Planning Act 1990. The current regulations are the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666. All subsequent references to Regulations are to the 1992 Regulations, unless otherwise stated.

Definition of an "advertisement"

2. For the purpose of the 1990 Act and these Regulations, the term "advertisement" has a wider than normal meaning. Section 336(1) of the 1990 Act, as amended by section 24 of the Planning and Compensation Act 1991, defines "advertisement" as "any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used, or designed or adapted for use, and anything else principally used, or designed or adapted principally for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly". Regulation 2 excludes anything "employed wholly as a memorial or as a railway signal".

Criteria for control under the Regulations

3. Under regulation 4, advertisements are subject to control only in the interests of "amenity" and "public safety". It follows that the content or subject of an advertisement cannot be controlled under the Regulations unless it appears to the local planning authority (LPA) to be required in the interests of "amenity" or "public safety"; and express consent cannot be refused because the LPA consider the advertisement to be misleading, unnecessary, or offensive to public morals.

Authorities responsible for advertisement control

4. For the purposes of the Regulations, the LPA is the appropriate district or metropolitan district council, except in Greater London, in a National Park, in the Broads, or in an urban development area designated by an order under section 134 of the Local Government, Planning and Land Act 1980. In Greater London, the LPA is the appropriate London borough council or the Common Council of the City of London; in a National Park, it is the appropriate county planning authority namely the National Park Committee

or Planning Board; and, in the Broads, it is the Broads Authority. In an urban development area it is the Urban Development Corporation if the Corporation is a LPA with the powers for advertisement control vested in it. The power in regulation 18 to make area of special control orders (see paragraphs 22 to 24 below) is exercisable in London by the appropriate London borough council or the Common Council and elsewhere by district planning authorities. In a National Park the power is conferred only on the county planning authority.

Part II: the scope of control

Advertisements excepted from control

5. The Regulations apply to the display of all advertisements on land (which includes buildings and land covered with water), except that Parts II and III do not apply to those "Classes" specified in Schedule 2 and excepted from control by regulation 3. The ten excepted Classes of advertisement are:

Class A: the display of an advertisement on, or consisting of, a balloon, not more than 60 metres above ground level, on a site for a maximum of 10 days in any calendar year, so long as the site is not in an Area of Outstanding Natural Beauty, a Conservation Area, a National Park, the Broads, or an area of special control of advertisements.

Class B: an advertisement displayed on enclosed land and not readily visible from outside the enclosure, or from any part of it over which the public have a right of access.

Class C: an advertisement displayed on or in a vehicle (which includes a vessel), unless it is being used principally for the display of advertisements (rather than for conveying people or goods).

Class D: an advertisement incorporated in the fabric of a building, eg incised stonework lettering, but excluding an advertisement fixed to, or painted on, a building.

Class E: an advertisement displayed on an article (including a gas or liquid) for sale, the container or dispenser, provided the advertisement is not illuminated and does not exceed 0.1m².

Class F: an advertisement relating specifically to a pending Parliamentary, European Assembly or local government election (to be removed within 14 days after the close of the poll).

Class G: an advertisement required by Standing Orders of either House of Parliament or by any enactment or statutory condition.

Class H: a traffic sign, as defined in section 64(1) of the Road Traffic Regulation Act 1984.

Class I: the national flag of any country, displayed on a single vertical flagstaff, without any additional inscription beyond the approved design of that national flag.

Class J: an advertisement displayed inside a building not used principally for the display of advertisements, and not within one metre of any external door, window, or other opening through which it is visible from outside.

6. The Civil Aviation (Aerial Advertising) (Captive Balloons) Regulations 1984 (SI 1984/474) permit certain advertisements displayed on captive balloons not exceeding a specified size and volume, providing the balloon is not being flown at a height exceeding 60 metres above ground-level. The reference in regulation 2(1) to a balloon as meaning "a tethered balloon or similar object" is intended to comprise both conventionally shaped balloons used for advertising purposes and other balloons designed in the form of the product, eg a bottle, which is being advertised. The definition of "site" in Class A of Schedule 2 has not been amended. Thus advertisers will still not be able to move a balloon advertisement to different parts of one large site to gain exemption for more than 10 days in any calendar year. Article 75 of the Air Navigation Order 1989 (SI 1989/2004) confirms that if a balloon remains attached to any object, which could not be blown away, then the balloon must be taken to be tethered to the site.

7. Further advice on the Aerial Advertising Regulations, and the recommended procedure in the event of an apparent contravention, is given in paragraphs 60 and 61 of Part V of this Annex.

The requirement for consent

8. All advertisements, other than the excepted classes mentioned in paragraph 5 above, require consent before they can be lawfully displayed. Section 224(3) of the 1990 Act provides that any person who displays an advertisement in contravention of the Regulations shall be guilty of an offence and liable to specified penalties on summary conviction. The Secretary of State nevertheless considers it would often be reasonable for LPAs to invite a person who appears to be contravening the Regulations to remove the advertisement, or to apply for consent, before they proceed to prosecute. The person may be unaware of the requirements of the Regulations; or may consider that he already has, or does not need, consent to display the advertisement. In cases of blatant, deliberate or repetitive displays of advertisements, immediate prosecution may be the more appropriate course to secure the early removal of an unlawful advertisement. A continuing offence may be the subject of a further prosecution, when the daily penalty will be available on conviction.

9. In all cases, other than the excepted categories and certain advertisements for which the Regulations provide a "deemed consent", application must be made to the LPA for express consent. Unless a specific condition is imposed to the contrary, consent applies to the land and is thus unaffected by a change of ownership. A change of occupancy of premises may sometimes result in the need for a minor change to an advertisement which has previously received the LPA's express consent. The Secretary of State considers it would be reasonable for LPAs to allow minor changes (eg where the name of the occupier changes, but the size and type of display otherwise remain substantially unaltered), without requiring another advertisement application.

10. By virtue of section 222 of the 1990 Act, planning permission is deemed to be granted for any development of land involved in the display of advertisements in accordance with the Regulations. But consent under the Regulations does not relieve the applicant of any other statutory obligation.

For example, it does not exonerate the advertiser from obtaining listed building consent, where appropriate.

Standard conditions

11. All advertisements displayed with express or deemed consent, under the Regulations, are subject to the standard conditions (specified in Schedule 1) requiring them to be kept safe, and reasonably clean and tidy. The requirement to obtain the permission of the owner of the land or buildings, or other person entitled to give permission, where the advertisement is to be displayed, is specified as standard condition 4. It is also a standard condition that an advertisement may only be displayed so as not to conflict with a signal or traffic sign of any sort, or otherwise to endanger the use of any road, railway, waterway or aerodrome, even though such factors should be taken into account when deciding an advertisement application for express consent, or on appeal.

Advertisements displayed with deemed consent

12. The Classes of advertisements which may be displayed with deemed consent, that is to say without the need for a LPA's express consent, are in Part I of Schedule 3 to the Regulations. Each Class has the limitations and conditions which apply to it specified under each heading; Part II of Schedule 3 provides the interpretation of definitions which relate specifically to the deemed consent Classes.

