

**Examiner of Statutory Rules**

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

**27 February 2015  
NIA 233/11-16**

Committee for Education	S.R. 2015 No. 69
Committee for the Environment	S.R. 2015 Nos. 39, 40, 41, 42, 43, 44, 58, 61
Committee for Finance and Personnel	S.R. 2015 No. 75
Committee for Health, Social Services and Public Safety	S.R. 2015 Nos. 53, 54, 56
Committee for Justice	S.R. 2015 Nos. 50, 51
Committee for Social Development	S.R. 2015 No. 52, 64, 65



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 Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39)

3. **I draw the attention of the Committee for the Environment and the Assembly to the Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39) on the ground that they are defectively drafted in one respect, acknowledged by the Department of the Environment.** The point is that some words seem to have been left out of the modification of section 29(7) of the Planning Act (Northern Ireland) 2011 set out in regulation 5(2): the modification (“the Department shall”) so that it does not make complete sense. It seems to me also that a further (earlier) modification of section 29(7) might also be useful (modifying the words “the applicant and the appropriate council” to read “the interested council”). Section 29(7), in its modified version, would then read (modifications in bold print):

“(7) Where a public local inquiry is not held under subsection (6), the Department must, before determining the application, serve a notice in writing on **the interested council** indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), **the interested council [wishes] [requests in writing], the Department shall give it the opportunity** of appearing before and being heard by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department for the purpose.”.

(As a further point, it seems to me that the interested council should request in writing the opportunity of being heard (reverting more faithfully to the more precise wording of section 29(7) rather than simply indicate that it “wishes” that to occur – see my square brackets. It is generally wise, when amending or modifying legislation, to stick as closely as possible to the structure of the original text.)

4. I understand that the Department intends to bring forward amending regulations to correct this at the earliest opportunity.

**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 Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/64)

The Rates (Regional Rates) Order (Northern Ireland) 2015 (S.R. 2015/75)

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

The Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/65)

### Statutory rules subject to negative resolution

#### **The Planning General Regulations (Northern Ireland) 2015 (S.R. 2015/39)**

The Planning (Use Classes) Order (Northern Ireland) 2015 (S.R. 2015/40)

The Motor Vehicle Testing (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/41)

The Public service Vehicles (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/42)

The Goods Vehicles (Testing) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/43)

The Local Government (Executive Arrangements) Regulations (Northern Ireland) 2015 (S.R. 2015/44)

The Attorney General's Human Rights Guidance (Youth Justice Agency – Conditions of Detention) Order (Northern Ireland) 2015 (S.R. 2015/50)

The Attorney General's Human Rights Guidance (Probation Board for Northern Ireland) Order (Northern Ireland) 2015 (S.R. 2015/51)

The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/52)

The Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/53)

The Misuse of Drugs (Designation) (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/54)

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/56)

The Planning (Claims for Compensation) Regulations (Northern Ireland) 2015 (S.R. 2015/58)

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015/61)

The Teachers' Superannuation (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/69)



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