



Northern Ireland  
Assembly

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COMMITTEE FOR  
HEALTH, SOCIAL SERVICES AND  
PUBLIC SAFETY

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# **OFFICIAL REPORT** (Hansard)

**Statutory Rule SR 2011/164**

**Statutory Rule SR 2011/165**

**Statutory Rule SR 2011/166**

25 May 2011

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR  
HEALTH, SOCIAL SERVICES  
AND PUBLIC SAFETY**

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Statutory Rule SR 2011/164

Statutory Rule SR 2011/165

Statutory Rule SR 2011/166

25 May 2011

**Members present for all or part of the proceedings:**

Ms Michelle Gildernew (Chairperson)  
Mr Jim Wells (Deputy Chairperson)  
Ms Michaela Boyle  
Ms Paula Bradley  
Mr Mickey Brady  
Mr Gordon Dunne  
Mr Mark H Durkan  
Mr Sam Gardiner  
Mrs Pam Lewis  
Mr John McCallister  
Mr Kieran McCarthy

**Witnesses:**

Ms Catherine Donnelly            )  
Ms Diane Taylor                 )        Department of Health, Social Services and Public Safety

**The Chairperson:**

Diane and Catherine, you are welcome. I ask that you make a presentation of 10 minutes, or thereabouts, explaining the background to the statutory rules and the actions taken by the

Department to date. I will then give members an opportunity to ask questions.

**Ms Diane Taylor (Department of Health, Social Services and Public Safety):**

Thank you, Chair. The statutory rules are for the health and social services trusts, the Regulation and Improvement Authority and the Medical and Dental Training Agency. The purpose of putting down those statutory rules was to remove the disqualification from appointment of persons who hold paid appointment or office with a trade union that represents the interests of members employed in a health and social services body.

There are 17 departmental arm's-length bodies, including the trusts. Nine of those apply no disqualification from trade union membership, and, in fact, there are currently trade union members on five bodies: the Health and Social Care Board; the Business Services Organisation the Patient and Client Council; the Public Health Agency; and the Fire and Rescue Service. A public appointments process is already under way to appoint trade union representative members to the Blood Transfusion Service; NIPEC, which is an organisation that looks after the education and development of nurses and midwives; the Guardian Ad Litem Agency; and the Social Care Council.

As the previous Minister wanted to look at the membership of all bodies, a desk audit was carried out. When that audit found that the disqualification was in place in eight of the health and social care bodies, legal advice was sought. The advice from the Attorney General was that, although there was room for ministerial appointments from trade union members, the regulations, as they stood, placed restrictions on and penalised the trade union sector alone. He advised that the current restriction was likely to be inconsistent with articles of the European Convention on Human Rights: either article 10, which relates to freedom of expression, or article 11, which is on freedom of association. The restriction could be inconsistent with either article 10 or article 11 individually, or in conjunction with article 14, which relates to the prohibition of discrimination. In light of that advice, the Minister asked that the statutory rules be laid. Catherine and I gave evidence on that to the previous Committee, as chaired by Mr Wells.

**Mr Wells:**

I remember it well.

**Ms Taylor:**

The previous Committee felt that its successor should consider the matter. Therefore, it was reported to the previous Minister that the new Committee would take this matter forward in the next mandate. The Minister reflected further before asking that the legislation be made. On March 24, the regulations were laid subject to negative resolution.

The disqualification that applies to those health and social care bodies does not apply in any other public body across Northern Ireland. We checked with other Departments, and nothing in their public appointments processes bars trade union membership. We checked with our colleagues across the UK, and there is no bar to trade union membership in any NHS bodies.

The rules have been laid and are due to come into force tomorrow. We have not yet had the opportunity to take our new Minister's view on the way he wants to go forward. We do not know whether he wants to bring in separate membership regulations to increase the number of individuals on each board, and those positions would automatically go out to competition for a trade union member, or whether vacancies will be advertised as they arise, and trade union members will be free to apply.

**The Chairperson:**

Catherine, do you want to add anything?

**Ms Catherine Donnelly (Department of Health, Social Services and Public Safety):**

No; I think that Diane has covered everything.

**The Chairperson:**

Before I bring members in, I have a question on the Attorney General's advice. Presumably, he identified that there could be a legal difficulty for the Department if the disqualification was allowed to remain. From a human rights point of view, I do not agree with barring trade union members from any organisation. I have no difficulty with the statutory rule itself, but the speed with which it was processed is probably a wee bit unorthodox. The relationship between the Committee and the Minister is important; we want to work with the Minister and for him not to proceed at such a pace.

However, I have no fundamental disagreement with the statutory rule, and I expect that the

previous Minister wanted to do the right thing after the Attorney General had identified the disqualification issue as a problem. Its timing is a little difficult, but I have no problem with the statutory rule. I will now take comments and questions from members.

