

Roads Service Policy & Procedure Guide : RSPPG_S035

Title: Advertisements placed within road boundaries and overlooking Motorways

Author : R Newell, update A Houston
Owner : Director of Corporate Services
Version : 2
Date Issued : 8 October 2005

Classification

Procedure Category : Statutory
Business Category : Legislation
Business Function : Traffic Management
Business Activity : Advertisements

Notes

This document is a direct replacement for Section 1818 of the Roads Manual as a consequence this document has not passed through the full document control system.

Certification

This document complies with Roads Service policy and practice, and is to be implemented with effect from the date of issue.

(Signed) G Allister

Director : Engineering

Certification Date: October 2005

CONTENTS

1	INTRODUCTION	3
1.1	Purpose	3
1.2	Definitions	3
1.3	Background	3
1.4	Implementation	4
1.5	Costs and Benefits	4
2	ROADS SERVICE POLICY & PROCEDURES	5
2.1	Advertisements placed within road boundaries	5
2.2	Election posters	7
2.3	Estate Agents Signs	8
2.4	Mobile Advertisements	8
2.5	Advertisements on or near Special Roads (e.g. a Motorway)	9
2.6	Advertisements placed outside the limits of a road	12
2.7	District council powers	12
3	FURTHER READING	13
4	APPENDICES	14
4.1	Appendix 1 Form of Notice under Article 87(3) of the Roads Order	14
4.2	Appendix 2 Form of Notice under Article 87(6) of the Roads Order	15
4.3	Appendix 3 Estate Agents Agreement	16

1 Introduction

1.1 Purpose

This Roads Service Policy & Procedure Guide (RSPPG):-

- a) Is aimed at all Roads Service Staff.
- b) This RSPPG replaces section 1818 (dated October 1985) of the Roads Service Roads Manual.

1.2 Definitions

- 1.2.1 "DRM" – Divisional Roads Manager
- 1.2.2 "DSO" – Departmental Solicitor's Office
- 1.2.3 "The Planning Regulations" – the Planning (Control of Advertisements) Regulations (NI) 1992
- 1.2.4 "The Printed Documents Act" - the Printed Documents Act (NI) 1970"
- 1.2.5 "The Road Traffic Regulation Order" – the Road Traffic Regulation (NI) Order 1997
- 1.2.6 "The Roads Order" – the Roads (NI) Order 1993

1.3 Background

1.3.1 The primary responsibility for controlling advertisements rests with the Planning Service. By virtue of Article 4 of the Planning Regulations, no advertisement may be displayed without the consent of the Department of the Environment. However, this prohibition does not apply to advertisements that have deemed consent under the Planning Regulations or advertisements of particular classes prescribed in those Regulations.

1.3.2 Advertisements that have deemed consent under the Planning Regulations include an advertisement-

- (a) announcing any local event or activity of a religious, educational, cultural, charitable, political, social or recreational character; or
 - (b) relating to any temporary matter in connection with an event or local activity of such character;
- not being an event or activity promoted or carried on for commercial purposes.

1.3.3 Advertisements that have deemed consent are subject to certain conditions including the period during which the advertisement may be displayed; area of advertisement; height above ground; etc. They must also comply with standard conditions prescribed in the Regulations. These include –

No.4 “No advertisement may be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission”; and

No.5 “No advertisement may be displayed on or so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any road, railway, waterway (including coastal waters) or aerodrome (civil or military)”.

1.3.4 Advertisements erected without lawful authority can be a distraction and possible danger to drivers, particularly if they are erected near junctions or purport to be direction signs. They can physically obstruct visibility and other lawful signs. If signs are not structurally sound and well secured they could pose a danger to the public and give rise to public liability claims.

1.4 Implementation

1.4.1 This RSPPG is to be implemented with effect from the date of issue.

1.5 Costs and Benefits

1.5.1 As this RSPPG is to replace an existing Roads Manual Section the costs and benefits are not relevant at this time.

2 Roads Service Policy & Procedures

2.1 Advertisements placed within road boundaries

2.1.1 It can generally be assumed that any advertisement, (defined in the Planning Regulations as any word, letter, model, sign, placard, board, notice, device or representation whether illuminated or not, for the purpose of advertisement, announcement or direction) placed within the boundaries of a public road would require a specific consent under the Planning Regulations. The limited exception to this requirement in the case of election posters is referred to in section 2.2.

