

Examiner of Statutory Rules

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

**18 May 2012
NIA 54/11/15**

Committee for Agriculture and Rural Development	S.R. 2012 No. 185
Committee for Enterprise, Trade and Investment	S.R. 2012 No. 179
Committee for the Environment	Draft S.R: The Goods Vehicles (Licensing of Operators) (Exemption) Regulations (Northern Ireland) 2012 S.R. 2012 No. 183
Committee for Health, Social Services and Public Safety	S.R. 2012 No. 182
Committee for Justice	Draft S.R: The Corporate Manslaughter and Corporate Homicide (2007 Act) (Commencement) Order (Northern Ireland) 2012 S.R. 2012 No. 177

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 Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/177)

3. **I draw the attention of the Committee for Justice and the Assembly to the Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/177) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Justice.** Regulation 3(2) inserts a definition in respect of the Carriage of Explosives Regulations (Northern Ireland) 2010 into the table in regulation 2(5) of those Regulations. Had there been a relevant textual amendment requiring a reference to those Regulations (which in this case there was not), then the appropriate inserted reference would of course have been to “these Regulations” rather than to a definition of those 2010 Regulations: the effect of the textual amendment would have been to have made that reference an internal reference (that is to say, a reference within those Regulations themselves rather than to some other regulations). That is a fairly elementary drafting point (and easily understood when applied), if perhaps a little difficult to set out in abstract terms. The Department has acknowledged this point and intends to tidy this at the next opportunity, as I suggested.

**Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012
(S.R. 2012/183)**

4. **I draw the attention of the Committee for the Environment and the Assembly to the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/183) on the ground that they are defectively drafted in one respect, acknowledged by the Department of the Environment.** The Department intends, at my suggestion, to correct the point by way of a correction slip: in my view there is no point of substance involved, merely one of clarification for the reader. The Department has in regulation 1(2)(a) given effect to some provisions on 1 April 2009. I take no point on that because there is express power for retrospective effect. But the Department has inadvertently included two provisions (regulations 2 and 17), which provisions merely announce that subsequent provisions contain amendments; they do not have any substantive effect in themselves. That creates a certain confusion because the subsequent amending provisions take effect from different dates (not simply from 1 April 2009): the confusion disappears if the references to regulations 2 and 17 are removed from regulation 1(2)(a); and because those references have no substantive effect, the use a correction slip, rather than a further amendment by way of a correcting statutory rule, seems appropriate.

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 rules requiring the approval of the Assembly

Draft S.R.: The Goods Vehicles (Licensing of Operators) (Exemption)(Northern Ireland) 2012

Draft S.R: The Corporate Manslaughter and Corporate Homicide (2007 Act) (Commencement) Order (Northern Ireland) 2012

Statutory rules subject to negative resolution

The Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/177)

The Control of Asbestos Regulations (Northern Ireland) 2012 (S.R. 2012/179)

The Children's Homes (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/182)

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/183)

The Potatoes Originating in Egypt (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/185)



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