

Examiner of Statutory Rules

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

**9 November 2012
NIA 82/11-15**

Committee for Agriculture and Rural Development	S.R. 2012 Nos. 383, 392, 400
Committee for Culture, Arts and Leisure	S.R. 2012 No. 397
Committee for Enterprise, Trade and Investment	S.R. 2012 Nos. 381,385
Committee for the Environment	S.R. 2012 No. 379
Committee for Finance and Personnel	Draft S.R.: General Register Office (Fees) Order (Northern Ireland) 2012
Committee for Health, Social Services and Public Safety	S.R. 2012 No. 384
Committee for Justice	S.R. 2012 No. 395
Committee for Social Development	S.R. 2012 No. 390, 394

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

Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012 (S.R. 2012/385)

3. **I draw the attention of the Committee for Enterprise, Trade and Investment and the Assembly to the Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012 (S.R. 2012/385) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Enterprise, Trade and Investment.**
4. These Regulations, made under section 2(2) of the European Communities Act 1972, import conditions into new electricity transmission licences by means of a new Article 11AB of the Electricity (Northern Ireland) Order 1992. That amendment is carried in regulation 2. Regulations 3 and 4 make what is in effect transitional provision for existing transmission licences. Regulation 3 provides for modifications to existing licences and regulation 4 provides that new Article 11AB (2) and (3) of the Electricity Order apply to licences under “paragraph (1)” as they apply to conditions included in a licence under that Article (that is, new Article 11AB). I queried whether the reference to “paragraph (1)” was intended to have been a reference to “regulation 3”, which would have made sense. The Department has confirmed that the reference should have been a reference to regulation 3. The Department intends to make correcting regulations to deal with the point.

The Plant Health (Amendment No. 3) Order (Northern Ireland) 2012 (S.R. 2012/392)

The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/400)

5. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Plant Health (Amendment No. 3) Order (Northern Ireland) 2012 (S.R. 2012/392) and the Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/400) on the ground that the Orders were laid in breach of the 21-day rule (and, as it happens, after they came into operation – in part at least).**
6. The first Order (made and coming into operation on 26 October 2012; laid on 29 October 2012) covers living plants and the second (made and coming into operation in part on 6 November; laid on the same day) covers wood and bark. The Department has explained the making and laying of the orders in terms of the urgency in relation to “ash dieback”, a matter which has been the subject of much public notice, and also in terms of a “fortress Ireland” approach in relation to S.R. 2012/400, in that similar and co-ordinated action is being taken in both Northern Ireland and in the Republic of Ireland. The explanation seems to be reasonable in the circumstances, given the apparent urgency of the situation.

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: General Register Office (Fees) Order (Northern Ireland) 2012

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

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment No. 3) Regulations (Northern Ireland) 2012 (S.R. 2012/390)

Statutory rules subject to negative resolution

The Smoke Control (Exempted Fireplaces) (No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/379)

The Electricity Safety, Quality and Continuity Regulations (Northern Ireland) 2012 (S.R. 2012/381)

The Bluetongue (Amendment) Regulations (Northern Ireland) 2012 (S..R. 2012/383)

The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012 (S.R. 2012/384)

Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012 (S.R. 2012/385)

The Plant Health (Amendment No.3) Order (Northern Ireland) 2012 (S.R. 2012/392)

The Social Security (Credits) (Amendment No.2) Regulations (Northern Ireland) 2012 (S.R. 2012/394)

The Firearms (Northern Ireland) Order 2004 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/395)

Fisheries (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/397)

The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/400)



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