13. Even if a LPA determines an application for express consent for an advertisement coming within any of the deemed consent Classes, the deemed consent provisions do not cease to apply. Consequently, LPAs may wish to notify anyone who unwittingly applies for consent for an advertisement which clearly falls within one of the deemed consent Classes, that express consent is not required for it. The LPA is also precluded, by regulation 13(4), when granting an express consent subject to conditions, from imposing any condition which is more limiting than would have applied under the appropriate deemed consent provisions in relation to that Class.

14. Classes 13 and 14 in Schedule 3 permit the continued display of advertisements, with deemed consent, either after the expiry of their period of express consent, or where the site was used for the display of advertisements on 1 April 1974 and has been so used continually since that date. In either case, these provisions allow for temporary cessation of the advertisement display (including, for instance, for the repair or redecoration of the premises to which the advertisement is attached) without losing the benefit of the deemed consent granted by Class 13 or 14 for the continued display of the particular advertisement, or the continued use of the site for the display of advertisements, as appropriate.

Exclusion of deemed consent provisions by direction under Regulation 7

15. Regulation 7 enables the Secretary of State to make a direction, following the LPA's proposal to him, that the display of advertisements of a Class or description in Schedule 3 (except Classes 12 and 13) 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 Secretary of State must provide an opportunity for objections to him against

the LPA's proposal; and, in deciding whether to make a direction, he 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.

16. If the Secretary of State decides to make a direction in accordance with regulation 7, he is required to give his reasons in writing for doing so; and details of the direction are to be published and notified to those immediately affected by it. The provisions of regulation 7 give people whose interest would be affected by the exclusion of the deemed consent for any of the specified Classes an opportunity of having their representations considered by the Secretary of State. The Secretary of State may also make a direction which modifies the proposal of the LPA, so long as the area is not thereby extended; and he may also make directions for limited, but renewable, periods.

Discontinuance action for advertisements displayed with deemed consent

17. The grant of deemed consent to display an advertisement is not absolute. The display of all such advertisements is qualified by the LPA's power to take discontinuance action in accordance with regulation 8. Discontinuance action may only be taken if the LPA are satisfied that it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. In accordance with regulation 8(2)(e), a discontinuance notice must contain a full statement of the reasons why the LPA consider it expedient, in the interests of amenity or public safety, for the display to be discontinued.

18. Regulation 8(1) of the Regulations enables a LPA to take discontinuance action against either a specific advertisement in the position where it is actually displayed, or in regard to the use of an entire site for advertisements, which is to be specified in the discontinuance notice. This latter power is particularly apposite where temporary advertisements, such as window-stickers, are to be discontinued. When using the power in regard to an entire site, LPAs need to define precisely the site to which the notice 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.

19. Regulation 8(2)(d) provides that a notice must also specify the period within which the display must be discontinued. Unless there is an appeal to the Secretary of State, or the notice is withdrawn or varied so as to extend the period specified for its taking effect, it will take effect by virtue of regulation 8(3) at the end of the period which it specifies. LPAs should always consider the particular circumstances and allow a reasonable time for discontinuing a display, especially when discontinuance action is likely to have serious financial consequences for a particular advertiser. The LPA may consider that a modified display would be acceptable; if so, the Secretary of State considers that they should so inform the person displaying the advertisement. This is best done before serving the notice; but, if the notice has been served, the LPA can provide time for negotiation by withdrawing the notice or amending the date on which it takes effect.

20. When the LPA decide to take discontinuance action, the notice must be served on the advertiser and on the owner and occupier of the land on which the advertisement is displayed. By virtue of regulation 15(3), a person on whom a discontinuance notice is served may appeal to the Secretary of State who may deal with his appeal as if he had applied for express consent to display the advertisement and the LPA had refused it.

21. The Secretary of State has power, in regulation 23(1), to initiate discontinuance action in regard to any advertisement displayed with deemed consent, after consultation with the LPA.

Areas of special control of advertisements

22. Section 221(1) and (3) of the 1990 Act provide for Regulations enabling the Secretary of State to make special provision for the control of advertisements in "areas of special control", which are to be:—

- (1) rural areas; or
- (2) other areas which appear to the Secretary of State to require special protection on grounds of amenity.

In Part IV of, and Schedule 5 to, these Regulations, provisions similar to the corresponding provisions in the 1989 Regulations are included. Advice on areas which may be suitable for designation as areas of special control is given in PPG 19. If a LPA wish to discuss whether an urban area they have in mind to define as an area of special control is likely to obtain the Secretary of State's approval, they are invited to consult the Department of the Environment (for England), or the Welsh Office (for Wales), informally about their proposals at the earliest possible stage.

23. Once an order has been defined by the LPA and approved by the Secretary of State, there is an obligation in regulation 18(4) to review it at intervals of not more than 5 years from the date of making the order; this also applies to existing orders. When reviewing an order, LPAs should bear in mind that its purpose is to apply stricter standards of control over outdoor advertising because the area in question requires special protection on amenity grounds. It is therefore important to ensure, in any review, that the standards adopted in first making the order are consistently maintained throughout the whole area whilst it remains in effect. LPAs should therefore consider the desirability of adding further areas to an existing order and of removing areas in which stricter control is no longer appropriate, whenever they review an order. Deciding whether to include more land in an existing order is likely to depend on whether the proposed addition is of at least equal visual amenity value. Deciding whether to exclude land from an existing order is likely to depend on whether there has been substantial industrial or commercial development of land within an area of special control. If so, it should normally be removed from the scope of the order. When any development has been mainly residential, much will depend on its precise scale, nature, and location. If the development is of good architectural quality, well-built and landscaped, and maintained to high standards, it may be appropriate to retain the land within the area of special control. If mineral-working has taken place, much will depend on the effect of the operations, their expected duration and the intended after-use of the land. When it is intended to restore the land to agricultural use, there need be no question of

exclusion from an order; but, where the likely result of the development is a prolonged period of dereliction, exclusion of the land from the order may be appropriate.

24. Schedule 5 to the Regulations prescribes the procedures to be followed by the LPA in defining and submitting a proposed order to the Secretary of State for approval; and by the Secretary of State in approving an order, with or without modifications. Paragraph 5 of Schedule 5 provides that when a formal objection to a proposed order is made, the Secretary of State may cause a local inquiry or hearing to be held or consider the objection by way of written representations. LPAs can do much to encourage informal consideration of a proposed order by consulting other interests such as the local trade, tourist and amenity organisations and any other interested bodies, at the earliest possible stage. LPAs are strongly advised to consult the Outdoor Advertising Council which represents the interests of the outdoor advertising industry. The Council's Secretary, at Keeley House, 22-30 Keeley Road, Croydon, Surrey CR0 1TE, will be able to give a reliable indication whether there is likely to be opposition to an order from advertising interests.

Part III: the exercise of control

Express consent

25. When an advertisement to which the Regulations apply does not qualify for deemed consent, an application must be made to the local planning authority (LPA) for express consent. "Local planning authority" is defined in regulation 2(2). An application relating to land in a National Park, outside a metropolitan county, is to be made direct to the relevant national park authority; and an application relating to land in the area of an urban development corporation (where that corporation is the LPA for the area) is to be made direct to the urban development corporation. All other applications are to be made to the relevant district planning authority or metropolitan district or London borough council. Regulation 11 requires that where the LPA are also the county planning authority, they must send a copy of any application, on receipt, to the district planning authority.