2.1.2 If the advertisement were affixed to a traffic sign there would probably be a contravention of Article 33 of the Road Traffic Regulation Order. If it is painted, inscribed, affixed or displayed on the surface of the road or on any tree, structure or other works in or on the road there could be a contravention of Article 87(1) of the Roads Order. The difficulty in these two cases is that it is the person who paints, inscribes, affixes or displays who commits the offence and it may be difficult to secure evidence to sustain a prosecution. However, see also paragraph 2.1.12.

2.1.3 Under Article 87(1), a person who, without lawful authority-

- (a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or
- (b) displays any advertisement,

upon the surface of a road or upon any tree, structure or other works in or on a road, shall be guilty of an offence.

2.1.4 Article 87(1) provides the defence of acting with 'lawful authority'. 'Lawful authority' does not include or imply consent under the Roads Order, as the Department has no specific consent powers, nor does it include planning consent except in the context of Article 87(5). Planning consent does not constitute lawful authority to place an advertisement on property not in ones ownership or control. No planning consent, if it were given for an advertisement within the road boundary, could legally be implemented.

2.1.5 In the interests of the safety and convenience of traffic using a road Roads Service should take steps to have any unauthorised advertisements which have been placed within the boundaries of a road removed as soon as possible. The action taken should be related to the degree of danger or inconvenience to traffic considered to be caused by the advertisement.

2.1.6 The attention of the advertiser (defined in the Planning Regulations as the person who himself or by his servant or agent undertakes or maintains the display of an advertisement) should be drawn to the requirements of consent under Regulation 5 and the penalties on conviction under Regulation 6 of the Planning Regulations and he should be requested in writing (by telephone first in urgent cases) to remove the advertisement within a stated time and told that if it is not removed by that date the Department will either remove the advertisement itself or serve notice on him requiring its removal. If appropriate, the advertiser should then be informed where the removed advertisement can be obtained. If the advertiser, in the case of a removable advertisement, cannot be located, the advertisement should be removed and retained and the police informed.

2.1.7 Article 87(2) enables the Department to remove any defacements or any advertisements displayed illegally, make good any damage to the road, tree, structure, etc. in question and recover its costs from the person responsible - regardless of whether or not legal proceedings have been instituted. This provision enables the Department to act quickly in the interests of road users, particularly where there is damage to a road.

2.1.8 Article 87(3) enables the Department to serve a notice on the owner of any structure or other works in a road requiring him to remove anything illegally painted, inscribed, affixed or displayed on the structure or other works, within a period of 21 days. This provision provides the Department with an alternative to action under Article 87(2) enabling it to require removal of the offending item by the owner of the structure or works. This may be appropriate where, for whatever reason, it would be more sensible or convenient for the owner to remove the thing from his own property. The form of notice is prescribed in Appendix 1.

2.1.9 Article 87(4) enables the Department, where an owner fails to comply with a notice issued under Article 87(3), within the specified period, to do anything he has failed to do and recover its costs from him.

2.1.10 Whilst Article 87(2) and 87(4) enable the Department to remove an unlawful advertisement and recover its removal costs, the Article is silent on what the Department is supposed to do with the advertisement once it has been removed. There is no power to dispose of it and whilst the Department would be responsible for exercising due care for the safety of the advertisement there is no power to levy a charge for the storage of the advertisement. The owner could require return of the advertisement at any time subject to the statute of limitations, i.e. 6 years.

2.1.11 Article 87(10) defines the terms "advertisement", "remove" and "road". The usual definition of road would include the carriageway, verges and any bridge, but would not necessarily include supporting or flank walls. This provision ensures that these additional items come explicitly within the terms of the Article.

