

Examiner of Statutory Rules

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

**15 June 2012
NIA 59/11-15**

Committee for Agriculture and Rural Development	Draft S.R.: The Welfare of Animals (Docking of Working Dogs' Tails and Miscellaneous Amendments) Regulations (Northern Ireland) 2012
Committee for Culture, Arts and Leisure	S.R. 2012 No. 219
Committee for Employment and Learning	S.R. 2012 No. 184
Committee for the Environment	Draft S.R.: Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012 S.R. 2012 Nos. 218, 230
Committee for Health, Social Services and Public Safety	S.R. 2012 No. 229
Committee for Justice	S.R. 2012 No. 217
Committee for Regional Development	S.R. 2012 No. 235
Committee for Social Development	S.R. 2012 No. 232

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 Quality of Bathing Water (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/218)

3. **I draw the attention of the Committee for the Environment and the Assembly to the Quality of Bathing Water (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/218) on the ground that they were laid in breach of the 21-day rule (that is to say, the well-established rule of practice whereby a department should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between the date of its laying and its coming into operation or commencement), explained by the Department of the Environment.** The Regulations were made on 25 May 2012, were laid on 29 May 2012 and came into operation on 1 June 2012. The Department took the view that the Regulations (effectively removing a particular location from the list of EU bathing waters in Schedule 1 to the Quality of Bathing Water Regulations (Northern Ireland) 2008). The Department had intended to make and lay the Regulations by 11 May 2012, but, as it happened, there was some discussion between the Department and the Committee on the proposed Regulations between 10 and 24 May 2012. In the circumstances that explanation seems to be reasonable.

The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)

4. **I draw the attention of the Committee for Social Development and the Assembly to the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232) on the ground that they were laid in breach of the 21-day rule, explained by the department for Social Development.** The corresponding Regulations for Great Britain were made on 31 December 2011 and came into force on 1 June 2012. These Regulations, for Northern Ireland, were made and laid on 6 June 2012 and came into operation 7 June 2012, as soon as possible following the enactment of the Pensions Act (Northern Ireland) 2012 on 1 June 2012. That was necessary because of parity considerations. In the circumstances the Department plainly had very tight timing constraints and the explanation seems to be reasonable.

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 Welfare of Animals (Docking of Working Dogs' Tails and Miscellaneous Amendments) Regulations (Northern Ireland) 2012

Draft S.R.: Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2012

Statutory rules subject to negative resolution

The Student Fees (Amounts) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/184)

The Valuation Tribunal (Amendment No. 2)) Rules (Northern Ireland) 2012 (S.R. 2012/217)

The Quality of Bathing Water (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/218)

The Safety of Sports Grounds (Fees and Appeals) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/219)

The Foster Placement (Children) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/229)

The Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/230)

The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)

The M2 Motorway at Whitla Street, Belfast (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012 No. 235)



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