

Section 9: Exceptions to the Advertising Activity Regulations

Exception for demonstrations and related activities

We have proposed an exception to the prohibition of advertising activity for demonstrations and related activity. This includes any act, public assembly or procession intended to demonstrate support for, or opposition to, the views or actions of a person or body. It also includes acts etc. intended to publicise a belief, cause or campaign or to mark or commemorate an event. Examples would be carrying placards during a protest march, displaying posters promoting a particular religious belief, or distributing flyers in support of a political party.

The exception does not include activity that promotes or advertises a good or service. Nor does it include an activity that promotes or advertises a person or body that provides a good or service, unless the body is a not-for-profit body. A not-for-profit body is a body that is required to use its funds for charitable or public purposes and is prohibited from distributing its assets to members (otherwise than for charitable or public purposes).

Exceptions for some wearers of costumes and clothing

We have proposed an exception for people who wear costumes that are advertisements or clothing on which an advertisement is displayed, without knowing that they are participating in an ambush marketing campaign.

An example would be a person who, on their way into a Games event, is handed a t-shirt that advertises a soft drink. The person will be able to rely on the exception if they do not know, or have reasonable cause to believe, that, by wearing the t-shirt, they are participating in a campaign intended to advertise the soft drink at the Games.

This exception does not prevent others involved in the ambush marketing campaign from remaining liable under the regulations. For example, a person handing out the soft drink t-shirts would not be able to rely on this exception. Nor would such a person be able to say that they should not be held liable because the person wearing the t-shirt is not liable.

Exceptions based on the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the "2007 Regulations")

As we have said above, we have proposed a number of exceptions to the prohibition, in our regulations, of advertising activity which are based on existing legislation. Those exceptions are modelled on:

- (a) exemptions, for some types of advertisement, to the requirement for consent under the 2007 Regulations; and

(b) provisions in the 2007 Regulations that grant “deemed consent” for other types of advertisement.

Where the objectives underlying our regulations require, we have proposed a different approach from that taken in the 2007 Regulations. For the same reason, we have not proposed exceptions for the following Classes of advertisement (for which “deemed consent” is granted in the 2007 Regulations):

- Class 3F – advertisements announcing the visit of a travelling circus, fair or similar travelling entertainment
- Class 8 – advertisements on hoardings
- Class 9 – advertisements on highway structures
- Class 13 – advertisements displayed on the same site for the preceding ten years
- Class 14 – advertisements displayed after expiry of express consent
- Class 15 – advertisements on balloons
- Class 16 – advertisements on telephone kiosks

Below are explanations of the exceptions included in our regulations.

Class A: an advertisement displayed on enclosed land and not readily visible from outside the enclosure, or from any part of it over which the public has a right of access. This includes an advertisement displayed in a shopping mall or arcade, but not in an historic shopping arcade which is defined as a group of buildings of which more than 50 per cent are listed buildings or within a conservation area, and where at least 75 per cent of the ground floor of more than 50 per cent of the buildings in the group is used predominantly for retail purposes. It also does not include an advertisement displayed in a railway station (including its yards), a bus station (including its forecourt) or any enclosed land (including a sports stadium or other building) in which a Games event is to take place.

This exception does not apply to advertisements displayed in public parks, public gardens or open space used by the public.

Class B: an advertisement displayed on or in any vehicle normally employed as a moving vehicle. This includes boats (any vessel on any inland waterway or in coastal waters), trains, aeroplanes and bicycles. This does not include vehicles used principally for the display of advertisements e.g. stationary vehicles, mobile billboards, or trailers in fields or lay-bys used for advertising purposes.

Class C: an advertisement incorporated in the fabric of a building¹ which is in existence on the day that the regulations come into force e.g. incised stonework lettering. It does not include an advertisement fixed to, or painted on, a building. It does not allow hoardings or similar structures to be part of the building.

Class D: an advertisement which refers to, and is displayed on, an article (including a gas or liquid) for sale, or on its container or dispenser, provided the advertisement is not illuminated and does not exceed 0.1 square metres.

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

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

¹ “Building” means a permanent building and excludes any other kind of structure or erection.

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

Class H: the national flag of any country, and/or the European Union flag, the Commonwealth flag, or the flag of the United Nations may be flown, provided nothing is added to the design of the flag or any advertising material is added to the flagstaff. The flag of any saint may be flown in the county with which the saint is associated.

Class I: an advertisement displayed inside a building,² and not within one metre of any external door, window, or other opening through which it is visible from outside. The advertisement must not be illuminated. This exception does not include an advertisement displayed in a railway station (including its yards), a bus station (including its forecourt) or a sports stadium or other building in which a Games event takes place.