2.1.12 Article 87(11) enables the Department to exercise the powers of the police under Section 1(1)(c) of the Printed Documents Act in so far as that Section applies to an advertisement printed by any person. The Printed Documents Act requires the printer of any material for public distribution or display to print his name and address on the document, to print the name and address of the person requiring this material to be printed on at least one copy of the document, to retain a copy for 6 months and to produce it for inspection to a member of the police if required. By enabling an officer of the Department to exercise the powers of the police in this regard, the task of identifying a person on whom a notice may be served etc., under this Article should be somewhat easier.

2.2 Election posters

2.2.1 Article 87(5) of the Roads Order exempts from the provisions of Article 87(1) advertisements relating to pending elections for Parliament, the NI Assembly or district councils. By virtue of regulation 4(2) of the Planning Regulations, election advertisements do not require planning consent provided they comply with the following conditions:

1. The advertisement is removed within 14 days after the close of the poll in the election to which it relates.
2. Any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the Department.
3. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.
4. Where an advertisement is required to be removed under these regulations the removal shall be carried out to the reasonable satisfaction of the Department of the Environment.
5. No advertisement may be displayed on or so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any road, railway, waterway (including coastal waters) or aerodrome (civil or military).

2.2.2 It is normal practice for the Planning Service to write to political parties contesting an election or by-election to remind them of the statutory requirements regarding the display of election advertisements and to obtain their co-operation in ensuring that they are not displayed in an illegal manner and are removed quickly after the poll.

2.2.3 While election advertisements enjoy a short-term immunity under the Planning Regulations, they do not enjoy any special privilege under common law i.e. there is no entitlement to mount such posters on street furniture or other Roads Service property. Where election posters obliterate all or part of a traffic sign they should be removed immediately. Other posters may be removed at the DRM's discretion.

2.2.4 When the period during which an election advertisement may be displayed without express consent under the Planning Regulations expires, and the advertisement has not been removed, the Department may serve notice, under Article 87(6), on the person who displayed the advertisement requiring its removal within 21 days. The form of notice is prescribed in Appendix 2.

2.2.5 Where a notice under Article 87(6) is not complied with, the Department may act, under Article 87(7) to secure the removal of the advertisement and recover any reasonable expenses incurred in so doing.

2.2.6 Where election advertisements have been displayed on a structure or other works in or on a road in contravention of the Planning Regulations, the Department, by virtue of Article 87(8), may serve a notice on the owner of the structure requiring him to remove the advertisement within 21 days failing which the Department may do so and recover any reasonable expenses incurred in so doing.

2.3 Estate Agents Signs

2.3.1 It is an offence under the Planning Regulations to erect an estate agent's sign without express consent anywhere other than within the curtilage of the property for sale. However, the Roads Order has been the legislative vehicle most often used to enforce as it provides a somewhat easier route - Roads Service has the power to remove signs whereas the Planning Service must go through the Courts.

2.3.2 During 1991 Belfast Division removed 6,000 signs. In spite of this action and repeated correspondence with individual estate agents, the problem persisted. In late 1995 Roads Service decided to take legal action against offenders, under the Planning Regulations and Article 87 of the Roads Order. Following the issue of summons against 6 of the major firms operating in the Greater Belfast Area, representations were made to Roads Service on behalf of the estate agents and after due consideration the summons were withdrawn and an agreement entered into with each of the estate agents. Under the terms of the agreement, these firms undertook to remove all of their illegal signs forthwith. They also gave an assurance that such illegal signs would not be erected by them in the future, provided that they were not unfairly disadvantaged by other firms not complying with the law. A copy of the agreement is attached at Appendix 3.

2.3.3 Successful prosecutions have been taken against firms who have breached this agreement.

2.4 Mobile Advertisements

2.4.1 Advertisements are sometimes mounted on a wheeled chassis or a trailer or vehicle that is in turn parked on a road. These are known as mobile advertisements.

