

Examiner of Statutory Rules

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

**22 November 2013
NIA 148/11-15R**

Committee for the Environment	S.R. 2013 No. 255
Committee for Health, Social Services and Public Safety	S.R. 2013 Nos. 253, 259
Committee for Regional Development	S.R. 2013 No. 257

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 Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013
(S.R. 2013/255)**

3. **I draw attention the attention of the Committee for the Environment and the Assembly to the Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013 (S.R. 2013/255) on the ground that they are defectively drafted in one respect acknowledged by the Department of the Environment.** The point is simply that there is an express conflict or contradiction between two items in Table 2 in paragraph 3 of the Schedule to the Regulations. Item 2 classifies waste arising from the discharge by a district council of its duty under the Article 7(2) of the Litter (Northern Ireland) Order 1994 to ensure that roads are kept clean as household waste. Item 5 classifies waste arising from the discharge by a district council or the Department for Regional Development of the duty under the Article 7(2) of the Litter (Northern Ireland) Order 1994 to ensure that roads are kept clean as industrial waste. Plainly both of those conflicting classifications in respect of district councils cannot stand. It seemed to me that the reference to a district council in item 5 had crept in in error (when I compared the corresponding table of the regulations for England and Wales). The Department

has acknowledged the error and intends to make early correcting regulations. In doing so it intends to take on board a couple of very minor suggestions I made by way of clarity.

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 Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2013 (S.R. 2013/253)

The Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013 (S.R. 2013/255)

The Traffic Signs (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/257)

The Health and Personal Social Services (Superannuation Scheme and Additional Voluntary Contributions) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/259)



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