All advertisements falling within Classes A to I above are subject to the following additional conditions:

- 1 No advertisement may be displayed without the permission of the owner of the site or any other person entitled to grant permission.
- 2 No advertisement may be sited or displayed so as to:
 - (a) endanger persons using any highway, railway, waterway, dock, harbour or civil or military aerodrome;
 - (b) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
 - (c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- 3 Any advertisement displayed, and any site used for the display of advertisements, must be maintained in a condition that does not impair the visual amenity of the site.
- 4 Any structure or hoarding erected or used principally for the display of advertisements must be maintained in a condition that does not endanger the public.
- 5 Where an advertisement is required under the regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Class 1: Functional advertisements of government departments and their agencies, local authorities, statutory undertakers and public transport undertakers

Class 1A includes government departments and agencies of government departments so that their functional advertisements are treated in the same way as those of local authorities, giving information or directions about the services they provide. Statutory undertakers and public transport undertakers (including Transport for London) may display functional advertisements required for the operation of their services. Illumination is only allowed where it is reasonably required for the purpose of the advertisement (e.g. where it is necessary to enable information or directions to be read in hours of darkness). A condition limits the size of advertisements within Class 1A to 1.55 square metres in area.

Class 1B allows local planning authorities to display their functional advertisements on land in their local authority area. Conditions apply to areas of special control designated under the 2007 Regulations where the functional advertisement may be displayed only if the local planning authority could have granted express consent for its display.

² "Building" means a permanent building and excludes any other kind of structure or erection

Class 2: Miscellaneous advertisements relating to the premises on which they are displayed

Class 2A permits notices or signs to be displayed on buildings or land as means of identification, direction or warning. These include the number or name of a house, a sign saying 'please shut the gate', and a warning notice saying 'beware of the dog'. The conditions and limitations are that illumination is not permitted and the overall size limit is 0.3 square metres. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

Class 2B permits notices or signs to be displayed on any premises in order to advertise the fact that a person, partnership or company is carrying out a profession, business or trade at those premises.

Illumination is not permitted unless the advertisement states that medical or pharmaceutical services or supplies are available on the premises. These include doctors' surgeries, dental practices, chiropractors, chiropractors, opticians, osteopaths, physiotherapists and veterinary services. Illumination is only allowed where it is reasonably required to fulfil the purpose of the advertisement (e.g. if it is necessary to enable the information to be read in hours of darkness) and no moving parts or flashing lights are permitted. The level of illumination is limited to 600 candela per square metre (where the illuminated area does not exceed 10 square metres) or 300 candela per square metre in any other case. In calculating the area each advertisement (or each side in the case of a double-sided advertisement) is to be taken separately and no unilluminated part is to be taken into account.

Only one advertisement may be displayed per person, partnership or company, but if there is more than one entrance to the premises on different road frontages, one advertisement per person may be displayed at each entrance on two different frontages. The overall size limit is 0.3 square metres per advertisement. The height above ground level at which advertisements may be displayed is limited so that no part of an advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

Class 2C permits advertisements relating to institutions of religious, educational, cultural, recreational or medical or similar character; or to any hotel, inn or public house, block of flats, club, boarding house, hostel or bed and breakfast establishment, at the premises where it is displayed.

Illumination is not permitted unless the advertisement states that medical or pharmaceutical services or supplies are available on the premises. Illumination is only allowed where it is reasonably required to fulfil the purpose of the advertisement (e.g. if it is necessary to enable the information to be read in hours of darkness) and no moving parts or flashing lights are permitted. The level of illumination is limited to 600 candela per square metre (where the illuminated area does not exceed 10 square metres) or 300 candela per square metre in any other case. In calculating the area each advertisement (or each side in the case of a double-sided advertisement) is to be taken separately and no unilluminated part is to be taken into account.

The other conditions and limitations are that the overall size limit is 1.2 square metres but if there is more than one entrance to the premises on different road frontages, one advertisement of up to 1.2 square metres may be displayed at each entrance on two different frontages. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

Class 3: Miscellaneous temporary advertisements

This Class applies to a wide variety of notices and signs which are used to publicise a forthcoming event, or to advertise a short-term use of the advertisement site. There are six separate categories. If a Class 3 advertisement relates to a sale (other than Class 3A advertisements) or event (other than Class F advertisements), it must not be displayed more than 28 days before the sale or event begins and must be removed within 14 days after it ends. In areas of special control designated under the 2007 Regulations there are stricter limits to the height above ground level at which advertisements may be displayed and on the size of characters or symbols on the advertisement.

Class 3A permits the display of a single board or two joined boards to be displayed (usually by estate surveyors, chartered surveyors, auctioneers and valuers), advertising that the residential, agricultural, industrial or commercial land or premises on which they are displayed are for sale or to let, or that the land on which they are displayed is to be sold or let for development for residential, agricultural, industrial or commercial use. Illumination is not permitted. Where the advertisement consists of more than a single board or two joined boards only the first advertisement to be displayed will benefit from the exception.

