

**Examiner of Statutory Rules**

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

**10 January 2014  
NIA 156/11-15R**

Committee for Agriculture and Rural Development	S.R. 2013 Nos. 295, 304
Committee for Enterprise, Trade and Investment	S.R. 2013 No. 261
Committee for the Environment	S.R. 2013 Nos. 285, 286, 287, 292, 298
Committee for Health, Social Services and Public Safety	S.R. 2013 Nos. 291, 294, 296, 299, 300, 301, 302 S.R. 2014 No. 2
Committee for Justice	S.R. 2013 Nos. 278, 293
Committee for Regional Development	S.R. 2013 Nos. 265, 266, 290
Committee for Social Development	S.R. 2013 Nos. 282, 283, 303, 308



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 Health Services (Cross-Border Health Care) Regulations (Northern Ireland) 2013 (S.R. 2013/299)**

**The General Dental Services (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/300)**

**The Health and Personal Social Services (General Medical Services Contracts) (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/301)**

**The Provision of Health Services to Persons not Ordinarily Resident) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/302)**

3. I draw attention the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the following Regulations, namely—
  - (a) **the Health Services (Cross-Border Health Care) Regulations (Northern Ireland) 2013 (S.R. 2013/299);**
  - (b) **the General Dental Services (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/300);**

(c) **the Health and Personal Social Services (General Medical Services Contracts) (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/301); and**

(d) **the Provision of Health Services to Persons not Ordinarily Resident) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/302),**

**on the ground that they were laid in breach of the 21-day rule (that is to say, the long-established rule of practice where by a department or other rule-making authority should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between the laying of the statutory and its coming into operation).**

4. The Regulations were made on 19 December 2013, and were laid on the same day; they came into operation on 27 December 2013. The Department was aware of a likely breach of the 21-day rule and informed me in advance with an explanation (13 December 2013). The Regulations are intended to give effect to implement Directive 2011/24/EU of the European Parliament and of the Council on application of patients' rights to cross-border healthcare. The Department had originally intended (as at August 2013) to have the Regulations in place under a very tight timetable by 25 October 2013, the date for transposition by member States. But it was engaged with the Committee until 11 December 2013 on the proposed Regulations. In the meantime, the clock was ticking. There was the prospect, in the event that the provisions of the Directive were held to be directly effective, of not being able (in the absence of the Regulations) to take advantage of various derogations. There would have been, it seems from the Department's explanation, potential for considerable cost implications, arising from that: healthcare in Northern Ireland would have been available to all EU citizens at no cost. Furthermore, the European Commission intended to initiate in the first week of 2014 infraction proceedings against member States that had not by then fully transposed the Directive. In the circumstances, the Department's explanation for the breach of the 21-day, for which it has apologised, seems to be reasonable. The Department, I am glad to say, took steps to lay the Regulations almost immediately after they were made.

**Corrigenda: Seventh Report, Session 2013/2014 (6 December 2013)**

5. In the Appendix to the Seventh Report, S.R. 2013/279 should have been cited as the Trunk T7 (A26 Dualling — Glarryford to A44 Drones Road *Junction*) Order (Northern Ireland) 2013 (my italics); and S.R. 2013/281 should have been cited as the Gas (Applications for Licences and Extensions) (*Amendment No. 2*) Regulations (Northern Ireland) 2013 (my italics).

**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 Weights and Measures (Specified Quantities) (Unwrapped Bread and Intoxicating Liquor) Order (Northern Ireland) 2013 (S.R. 2013/261)

The Galwally Avenue, Belfast (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/265)

The Route U6005 Quoile Brae, Downpatrick (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/266)

The Insolvency (Amendment) Rules (Northern Ireland) 2013 (S.R. 2013/278)

The Housing Benefit (Local Housing Allowance and Executive Determinations) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/282)

The Occupational Pensions (Revaluation) Order (Northern Ireland) 2013 (S.R. 2013/283)

The Goods Vehicles (Testing) (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/285)

The Motor Vehicle Testing (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/286)

The Road Service Licensing (Community Licences) Regulations (Northern Ireland) 2013 (S.R. 2013/287)

The C334 Derryleckagh Road, Warrenpoint (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/290)

The Food Safety, Food Hygiene and Official Controls (Sprouting Seeds and Miscellaneous Amendments) Regulations (Northern Ireland) 2013 (S.R. 2013/291)

The Smoke Control (Exempted Fireplaces) (No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/292)

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2013 (S.R. 2013/293)

The Feed (Hygiene and Enforcement) and the Animal Feed (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/294)

The Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2013 (S.R. 2013/295)

The Contaminants in Food (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/296)

The Motor Vehicles (Driving Licences) (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/298)

**The Health Services (Cross-Border Health Care) Regulations (Northern Ireland) 2013 (S.R. 2013/299)**

**The General Dental Services (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/300)**

**The Health and Personal Social Services (General Medical Services Contracts) (Amendment No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/301)**

**The Provision of Health Services to Persons not Ordinarily Resident) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/302)**

The Housing Benefit (Executive Determinations and Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/303)

The Seeds (Miscellaneous Amendments) Regulations (Northern Ireland) 2013 (S.R. 2013/304)

The Jobseeker's Allowance (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/308)

The General Ophthalmic Services (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/2)





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