26. The appropriate fee for the category of advertisement to be displayed must accompany the application. The amount of the fee is prescribed in Fees Regulations (currently the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) Regulations 1991). LPAs will usually supply applicants with forms asking for the required particulars. They are asked to adopt the model application form at Appendix A to this Annex. LPAs may accept any alternative form of application, for example a letter, provided it contains the required information; and they may ask for further information but should only do so when it is essential for determining the application. LPAs may refuse an application if they have insufficient information to deal with it, or the information is so deficient that the application is not validly made. If the application contains enough information for the LPA to consider it, but there are doubts whether some points have been adequately resolved, the proper course is to explain to the applicant that refusal is likely unless further relevant information is provided. LPAs are advised to follow this course, rather than refuse consent without giving the applicant the opportunity to submit further particulars. The LPA

also have the power in regulation 11(b) to direct an applicant to provide verifying evidence.

Consideration and determination of applications

27. The LPA's power to control advertisements may be exercised only in the interests of "amenity" and "public safety". Sub-paragraphs (a) and (b) of regulation 4(1) state the relevant factors for these purposes. Advice on assessing the effect of a proposed display on "amenity" and "public safety" is given in PPG 19. Further advice on the "public safety" aspects of any display is given in paragraph 36 below and in Appendix B to this Annex.

Power of LPA to decline to determine applications

28. Section 70A of the Town and Country Planning Act 1990, as applied and modified by regulation 13 and Parts I and II of Schedule 4, empowers a LPA to decline to determine repetitive similar applications for express consent. Section 70A provides that, where the Secretary of State has refused an application on appeal, a LPA may decline to determine any similar application received within the following two years, unless there has been a significant change in any material consideration. This two-year period runs from the date of the Secretary of State's decision, irrespective of any unresolved challenge in the Courts.

29. Section 70A, as modified, defines applications as "similar" if the land and subject matter are, in the LPA's opinion, the same or substantially the same. Authorities should use the power only where they consider that the applicant intends to exert pressure by submitting repeated similar applications, or where the applicant is using repeated applications as a delaying tactic to maintain the display of an unlawful advertisement. If an application has been revised in a genuine attempt to take account of objections to an earlier proposal, it should not be regarded as "similar" for the purposes of this section.

30. A change in a material consideration will be "significant" for the purposes of this section if it might be expected significantly to alter the weight of any consideration of amenity or public safety which was applied to the original application.

31. An application which a LPA decline to determine under section 70A should be returned to the applicant and regarded by the authority as withdrawn. The applicant has no right of appeal against non-determination of his application if the LPA have notified him that they have exercised their power under section 70A to decline to determine the application. Nor is there any right of appeal to the Secretary of State against a decision to decline to determine an application. An applicant may, however, seek leave to apply for judicial review, by the High Court, of a LPA's decision to exercise their power under section 70A.

32. In considering whether to exercise their power under section 70A, a LPA will sometimes have to consider doubtful cases. In general, a LPA should give the benefit of the doubt to an applicant and determine the application. No conclusion about the likely success of an application should be drawn from the decision by a LPA not to exercise their power under section 70A.

Period of consent

33. In addition to the standard conditions (described in paragraph 11 of this Annex), a LPA may impose such other conditions as they think fit on any part of the consent, including a requirement that the advertisement be removed at the end of the specified period. However, they cannot impose more limiting conditions than would have applied under a deemed consent for that class of advertisement, if advantage had been taken of those provisions. The period of a consent will normally be for 5 years, but the LPA may grant consent for any shorter or longer period they consider expedient (regulation 13(5)). If consent is granted for less than 5 years, a specific condition requiring the removal of the display on the relevant date should be imposed on the consent. When the period of the consent ends, in the absence of any condition to the contrary, an advertisement may continue to be displayed, under the provisions of Class 14, but subject to discontinuance action under regulation 8 (see paragraphs 17 to 21). Regulation 9(6) provides that an application may not be made for renewal of express consent earlier than 6 months before expiry of that consent.

Notification of decision

34. The LPA's decision on an application for express consent must be given in writing within 8 weeks, unless both the applicant and the LPA agree, in writing, to a longer period. If the LPA refuse consent, or grant consent subject to conditions other than the standard conditions, their reasons must be stated clearly in writing.

Register of applications

35. Regulation 21 requires every LPA to keep a register of applications for advertisement consent. Regulation 21(3) permits part of the register to be kept in different offices within the LPA's area; and each office is to keep as much of the register as relates to the area it serves. This is intended to ensure that the information in the register is reasonably accessible to applicants and the general public throughout the LPA's area.

Consultation about, and publicity for, applications

36. Regulation 12 requires consultation with any neighbouring LPA where any part of that authority's area appears likely to be affected by a proposed advertisement display. For proposals relating to land within a National Park, regulation 12(1)(b) and paragraph 4(2) of Schedule 1 to the 1990 Act (as amended by paragraph 53(3) of Schedule 7 to the Planning and Compensation Act 1991) require the county planning authority to consult the district planning authority before determining the application. The Secretary of State looks to authorities to make appropriate working arrangements for this purpose. As the Regulations are exercisable in the interests of public safety, as well as amenity, LPAs will also need to make suitable arrangements with the local highway authority to obtain advice on any highway factors. Advice regarding consultation about public safety implications for trunk-roads and motorways, or relating to railways, waterways, docks, harbours, and aerodromes is given in Appendix B to this Annex.

37. Although there is no statutory requirements for LPAs to publicise advertisement applications, they should consider whether any application would affect the amenity of neighbours. Where neighbours' amenity appears to be affected, LPAs may wish to seek their views before determining the application.

Revocation or modification of express consent

38. Express consent for the display of an advertisement can be modified or revoked by an order made under regulation 16 by the LPA. This requires the Secretary of State's approval. Such action can only be taken before the display commences; or, if building operations are involved, before their completion. Notice of the submission of such an order to the Secretary of State must be served on everyone affected by it; it is also suggested that a LPA advertise this notice of submission in newspapers circulating in the locality. A hearing before an officer appointed by the Secretary of State must be afforded if anyone notified requires it. Moreover, provided a written claim is submitted to the LPA within six months of the confirmation of the order, compensation (in accordance with regulation 17(2)) must be paid for any proved expenditure, loss, or damage directly attributable to the revocation or modification, other than in respect of depreciation in the value of any interest in the land.

Part IV: appeals to the Secretary of State

Right of appeal

39. When an application for consent has been refused, or granted subject to conditions other than the standard conditions; when the LPA fail to give their decision within the prescribed period of eight weeks (or such longer period as may have been agreed); or fail to notify the applicant that they have exercised their power to decline to determine the application; or when a discontinuance notice has been served, the applicant or recipient of the notice may appeal to the Secretary of State by giving notice in writing within eight weeks, or such longer period as the Secretary of State may allow. The appeal provisions closely follow the provisions for planning appeals, in sections 78 and 79 of the 1990 Act; but decisions on advertisement appeals are taken by the Secretary of State, not by Planning Inspectors. When giving notice of appeal, the relevant documents must also be submitted to the Secretary of State. Appellants should state explicit reasons why they disagree with the LPA's decision; merely to state that they disagree delays the appeal process. Before exercising discretion to permit an appeal "out of time", the Secretary of State must be convinced that there are good reasons justifying the delay.