Size limits apply. If the sale or letting is for agricultural, industrial or commercial use or development, the advertisement board must not exceed 2 square metres, unless two boards are joined together to form a single advertisement, in which case a total surface area of 2.3 square metres is permitted. If the sale or letting is for residential use or development, the advertisement board must not exceed 0.5 square metres, or a total area of 0.6 square metres for two joined boards. No advertisement board is allowed to extend outwards from the wall of a building by more than 1 metre. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations, or where the sale or letting is for only part of a building, the lowest level of that part of the building on which display of the advertisement board is reasonably practicable. The size of characters or symbols on the board is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

The only permitted additions to the board(s) are statements saying that the sale or letting has been agreed, or that land or premises have been sold or let, subject to contract. Boards must be removed no later than 14 days after the sale has been completed or the tenancy has been granted.

Class 3B permits advertisements announcing the sale of goods or livestock on land or premises which are not normally used for goods or livestock sales. Advertisements within this category include those advertising an auction of house contents at the house, and a sale of livestock on farm premises. Illumination is not permitted. Only one advertisement is allowed at any one time. Where more than one advertisement is

displayed at the same time only the first will benefit from the exception. Size limits apply. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control. The advertisement must not be displayed more than 28 days before the sale is due to begin and must be removed not later than 14 days after it ends or, if it is cancelled or postponed, after it was due to begin.

Class 3C permits firms or individuals who are carrying out building, engineering or construction work to advertise the fact at the site only for as long as the work is being carried out. The land must not normally be used, whether at regular intervals or otherwise for building, engineering or construction work.

One person, partnership, or company (whether incorporated or not) may display their own advertisement board provided it does not exceed 3 square metres, if displayed more than 10 metres from a highway, or 2 square metres in any other case. But if all those engaged on the contract rely on a single advertisement board, it can have a total area of three square metres, plus a further 0.6 square metres for each additional firm or person mentioned on the board, if displayed more than 10 metres from a highway; or 2 square metres, plus a further 0.4 square metres for each additional firm etc. in any other case. Additionally, if the development project is known by a particular name, the size of the advertisement board may be increased by a further 20 per cent to enable the name to be displayed.

Only one advertisement is permitted to be displayed at any one time on each road frontage to the site of each separate development project (and where more than one advertisement is displayed only the first to be displayed will benefit from the exception). However, where a board is already being displayed (so that it is impracticable or inconvenient to add another name to it) any other individual, firm or contractor working at the site may display a separate board for up to three months. Such a board cannot be larger than 0.5 square metres on each road frontage to the site of the project.

Illumination is not permitted. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

Class 3D permits temporary advertisements advertising any local event or activity being held for charitable purposes. The event or activity may be religious, educational, cultural, political, social or recreational, but cannot be an event or activity promoted or carried on for any commercial purpose. Class 3D advertisements include advertisements for a church bazaar, a fete for parent-teacher association, a sponsored marathon in aid of charity, an amateur sports event, but not any sporting event organised for commercial purposes. The advertisement may not promote or advertise a good, service or commercial supplier of goods or services.

Illumination is not permitted. Size limits apply. No advertisement may exceed 0.6 square metres in area. The height above ground level at which it may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no

more than 0.75 metres in height, or 0.3 metres in an area of special control. The advertisement must not be displayed more than 28 days before the event or activity is due to begin and must be removed not later than 14 days after it ends.

Class 3E permits temporary advertisements advertising that a demonstration of agricultural methods or processes is taking place on the land where the advertisements are being displayed. The advertisements may not be displayed on any land for more than six months in any period of 12 months. Illumination is not permitted. Size limits apply. The maximum area of all the displayed advertisements must not exceed 1.2 square metres and no individual advertisement is to exceed 0.4 square metres. The height above ground level at which it may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control. The advertisement must not be displayed more than 28 days before the demonstration is due to begin and must be removed not later than 14 days after it ends.

Class 4: Illuminated advertisements on business premises

Class 4 allows advertisements on business premises to be displayed with either internally illuminated letters or characters on an unilluminated background or lit by 'halo illumination'. 'Halo illumination' means that the background (rather than the letters or characters) is illuminated by a light source that is not directly visible from any angle. The level of illumination is limited to 600 candela per square metre (where the illuminated area does not exceed 10 square metres) or 300 candela per square metre in any other case. In calculating the area each advertisement (or each side in the case of a double-sided advertisement) is to be taken separately and no unilluminated part is to be taken into account. Intermittent light sources, flashing lights, moving parts or features, exposed cold cathode tubing, or animation are not allowed. The use of retroflective material which reflects light from vehicles' headlights is not allowed. Illumination is only allowed where it is reasonably required to fulfil the purpose of the advertisement (e.g. if it is necessary to enable the information to be read in hours of darkness). Class 4 advertisements are not allowed in conservation areas designated under the Planning (Listed Buildings and Conservation Areas) Act 1990, areas of outstanding natural beauty designated under the Countryside and Rights of Way Act 2000, National Parks or the Broads.