2.4.2 Under Article 87(1) of the Roads Order, Roads Service power is limited to taking action against 'any person who, without lawful authority, displays any advertisement upon the surface of a road or upon any tree, structure or other works in or on a road'. In the case of an unlawful mobile advertisement it is by no means clear that an advertisement mounted on wheels would fall within the definition of "structure" and, if it did, whether it could be regarded as being "in" or "on" a road. This will ultimately be up to a court of law to decide. However, subject to its consideration of the facts of each particular case, the DSO has agreed to prosecute unlawful mobile advertisements under Article 87(1).

2.5 Advertisements on or near Special Roads (i.e. Motorways and Westlink)

2.5.1 Article 21(1) of the Roads Order states that any person who:

- erects
- exhibits
- causes, or
- permits to be erected or exhibited

any advertisement or notice which is sited or designed wholly or mainly for the purpose of being visible to persons using a special road, or which is likely to prejudice the safety of traffic using a special road, shall be guilty of an offence. Special roads are comprised of the motorway network and Westlink.

2.5.2 Such advertisements can be hazards to road safety. Research Findings 168/2003 commissioned by the Scottish Executive has shown that external-to-vehicle distractions like billboards and advertising signs are a major but under-reported contributory factor in road accidents, with the greatest risk at junctions and on long monotonous roads. Advertising is deliberately designed to attract drivers' attention and the additional visual clutter makes it harder to perceive traffic signs. On long stretches of road like motorways, being caught by surprise by the advertising can cause momentary fixation and loss of driving concentration. It has been demonstrated that driver reaction times are slower when distracted, even when unconsciously so. Young drivers are particularly prone to external-to-vehicle distraction.

2.5.3 Divisions should therefore arrange for advertising signs that have been placed inside the motorway boundary or have been attached to motorway boundary fences, traffic signs and over-bridges to be removed by RSD or a maintenance contractor within 5 working days of discovery. (N.B. After responsibility for maintaining the motorway network has transferred to DBFO Co, this duty to remove advertisements will also pass from the Divisions to the DBFO Co). The signs must be stored within a Roads Service or DBFO Co compound for a period of 28 days before disposal in case the owners wish to reclaim them.

2.5.4 Advertisements that have been located on land or properties adjacent to motorways primarily to seen by users of motorways are usually fixed to buildings or mounted on posts, mobile trailers or lorry containers, or can be flags, banners or even balloons. They convey various messages, including:

- Information about the business of the property owner or tenant...products and services, location and directions, hours of business, telephone and fax numbers, e-mail address, and prices and sales/special offers;
- Advertising about products or services not directly associated with the business conducted on the property or land; or
- Estate agents or developers signs...for sale, to let, and advance notice of developments.

2.5.5 Some such advertisements may have already received approval from Planning Service under the Planning (Control of Advertisements) Regs (NI) 1992. However the Planning Appeals Commission advise that Roads Service can still seek their removal on the grounds of road safety.

2.5.6 Although Article 21 of the Roads Order clearly states that it is an offence to display any advertisement primarily intended to be visible from a motorway, Roads Service may need to target its limited resources at the removal of those signs considered to be of greatest road safety risk.

2.5.7 In general, simple company names and logos attached to buildings or located within land or property adjacent to the motorways are not considered a road safety risk and can be tolerated.

2.5.8 However, when made aware of any other advertising sign that has been erected to be seen mainly by motorway users, Division's should take the following enforcement actions:

- i. Write to the advertising company or the owner of the property seeking removal within 21 days of the following:
 - Advertisements unrelated to the business of the premises on which they are located;
 - Advertisements located in farm fields; or
 - Advertisements that are insecurely attached and at risk of falling/blowing onto the motorway.
- ii. Within available resources, consider writing to the advertising company or the owners of property seeking removal within 21 days of the following:
 - Advertisements that contain large amounts of information or give direction information to the business premises;
 - Advertisements that are located on or near motorway roundabouts, junctions or slip roads; or
 - Advertisements that are aligned parallel to the motorway carriageway.

2.5.9 Divisions may, if they chose, use the standard letter in 2.5.17 to initiate action for removal of offending signs.

2.5.10 To avoid time limitation in Magistrates Courts should prosecution become necessary, it is essential to take action within 6 months of an advertisement that overlooks a motorway being erected. For this reasons, Divisions should identify newly placed advertising signs during their own (or the DBFO Co's) monthly motorway safety inspections, and keep an up-to-date register of enforcement activity.

