

Examiner of Statutory Rules

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

**9 March 2012
NIA 41/11-15**

Committee for Agriculture and Rural Development	S.R. Nos. 65, 66, 67
Committee for Employment and Learning	S.R. 2012 Nos. 62, 81
Committee for the Environment	S.R. 2012 Nos. 52, 59, 61,85
Committee for Finance and Personnel	Draft S.R.: The Rates (Deferment) (Revocation and Savings) Regulations (Northern Ireland) 2012; S.R. 2012 Nos. 49, 50, 51, 74, 79
Committee for Health, Social Services and Public Safety	S.R. 2012 Nos. 42 ,71, 72, 73
Committee for Justice	S.R. 2012 No. 64
Committee for Regional Development	S.R. 2012 Nos. 57, 58, 60, 70
Committee for Social Development	S.R. 2012 Nos. 83, 84

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 Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/62).

3. **I draw the attention of the Committee for Employment and Learning and the Assembly to the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/62) on the ground that they do not conform to established drafting practice in one respect, acknowledged by the Department for Employment and Learning.** Regulations 102 and 103 of the 2009 Regulations (as substituted by regulations 7 and 8) should have borne the headings **“Overpayments of fee support”** and **“Overpayments of college fee loan”**: where a provision bearing a heading (in this case a regulation, but it applies equally to a section on an Act or an Article of an Order) is substituted or inserted as a textual amendment, the established drafting practice is to give that provision a heading (either a new one, where the subject-matter of the provision has changed to make this more appropriate — as in the case of new regulations 99 or 99A; or, as in the case of regulations 102 and 103, the existing headings). I suggested to the Department that they correct this by way of correction slip since so change of substance was involved, and the Department agreed to do so: that seemed to me a sensible way of clarifying the matter without recourse to a further amendment, and I would like to see that practice develop in a measured way. I will happily discuss this further with

Statutory Publications Office and others. The important thing is that the legislation should be made as clear as possible to the reader.

The Aujeszky's Disease Order (Northern Ireland) 2012 (S.R. 2012/65)

The Aujeszky's Disease Scheme Order (Northern Ireland) 2012 (S.R. 2012/66)

4. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Aujeszky's Disease Order (Northern Ireland) 2012 (S.R. 2012/65) and the Aujeszky's Disease Scheme Order (Northern Ireland) 2012 (S.R. 2012/66) on the ground that they were laid in breach (marginally) of the 21-day rule (that is to say, the well-established rule whereby a department or other rule-making authority should, in the case of a statutory rule subject to negative resolution, allow at least 21 days between the laying of the statutory rule and its coming into operation or commencement).** In this case the statutory rules were made on 22 February 2012, were laid on 29 February 2012, and come into operation on 19 March 2012. The Department of Agriculture and Rural Development has apologised and described the breach as unintentional due to unforeseen printing difficulties, and indicated that there was a degree of urgency in the need to apply the European Commission for Annex 1 recognition (disease-free status). In the circumstances my view is that, while the Department could have avoided the breach, it acted reasonably. This prompts me to make two general observations on the matter. Where possible, Departments should allow adequate time for laying: in this case the Department allowed itself in effect only 25 days between making and commencement (which was plainly rather tight); and, secondly, I repeat the well-worn guidance that where time is short (as in this case), there is no need to wait for the final printed copies before laying, since good quality "typescript" is fully acceptable for laying purposes.

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 Rates (Deferment) (Revocation and Savings) Regulations (Northern Ireland) 2012

Statutory rules subject to affirmative resolution

The Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/84)

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

The Mesothelioma (Lump Sum Payments) (Conditions and Amounts) Regulations (Northern Ireland) 2012 (S.R. 2012/83)

Statutory rules subject to negative resolution

The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42)

Superannuation (Chief Inspector of Criminal Justice in Northern Ireland) Order (Northern Ireland) 2012 (S.R. 2012/49)

Superannuation (Police Ombudsman for Northern Ireland) Order (Northern Ireland) 2012 (S.R. 2012/50)

Superannuation (Commissioner of the Northern Ireland Law Commission) Order (Northern Ireland) 2012 (S.R. 2012/51)

The Removal and Disposal of Vehicles (Prescribed Periods) Regulations (Northern Ireland) 2012 (S.R. 2012/52)

The University Terrace, Belfast (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/57)

The Shankbridge Road, Ballymena (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/58)

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (S.R. 2012/59)

The Malone Beeches, Belfast (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/60)

The Statutory Nuisances (Appeals) Regulations (Northern Ireland) 2012 (S.R. 2012/61)

The Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/62)

Police Service of Northern Ireland (Pensions) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/64)

The Aujeszký's Disease Order (Northern Ireland) 2012 (S.R. 2012/65)

The Aujeszký's Disease Scheme Order (Northern Ireland) 2012 (S.R. 2012/66)

The Westbourne Avenue, Ballymena (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/70)

The Firefighters' Pension Scheme (Contributions) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/71)

The New Firefighters' Pension Scheme (Contributions) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/72)

The Travelling Expenses and Remission of Charges (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/73)

The Road Traffic (Financial Penalty Deposit) (Interest) Order (Northern Ireland) 2012 (S.R. 2012/74)

The Rates (Social Sector Value) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/79)

Local Government (Payments to Councillors) Regulations (Northern Ireland) 2012 (S.R. 2012/85)

Statutory rule subject to laying before the Assembly but not subject to any other Assembly proceedings

The Employment Rights (Increase of Limits) Order (Northern Ireland) 2012 (S.R. 2012/81)

Statutory rule not subject to laying and not subject to any Assembly proceedings

The Pigs (Records, Identification and Movement) Order (Northern Ireland) 2012 (S.R. 2012/67)



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