Class 4A permits internally or 'halo' illuminated advertisements on premises within a retail park but only on a frontage which faces or overlooks a communal car park within the boundaries of the retail park. The advertisement must refer wholly to the business or name or qualification of the person carrying on the business, or the goods sold or services provided on the premises. Only one advertisement parallel to the wall and one projecting at right angles from the wall are allowed.

Size limits apply to advertisements projecting from the wall. No such advertisement may exceed 1 square metre in area. The distance the sign can project from the wall of a building is limited to no more than 1 metre and it may not be more than 1.5 metres high.

The height above ground level at which any advertisement (whether parallel to or projecting from a wall) may be displayed is subject to conditions. The lowest part of the advertisement must be at least 2.5 metres above ground level. But no part of the advertisement may be more than either 4.6 metres above ground level, or the bottom level of any first floor window in the wall on which the advertisement is displayed,

whichever is the lower. The size of characters or symbols on any advertisement is limited to no more than 0.75 metres in height.

Class 4B permits illuminated advertisements on business premises (other than those in Class 4A) provided they refer wholly to the business or name or qualification of the person carrying on the business, or the goods sold or services provided on the premises. Only one advertisement parallel to the wall and one projecting at right angles from the wall are allowed.

Size limits apply to advertisements projecting from the wall. The surface of any such advertisement may not exceed 0.75 square metres in area. The distance the sign can project from the wall of a building is limited to no more than 1 metre, or two thirds of the width of any footway or pavement below (whichever is the lesser). It may not be more than 1 metre high and may not project over any road.

The lowest part of any advertisement (whether parallel to or projecting from a wall) must be at least 2.5 metres above ground level. But no part of the advertisement may be more than either 4.6 metres above ground level, or the bottom level of any first floor window in the wall on which the advertisement is displayed, whichever is the lower.

No surface of the advertisement may be more than one sixth of the frontage on which it is displayed. This is measured up to a height of 4.6 metres from ground level, or one fifth of the frontage measured to the top of the advertisement (whichever is the lesser).

The size of characters or symbols on any advertisement is limited to no more than 0.75 metres in height.

Advertisements on shops may only be displayed on a wall containing a shop window.

As well as illumination by internal or 'halo' means, the advertisement may be illuminated by a built-up box containing the light source. In this case the distance between the face of the advertisement and any wall parallel to which it is displayed at the point where it is fixed is limited to no more than 0.25 metres. This is also the limit for the distance between the two faces of an advertisement projecting from a wall.

Class 5: Other advertisements on business premises

Class 5 allows specific advertisements which are not covered by Classes 4A or 4B to be displayed on business premises. It permits a wide variety of notices, signs and other advertisements to draw attention to the business carried out on the premises, any commercial services, goods for sale, or any other services available at the business premises where the advertisement is being displayed. It also allows the name or qualifications of the person carrying on the business, or supplying the goods or services, on those premises, to be displayed. There is no limit to the number of advertisements which may be displayed but there are maximum size limits for each advertisement in an area of special control designated under the 2007 Regulations and for those in other areas.

'Business premises' means any building (being a permanent building and not any other kind of structure or erection) in which a professional, commercial or industrial undertaking is being carried on, or any commercial services are being provided for the public. Examples of business premises include: office buildings; banks and building societies; shops, supermarkets and hypermarkets; theatres, cinemas and night clubs; bingo halls and amusement arcades; vehicle showrooms and garages; privately owned factories and works; restaurants and cafés. It does not include a building designed for use as one or more separate dwellings unless that building has normally been used in the preceding 10 years for any professional, commercial or industrial business or for

providing services to the public or any association; or the building has been adapted by the construction of a shop front. It also does not include a building used as a religious, educational, cultural, recreational or medical institution; any forecourt or other land forming part of the curtilage of a building; or any fence, wall or similar structure unless it forms part of the fabric of a building.

Class 5 is not intended to permit all forms of outdoor advertising on any business premises. It only permits advertisements relating to the goods or services available at the particular premises or the supplier operating from those premises. This means advertisements which refer to the business or other activity on the premises; the goods for sale or the services available; and/or the name and qualifications of the firm or person providing the goods or services on the premises.

