

Examiner of Statutory Rules

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

**21 February 2014
NIA 161/11-15R**

Committee for Agriculture and Rural Development	S.R. 2014 No. 23
Committee for Education	S.R. 2014 No. 37
Committee for Employment and Learning	S.R. 2014 No. 39
Committee for the Environment	S.R. 2014 No. 31
Committee for Justice	S.R. 2014 Nos. 26, 40, 41
Committee for Regional Development	S.R. 2014 Nos. 32, 36
Committee for Social Development	S.R. 2014 No. 33

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 Explosives (Hazard Information and Packaging for Supply) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/26)

3. **I draw the attention of the Committee for Justice and the Assembly to the Explosives (Hazard Information and Packaging for Supply) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/26) on the ground that they are defectively drafted in several respects, acknowledged by the Department of Justice.**
4. I understand that the Department intends to revoke and replace these Regulations quickly with a new set of regulations, and that is commendable. The Department was especially concerned, as I had pointed out, that it had not recited the power in paragraph 1A of Schedule 2 to the European Communities Act 1972 to provide for ambulatory interpretation of references in EU instruments as set out in regulation 2/regulation 3(3)(c) of the amended regulations.
5. The Department had also not recited in the preamble, as it should have done, that it appeared to the Department expedient to provide for the ambulatory interpretation of those references. (I note in passing that a similar criticism applies to similar regulations in S.R. 2013/206 on health and safety, on which I took no points at the time.)
6. Finally, the Department had purported to amend the preamble of the amended regulations: as the Joint Committee on Statutory Instruments at Westminster indicated in its Eleventh Report

for Session 2013-14 (30 October 2013) in relation to similar provisions for Great Britain in S.I. 2013/1506, this was misconceived since the preamble is not amendable; and also the purported amendment did not make sense because it did not fit textually. (That criticism also applies to S.R/ 2013/206.) The preamble/recital of powers of a statutory rule is there to bring the statutory rule into being and it takes account of the circumstances existing at that time. Once that is done it has served its purpose. The preamble of the amending statutory rules brings about any further changes, and makes the appropriate recitals accordingly.

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 Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014 (S.R. 2014/23)

The Explosives (Hazard Information and Packaging for Supply) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/26)

The Planning (General Development) (Amendment) Order (Northern Ireland) 2014 (S.R. 2014/31)

The Former Glenshane Road at Ranaghan Bridge, Magherafelt (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/32)

The Social Security (Crediting and Treatment of National Insurance Contributions and National Insurance Numbers) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/33)

The M1/Trunk Road T3 and M1 – M2 Link (Amendment) Order (Northern Ireland) 2014 (S.R. 2014/36)

The Teachers' Superannuation (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/37)

The Building Society Special Administration Rules (Northern Ireland) 2014 (S.R. 2014/40)

The Building Society Insolvency Rules (Northern Ireland) 2014 (S.R. 2014/41)

Statutory rule required to be laid but not subject to Assembly proceedings

The Employment Rights (Increase of Limits) Order (Northern Ireland) 2014 (S.R. 2014 No. 39)



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

£2.00

Printed in Northern Ireland by The Stationery Office Limited
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ISBN 978-0-339-40427-4

