

Examiner of Statutory Rules

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

**6 December 2013
NIA 151/11-15R**

Committee for Enterprise, Trade and Investment	S.R. 2013 No. 281
Committee for the Environment	S.R. 2013 Nos. 260, 262
Committee for Justice	S.R. 2013 No. 272
Committee for Regional Development	S.R. 2013 No. 279
Committee for Social Development	S.R. 2013 No. 277

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 rule to which attention is drawn in this report

The Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013 (S.R. 2013/260)

3. **I draw attention the attention of the Committee for the Environment and the Assembly to the Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013 (S.R. 2013/260) on the ground that they are defectively drafted in one respect acknowledged by the Department of the Environment.**
4. The preamble/recital of powers refers to a power (to make the Regulations) being exercised under Article 76 of the Magistrates’ (Northern Ireland) Order 1981. This is of course an error because there is no power to make regulations under Article 76 (which provision is about applications to a magistrates’ court). Accordingly, the exercise of power under Article 76 should not have been recited in the preamble. The preamble also recites the powers under Articles 5F(2) and 42(A)(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997, and it seems to me that the references to Article 76 of the Magistrates’ Courts (Northern Ireland) Order 1981 come under that rubric (as expressly expanded by Articles 5F(3A) and 42A(3A)). The Department acknowledges this point. I indicated to the Department that the preamble/recital of powers of a statutory rule cannot of course be amended because its only purpose is to bring the provisions in the statutory rule into being.

5. I mentioned also to the Department in passing two other small points that occurred to me, suggesting that they might be further considered as and when a suitable opportunity arose.
6. First, it seemed to me that “any other person with a legal interest in that property” in regulation 5(1) is intended to mean “any other person claiming or appearing to the Department to be entitled to that property”: such expression would appear to be more consistent with the language of the 1997 Order and also more internally consistent; and “legal interest” has a ring of legal interest as distinct from beneficial interest or equitable interest.
7. And, second, it seemed to me that “the Magistrates’ decision” in regulation 6(7) is intended to mean “the court’s decision” (that is, to say, the decision of a magistrates’ court consisting of a district judge (magistrates’ courts), formerly known as a resident magistrate).

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 rules subject to negative resolution

The Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013 (S.R. 2013/260)

The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/262)

The Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/272)

The Social Security (Age-Related Payments) Regulations (Northern Ireland) 2013 (S.R. 2013/277)

The Truck Road T7(A26 Dualling – Glarryford to A44 Drones Road Junction) Order (Northern Ireland) 2013 (S.R. 2013/279)

The Gas (Applications for Licences and Extensions) (Amendment No.2) Regulations (Northern Ireland) 2013 (S.R. 2013/281)



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