2.5.11 If the property owner does not remove an advertisement when notified, the Division should pass the case to the Crown Solicitor for prosecution of the offender. Generally the Crown Solicitors will require a statement from Roads Service and copies of all related correspondence and photographs of the offending advertisement.

2.5.12 Article 21(4) provides that anyone convicted for contravening the prohibition in Article 21(1) shall remove the advertisement or notice within a time limit to be specified by the Court and that failure to do so will render the offender guilty of a further offence.

2.5.13 Article 21(5) enables the Department to remove any advertisement or notice which is the cause of a further offence and recover from the offender any costs reasonably incurred in so doing.

2.5.14 The offence provision in Article 21(1) does not apply to:

- traffic signs or other notices erected or exhibited by, or by the direction of, an officer authorised by the Department or a member of Police Service for Northern Ireland; and
- advertisements or notices which existed at the time of the first publication of the Department's notice of intention to make the road a special road – but see also paragraph 2.5.16.

2.5.15 Article 21(3) enables the Department to make regulations exempting from the general prohibition in Article 21(1), specific categories of advertisements or notices in certain places and subject to specific conditions. No regulations have yet been made under this power.

2.5.16 Article 21(6) enables the Department to take action in respect of an advertisement or notice in existence before the designation of the special road and which, in its opinion, is prejudicial to the safety of traffic on that special road. The Department may serve a notice on the owner or occupier of the land where the advertisement or notice is situated requiring him to remove it. A person on whom a notice is served may appeal, in writing to the Department, within 21 days of receiving the notice.

2.5.17 Sample letter to person who has erected or allowed an advertising sign overlooking a motorway:

Dear Sir,

Advertising Sign overlooking M? Motorway

It has come to the attention of Roads Service that an advertising sign is displayed on your property solely or largely for the purpose of being visible to traffic on the M? Motorway. The advertisement is [description] and is fixed on [position] at [location/address]. A photograph is attached.

Advertising signs such as yours are a major but under-reported contributory factor in road accidents, with the greatest risk at junctions and on long monotonous roads such as motorways. They are deliberately designed to attract drivers' attention and the additional visual clutter makes it harder for them to perceive traffic signs and conditions. Being caught by surprise by advertising can cause momentary fixation and loss of driving concentration. It has been demonstrated that driver reaction times are slower when distracted, even when unconsciously so. Young drivers are particularly prone to such external-to-vehicle distraction.

The Roads Service has a mission "to facilitate the safe movement of people, goods and services for the social and economic benefit of all people in Northern Ireland" and consequently it targets much of its resources towards traffic safety measures. To further help achieve this aim, Roads Service has powers of prosecution under the Roads (NI) Order 1993 to prevent activity that might endanger road

users. Naturally particular attention is paid to dangerous activity along and around high-speed motorways (known as special roads).

Article 21 of the Roads Order states:

"Any person who erects or exhibits or causes or permits to be erected or exhibited any advertisement or notice which is sited or designed wholly or mainly for the purpose of being visible to persons using a special road or which is likely to prejudice the safety of traffic using a special road shall be guilty of an offence and liable on summary conviction to a fine..."

which, in layman's terms, makes it an offence to erect an advertisement primarily to overlook a motorway. Even if it has been granted planning approval, exhibiting such an advertisement is still an offence since it causes a road safety hazard, and Roads Service will be obliged to seek its removal.

Your advertisement at [location] is perceived to be a distraction to drivers on the M? Motorway and is in contravention of the Roads (NI) Order 1993. You are requested to permanently remove it within 21 days of the date of this letter otherwise Roads Service may initiate legal proceedings. I hope you will appreciate the reason for this request and are able to comply voluntarily.