If the business premises is a shop, no advertisement may be displayed except on a wall containing a shop window. In an area of special control designated under the 2007 Regulations there are size and height restrictions. The space occupied by the advertisement may not exceed one tenth of the area of the face of the building on which it is displayed up to a height of 3.6 metres from ground level. Even if the advertisement is not displayed flat against the face of the building its overall area is calculated as though it were. The advertisement may not be displayed higher than 3.6 metres above ground level or the bottom level of any first floor window in the wall on which the advertisement is displayed, whichever is lower. No character or symbol on the advertisement may be more than 0.75 metres in height, or 0.3 metres in an area of special control.

Illumination is not permitted unless the advertisement is for medical, pharmaceutical or veterinary services available on the premises, or medical or veterinary supplies which are available there. The premises include doctors' or dental surgeries, chiropractors, osteopaths, opticians and veterinary services. Illumination is by static means – intermittent light sources, flashing lights, moving parts or features, exposed cold cathode tubing, or animation are not allowed. The use of retroflective material which reflects light from vehicles' headlights is not allowed. Illumination is only allowed where it is reasonably required to fulfil the purpose of the advertisement (e.g. if it is necessary to enable the information to be read in hours of darkness). The level of illumination is limited to 600 candela per square metre (where the illuminated area does not exceed 10 square metres) or 300 candela per square metre in any other case. In calculating the area each advertisement (or each side in the case of a double-sided advertisement) is to be taken separately and no unilluminated part is to be taken into account.

Where an advertisement consists of a single placard or poster, the maximum size is 1.554 square metres.

Outside an area of special control, the height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be higher than 4.6 metres above ground level, or the bottom level of any first floor window in the wall on which the advertisement is displayed, whichever is lower. The size of characters or symbols on the advertisement may be no more than 0.75 metres in height.

Class 6: An advertisement on a forecourt of business premises

Class 6 gives business premises with a forecourt (or more than one), further consent to display the type of advertisement permitted by Class 5. It gives consent for notices, signs and other advertisements to draw attention to the business carried out on the premises, any commercial services, goods for sale, or any other services available at the

business premises. It also allows the name or qualifications of the person carrying on the business, or supplying the goods or services, on those premises, to be displayed.

The 'forecourt' of a building, or part of a building, is an area of land, whether it is enclosed or not, within the curtilage of the building or part of it, to which the public may have access with the permission of the owner. It includes any fence, wall, screen or other structure that defines the boundaries of that area. A forecourt would include: the enclosed area in front of a newsagent's shop; the area at a petrol filling station where pumps are situated; a terrace in front of a restaurant or café. Forecourt does not include the area of pavement in front of business premises which forms part of the highway.

A condition limits the maximum area for all advertisements on forecourts to 4.6 square metres, but no single advertisement can exceed 1.55 square metres. Therefore a building which has two or more frontages with forecourts may display an advertisement on each forecourt, as long as no individual advertisement is more than 1.55 square metres and the maximum area of all the advertisements on the forecourts does not exceed 4.6 square metres. This allows a non-illuminated 'four sheet' display but not a 'six sheet' display.

Illumination is not permitted. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control designated under the 2007 Regulations. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control.

Class 7: Flag advertisements

Class 7 permits some flag advertisements (in addition to those flags permitted by Class H – see above).

Class 7A permits an advertisement in the form of a flag to be flown on a single flagstaff projecting vertically from the roof of a building. There is no height limit.

The flag may only have on it the name or device (such as the emblem or trademark) of the company or person occupying the building, or refer to a specific event of a limited duration taking place in the building. In the latter case the flag may only be flown for the duration of this event. This exception does not cover flags that advertise goods or products. The size of characters or symbols on the flag is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control designated under the 2007 Regulations.

Class 7B permits the display of flag advertisements flown from a single vertical flagstaff at residential, or predominantly residential, development sites. Flags may be flown during construction works and for as long as at least one of the new houses or flats remains available for sale, up to the date which is one year after building operations have been substantially completed.

The flags must relate to the development or to a person carrying out the development or an aspect of it. They may not be flown in any conservation area designated under the Planning (Listed Buildings and Conservation Areas) Act 1990, area of outstanding natural beauty designated under the Countryside and Rights of Way Act 2000, National Park, the Broads or an area of special control designated under the 2007 Regulations.

The number of flag advertisements is limited by the total number of houses and/or flats constructed or to be constructed. Up to 10 houses/flats means that only one flag may be flown. Between 10 and 100 houses/flats means that two flags may be flown. More than 100 houses/flats means that three flags may be flown.

However, there is a condition making special provision for developments that are carried out in phases. This allows the land on which the different phases are being undertaken to be treated separately for the purposes of the exception, even though all of the land is subject to one planning permission. Likewise, there is a condition for developments carried out by different people, each undertaking part of the development on discrete parts of the land. The discrete parts of land can be treated separately for the purposes of this exception.

The maximum size of each flag is limited to 2 square metres. No part of the flagstaff may be more than 4.6 metres above ground level.

