

Examiner of Statutory Rules

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

**10 June 2011
NIA 6/11-15**

Committee for the Environment	S.R. 2011 Nos. 210, 211, 212
Committee for Finance and Personnel	S.R. 2011 Nos. 141, 158
Committee for Justice	S.R. 2011 No. 208
Committee for Regional Development	S.R. 2011 Nos. 186, 187, 188, 189, 90, 206, 207

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 No.2) 2011 (S.R. 2011/208)

3. **I draw the attention of the Committee for Justice and the Assembly to the Rules of the Court of Judicature (Northern Ireland) (Amendment No.2) 2011 (S.R. 2011/208) on the ground that there was some delay in the laying of the Rules after the first sitting of the new Assembly, explained in reasonably candid terms by the Northern Ireland Courts and Tribunals Service; and on the ground that there is one slight drafting defect, acknowledged by the Courts and Tribunals Service.**
4. The delay arose because of the somewhat unusual nature of these Rules. The Rules fall (as an unintended consequence of the devolution of justice) between two constitutional stools, as it were, in that, after making by the Court of Judicature Rules Committee, they must, in this case as an exception to the general (post-devolution) regime, be allowed or disallowed by the Lord Chancellor rather than the Department of Justice. This is because they relate to an excepted matter (in this case an amendment of Order 116 of the Rules (relating to confiscation and forfeiture of assets under the Terrorism Act 2000)): see 55(1A)(a) of the Judicature (Northern Ireland) Act 1978 (as amended by paragraph 15(a) of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976)). But, by contrast, when it comes to parliamentary/Assembly scrutiny, rather than being treated as an exception from the general regime to reflect the exception relating to

their making, they are, in common with the general regime, subject to negative resolution in the Assembly: see section 56(1) of the Judicature (Northern Ireland) Act 1978 as amended by paragraph 16 of Schedule 18 to the 2010 Order. The Rules were made by the Rules Committee on 23 March 2011 and were allowed by the Lord Chancellor on 4 April 2011 (with a commencement date of 23 May 2011), subsequent to which it was realised that the Rules were not subject to any procedure at Westminster but rather to negative resolution in the Assembly. In light of that, there was some uncertainty as to how to proceed, as is indicated in paragraph 3.14 of the Explanatory Memorandum prepared by the Courts and Tribunals Service/Department of Justice. The Rules were laid on 2 June 2011.

5. There are, it seems, plans to further amend section 56(1) of the Judicature Act by way of a further Order under section 86 of the Northern Ireland Act 1998 to correct this unintended constitutional infelicity.
6. The small drafting point is simply that there should be references in Order 116, [new] rules 15A(2) and 15D to the *Director of Public Prosecutions for Northern Ireland* (the correct title of that statutory office) (rather than to the Director of the Public Prosecution Service or the Director of Public Prosecutions). But it seems plain that this amendment can wait until the next opportunity to amend Order 116 (under whatever procedure is then in place): all users of the Rules of the Court of Judicature will of course be fully clear as to the intention; nevertheless it is self-evident that the correct statutory title should be embodied in the Rules.

W G Nabney
Examiner of Statutory Rules
10 June 2011

Appendix

(The attention of the appropriate Committees and the Assembly is drawn to those statutory rules marked in bold)

Statutory rules subject to negative resolution

The Land Registration (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/141)

The Land Registration (Electronic Communications) Order (Northern Ireland) 2011 (S.R. 2011/158)

The Colin Road, Belfast (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/186)

The Lisburn Road, Ballynahinch (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/187)

The Carryduff Road, Temple (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/188)

The Shipquay Place, Londonderry (Footway) (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/189)

The Private Access at No. 186 Dublin Road, Loughbrickland (Stopping-Up) Order (Northern Ireland) 2011 (S.R. 2011/190)

The Dundrod Circuit (Admission Charges) Regulations (Northern Ireland) 2011 (S.R. 2011/206)

The A25 Newtown Road, Camlough (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/207)

The Rules of the Court of Judicature (Northern Ireland) (Amendment No. 2) 2011 (S.R. 2011/208)

The Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/210)

Groundwater (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/211)

The Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/212)



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