Procedure on appeals

40. The Secretary of State's decision on an appeal is usually based on consideration of the parties' written representations and an assessment, on merits, of the proposed display. This may involve either an unaccompanied inspection of the site by an officer of the Department, or an examination of photographs of the site and its surroundings, which the LPA and appellant provide so that visual amenity can be assessed. The second course is available only if, at the outset, the appellant and the LPA both agree to it. The Secretary of State retains the right to arrange a site-inspection if he thinks it is needed.

If an appellant particularly wants to make representations personally, or by means of an agent acting for him, the Secretary of State may be asked to arrange a hearing where both parties will appear before an officer of the Department. The officer will listen to their representations and subsequently make his report and recommendation to the Secretary of State; the officer will also inspect the site, accompanied by the parties. This is normally the slowest and most administratively expensive appeal procedure and the Secretary of State therefore expects the parties not to ask for a hearing unless it is absolutely essential. Whichever procedure the parties prefer, and unless a hearing is requested, the Secretary of State has power to adopt the procedure he considers most appropriate to assess the issues before him in the appeal. He will not agree to a request for the procedure based solely on written representations and photographs if the appeal involves "public safety" issues; a site-inspection is essential for these appeals.

41. To make an advertisement appeal, form DOE 14075B (Welsh Office form Advt 1) should be used. Appellants should adopt the procedure outlined below. LPAs should include in their "Notes for Guidance" the address of the appropriate local authority department to which a copy of the appeal form should be sent.

42. The appeal procedure operates as follows:—

- (a) written representations, with or without a site-inspection
 - (1) the appeal should be submitted on the specially designed, 3-part appeal form (DOE 14075B/WO Advt 1) which uses a copying process requiring no carbon paper;
 - (2) on submission of the appeal, the completed form should be sent to the Department, with one copy sent simultaneously to the LPA and the second copy retained for the appellant's own records;
 - (3) the appellant has the option of submitting his own photographs of the appeal site simultaneously with the completed form (with a copy of the photographs being sent to the LPA);
 - (4) within 3 weeks of receiving their copy of the appeal, the LPA are required to submit their written representations to the Department and copy them simultaneously to the appellant;
 - (5) within 2 weeks of receiving a copy of the LPA's written representations (as at (4) above), the appellant is required to submit any further representations to the Department; and
 - (6) unless the appellant's further representations (as at (5) above) raise any new issue, there will be no further invitation to the LPA to comment, and the appeal will proceed at once to decision.
- (b) oral representations at a hearing
 - (1) steps (1), (2) and (3) at (a) above apply;
 - (2) when a date for a hearing has been agreed, the LPA are required by the 1992 Direction to submit a copy of their written statement, together with the necessary photographs, plans and documents, to the Department and the appellant 28 days before the notified hearing date.

LPA's written statement for appeals

43. Many LPAs produce written statements on advertisement appeals which include unnecessarily detailed descriptions of the appeal site and lengthy statements of advertisement control policies. LPAs will lose nothing by concentrating their written statement on a succinct description of the appeal site, and a concise account of the "visual amenity" and "public safety" factors on which their decision to refuse advertisement consent was based. This would be a more efficient and effective use of scarce resources, to the benefit of the appeal process. The suggested format of a model statement is at Appendix D to this Annex, which is commended to LPAs.

Guidance on appeal procedures

44. To help intending appellants to select which appeal procedure is best suited to their circumstances, LPAs are invited, whenever their decision does not grant consent for what was applied for, to issue Notes for Guidance about the available appeal procedures. For this purpose, suggested model "Notes for Guidance about advertisement appeal procedures" are provided at Appendix C, which apply to appeals in England and Wales.

Procedure for appeals against discontinuance notices

45. Regulation 8(2)(e) requires the LPA to provide a full statement of the reasons why they have decided to serve a "discontinuance notice", requiring the use of a site or the display of an advertisement to cease. If the statement provided as part of the discontinuance notice is sufficiently detailed, the Secretary of State sees no need for the LPA to elaborate on their reasons for serving a discontinuance notice in a separate written statement, whenever there is an appeal under regulation 15 against a discontinuance notice.

46. To minimise the administrative burden, the Department will not normally ask LPAs for a written statement on discontinuance notice appeals proceeding by written representations. Instead, the following procedure will apply:

- (1) the appellant will be asked to give a full statement of his reasons for appealing against a discontinuance notice when the appeal is first made (on form DOE 14075B);
- (2) on receipt of such an appeal the Department will ask the LPA to submit their comments on the appellant's statement of his reasons for appeal, within a time-limit of 4 weeks from the date of the Department's request, and to copy their comments simultaneously to the appellant;
- (3) on receipt of the LPA's comments, the Department will ask the appellant for any comments to be made within a time-limit of 3 weeks; and
- (4) unless the appellant's representations (as at (3) above) raise any new issue, there will be no further invitation to the LPA to comment and the appeal will proceed at once to decision.

Dismissal of appeals in cases of undue delay

47. Section 79(6A) of the Town and Country Planning Act 1990, as applied by regulation 15 and Parts III, IV and V of Schedule 4, empowers the Secretary of State to issue a warning to an appellant that, in his opinion, the appeal is being unduly delayed by the appellant and require him to carry out

certain specified steps. If the appellant subsequently fails to carry out the steps specified by the Secretary of State within the time-limit specified, the Secretary of State may decide to dismiss the appeal for reasons of undue delay, without considering its planning merits. The validity of any such decision by the Secretary of State may be challenged in the usual way by making an application to the High Court under section 288 of the Town and Country Planning Act 1990.

48. It is envisaged that use of this power would be considered if, at any stage of the appeal procedure, an appellant refuses to co-operate with the Department in processing an appeal, or otherwise obstructs that process. The power would not normally be used if the appellant could show reasonable grounds for his behaviour. The progress of negotiations with the LPA on a similar application for express consent will not necessarily be regarded as reasonable grounds.

49. A request from the Department to the appellant for action or information will not constitute a warning notice for the purposes of section 79(6A).

Secretary of State's decision on an appeal

50. The Secretary of State may allow or dismiss an appeal, or may reverse or vary any part of the LPA's decision. He may also treat an application as if it had been made to him in the first instance by considering, and inviting further representations on, any matters which have not previously been raised by either of the parties. The Secretary of State's decision on an appeal is final and takes effect as if it were the LPA's decision, subject only to the right of either party to challenge the decision in the High Court on a point of law, in accordance with the provisions of section 288 of the 1990 Act.

Part V: unauthorised advertisements

Fly-posting

51. The requirement in the "standard conditions" (Schedule 1) to obtain the site-owner's permission to display any advertisement is intended to enable LPAs to deal effectively with fly-posting, that is, the display of advertisements without the consent of the owner or occupier of the land or premises. The view is taken that such advertisements are entirely unauthorised; and their display entails liability not only on the person actively responsible for putting up the advertisement but also, with certain reservations in their interests, on the owner of the land and the person benefiting from the display. There have been successful prosecutions against those who have been responsible for events advertised by means of fly-posting; but section 224(5) of the 1990 Act provides that the owner or occupier of the land on which there is fly-posting, or the person whose goods or activities are advertised, shall not be guilty of an offence if that person can prove that the fly-posting was done without their knowledge or consent.