Class 10: Advertisements for Neighbourhood Watch and similar schemes

Class 10 enables an advertisement displayed on or near highway land (but not in the window of a building) to give notice that a Closed Circuit Television (CCTV), neighbourhood watch or similar scheme, jointly established by a local committee and the police authority, is in operation in the area. This includes Home Watch, Crime Watch, Farm Watch and Industrial Watch set up jointly with the police authority. These CCTV signs are associated with CCTV schemes for general crime prevention purposes, not for traffic offences which are covered by road traffic legislation. The CCTV signs are often fitted to lampposts.

At least 14 days before any sign is put up, the local planning authority must be notified in writing where it is to be displayed and assured that it is properly authorised by the police, and where it is displayed on highway land, that the consent of the highway authority has been given. If the police or highway authority withdraw their approval or the scheme ceases to operate, the signs must be removed within 14 days. Illumination is not permitted.

Size limits apply. No advertisement may exceed 0.2 square metres. The height above ground level at which the advertisement may be displayed is limited so that no part of the advertisement may be higher than 3.6 metres above ground level. The size of characters or symbols on the advertisement is limited to no more than 0.75 metres in height, or 0.3 metres in an area of special control designated under the 2007 Regulations.

Class 11: Directional advertisements

Class 11 permits temporary directional signs, on a single flat surface, telling potential house buyers and other visitors how to reach a site where new residential development is taking place. At least 14 days before any sign is put up, the local planning authority must be notified in writing where it is to be displayed and from what date. No sign may continue to be displayed after development of the house building site is completed, or for more than two years in total.

The sign must not look like a traffic sign. The sign must be on land adjacent to but not on highway land, so that the sign is reasonably visible to an approaching driver, but may not be within 50 metres of a traffic sign which is intended to be seen by anyone approaching from the same direction. No sign may be more than two miles from the main entrance for the development site. Illumination and retroflective material are not permitted.

Size limits apply. No advertisement may exceed 0.15 square metres. No character or symbol on the advertisement may be less than 0.04 metres high or more than 0.25 metres high. The height above ground level at which it may be displayed is limited so

that no part of the advertisement may be higher than 4.6 metres above ground level or 3.6 metres in an area of special control designated under the 2007 Regulations.

Class 12: Advertisements inside buildings

Class 12 permits advertisements which do not fall within Class I (see above) to be displayed inside a building. 'Building' means a permanent building and excludes any other kind of structure or erection. This exception does not include an advertisement displayed in a railway station, a bus station or a sports stadium or other building in which a Games event is taking place. Class 12 includes: advertisements which are illuminated, for example, a sign in the window of a chemist's shop; and advertisements within one metre of any window or other external opening through which they can be seen from outside the building.

Other exceptions

We have proposed a number of 'miscellaneous' exceptions to the prohibition on advertising activity in the Regulations.

There is an exception for advertisements that are memorials and railway signs. This mirrors the position under the 2007 Regulations.

There is an exception for the distribution or provision of a current newspaper or periodical. This does not include a newspaper or periodical that is specifically intended to advertise a good, service or supplier around the Games. There are rules about the size of any receptacle for the newspaper or periodical. It may not exceed 1 metre in length or width or 2 metres in height; occupy a ground area exceeding 0.25 square metres; stand on the carriageway of a street; interfere with or inconvenience people using the street. A 'receptacle' is anything used as a container for the newspaper/periodical or for its display.

There is an exception for any advertising activity carried out in accordance with a condition attached to a trading authorisation granted by the Olympic Delivery Authority.

There are exceptions for advertisements displayed on aircraft.

Finally, there is an exception for an advertisement displayed on street furniture. The advertisement may not be illuminated, and may only bear the name, contact details or device (or any one or combination of these things) of the manufacturer, owner or operator and may not be displayed as part of a campaign specifically intended to advertise within an event zone during the relevant event period.

Scottish Regulations

We have sought to mirror the exceptions in the draft England and Wales Regulations by reference to the analogous Scottish planning regulations, which although different in structure contain similar provisions in respect of consent and deemed consent for advertising.

Section 10: Human Rights Assessment

Introduction

1. Sections 19 and 25 of the London Olympic Games and Paralympic Games Act 2006 ("2006 Act") require ministers to make regulations about advertising and trading in the vicinity of London 2012 Games events.
2. Ministers have prepared draft Regulations which are to be the subject of a public consultation exercise in early 2011.
3. This paper assesses the impact of the draft Regulations on the rights and fundamental freedoms affirmed by the European Convention on Human Rights ("ECHR") and given further effect in UK law by the Human Rights Act 1998.

