

Examiner of Statutory Rules

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

**5 October 2012
NIA 75/11-15**

Committee for Agriculture and Rural Development	S.R. 2012 No. 335
Committee for the Environment	S.R. 2012 Nos. 354, 355
Committee for Finance and Personnel	S.R. 2012 Nos. 365, 366
Committee for Justice	S.R. 2012 No. 272
Committee for Regional Development	S.R. 2012 Nos. 339, 359, 360, 361

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 rule to which attention is drawn in this report

**The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2012
(S.R. 2012/272)**

3. **I draw the Attention of the Committee for Justice and the Assembly to Rules of the Court of Judicature (Northern Ireland) (Amendment) 2012 (S.R. 2012/272) on the ground that the Court of Judicature Rules Committee intends to make a further amendment to the Rules of the Court of Judicature following a suggestion from me.** The amendment to the Rules simply inserted a reference to orders under section 91 of the Justice Act (Northern Ireland) 2011 (orders of magistrates’ court releasing person on compassionate bail) into Order 79 rule 11 of the Rules. Order 79 rule 11 is the general rule providing of the enforcement of bail granted by the High Court (or the Court of Appeal) by recommittal to custody. The amendment, it seems, proceeded on the premise that the High Court has power (as has the Court of Appeal) under its inherent jurisdiction to enforce an order for bail: see the Report of the Northern Ireland Law Commission on Bail in Criminal Proceedings NILC 14 (2012) at paragraph 3.35 and footnote 131.
4. I questioned whether the amendment (simply inserting a reference to a statutory jurisdiction of a magistrates’ court into the Rules) achieved the intention and suggested that there is in effect a two-stage process which needs to be articulated to come extent. First, there is an application to the court seeking that the court should in essence remove the order into the

High Court for review, whereupon it is for the High Court to decide whether to exercise its inherent jurisdiction against the criteria set out in in Order 79 rule 11. Second, if the High Court so decides, it may enforce the order accordingly and order that the person released on bail on foot of the magistrates' court order be recommitted to custody. I set out a formulation of that for consideration.

5. I understand that the Court of Judicature Rules Committee has now considered what I suggested and that a further amendment is to be brought forward. Ultimately, it seems to me that it is a matter for the High Court, on application, to decide whether it can assume jurisdiction and apply that jurisdiction accordingly.

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 affirmative resolution

The Scheme for Construction Contracts in Northern Ireland (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/365)

The Construction Contracts Exclusion Order (Northern Ireland) 2012 (S.R. 2012/366)

Statutory rules subject to negative resolution

The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2012 (S.R. 2012/272)

The Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012 (S.R. 2012/335)

The Trunk Road T14 (A55 Knock Road, Belfast) Order (Northern Ireland) 2012 (S.R. 2012/339)

The Motor Vehicles (Driving Licences) (Fees) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/354)

The Motor Vehicles (Driving Licences) (Amendment No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/355)

The Tullynacross Road, Lisburn (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/359)

The Templemore Street, Belfast (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/360)

The C156 (Unnamed Road), Moyraverty, Craigavon (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/361)



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