

Examiner of Statutory Rules

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

**8 February 2013
NIA 96/11-15R**

Committee for Agriculture and Rural Development	S.R. 2013 No. 7
Committee for Finance and Personnel	Draft S.R.: The Companies (Public Sector Audit) Order (Northern Ireland) 2013 S.R. 2013 Nos. 12, 15, 16, 17
Committee for Justice	S.R. 2013 Nos. 18, 19
Committee for Social Development	S.R. 2013 No. 2

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 Plant Health (Amendment) Order (Northern Ireland) 2013 (S.R. 2013/7)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Plant Health (Amendment) Order (Northern Ireland) 2013 (S.R. 2013/7) on the ground that the Order was laid in breach of the 21-day rule (and was in fact laid after it came into operation), explained by the Department of Agriculture and Rural Development.** The Order was required as a matter of urgency because of the risk of the spread to Northern Ireland of a serious disease affecting potatoes. It was made, was laid and came into operation on 16 January 2013. A consultation had been carried out with major stakeholders before the Order was made, and controls were already in place in England. I note also that the Order for England (S.I. 2012/3033) was made, was laid and was in operation within two days and that the Joint Committee on Statutory Instruments did not comment adversely on the breach of the 21-day rules in that case on the basis of the explanation advanced. Accordingly, the Department’s explanation seems to be reasonable 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)

Draft statutory rule requiring the approval of the Assembly

Draft S.R.: The Companies (Public Sector Audit) Order (Northern Ireland) 2013

Statutory rules subject to affirmative resolution

The Employment and Support Allowance (Amendment) Regulations 2013 (S.R. 2013/2)

The Rates (Temporary Rebate) (Amendment) Order (Northern Ireland) 2013 (S.R. 2013/15)

The Rates (Regional Rate) Order (Northern Ireland) 2013 (S.R. 2013/16)

The Rates (Exemption for Automatic Teller Machines in Rural Areas) Order (Northern Ireland) 2013 (S.R. 2013/17)

Statutory rules subject to negative resolution

The Plant Health (Amendment) Order (Northern Ireland) 2013 (S.R. 2013/7)

The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12)

The County Courts (Financial Limits) Order (Northern Ireland) 2013 (S.R. 2013/18)

Statutory rule not subject to Assembly proceedings

The County Court (Amendment) Rules (Northern Ireland) 2013 (S.R. 2013/19)



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