Freedom of Expression and Protection of Possessions

Impact of Regulations

4. Article 10 of the ECHR affirms the right to freedom of expression. During the London 2012 Games, the Regulations will restrict a person's ability to engage in advertising activity as well as some forms of trading that include an element of "expression" in small areas around London 2012 events. By doing so, the Regulations will interfere with the Article 10 rights of people who wish to engage in those activities.
5. Article 1 to the First Protocol to the ECHR ("A1P1") protects a person's "possessions" from unjustified appropriation or interference by the State. The benefit of a licence, permit, certificate or consent (a "licence") to carry on a profitable activity can amount to a "possession" for A1P1 purposes. The Regulations will apply despite any licence granted before or after the Regulations come into force¹ and will restrict a person's ability to engage in advertising activity and trading in accordance with an existing licence (in the small areas where the Regulations apply, during the Games period). Accordingly, the Regulations will arguably interfere with the A1P1 rights of current licensees.
6. Further, the Regulations will limit the uses to which land and other property (again, within the small areas where the Regulations apply) may be put during the Games period. They will prevent, for example, a land owner from using his or her land (or allowing his or her land to be used) for advertising or trading activities. This may also amount to an interference with land or other property owners' A1P1 rights.

¹ This is the effect of sections 19(8)(e) and 26(4) of the 2006 Act.

Justification

7. Interferences with the rights to freedom of expression and protection of one's possessions may be justified on related grounds.
8. An interference with freedom of expression will be justified under Article 10(2) of the ECHR where it is prescribed by law, where it furthers a "legitimate aim" referred to in Article 10(2), and where it is necessary in a democratic society. States are accorded a broad margin of appreciation under Article 10 for restrictions on commercial expression.
9. Likewise, an interference with possessions will be justified under A1P1 where it is "lawful" (that is, imposed by sufficiently accessible, precise and foreseeable law), where it pursues a legitimate aim which is in the general interest, and where it is proportionate to that aim (that is, it strikes a "fair balance" between the general interests of the community and the individual's fundamental rights).
10. The interferences in the Regulations with Article 10 and A1P1 rights will be prescribed by law that is accessible, precise and foreseeable. As we have noted, sections 19 and 25 of the 2006 Act set out ministers' powers to make regulations about advertising and trading in the vicinity of London 2012 Games events (indeed, those sections require ministers to make such regulations). The Regulations will specify:
 - The areas to which the restrictions apply
 - The periods during which they will apply
 - The types of advertising and trading activities that are covered by the regulations
11. Draft Regulations will be the subject of a consultation process that will both inform the public about their proposed content and invite responses. After the draft Regulations have been amended in light of responses to the consultation, they will be debated in draft in Parliament and will be made by the Minister only if the draft is approved by both Houses. The Regulations will be publicly available and the Olympic Delivery Authority will make arrangements to have their effect brought to the attention of persons likely to be affected or interested.²
12. The Regulations are intended to meet commitments given by the UK Government to the International Olympic Committee in London's bid to host the 2012 Games. The main aims are:
 - To ensure all Olympic and Paralympic events have a consistent celebratory look and feel to them
 - To prevent ambush marketing within the vicinity of venues³
 - To ensure people can easily access the venues
13. These aims are consistent with legitimate aims that justify an interference with Article 10 and A1P1 rights. The Games are a once-in-a-lifetime occasion and it is reasonable for the Government to enact measures to facilitate the staging of the Games, even where those measures necessitate a limited and temporary interference with individuals' rights.

² The ODA is required to do this by sections 23(1) and 29(1) of the 2006 Act.

³ "Ambush marketing" describes activities undertaken by businesses not sponsoring an event which nevertheless suggest that they or their products are associated with the event or which seek to exploit the interest in the event by exposing their brands to spectators at the event and/or watching the event on TV around the world.