Prosecuting fly-posters

52. LPAs may find the following procedures useful as means of bringing successful prosecution of fly-posting under section 224(3) of the 1990 Act:

- (1) enforcement officers' duties should include keeping regular watch for any new fly-posting;
- (2) enforcement officers should note all new fly-posting sites, photograph them (and date the photographs) and, where possible, remove a copy of the illegal poster for exhibition in Court;
- (3) the LPA should take positive steps to find the person who benefits from the advertisement, either by a personal call from an enforcement officer at an address shown, or on the company who printed the posters, or by enquiring at the venue of the function (perhaps necessitating a visit to the function out of normal working hours);
- (4) the LPA should advise the person responsible, usually the organiser of an advertised event, that the posters contravene the Control of Advertisements Regulations and give that person a detailed description of the places where they are displayed. (This should be confirmed by recorded delivery letter and the person responsible asked to remove the advertisements);
- (5) if the posters are not removed within a reasonable time, the LPA should issue summonses; and
- (6) with guidance from the authority's legal adviser, the enforcement officer should prepare a brief statement, supported by photographs and/or a copy of the poster and a copy of the recorded delivery letter which warned the person responsible that the event had been illegally fly-posted.

LPAs using these procedures have been able to satisfy Magistrates' Courts that adequate warning was given, so that the organiser or promoter could no longer claim to be unaware of the illegal advertising. Quite frequently the preliminary warning letter (sub-paragraph (4) above) has been enough by itself to ensure that posters are removed. (Because some events which are advertised by fly-posting are held in premises owned by local authorities, it would help LPAs to adopt a policy of warning prospective hirers of municipally owned premises that they must not advertise any event in this unauthorised way.)

Removing or obliterating certain advertisements

53. LPAs are reminded that section 132 of the Highways Act 1980 enables the highway authority to remove pictures or signs affixed to trees, structures or works in the highway.

54. Section 225 of the 1990 Act enables a district council or London borough council "to remove or obliterate any placard or poster" displayed illegally in their area. Before this power can be exercised, sub-sections (3) and (5) require advance written notice to be given, to anyone who can be identified as the person responsible for the display, that—

- (1) in the LPA's opinion it is displayed illegally; and
- (2) the LPA intend to remove or obliterate it after the expiry of a period specified in the notice.

Sub-section (5) specifies the period of advance notice as "not less than two days from the date of service of the notice". *Thus two clear days after the date*

when the notice is served must be allowed before the LPA proceed to remove or obliterate the display. In practice, a LPA may prefer to allow longer than the minimum period of *two* clear days; and may do so.

55. The main purpose of this advance notice procedure is to enable anyone who genuinely believes that the poster or placard is being displayed with either "deemed consent", or an "express consent", to tell the LPA that this is the case; and, if he wishes, to ask them to reconsider their intention to remove the placard or poster. Because this procedure may involve a LPA in abortive administrative work in trying to trace the whereabouts of the person due to be notified, sub-section (4) of section 225 has the effect of specifically exempting the LPA from giving notice where the placard or poster does not give the address of the person displaying it (as well as his name) and the LPA do not know that address and are unable to ascertain the relevant address after making "reasonable inquiry" about it. What is "reasonable inquiry" is a matter for each LPA to determine in the particular circumstances. When the placard or poster identifies the person displaying it as someone (including a commercial concern) well known nationally or locally, but does not give an address, it would appear reasonable for the LPA to give advance notice of their intention when they can readily obtain, or already know, the relevant address to which the notice should be sent.

56. There is no definition of the terms "placard" and "poster" in section 225. It is therefore a matter for the LPA and, eventually, the Court to decide on the facts of each case. If a placard or poster is displayed by means of securing it temporarily to an "A-board", it would appear that the power applies only to the placard or poster and *not* to the A-board itself.

Powers of entry

57. Section 324(3) of the 1990 Act deals with rights of entry on to land or premises. This sub-section gives a district council's duly authorised officer a power, at any reasonable time, to enter land or premises for the purpose of exercising the power in section 225 provided that the land or premises are unoccupied; and the power cannot be exercised without entering the land or premises.

Removing painted signs

58. The power to remove or obliterate does not apply to painted signs, slogans or expressions which appear on buildings, walls or street furniture. However, the Secretary of State urges LPAs to take whatever steps they consider appropriate to remove such expressions (especially any intended to incite racial or religious hatred) as part of their normal cleaning and environmental improvement functions in their area.

Profits from illegal advertising

59. In prosecuting any contravention of the Regulations, LPAs may wish to bring to the Court's attention the likely amount of profit accruing for the illegal display of an advertisement. This will help Magistrates to assess (within the statutory limits) a penalty commensurate with the offence. Since it is a well-established principle of sentencing that the financial benefit of any offence should not outweigh the penalty, LPAs are advised to include any relevant information about profits when presenting a case to Magistrates.

Contravention of Aerial Advertising Regulations

60. The Civil Aviation (Aerial Advertising) (Captive Balloon) Regulations 1984 provide that at all stages of its flight a balloon flown for advertising purposes must not be more than 60 metres above ground level. The Civil Aviation Authority's (CAA) permission is also required, under Article 75 of the Air Navigation Order 1989, to fly a captive balloon, at any height; within 5 kilometres of an aerodrome or within 60 metres of a vessel, vehicle or structure. All applications for a permission must state whether or not the local Police have any objection; the Police can consider whatever safety factors are relevant.

61. Without the CAA's permission an advertiser would be liable to prosecution. Only exceptionally would such a permission be given and it would be copied by the CAA to the local Police. If a balloon is flown for advertising purposes, apparently above 60 metres from the ground, the LPA should proceed as follows:

- (i) urgently contact Civil Aviation Policy Division 2 in the Department of Transport, at 2 Marsham Street, London SW1, to report the apparent breach of the Regulations; and
- (ii) check with the local Police whether any permission for the balloon has been given by the CAA.

If no permission has been given, the matter should be reported to the CAA's Air Safety Enforcement Branch, at CAA House, 45-59 Kingsway, London WC2B 6TE, telephone 071-379-7311 Ext. 5705. The Police will then usually ask for the balloon to be hauled down, at the CAA's request.

Part VI: other matters

Sign-posting of local tourist facilities in rural areas

62. LPAs in scenically attractive rural areas frequently have to decide advertisement applications for "advance signs", to be sited off highway land, directing potential customers to local tourist facilities, e.g. a hotel, restaurant, or inn, or bed and breakfast accommodation, or a craft workshop, situated well away from any main road. This type of advertisement application may conflict with authorities' policy statements for the display of outdoor advertisements. Nevertheless, in dealing with applications for "advance signs", to be sited off highway land, for local tourist facilities, LPAs are invited to bear in mind that effective signposting is often a vital way of attracting potential customers to such facilities and thus benefiting the local economy in their area. If consent for an "advance sign" has to be refused, on grounds of "amenity" or "public safety", efforts should be made, where practicable, to suggest an alternative site or sign, and to co-operate with the applicant in devising a sign-posting scheme which is acceptable in the locality. LPAs in rural areas are also invited to co-operate with other organisations, such as the Regional Tourist Boards and the Rural Development Commission (in England), or the Development Board for Rural Wales, in producing and encouraging the display of environmentally acceptable sign-posting schemes where it is clear that an approved scheme will help to avoid a proliferation of poorly designed signs.