Yours Faithfully,

XXXXXXXXXX
Authorised Officer

2.6 Advertisements placed outside the limits of a road

2.6.1 If an advertisement placed outside the limits of a road prejudices the safety and convenience of traffic, the attention of the Planning Service should be drawn to the matter immediately and confirmed in writing later. It is possible that such an advertisement might also contravene Article 49 of the Roads Order by causing an obstruction to view. If this is the case appropriate action should be taken in accordance with Schedule 4 of that Order.

2.7 District council powers

2.7.1 While district councils may remove posters from private property under the terms of Article 18 of the Local Government (Miscellaneous Provisions) (NI) Order 1985, they are not authorised to execute such removal from public property (other than their own). It may, however, be possible to engage the services of a council for this work under the existing agency agreements provided for in Section 105 of the Local Government Act (NI) 1972.

3 Further reading

3.1.1 RSPPG_F003 – Delegation to Authorised Officers

Control Copy

4 Appendices

4.1 Appendix 1 Form of Notice under Article 87(3) of the Roads Order

[Name]
[&]
[Address]

RECORDED DELIVERY

[date]

THE ROADS (NORTHERN IRELAND) ORDER 1993 ARTICLE 87(3)

WHEREAS the Department for Regional Development is satisfied that an [advertisement/sign/etc.] displayed on [describe the structure on which the offending mark is displayed] situated in/on the [name/title of road] is in contravention of Article 87(1) of the said Roads Order,

TAKE NOTICE that in accordance with Article 87(3) the Department for Regional Development as road authority for the said [name/title of road] hereby requires you to remove the [advertisement/sign/etc.] within 21 days of the service of this notice.

AND FURTHER TAKE NOTICE that should you fail to comply with this notice the Department has power to carry out the work and recover any expenses thereby reasonably incurred by it from you.

day of 200 Dated this

Signed on behalf of
the Department for
Development Regional

[
name]
Authorised Officer

4.2 **Appendix 2 Form of Notice under Article 87(6) of the Roads Order**

[Name]
[&]
[Address]

RECORDED DELIVERY

[date]

THE ROADS (NORTHERN IRELAND) ORDER 1993 ARTICLE 87(6)

WHEREAS the Department for Regional Development is satisfied that an [advertisement/sign/etc.] relating to an election, displayed on [describe the structure on which the offending mark is displayed] situated in/on the [name/title of road] is in contravention of the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 made under Article 67 of the Planning (Northern Ireland) Order 1991,

TAKE NOTICE that in accordance with Article 87(6) of the said Roads Order, the Department for Regional Development as road authority for the said [name/title of road] hereby requires you as the person responsible for the displaying of the advertisement, to remove the [advertisement/sign/etc.] within 21 days of the service of this notice.

AND FURTHER TAKE NOTICE that should you fail to comply with this notice the Department has power to carry out the work and recover any expenses thereby reasonably incurred by it from you.

day of 200 Dated this

Signed on behalf of
the Department for
Development Regional

name]
Authorised Officer

4.3 Appendix 3 Estate Agents Agreement



The Divisional Roads Manager
DRD – Roads Service
[] Division

AGREEMENT BETWEEN THE DRD ROADS SERVICE AND ESTATE AGENTS CONCERNING THE ERECTION OF ESTATE AGENT SIGNS ON ROADS SERVICE PROPERTY

I hereby agree to arrange for the immediate removal of all illegal directions boards/arrows which this firm has erected on Roads Service property/street furniture and assure Roads Service that this firm will not erect such boards/arrows in the future, provided that the DRD Roads Service, for its part, vigorously pursues/prosecutes any Estate Agents which might erect such boards/arrows in the future.

Dated this day of 200 .

Signed -----

For -----

(Name of Firm)

Address -----

Roads Service Policy & Procedure Guide : RSPPG_S035

Title:

Document History

Version	Date	Author	Authorised by Document Control Panel Members Name : Signature
1	15/04/2002	R Newell	R Wilson
2	6 Oct 05	A Houston	

Overall Reasons For This Version

Version	Reasons
1	First issue of RSPPG
2	Further detail about advertisements overlooking motorways

Revision Details

Version	Amendments
2	Section 2.5