

Examiner of Statutory Rules

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

**27 January 2012
NIA 30/11-15**

Committee for Agriculture and Rural Development	S.R. 2011 Nos. 435, 436, 437, 438, 440
Committee for Enterprise, Trade and Investment	S.R. 2012 No. 11
Committee for the Environment	S.R. 2012 Nos. 7, 8
Committee for Finance and Personnel	S.R. 2012 No. 2
Committee for Health, Social Services and Public Safety	S.R. 2012 No. 3
Committee for Social Development	S.R. 2012 Nos. 1, 14

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 Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2011 (S.R. 2011/435)

The Northern Ireland Poultry Health Assurance Scheme Order (Northern Ireland) 2011 (S.R. 2011/436)

The Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (S.R. 2011/438)

The Non-Commercial Movement of Pet Animals Order (Northern Ireland) 2011(S.R. 2011/440)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the following statutory instruments —**
 - (a) **the Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2011 (S.R. 2011/435);**
 - (b) **the Northern Ireland Poultry Health Assurance Scheme Order (Northern Ireland) 2011 (S.R. 2011/436);**
 - (c) **the Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (S.R. 2011/438); and**
 - (d) **the Non-Commercial Movement of Pet Animals Order (Northern Ireland) (S.R. 2011/440),**

on the ground that they were laid in breach of the 21-day rule (that is to say, the long-established rule of practice whereby a department or other rule-making authority should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between the laying of the statutory rule and its coming into operation), explained in reasonable terms by the Department of Agriculture and Rural Development. The statutory rules were made on 21 December 2011, were laid on 23 December 2011 and came into operation on 1 January 2012. The imperative was to have the Non-Commercial Movement of Pet Animals Order (Northern Ireland) 2011 (with which there were linkages to the other statutory rules) in place for 1 January 2012 in order to avoid the risk of EU infraction proceedings and at the same time maintain disease control measures. (I mention also that the same timing considerations applied to the linked Zoonoses (Amendment) Order (Northern Ireland) 2011 (S.R. 2011/437), except that in this case the 21-day rule does not, strictly, apply: that statutory rule, contrary to what the Department stated in its laying letter, is not subject to negative resolution; rather, it is subject, it seems, to a requirement that it be laid before the Assembly by virtue of Article 61(2) of the Diseases of Animals (Northern Ireland) Order 1981.)

4. **I also draw attention to drafting issues relating to the Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2011 (S.R. 2011/435) and the Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (S.R. 2011/438), acknowledged by the Department of Agricultural and Rural Development.**
5. **The Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2011 (S.R. 2011/435)** seems to me to have a very confusing structure. Article 3 makes provision for a Schedule relating to fees. Part II of the Schedule is in the form a table, which is a fairly typical form. But Part I of the Schedule appears to set out some principles for the charging and determination of fees, and it is not completely clear in all cases whether and how these link to the table in Part II. Paragraph 3 of Part I sets out (not entirely clearly, it seems to me) detailed provision for charging a re-inspection fee, but this is not reflected in quite the same way in Part II. In addition there appears to be some overlap between what is stated in Article 3(2) about when fees in general and the specific provision covering the same ground in paragraph 3(2) in respect of re-inspection fees. What I have suggested, and what the Department has agreed to revisit by way of an early amendment, is that the Schedule would be clearer if it were drafted in one part rather than two in the form of a table with additional notes to the table – but only providing any necessary elaboration, say, to the determination of a re-inspection fee. There would in addition be some consequential amendment of what is in Article 3.
6. **The Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (S.R. 2011/438)** contains one provision which appears to me to be otiose: that is to say, Regulation 10 serves no purpose in the scheme of the Regulations. Regulation 10(1) contains a statement to the effect that imports of live animals from outside the EU cannot be made directly into Northern Ireland: that is because there are currently no recognised EU border inspection posts in Northern Ireland approved for this purpose (whereas there are border inspection posts approved for certain animal products at Belfast port and Belfast International Airport). But that statement on its own seems out of place against the whole framework of Part 3 of the Regulations, which makes detailed provision for imports through border inspection posts approved for the purpose. It seems to me therefore that it is unnecessary (and somewhat inconsistent with the general tenor of Regulations as a whole) to state an absolute bar to direct imports on the face of the Regulations; rather, it would seem appropriate to leave the matter of animal imports to the border inspection post regime in place at any given time. Regulation 10(2) contains a saving for the import of certain animals under rabies control measures; but that seems to be covered elsewhere in the Regulations (paragraph 4 of Schedule 4). The Department acknowledges these points and intends to omit regulation 10 when a suitable opportunity to make the amendment arises.

The Specified Products from China (Restrictions on First Placing on the Market) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/3)
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7. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Specified Products from China (Restrictions on First Placing on the Market) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/3) on the ground that they were laid in breach of the 21-day rule, explained in reasonable terms by the Food Standards Agency on the basis of implementing an emergency EU Decision (Commission Decision 2011/884/EU published in the Official Journal on 23 December 2011 and on EU website on 28 December 2012. The Regulations were made on 10 January 2012, were laid on 11 January 2012 and came into operation on 12 January 2011. I note with approval that the Regulations were at least laid before they came into operation.**

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 rule subject to affirmative resolution

The Official Statistics Order (Northern Ireland) 2011 (S.R. 2011/2)

Statutory rule requiring the approval of the Assembly (confirmatory procedure)

The Jobseeker's Allowance (Work Experience) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/14)

Statutory rules subject to negative resolution

The Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2011 (S.R. 2011/435)

The Northern Ireland Poultry Health Assurance Scheme Order (Northern Ireland) 2011 (S.R. 2011/436)

The Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (S.R. 2011/438)

The Non-Commercial Movement of Pet Animals Order (Northern Ireland) 2011 (S.R. 2011/440)

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/1)

The Specified Products from China (Restrictions on First Placing on the Market) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/3)

The Motor Vehicles (Taxi Drivers' Licences) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/7)

The Local Government (Specified Bodies) Regulations (Northern Ireland) 2012 (S.R. 2012/8)

The Petroleum (Consolidation) Act (Amendment of Licensing Provisions) Regulations (Northern Ireland) 2012 (S.R. 2012/11)

Statutory rule subject to laying but not subject to any Assembly proceedings

The Zoonoses (Amendment) Order (Northern Ireland) 2011 (S.R. 2011/437)



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