

**Examiner of Statutory Rules**

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

**27 June 2014  
NIA 186/11-15**

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| Committee for Agriculture and Rural Development          | S.R. 2014 No. 172  |
| Committee for Employment and Learning                    | S.R. 2014 No. 173  |
| Committee for the Environment                            | S.R. 2014 Nos. 147, 166  |
| Committee for Health, Social Services, and Public Safety | S.R. 2014 Nos. 168, 169, 170   |
| Committee for Justice                                    | Draft S.R: The Lands Tribunal<br>(Salaries) Order (Northern Ireland) 2014<br><br>S.R. 2014 Nos. 163, 174, 178                            |
| Committee for Social Development                         | Draft S.R: The Business Improvement Districts<br>(Miscellaneous) Regulations (Northern Ireland) 2014<br><br>S.R. 2014 Nos. 143, 162, 167 |



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 Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2014 (S.R. 2014/178)**

3. **I draw the attention of the Committee for Justice and the Assembly to the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2014 (S.R. 2014/178) on the ground that they were laid in breach of the 21-day rule, explained by the Department of Justice.** The Rules were made on 17 June 2014, were laid on 19 June 2014 and came into operation on 26 June 2014 (yesterday).
4. The Department reached its policy position after a general consultation with “stakeholders” and other interested parties. Since the proposals were first agreed with the Committee in May 2013, there were two significant additional matters, namely, the need for provision in respect of both fine default hearing fees and sentence hearing fees (in the comparatively rare circumstances where there has been a change of legal representation post-conviction and before sentencing): both matters resulted from recent decisions in the courts.
5. In addition, the power under which the Rules were made (namely, Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981) required further consultations on the Rules with the statutory consultees referred to in that provision, namely, the Lord Chief Justice, the Attorney General, the County Court Rules Committee and the Magistrates’ Courts Rules Committee. Those further consultations took place during a particularly busy period

for the relevant officials in the Department, including work on the Legal Aid and Coroners' Courts Bill. In those circumstances, there was some delay in completing the final stages in the drafting and making of the Rules. It was necessary to bring the Rules into operation on 26 June 2014 to ensure the availability of legal aid remuneration in respect of fine default hearings in the magistrates' courts: the first such hearings were scheduled to take place on that date.

6. The Department has apologised for the breach of the 21-day rule, and has indicated that it will work to ensure that it avoids any similar breach in future. Plainly, there was in this case the compelling constraint of the fine default hearings and the need to have the Rules in place for those proceedings; although, it would have been better, as the Department accepts, to have been in a position to have made and laid the Rules earlier. I do not think I can say any more on that. The Department has put forward its explanation, and it seems that it did not act unreasonably in all the circumstances.

**W G Nabney**

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27 June 2014

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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 rules requiring the approval of the Assembly

Draft S.R.: The Business Improvement Districts (Miscellaneous) Regulations (Northern Ireland) 2014

Draft S.R.: The Lands Tribunal (Salaries) Order (Northern Ireland) 2014

## Statutory rules subject to negative resolution

The Business Improvement Districts (General) Regulations (Northern Ireland) 2014 (S.R. 2014/143)

The Sulphur Content of Liquid Fuels (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/147)

The Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/162)

The Police Rehabilitation and Retraining Trust Regulations (Northern Ireland) 2014 (S.R. 2014/163)

The Smoke Control Areas (Exempted Fireplaces) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/166)

The Child Support (Great Britain Reciprocal Arrangements) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/167)

The New Firefighters' Pension Scheme (Amendment) (No. 2) Order (Northern Ireland) 2014 (S.R. 2014/168)

The Firefighters' Pension Scheme (Amendment) (No. 2) Order (Northern Ireland) 2014 (S.R. 2014/169)

The Pharmaceutical Services (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/170)

The Plant Health (Amendment) Order (Northern Ireland) 2014 (S.R. 2014/172)

The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2014 (S.R. 2014/173)

The Rehabilitation of Offenders (Exceptions) (Amendment) (No. 2) Order (Northern Ireland) 2014 (S.R. 2014/174)

**The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2014 (S.R. 2014/178)**



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