14. Moreover, the Regulations will further the interests of public safety at Games time by ensuring that competitors, officials, spectators and other people attending events are able smoothly to enter and exit venues. They will also protect the rights of those that have made a commercial contribution to the staging of the Games (without which the Games could not take place) by preventing advertising and trading activities that amount to ambush marketing. It is legitimate in a democratic society to take steps to protect commercial investments which have a public interest element to them. In this case, the social benefits of the Games could not be achieved without such commercial investments.
15. The Regulations will be reasonable and proportionate. They will strike a fair balance between the community's general interests (as reflected in the objectives underlying the Regulations) and individuals' rights to freedom of expression and protection of possessions. They will interfere with those rights to the minimum extent necessary to meet the underlying objectives described above.
16. For example, the Regulations will apply only to small, individually drawn areas around each Games venue. In most cases, these areas will extend only a few hundred metres from a venue's perimeter. Where an area does not pose a risk to the objectives underlying the Regulations, it will be excluded from the Regulations, even if it is situated close to a Games venue. In aggregate, the area covered by the Regulations represents a very small proportion of the total land area of the United Kingdom.
17. Further, the Regulations are a temporary measure – they will only apply for short periods tailored for each venue by reference to the times when Games events are to take place. The longest period that the Regulations will apply to any one place is 35 days (in the area around the main Olympic Park). This period is made up of two phases (one of 22 days for the Olympic Games, and another of 13 days for the Paralympic Games) separated by a period of two weeks during which the Regulations will not apply. For many venues, the Regulations will apply only for a few days. The Regulations will cease to have any effect on the day after the closing ceremony of the Paralympic Games.
18. The Regulations contain a number of exceptions which exempt advertising and trading activity that does not undermine the objectives underlying the Regulations. For example, there is an exception for demonstrations and related activity. This exempts acts, public assemblies or processions that are intended to demonstrate support for or opposition to the views or actions of a person or body. It also exempts acts etc. that are intended to publicise a belief, cause or campaign or mark or commemorate an event. The exception would cover (for example) carrying a placard during a protest march, displaying a poster promoting a particular religious belief, or distributing flyers in support of a political party. The exception does not apply to any commercial activity – activity that promotes or advertises a good, service or supplier of a good or service (unless that supplier is a not-for-profit body).
19. There are a number of detailed exceptions for advertisements that do not require express consent from local planning authorities under the current law. These exceptions have the effect (for example) of exempting certain types of advertisements on business premises (such as standard shop signs) and advertisements on vehicles not principally used to display advertisements.
20. Likewise, there are a number of detailed exceptions for trading activity, which exempt (for example) operating as a newsvendor, providing various motor vehicle-related services on private land (such as, running a car sale yard), and trading on private land adjacent to shops, cafés and related premises, and petrol stations.

21. In addition to specific exceptions, the Regulations will provide for advertising and trading activity to be authorised by the London Organising Committee of the Olympic Games and Paralympic Games Limited (LOCOG) and the Olympic Delivery Authority (ODA) respectively. LOCOG and the ODA will publish documents setting out their approach to authorisation and, in general, will authorise advertising and trading that is not inconsistent with the objectives underlying the Regulations.
22. The combined effect of the exceptions set out in the Regulations and LOCOG's and the ODA's authorisation functions is that only those forms of advertising and trading activity that are inconsistent with the legitimate aims of the Regulations will be prohibited.

Right to be Presumed Innocent

Impact of Regulations

23. Article 6(2) of the ECHR affirms the right to be presumed innocent until proven guilty according to law. The draft Regulations provide that a person who has an interest in or is responsible for a business, good or service, will be liable for a contravention of the Regulations by the business or if the contravention relates to the good or service. Similarly, a person who owns or occupies land will be responsible for any contravention of the Regulations that takes place on the land. In both cases a person can escape liability if they prove that the contravention took place without their knowledge or despite their having taken all reasonable steps to prevent a contravention from occurring, continuing or recurring.⁴ By requiring an accused person to prove the elements of the defence the usual onus is reversed and the Regulations could be said to interfere with the right to be presumed innocent affirmed by Article 6(2).

Justification

24. An interference with the right to be presumed innocent will be justified where it is confined "within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence."⁵ Putting this another way, an interference will be justified where it furthers a legitimate aim and is reasonably proportionate to that aim.
25. In paragraph 12 above, we have set out the three general objectives of the Regulations. The reverse onus provision is intended to contribute to the achievement of those objectives. In addition, it is specifically intended to ensure that people who are responsible for businesses that contravene the Regulations, or goods or services in relation to which a contravention occurs, or land on which a contravention takes place, are held accountable for the contravention or, at least, take reasonable steps to prevent a contravention occurring.
26. The reversal of onus is reasonably proportionate to those objectives. The onus (to prove a lack of knowledge or reasonable preventative steps) will only transfer to an accused once the prosecution has proven that a contravention of the Regulations has occurred (that is, that there has been advertising or trading activity in contravention of the Regulations). The prosecution would also have to prove that

⁴ In the case of a contravention of the advertising regulations, this defence is contained in section 21(2) of the 2006 Act rather than in the Regulations themselves.

⁵ *Salabiaku v France* (1988) 13 EHRR 379, para 28.

the contravention was undertaken by a business for which the defendant was responsible, or that it related to a good or service for which the person was responsible, or that it occurred on land which the person owned or occupied. Accordingly, the prosecution will be required to make out the main elements of an offence before the onus shifts to the defendant.

27. In addition, once the onus is reversed, the matters that a person is required to prove in order to benefit from the defence are peculiarly within the knowledge of the person – that they did not know about the trading or advertising or that they took reasonable steps to prevent the trading or advertising from occurring. The burden on the accused person would, accordingly, not be difficult for a person to discharge if they have no knowledge of the advertising or trading at issue or have taken steps to prevent it.

Conclusion

28. In light of the above analysis, we have concluded that any interference with a person's Article 6, 10 or A1P1 rights by the Regulations is justified.