Outdoor advertising on bottle banks and other recycling containers

63. Many local authorities have bottle-banks and other recycling schemes in their areas, for collection and eventual recycling of waste. The main source of revenue for these schemes is by sale to industry, but there may be opportunities for supplementing the revenue by allowing advertising on the sides of the containers. Such advertising would usually be permitted by Class 1B in Schedule 3 and could take the form of a poster advertising a sponsor company's product, or the display on the containers of the name of the scheme's sponsors or supporter. The environmental benefits of recycling schemes would justify this; and it should usually be a visually acceptable type of advertising, although there may be some places, eg in a conservation area, where the LPA consider that a container with advertisements on it would be unduly obtrusive. Since the containers are usually under local authority control, it should be possible to prevent unsuitable advertisements on them.

APPENDIX A to Annex to Department of the Environment Circular 5/92
(Welsh Office Circular 14/92)

You are advised to read the accompanying notes before completing any part of this form.

APPLICATION FOR CONSENT TO DISPLAY AN ADVERTISEMENT
Town and Country Planning Act 1990

The Town and Country Planning (Control of Advertisements) Regulations 1992

Completed copies of this form and the drawing specified overleaf (see note 3) should be sent to:—

<p>1. APPLICANT (Block capitals please) Full Name Address Tel. No. Postcode</p>	<p>2. AGENT (if any) (Block capitals please) Full Name Address Tel. No. Postcode</p>
<p>3. Full postal address or location of the land on which the advertisement is to be displayed.</p>	<p>4. State the purpose for which the land or building is now used.</p>
<p>5. (a) Has the applicant an interest in the land? YES/NO* (b) If NO, has the permission of the owner, or of any other person entitled to give permission for the display of the advertisement, been obtained? (see note 5). YES/NO*</p>	<p>6. (a) State the nature of the advertisement (eg hoarding, shop sign, projecting sign, etc). (b) Is the advertisement already being displayed? YES/NO*</p>
<p>7. Description of advertisement (see note 4). Size(m) Illumination type</p> <p>(i) (ii) (iii) (Continue on separate sheet, if necessary)</p>	
<p>8. Period for which consent is sought (see note 2).</p>	

*Delete as appropriate

I enclose a cheque or money order for the appropriate fee of £

Signed Date.....
(applicant/agent)

NOTES

General

1. Under the Town and Country Planning (Control of Advertisements) Regulations 1992, many outdoor advertisements require "express consent" from the local planning authority (usually the district council) before they can be lawfully displayed. Applicants should refer to the Regulations or to the explanatory booklet (obtainable from the Council) if they would like more information.

Period of consent

2. The maximum period for which the Council will grant consent is normally 5 years; but they have discretion to grant consent for a longer period. If consent is sought for a specific period of more or less than 5 years, this should be stated in section 8 of the application form.

Drawings required

3. The drawing of the proposed advertisement can be in black and white on paper. It should show the size of the advertisement and its position on the land or the building in question. For a sign, the drawing should indicate the materials to be used, fixings, colours, height above the ground and, where it would project from a building, the extent of the projection. The drawing should include the site location plan, which need not be to scale but should have sufficient detail to enable the site to be identified.

Description of signs, size and illumination

4. The *type* of each sign for which application is being made, eg fascia, projecting box, pole-mounted free-standing, should be shown, together with the dimensions of each sign; and, if any of the signs is to be illuminated, the type of illumination, eg internal, external, floodlight, etc, and whether the illumination will be static or intermittent.

Owner's consent

5. It is a condition of *every* consent granted by or under the Regulations that, before displaying any advertisement, the permission of the owner of the land or other person entitled to grant permission must be obtained. To display any advertisement without this permission is an offence, open to immediate prosecution.

Other consents

6. A grant of consent under the Town and Country Planning (Control of Advertisements) Regulations 1992 does not rank as consent which may be required for any other purpose, eg "listed building consent" where the advertisement is to be displayed on any listed building.

Fees for advertisement applications

7. Regulation 11 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 requires a fee to be paid to the Council with the advertisement application. The fee is related to each site on which it is proposed to display one or more advertisements.

APPENDIX B to Annex to DOE Circular 5/92 (WO 14/92)

**CONSIDERATION OF, AND CONSULTATION REGARDING,
POSSIBLE EFFECT OF ADVERTISEMENTS ON PUBLIC SAFETY**

This Appendix sets out the relevant considerations to be taken into account by LPAs in assessing "public safety" factors arising from advertisement applications. The Appendix deals with four different forms of transport, where public safety factors are material.

Roads

General considerations

1. The main types of advertisement which are likely to cause danger to road-users and, for that reason, are open to objection on public safety grounds are:—

- (a) those which obstruct or impair sight-lines at corners, bends or at a junction, or at any point of access to a highway;
- (b) those which, by virtue of their size or siting, would obstruct or confuse a road-user's view, or reduce the clarity or effectiveness of a traffic sign or signal, or would be likely to distract road-users because of their unusual nature;
- (c) those which effectively leave insufficient clearance above any part of a highway, or insufficient lateral clearance for vehicles on the carriageway (due allowance being made for the camber of the road-surface);
- (d) those illuminated signs (incorporating either flashing or static lights)—
 - (i) where the means of illumination is directly visible from any part of the road;
 - (ii) which, because of their colour, could be mistaken for, or confused with, traffic lights or any other authorised signals;
 - (iii) which, because of their size or brightness, could result in glare and dazzle, or distract road-users, particularly in misty or wet weather;
- (e) those which incorporate moving or apparently moving elements in their display, particularly where the whole message is not displayed at one time, thus increasing the time taken to read the whole sign legend;
- (f) those requiring close study (such as Public Information Panels), which are situated so that people looking at them would be insufficiently protected from passing vehicles; or those advertisements sited on narrow footpaths where they may interfere with safe passage by causing pedestrians to step into the road;
- (g) those which resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984, and may therefore be subject to removal by the highway authority under section 69 of that Act, for example—
 - (i) those embodying red circles, crosses or triangles, or any traffic sign symbol; or those in combinations of colours which might otherwise be mistaken for traffic signs;
 - (ii) those incorporating large arrows or chevrons with only the arrow or chevron reflectorised or illuminated, causing

- confusion with similar signs in use at, or approaching, roundabouts;
- (h) those which embody directional or other traffic elements and which need special scrutiny because of possible resemblance to, or confusion with, traffic signs, eg advertisements which—
 - (i) contain a large arrow or chevron (or have a pointed end and have only a few words of message);
 - (ii) invite drivers to turn right on a main road, or where there is fast moving traffic;
 - (iii) invite drivers to turn, but are sited so close to the turning that there is not enough time to signal and turn safely;
 - (iv) are so close to similar advertisements, or official traffic signs, that road-users might be confused in the vicinity of a road-junction or other traffic hazard.

In many cases it may be possible for the hazardous traffic features of the display to be removed by, for example, re-siting the sign, or screening of floodlights, or changing the colours of lights. Such changes might be achieved by discussing a suitable alternative display with the intending advertiser.

