

**Examiner of Statutory Rules**

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

**29 June 2012  
NIA 62/11-15**

Committee for Agriculture and Rural Development	S.R. 2012 No. 241
Committee for Education	S.R. 2012 No. 239
Committee for Finance and Personnel	S.R. 2012 No. 192
Committee for the Environment	S.R. 2012 No. 231
Committee for Health, Social Services and Public Safety	Draft S.R.: The Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2012
Committee for Justice	S.R. 2012 No. 226
Committee for Social Development	S.R. 2012 Nos. 237, 238, 240



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 Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/231)**

3. **I draw the attention of the Committee for the Environment and the Assembly to the Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/231) 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 by the Department of the Environment and by the Department of Agriculture and Rural Development on 1 June 2012 (the Friday before the long holiday weekend), were laid on 6 June 2012 (Wednesday) and came into operation on 22 June 2012. The Department of the Environment has apologised for the inadvertent breach of the 21-day rule, and that is perhaps reasonable as far as it goes. But it seems to me that in this case the breach was avoidable and there are perhaps lessons to be learnt from this. First, the Departments allowed themselves the bare minimum of time to comply with the 21-day rule, so that the timetable was almost impossibly tight from the start; second, that were two departments rather than one making the Regulations; third, the Regulations were delivered to the Assembly (by the Department of Agriculture and Rural Development) at around 4.30pm on Friday, 1 June 2012, approximately 30 minutes before the close of the Business Office; and, fourth, the Regulations were left with security staff at

“the slope” rear goods entrance, instead of being delivered by hand (as is the established recommended practice) to the Business Office (where a dated receipt — definitively indicating the date of laying — would have been issued on the spot).

**The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2012 (S.R. 2012/240)**

4. **I draw the attention of the Committee for Social Development and the Assembly to the Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2012 (S.R. 2012/240) on the ground that they were laid in breach of the 21-day rule, explained by the Department for Social Development.** The corresponding Order for Great Britain (contained in S.I. 2012/1506) was made on 14 June 2012 (having been laid in draft and approved by Parliament) and came into force on 15 June 2012. This Order, for Northern Ireland, was made on the same day (14 June 2012) and came into operation on 15 June 2012, for parity considerations, including parity of timing: the relevant statutory framework envisaged this and there is no power to specify different amounts for Northern Ireland. Accordingly, the explanation appears to be reasonable, and it seems that the Department had no other course open to it as regards the timing of the Order.

**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 rule requiring the approval of the Assembly

Draft S.R.: The Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2012

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

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/237)

### Statutory rules subject to negative resolution

The Building Regulations (Northern Ireland) 2012 (S.R. 2012/192)

The Police and Criminal Evidence (1989 Order) (Codes of Practice) (Temporary Modification to Code A) Order (Northern Ireland) 2012 (S.R. 2012/226)

### **The Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/231)**

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/238)

Pre-School Education in Schools (Admission Criteria) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/239)

### **The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2012 (S.R. 2012/240)**

The Plant Health (Amendment No. 2) Order (Northern Ireland) 2012 (S.R. 2012/241)







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