

Examiner of Statutory Rules

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

**24 June 2011
NIA 09/11-15R**

Committee for Enterprise, Trade and Investment	S.R. 2011 No. 209
Committee for the Environment	S.R. 2011 No. 216
Committee for Health, Social Services and Public Safety	S.R. 2011 No. 217
Committee for Office of the First and deputy First Minister	S.R. 2011 No. 168
Committee for Regional Development	S.R. 2011 Nos. 134, 190
Committee for Social Development	S.R. 2011 No. 214

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

Rail Passengers' Rights and Obligations (Exemption) Regulations 2011 (S.R. 2011/134)

3. **I draw the attention of the Committee for Regional Development and the Assembly to the Rail Passengers' Rights and Obligations (Exemption) Regulations 2011 (S.R. 2011/134) on the ground that there was delay in laying them after their making, explained to a large extent by the Department for Regional Development.** The Regulations were made on 21 March 2011 with a commencement date of 22 April 2011. The Department could, it seems to me, have laid them, as it had intended to do, before the dissolution of the previous Assembly (midnight on 24 March 2011), say by laying in typescript; but rather the Department waited for the printed copies to be run off, which copies were not available until after dissolution. The Department contacted me by letter dated 19 April with the explanation about waiting for the printed copies. I replied in terms that it should lay them after the first sitting of the new Assembly. The Department sought my view as to whether it could and should change the commencement date by way of a correction slip: it seemed to me that the appropriate course was to leave the commencement date but to reiterate the explanation for laying the Regulations before the new Assembly after 12 May 2011. I do not consider that it would have been appropriate to have changed the commencement date by way of simple correction slip after making: had such a course been necessary or compelling (and that did not seem to arise in this case), then that would have been a matter for revoking and re-making the Regulations. The Department subsequently briefed its incoming Minister on the Regulations, and they were laid, with the brief explanation on 14 June 2011. In general

terms, Departments should strive to lay regulations subject to negative resolution as soon as possible after their making (generally allowing at least 21-days between their making and their coming into operation). In this case, having missed dissolution deadline of 24 March 2011, it was inevitable that the Regulations would be laid (before the new Assembly) after their coming into operation; but at least they have now been laid.

The Employment Equality (Repeal of Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168)

4. **I draw the attention of the Committee for the Office of the First Minister and deputy First Minister and the Assembly to the Employment Equality (Repeal of Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168) on the ground they are defectively drafted in one respect, acknowledged by the Office of the First Minister and deputy First Minister (OFMDFM).**
5. Regulation 4 contains transitional provisions. Regulation 4(4)(a) seems to have little or no effect beyond what is in regulation 4(1)(a) and seems to be largely explanatory rather than legislative: its effect seems to be to merely explain that an employer may not issue a notice under paragraph 2 or 4 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 on or after 6 April 2011 in respect of an employment of a person to which this employment relates. But that seems to be the effect of regulation 4(1)(a) already. I suggested to the OFMDFM that the function of legislation was not to contain material that was purely explanatory in nature and asked whether it was not putting forward the same proposition in two different ways, so that regulation 4(4)(a) was otiose. OFMDFM acknowledges the point, indicating that it will consider this for the future. I will add that these are complex Regulations, drafted quickly in what seems to be a careful manner, and that the point should not unduly affect the working of the Regulations.

Corrigendum: Second Report of Session 2011/2012

6. The Second Report of the Examiner of Statutory Rules of Session 2011/2012 (10 June 2011) listed the Private Access at No. 186 [sic] Dublin Road, Loughbrickland (Stopping-Up) Order (Northern Ireland) 2011 (S.R. 2011/190) as being subject to negative resolution. Stopping-up orders (and abandonment orders) made under Article 68 of the Roads (Northern Ireland) Order 1993 are subject to negative resolution; but stopping-up of private access orders made under Article 69 of the Roads Order (as was the instant Order) are not subject to any Assembly procedure; it may well be that the reasoning lying behind this distinction is that there is less of a public rights element and more of an element of the enjoyment of private land, and that they are even further into the grey area between legislative and administrative orders. I have relisted the Order (correcting a numeric reference in its title — 168 rather than 186) in the Appendix to this report.

W G Nabney
Examiner of Statutory Rules
24 June 2011

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

Rail Passengers' Rights and Obligations (Exemption) Regulations (Northern Ireland) 2011 (S.R. 2011/134)

The Employment Equality (Repeal of Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011/168)

Tourist Establishments (Notices, Certificates and Forms) Regulations (Northern Ireland) 2011(S.R. 2011/209)

The Registered Rents Order (Northern Ireland) 2011 (S.R. 2011/214)

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/216)

The Food Additives (Amendment No. 2) Regulations (Northern Ireland) 2011(S.R. 2011/217)

Statutory rule not subject to any Assembly procedure

The Private Access at No.168 Dublin Road, Loughbrickland (Stopping-Up) Order (Northern Ireland) 2011(S.R. 2011/190)



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:

TSO Ireland

18-22 Arthur Street, Belfast BT1 4GD

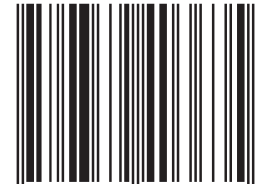
Telephone: 028 9023 8451

Fax: 028 9023 5401

£2.00

Printed in Northern Ireland by The Stationery Office Limited
© Copyright Northern Ireland Assembly Commission 2011

ISBN 978-0-339-40363-5



9 780339 403635