



Northern Ireland
Assembly

Examiner of Statutory Rules

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

Session 2015/2016 Third Report

2 October 2015

NIA 266/11-16

Committee for Agriculture and Rural Development	S.R. 2015 Nos. 326, 332
Committee for Education	S.R. 2015 No. 341
Committee for Justice	S.R. 2015 No. 330
Committee for Social Development	S.R. 2015 No. 331

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 Rural Development Programme Regulations (Northern Ireland) 2015 (S.R. 2015/326)
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3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Rural Development Programme Regulations (Northern Ireland) 2015 (S.R. 2015/326) on the ground that they require elucidation in one respect (the definition of agricultural land in regulation 13), provided by the Department of Agriculture and Rural Development.**
4. Regulation 13 is headed “definition of agricultural land”. The definition is in terms that “the Department shall publish in such terms as it considers appropriate a definition of agricultural land for the purposes of Article 28(2) of the Rural Development Regulation”. I asked the Department whether a definition of this nature perhaps offended against general EU principles of legal certainty,

suggesting that the definition might have been set out in the Regulations themselves. The Department has explained that in the context of this there is a binding contractual relationship between an individual rural benefit beneficiary and the Department. Much if this is embodied in the scheme rules published under the Environmental Farming Scheme (the official name for the Agri-Environment-Climate support scheme in Northern Ireland). That seems to be an administrative rather than a legislative scheme. It seems that the scheme rules (including the definition of agricultural land) will be published online and available in hard copy.

5. I suggested to the Department that the various online versions (assuming that they might be amended administratively) would need to be clearly archived on the Department's website so as to label a version of the rules according to the dates when it applied. That would seem to be necessary so as to reduce the potential for protracted evidential disputes as to the applicable scheme rules at any particular time and to increase certainty. The Department intends to so label any scheme amendments to the scheme rules.
6. **I draw attention to regulation 13 accordingly, with the elucidation provided by the Department.**

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 Rural Development Programme Regulations (Northern Ireland) 2015 (S.R. 2015/326)

The Disclosure of Victims' and Witnesses' Information (Prescribed Bodies) Regulations (Northern Ireland) 2015 (S.R. 2015/330)

The State Pension Credit (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/331)

The Animal By-Products (Enforcement) Regulations (Northern Ireland) 2015 (S.R. 2015/332)

The General Teaching Council for Northern Ireland (Constitution) (Amendment No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/341)



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