**Mr Wells:**

This is an appalling decision, and, in taking it, the Department has treated the Committee with utter disdain. You know full well what I am talking about. You brought this statutory rule to the Committee at its meeting on 21 March, and there was ample opportunity to have brought it back to the Committee in the months that followed that to allow the Committee a proper opportunity to examine it. Having received the unanimous — I emphasise “unanimous” — view of the Committee that the statutory rule should not go ahead, the Minister decided to override the views of the Committee and to take the decision to introduce it on his last day in office on 24 March. It will be implemented tomorrow without the Committee’s having had time to deal with it.

How can we trust the Department to treat the Committee with the respect that it deserves if it is to be ridden roughshod over in a way that, frankly, stinks? What is going on here?

**Ms Taylor:**

I fully appreciate your comments. I also appreciate the speed and unorthodox method by which it was laid before the Committee, and that the Committee accepted it as an agenda item during its previous meeting. I apologise that that is how you feel, but I carried out the instructions of my Minister at the time.

**Mr Wells:**

Yes, but legally can you do what you have done? My understanding is that the statutory rule cannot go forward until the Committee has assessed and scrutinised it during the 21-day period and has made a decision on it. I do not believe that you can do what you have done. However, if you can, that means that this Committee is simply a paper exercise that counts for nothing. The Committee is the only body with a legitimate right to scrutinise subordinate legislation. If you are telling us that, from now on, if a Minister wants to put something through it will go through anyhow, what is the sense in our sitting here week after week scrutinising SL1s?

**Ms Taylor:**

Mr Wells, my understanding is that the statutory rule will be in plenary for 10 days after

tomorrow and that there will be an opportunity for the Assembly to pray against it.

**Mr Wells:**

What about this Committee? What can it do against it?

**The Chairperson:**

My advice is that the statutory rule will go ahead and will be made tomorrow. The Committee could annul that decision, although it does not need to make a decision today. We could make a decision next week, and we have until 21 June when the motion will be debated in the House. There is some question over the legal position, with a previous Minister in a previous mandate taking decisions that the Department has been left to implement. There is now a new Minister in place, the statutory rule is going ahead and the Committee would appreciate further discussion on what route it should take.

Ultimately, the Department is likely to be challenged if the statutory rule does not go ahead. It will unbar trade unionists from membership of eight of 17 arm's-length bodies in the Health Service, which is a fundamental wrong that needs to be righted. I have no difficulty with the previous Minister's decision; the difficulty that the Committee has is with the way and haste with which it was carried out. I do not think that there is any point in blaming departmental officials for that.

**Mr Brady:**

I agree with Jim about the logistics of how the decision was arrived at. However, we are dealing with the fundamental issue of the debarring of trades union representatives from several arm's-length bodies of the Health Service, which is appalling. I was at the previous meeting and I absolutely agree that the Committee was treated with disdain; however, we should not shoot the messenger. That is the fundamental issue. I agree absolutely that the Committee was treated with disdain, because I was at the last meeting. I suppose, with respect, that it is a question of not shooting the messenger; but this is a fundamental issue. There is no rationale or logic as to why trade unionists are barred from sitting on some bodies but not others. It seems that a decision was taken on this matter in the past that does not stand up to scrutiny. That is the issue.

**The Chairperson:**

The Committee would take a very dim view if this were to happen again; there is no question of

that.

**Mr Wells:**

I agree with Mickey Brady that the issue is not the principle of whether this is right or wrong. I am sure that many on the Committee think that this is the right decision. The issue is that this has been the situation since 1973. It did not have to be bounced on the Committee on its last day, the decision being taken on the Minister's last day in office and implemented on the day after we have our first meeting. If we do not draw a line in the sand on this matter, other controversial issues will also be bounced past the Committee. That is the issue.

**The Chairperson:**

In fairness, would it not look foolish if we were to annul a statutory rule where we agree with the policy, which is then brought back three months later? Nobody is questioning how this was done and the fact that it was done. It was shabbily done and it did treat the Committee badly; but to go through the procedure of annulment just to go through the process again seems to be maybe a wee bit childish. I hope that the lesson is there for the Department that this should never happen again and will not happen again, and that this Committee will be given its proper place in scrutinising legislation, statutory rules, etc.

**Mr Wells:**

The least we can do is to write to the Department and indicate our extreme displeasure about how this was handled, and have an assurance that this will never happen again. My fear is that if we tug our forelocks and allow this to go through, even if we agree with it, it will happen again in this mandate.

I was at the meeting, and we allowed them to bring it forward. We could have simply chased them, and we would have been perfectly within our rights to do so. We allowed it to happen that Monday, and this is the response: that they are just going to ignore our views on it. We need to put down a very strict marker that we will not tolerate being treated like this again by the Department.