2. All advertisements are intended to attract attention and hence present a potential road safety hazard. Particular consideration should be given to proposals to site advertisements at points where drivers need to take exceptional care, for instance at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing, or other places where local conditions present special traffic hazards. There are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, and if it is a shop fascia sign, name-board, trade or business sign, or a normal hoarding or poster panel, provided it is illuminated other than as in paragraph 1(d) above.

Trunk Roads

Consultation

3. In accordance with regulation 12(1)(c), where it appears to a LPA that the safety of users of trunk-roads in England may be affected by the display of advertisements, they must seek the advice of the Secretary of State for Transport before granting consent. Correspondence should be addressed to The Secretary, Department of Transport (London Regional Office), 2 Marsham Street, London SW1P 3EB, where the trunk-road is in Greater London; or to the appropriate Regional Director (Transport) in the Department of Transport, for trunk-roads elsewhere in England. (A trunk road, by definition, includes a special road or motorway provided by the Secretary of State for Transport.) The surveyor of the appropriate agent authority may be able to advise initially whether the safety of road-users is likely to be affected.

4. The Regulations impose no duty to consult about advertisements visible from classified roads; but, if the LPA have any doubt about the effect of such advertisements on public safety, they should consult the local highway authority.

5. Section 64 of the Road Traffic Regulation Act 1984 defines "a traffic sign" by reference to regulations. The relevant regulations are the Traffic Signs Regulations and General Directions 1981 (SI 1981, No. 859) (as amended). Section 69 of the 1984 Act gives highway authorities a discretionary power to remove anything which resembles but is not legally a "traffic sign". The Control of Advertisements Regulations do not affect this provision. If therefore, a LPA, when considering an application for the display of an advertisement, think that it might be an object or device to which the powers of section 69 of the 1984 Act apply, they should consult the local highway authority before granting express consent. Types of advertisements in the nature of traffic signs are listed in paragraph 1(g) of this Appendix.

Motorways

6. Land alongside motorways is landscaped for reasons of safety and appearance. Only prescribed or authorised traffic signs are permitted on land acquired for motorways. Advertisements may, however, be permitted within a motorway "service area", provided they are not visible from the motorway. It is hoped that LPAs will take steps to ensure that, on the land alongside motorways but not required for them, no advertisements which could adversely affect amenity, or constitute a danger to traffic, are allowed. Where the route of a proposed motorway lies within an area subject to special control of advertisements, a general prohibition of large scale advertising and certain other limitations already applies.

Railways

7. Under certain conditions, advertisements, whether illuminated or not, can interfere with railway safety in the following ways:—

- (a) by interfering with the visibility or interpretation of fixed signals;
- (b) by causing the illusion of a signal where no signal is situated;
- (c) by being mistaken for hand signals;
- (d) by interfering with warning boards, speed-restriction signs, tail-lights, or other signs or lights.

Green, yellow or red illuminated advertisements are particularly liable to cause such difficulties.

8. The British Railways Board or other statutory undertaking should be consulted, in accordance with regulation 12(1)(d), in the case of illuminated advertisements visible from the railway track, or non-illuminated advertisements adjacent to the railway track, which could possibly interfere with its safe operation.

9. For British Rail, consultation should be through the General Manager of the appropriate Region. Their addresses are as follows:—

<i>Region</i>	<i>Address</i>
London	The General Manager
Midland	British Rail, London Midland Region Stanier House 10 Holliday Street BIRMINGHAM B1 1TG

Western	The General Manager British Rail, Western Region 125 House Gloucester Street SWINDON Wiltshire SN1 3EB
Eastern	The General Manager British Rail, Eastern Region YORK YO1 1HT
Southern	The General Manager British Rail, Southern Region Waterloo Station LONDON SE1 8SE

If there is doubt about the appropriate Region, the local station manager will advise.

For the railways of London Transport, consultation should be with:—

The Managing Director (Railways)
London Transport
55 Broadway
LONDON SW1H 0BD

For railways not owned by British Rail or London Transport, consultation should be with the secretary or manager of the undertaking concerned.

Inland Waterways, Docks, Harbours and Coastal Waters

10. LPAs should consider whether any particular advertisement is likely to obstruct, or cause confusion in the interpretation of, navigation lights, beacons and similar signs and warnings to vessels using inland waterways, docks and harbours, and coastal waters. Advertisements should not overhang or obstruct a waterway; nor should they be displayed or erected in such a manner as to obstruct or interfere with navigation by hindering a clear view of the waterway from a vessel, particularly at bends.

11. Where it appears to a LPA that an advertisement may affect the safety of a waterway (including coastal waters), dock or harbour, they have the duty, under regulation 12(1)(d), to consult the responsible bodies.

12. For inland waterways belonging to the British Waterways Board, LPAs should consult the appropriate Area Manager of the Board. Their addresses are:—

BIRMINGHAM
6th Floor
Auchinleck House
Broad Street
Fiveways
Birmingham B15 1DL

GLASGOW
Upper Cross Street
Glasgow G4 9SK

CASTLEFORD
Lock Lane, Castleford
West Yorks WF10 2LH

GLOUCESTER
Llanthony Warehouse
Gloucester Docks
Gloucester GL1 2EJ

LEEDS

PO Box No. 9
1 Dock Street
Leeds LS1 1HH

LONDON (AREA)

Greycliffe Road
Watford
Hertfordshire WT2 4JR

WIGAN

Pottery Lane
Wigan
Lancashire WN3 5AA

NORTHWICH

Navigation Road
Northwich
Cheshire CW8 1BH

NOTTINGHAM

Mill Lane
Mill Gate
Nottingham NG24 4TT

13. For docks and harbours, consultation should be with the appropriate dock or harbour authority.

14. For harbour approaches (or other coastal waters where there are navigational lights), consultation should be with The Secretary, Trinity House, London EC3N 4DH.

Airports

15. An advertisement may endanger the safety of aircraft because:-
- (a) its glare may dazzle a pilot of an aircraft taking off or landing at an aerodrome;
 - (b) it may be mistaken by a pilot for visual guidance signals (eg the visual glide path) on the approach to an aerodrome;
 - (c) it may constitute an obstacle to an aircraft if it is on high ground or in the immediate vicinity of an aerodrome;
 - (d) in the proximity of radar or other navigational aid equipment, it might impair the performance of the equipment.

LPAs have a duty, under regulation 12(1)(d), to consult the Civil Aviation Authority (CAA) in the case of a civil aerodrome, or the Secretary of State for Defence in the case of a military aerodrome. The addresses for consultation are:-

CIVIL AIRPORTS

The Director of Aerodrome Standards
Civil Aviation Authority
Aviation House
South Area
Gatwick Airport
West Sussex RH6 0YR

MILITARY AIRPORTS

PL(LANDS)2B
Ministry of Defence
Leatherhead Road
Chessington
Surrey KT9 2LU

APPENDIX C to Annex to DOE Circular 5/92 (WO 14/92)

Notes for guidance about advertisement appeals

The right to appeal

1. You have a right to appeal against the local planning authority's—
 - (a) refusal of consent for an advertisement;
 - (b) grant of consent for an advertisement subject to a condition with which you are dissatisfied;
 - (c) failure to issue a decision on an application within a specified time (namely 8 weeks from the date the application is formally acknowledged or such longer period you may have agreed in writing with the Council), provided the Council have not given you notice that they have declined to determine your application under the provisions of section 70A of the Town and Country Planning Act 1990; or
 - (d) "discontinuance notice" requiring you to remove an advertisement, or stop using an advertisement site.

