

**Examiner of Statutory Rules**

**Report of the  
Examiner of Statutory Rules  
to  
the Assembly  
and  
the Appropriate Committees**

**8 November 2013  
NIA 144/11-15R**

Committee for Agriculture and Rural Development	S.R. 2013 No. 244
Committee for the Environment	S.R. 2013 Nos. 241, 248
Committee for Health, Social Services and Public Safety	S.R. 2013 No. 247
Committee for Justice	S.R. 2013 No. 249
Committee for Regional Development	S.R. 2013 No. 256
Committee for Social Development	S.R. 2013 Nos. 246, 250



## Statutory rules to which attention is drawn in this report

1. In accordance with the delegations in respect of the technical scrutiny of statutory rules under Standing Order 43(4)(b) given to the Examiner of Statutory Rules by the appropriate Committees on 25, 26 and 31 May and 1 June 2011 for this mandate of the Assembly, I submit my report on the statutory rules listed in the Appendix.
2. My terms of reference are essentially set out in Standing Order 43(6) (taken with the delegations under Standing Order 43(4)(b)). They are as follows:
 

“(6) In scrutinising an instrument the appropriate Committee shall inter alia consider the instrument with a view to determining and reporting on whether it requires to be drawn to the special attention of the Assembly on any of the following grounds, namely, that –

  - (a) it imposes a charge on the public revenues or prescribes the amount of any such charge;
  - (b) it contains provisions requiring any payment to be made to any Northern Ireland department or public body in respect of any approval, authorisation, licence or consent or of any service provided or to be provided by that department or body or prescribes the amount of any such payment;
  - (c) the parent legislation excludes it from challenge in the courts;
  - (d) it purports to have retrospective effect where the parent legislation confers no express authority so to provide;
  - (e) there appears to have been unjustifiable delay in the publication of it or in the laying of it before the Assembly;
  - (f) there appears to be a doubt whether it is intra vires or it appears to make some unusual or unexpected use of the powers conferred by the parent legislation;
  - (g) it calls for elucidation;
  - (h) it appears to have defects in its drafting;

or on any other ground which does not impinge on its merits or the policy behind it.”.

## Statutory rules to which attention is drawn in this report

**The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2013 (S.R. 2013/249)**

3. **I draw attention the attention of the Committee for Justice and the Assembly to the Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2013 (S.R. 2013/249) on the ground that it is defectively drafted in one respect acknowledged by the Department of Justice.** The effect of this Order is to extend the jurisdiction on the Court of Appeal to review sentences (on references by the Director of Public of Public Prosecutions for Northern Ireland on the ground that the sentence in a particular case is unduly lenient) in respect of certain offences tried on indictment in the Crown Court relating to the fraudulent evasion of duty on hydrocarbon fuels or tobacco products, so the context of this Order is not insignificant. The offences in question are described in Article 2. Article 3 (which elaborates on what is in Article 2), as laid, refers in three places to “paragraph 2”: plainly, the intention is to refer to “Article 2”. At my suggestion, the Department of Justice intends to correct this by way of a correction slip to clarify this. The slip is obvious, but it would clearly be preferable to refer to “Article” rather than “paragraph” as the conventional division of an Order lest anyone should be left in any doubt. In my view that is the appropriate course of action in this case.

**W G Nabney**

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## Appendix

*(The attention of the appropriate Committees and the Assembly is drawn to those statutory rules marked in bold)*

### Statutory rule requiring the approval of the Assembly (confirmatory procedure)

The Jobseeker's Allowance (Domestic Violence) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/250)

### Statutory rules subject to negative resolution

The Waste (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/241)

The African Horse Sickness Regulations (Northern Ireland) 2013 (S.R. 2013/244)

The Social Security (Miscellaneous Amendments No. 2) Sickness Regulations (Northern Ireland) 2013 (S.R. 2013/246)

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment No. 2) Sickness Regulations (Northern Ireland) 2013 (S.R. 2013/247)

The Waste (Fees and Charges) Regulations (Northern Ireland) 2013 (S.R. 2013/248)

**The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2013 (S.R. 2013/249)**

The M2/Trunk Road T7 Order (Northern Ireland) 2013 (S.R. 2013/256)







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