**The Chairperson:**

I do not have any difficulty with that. Are members content? Do members want to come back and have a discussion about this?

**Mr Durkan:**

I agree with the others. We can all accept why it was done. The problem is how it was done. We are also too aware that this was not the only decision that the Minister made on that last day in office, and one of those, at least, has since been revisited. Here, however, the decision was the right one, but the problem is how it was made and the manner in which that was done; and it is one we should avoid in the future.

**Ms Taylor:**

I certainly take the Committee's comments very seriously.

**The Chairperson:**

OK. Is the Committee content that we write to the new Minister in very strong terms explaining our dissatisfaction at how this was handled and seeking a written assurance that it will not happen again, and that this Committee will be given its place? Are members content with that approach?

**Mr Dunne:**

Is this a long and ongoing process? By moving it forward, it has been done in two months. To me as a new person, it seems to have been pushed very rapidly. Has this been an ongoing problem that needed to be resolved? Is there a history of this, has it just been recently discovered, or has somebody been lobbying for it for a long time?

**The Chairperson:**

I will ask Diane to answer this question, but I presume that we have had an Attorney General for a short period, and he has had an awful lot of work to go through as soon as he came into office. He is obviously finding inequalities and discrepancies that need to be addressed, and, as he is finding them, he is advising Departments that they need to be fixed. Is that correct, Diane?

**Ms Taylor:**

That is exactly right. The previous Minister had a meeting with the Attorney General. This issue came up as one of the subjects of discussion during that meeting and the Minister asked that immediate action be taken to remedy the situation.

**The Chairperson:**

Had the Minister not been made aware that that anomaly existed before the Attorney General pointed it out to him?

**Ms Taylor:**

Not that particular legal position, although he did have a desire that there should be trade union membership on HSE boards.

**Mr Wells:**

I do not want to labour the point, but on that same day we had the Altnagelvin decision, which was a bombshell to that community. We also had an announcement of a major review of Health Service provision, and we had this. I do not like Ministers on their last day behaving like Nero when Rome burns and doing things because they know there can be no comeback, because no one can do anything about them, and because there is no time. That is the principle that I do not like. What happened in that last week did the Assembly no credit.

**The Chairperson:**

I agree with the Deputy Chairman on that point. Unfortunately, the Health Minister was not the only Minister who made decisions that could be deemed controversial on their last day. I would not like to single out any one Minister for criticism. If members are content, we will go ahead with that. We will write to seek a very strong assurance, Diane and Catherine, that it will not happen again and that the Committee will be given its due place.

Members are content with that statutory rule, even if they are not content with the way in which it was brought about. I put it to the Committee for Health, Social Services and Public Safety that it has considered the Health and Social Services Trusts (Membership and Procedure) (Amendment) Regulations (NI) 2011 and has no objection to the rule, subject to the report of the Examiner of Statutory Rules.

**Mr Wells:**

I am voting no, Madam Chairman, to register my complaint about how the matter was handled.

**The Chairperson:**

OK. Does anyone else want to vote against it?

**Mr Brady:**

As we know, Jim will be in the Chair, so I presume that the situation will prevail only for a couple of years. *[Laughter.]* I just wanted to make that point.

**Mr Wells:**

I will hear that many times.

**Mr Brady:**

We can hold you to what you said.

**Mr McCallister:**

I am sure that he will say that there were exceptional circumstances.

**Mr Brady:**

This meeting is being covered by Hansard.

**The Chairperson:**

I put it to the Committee for Health, Social Services and Public Safety that it has considered the Health and Social Services Trusts (Membership and Procedure) (Amendment) Regulations (NI) 2011 and has no objection to the rule, subject to the report of the Examiner of Statutory Rules.

*The Committee divided: Ayes 7; Noes 2.*

*AYES*

Ms Boyle, Mr Brady, Mr Durkan, Mr Gardiner, Ms Gildernew, Mr McCallister, Mr McCarthy

*NOES*

Mr Dunne, Mr Wells.

*The following members abstained: Ms P Bradley, Mrs Lewis.*

**Mr Wells:**

I am just registering my opposition on that principle. I will not pursue it any further.

**The Chairperson:**

I put it to the Committee for Health, Social Services and Public Safety that it has considered the

Regulation and Improvement Authority (Appointments and Procedure) (Amendment) Regulations (NI) 2011 and has no objection to the rule, subject to the report of the Examiner of Statutory Rules.

*Members indicated assent.*

**The Chairperson:**

I see that our decision is unanimous.

I put it to the Committee for Health, Social Services and Public safety that it has considered the NI Medical and Dental Training Agency (Establishment and Constitution) (Amendment) Order (NI) 2011 and has no objection to the rule, subject to the report of the Examiner of Statutory Rules.

*Members indicated assent.*