The appeal is made to the Secretary of State for the Environment for appeals in England, or to the Secretary of State for Wales for appeals in Wales; and the appeal procedure is very similar to the procedure for a planning appeal to the Secretary of State.

The choice of appeal procedure

2. There is a choice of two appeal procedures and the Department of the Environment or Welsh Office will co-operate with you, or your agent, in enabling your appeal to be processed and decided in the way you would prefer. But the Departments may occasionally have to use a procedure which is not your own preference, in order to ensure that all aspects of the appeal are thoroughly and fairly considered. When this happens the Departments will explain why.
3. From the outset of an appeal you should give *precise* grounds of appeal. This enables the local planning authority in their written statement to answer the relevant points and thus avoid unnecessary delays. You will be given the opportunity to respond to their representations.
4. The available appeal procedures are:
 - (a) by written representations which you and the local planning authority make, followed by (i) an *unaccompanied* site-inspection of the appeal site; or (ii) no site-inspection, but with consideration of photographs of the appeal site, *provided you and the planning authority both agree in advance to this arrangement*;
 - (b) by a hearing of the parties' oral representations, and (usually) an accompanied site-inspection of the appeal site, which are then reported to the Secretary of State. You should note that, if you opt for this procedure, you may be liable for an award of the planning authority's appeal costs against you if you are found to have behaved "unreasonably" in the appeal proceedings. Further advice is given in DOE Circular 23/91 (WO 77/91).

The address for advertisement appeals and appeal forms

5. All advertisement appeals in England have to be submitted to the Secretary of State for the Environment, or in Wales, to the Secretary of State for Wales, within 8 weeks of the receipt of the local planning authority's decision against which you are appealing. To appeal you should complete the official appeal form. Ask for form DOE 14075B in England or form Advt 1(89) in Wales for your appeal. These are specially designed, 3-part appeal forms using a copying process requiring no carbon paper. Please read the notes for guidance carefully *before* completing the forms. Form DOE 14075B can be obtained from this address:—

The Secretary,
Department of the Environment (PDC 2)
Tollgate House (Room TX 308),
Houlton Street,
Bristol, Avon BS2 9DJ

The telephone number is 0272-218577 or 218611 if you need more information or advice from the Department. The Fax number for urgent communications is 0272-218639.

Form Advt 1(89) can be obtained from this address:—

Welsh Office,
Planning Division,
Cathays Park, Cardiff CF1 3NQ.

The telephone number is 0222-823886 or 823274 if you need more information or advice. The Fax number for urgent communications is 0222-823036.

6. On completion of the forms they should be returned as follows:—
- (a) white copy, to the Department of the Environment or Welsh Office at the appropriate address above;
 - (b) yellow copy, to the Council against whose decision you are appealing.

The blue copy is for your own records.

APPENDIX D to Annex to DOE Circular 5/92 (WO 14/92)

MODEL FORMAT FOR LPA'S APPEAL STATEMENT

1. **References:** Departmental appeal reference number; LPA's reference nos. for appeal and application; Address of appeal site; Name of appellant (or agent).
2. **Site description:** a brief, factual description of the appeal site and its immediate vicinity, drawing attention (if appropriate) to any physical, architectural or other characteristics which are not readily apparent from the site-plan and photographs. Include reference to any designated area (e.g. area of special control of advertisements).
3. **Site history:** a brief statement of any relevant applications involving the appeal site.
4. **Land use allocation:** factual statement of the land use allocation in the current development plan.
5. **Advertisement control policy:** a concise statement of the policy guidelines for control over outdoor advertisements which the LPA regard as relevant to the appeal site.
6. **Observations on grounds of appeal:** a concise statement of the LPA's observations on the appellant's grounds for appeal to the Secretary of State. There is no need to repeat the LPA's reasons for refusal of the advertisement application or to provide a detailed history of any previous advertisement applications and appeals, unless they are directly relevant to the current appeal. If it is not already clear from other statements, include a reference to any modification of, or condition on, the display which would make it acceptable to the LPA.
7. **Enclosures:** a list of documentation accompanying the statement.

NB: An indication of those to whom the statement and accompanying documents have been sent is helpful.

APPENDIX E to Annex to DOE Circular 5/92 (WO 14/92)

THE TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) DIRECTION 1992

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by regulation 22 of the Town and Country Planning (Control of Advertisements) Regulations 1992(a) and of all other powers enabling them in that behalf, hereby given the following direction:—

1. In this direction—

‘the 1992 regulations’ means the Town and Country Planning (Control of Advertisements) Regulations 1992;

‘local planning authority’ has the meaning assigned to it by regulation 2(2) of the 1992 regulations;

‘the Secretary of State’ means, in relation to England, the Secretary of State for the Environment and, in relation to Wales, the Secretary of State for Wales.

2. Subject to paragraph 3 of this direction, every local planning authority shall, within 21 days from the date on which they are notified by an appellant of the making of an appeal to the Secretary of State under regulation 15(1) of the 1992 regulations, (the date on which the authority receive a completed copy of, in England, form 14075B, and in Wales a copy of form Advt 1(89)), send to the Secretary of State:—

- (a) a statement containing the authority’s response to each of the grounds of appeal;
- (b) set of such photographs of the appeal site and its surroundings as will, in their opinion, assist the Secretary of State in considering, in relation to the appeal, the interests of amenity or public safety; and
- (c) a plan, drawn to a scale to be specified thereon, showing the location and boundary of the appeal site and the position from which each of the photographs was taken.

3. The requirements imposed by paragraph 2(b) and (c) of this direction shall not apply where the Secretary of State is believed by the local planning authority to be in possession of photographs and plans which are, in their opinion, sufficient to illustrate the appeal site and its surroundings and the position from which the photographs were taken.

4. Every local planning authority in England, in relation to appeals made to the Secretary of State under regulation 15(1) of the 1992 regulations, and every local planning authority, in relation to appeals made to the Secretary of State under regulation 15(3) of the 1992 regulations, shall send to the Secretary of State, within 21 days of the date of any request in that behalf, such of the documents referred to in paragraph 2(a), (b) and (c) of this direction as he may specify.

5. Every local planning authority in England and Wales, in relation to appeals made to the Secretary of State under either

(a) SI 1992/

regulation 15(1) or 15(3) of the 1992 regulations which are proceeding by way of oral representations, shall send to the Secretary of State not later than 28 days before the agreed hearing date such of the documents referred to in paragraph 2(a), (b) and (c) of this direction as he may specify.

6. Paragraph 5 of this direction shall not apply to any appeal to which rule 6 of the Town and Country Planning (Inquiries Procedure) Rules 1974(b) applies.

7. The Town and Country Planning (Control of Advertisements) Direction 1989 is hereby cancelled.

8. This direction may be cited as the Town and Country Planning (Control of Advertisements) Direction 1992.

Signed by Authority of
the
Secretary of State
11 March 1992

D. N. DONALDSON,
An Assistant Secretary
in the Department
of the Environment.

Signed by Authority of
the
Secretary of State
11 March 1992

H. R. BOLLINGTON,
An Assistant Secretary
in the Welsh Office.

(b) SI 1974/419.

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