

**Examiner of Statutory Rules**

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

**9 September 2011  
NIA 12/11-15**

Committee for Agriculture and Rural Development	S.R. 2011 Nos. 223, 233, 248, 258, 263, 278, 279, 297
Committee for Employment and Learning	S.R. 2011 Nos. 237, 249, 262, 277,
Committee for Enterprise, trade and Investment	S.R. 2011 Nos. 247, 283
Committee for the Environment	S.R. 2011 Nos. 228, 232, 235, 238, 239, 240, 287, 288, 289, 290
Committee for Healthy, Social and Public Safety	S.R. 2011 No. 236, 256, 284,
Committee for Justice	S.R. 2011 Nos. 225, 229, 230, 242, 243, 244,
Committee for Regional Development	S.R. 2011 No. 261, 275, 276,
Committee for Social Development	S.R. 2011 Nos. 231, 264, 265, 280, 291, 293, 296, 298



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 Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011(S.R. 2011/226)**

3. **I draw the attention of the Committee for Social Development and the Assembly to the Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011(S.R. 2011/226) on the ground that they were (marginally and reasonably) laid in breach of the 21-day rule (that is to say, the long established rule of practice whereby a department or other rule-making body should, in the case of a statutory rule subject to negative resolution, allow at least 21 days between the making of statutory rule and its coming into operation (commencement date)), implicitly explained by the Department for Social Development.** The statutory rule was made and laid in parity with the corresponding statutory instrument for Great Britain (S.I. 2011/1464), which statutory instrument was laid just within the 21-day rule applying at Westminster with a commencement date of 4 July 2011; whereas S.R. 2011/226 was laid several days later on 17 June 2011 with the same commencement date.

**The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011(S.R. 2011/236)**

4. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011(S.R. 2011/236) on the ground that they were laid in breach of the 21-day rule, explained by the Food Standards Agency in terms of the need to have the regulations in place to meet the coming in operation of Commission Regulation (EU) No. 284/2011 on 1 July 2011.** The EU Regulation was published in the Official Journal on 23 March 2011, following which there had to be a period of open and transparent consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council. I note also that the Regulations were made and laid in a similar timeframe to those for England in S.I. 2011 and those for Scotland in S.S.I. 2011/282, and that they were made and laid between the English Regulations and the Scottish Regulations. So the explanation seems to be reasonable.

**The Animal By-Products (Enforcement) (Amendment) Regulations (Northern Ireland) 2011(S.R. 2011/258)**

5. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Animal By-Products (Enforcement) (Amendment) Regulations (Northern Ireland) 2011(S.R. 2011/258) on the ground that they were laid in breach of the 21-day rule, explained by the Department of Agriculture and Rural Development in terms of correcting a technical error as quickly as possible.** In my First Report of this Session, dated 26 May 2011, I drew attention to the doubtful vires under the European Communities Act 1972, acknowledged by the Department of Agriculture and Rural Development, of provision for a term of imprisonment (on summary conviction) not exceeding six months in S.R. 2011/124. These Regulations now substitute a term of imprisonment not exceeding three months, and it is of course important that a change of this nature is made as quickly as possible.

**W G Nabney**

Examiner of Statutory Rules

24 June 2011

## Appendix

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

### **Statutory rules requiring the approval of the Assembly (confirmatory procedure)**

*The Employment and Support Allowance (Work-Related Activity) Regulations (Northern Ireland) 2011 (S.R. 2011/265)*

*The Additional Statutory Paternity Pay (General) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/277)*

*The Social Security (Loss of Benefit) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/291)*

### **Statutory rules subject to negative resolution**

*The Marketing of Potatoes (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/223)*

### **The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011 (S.R. 2011/226)**

*The Local Government (Contracts) Regulations (Northern Ireland) 2011 (S.R. 2011/228)*

*The Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) 2011 (S.R. 2011/229)*

*The Crown Court (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/230)*

*The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/231)*

*The Waste (Fees and Charges etc.) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/232)*

*The Plant Health (Amendment No. 2) Order (Northern Ireland) 2011 (S.R. 2011/233)*

*The Passenger and Goods Vehicles (Community Recording Equipment) Regulations (Northern Ireland) 2011 (S.R. 2011/235)*

### **The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011 (S.R. 2011/236)**

*The Industrial Court (Membership) Regulations (Northern Ireland) 2011 (S.R. 2011/237)*

*The Chemical Analysis of Water Status (Technical Specifications) Regulations (Northern Ireland) 2011 (S.R. 2011/238)*

*The Control of Ozone-Depleting Substances Regulations (Northern Ireland) 2011 (S.R. 2011/239)*

*The Ozone-Depleting Substances (Qualifications) Regulations (Northern Ireland) 2011 (S.R. 2011/240)*

*The Road Traffic Fixed Penalties (Enforcement of Fines) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/242)*

*The Family Proceedings (Amendment No. 2) Rules (Northern Ireland) 2011 (S.R. 2011/243)*

*The Divorce and Dissolution etc. (Pension Protection Fund) Regulations (Northern Ireland) 2011 (S.R. 2011/244)*

*Electricity (Published Criteria for Generating Stations) Regulations (Northern Ireland) 2011 (S.R. 2011/247)*

*Eggs and Chicks (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/248)*

The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2011 (S.R. 2011/249)

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/256)

**The Animal By-Products (Enforcement) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/258)**

The Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/261)

The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2011 (S.R. 2011/262)

The Foyle Area and Carlingford Area (Prohibition of Unlicensed Fishing) (Prescribed Species) Regulations (Northern Ireland) 2011 (S.R. 2011/263)

The Charities (Interim Manager) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 264)

The Eskragh Road (U1104), Granville, Dungannon (Stopping-Up) Order (Northern Ireland) 2011 (S.R. 2011/275)

The Disert Road, Draperstown (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/276)

The Dogs (Fixed Penalty) Regulations (Northern Ireland) 2011 (S.R. 2011/278)

The Dogs (Licensing and Identification) Regulations (Northern Ireland) 2011 (S.R. 2011/279)

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/280)

The Factories Act (Northern Ireland) 1965 and Office and Shop Premises Act (Northern Ireland) 1966 (Repeals and Modifications) Regulations (Northern Ireland) 2011 (S.R. 2011/283)

The Extraction of Solvents Regulations (Northern Ireland) 2011 (S.R. 2011/284)

The Road Traffic (Fixed Penalty) (Offences) Order (Northern Ireland) 2011 (S.R. 2011/287)

The Road Traffic (Fixed Penalty) (Amendment) Order (Northern Ireland) 2011 (S.R. 2011/288)

The Radioactive Substances Exemption (Northern Ireland) Order 2011 (S.R. 2011/289)

The Radioactive Substances Act 1993 (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/290)

The Housing Benefit (Amendment No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/293)

The Social Security (Exemption from Claiming Retirement Pension) Regulations (Northern Ireland) 2011 (S.R. 2011/296)

The Foyle Area (Angling Permits) Regulations 2011 (S.R. 2011/297)

The Social Security (Electronic Communications) Order (Northern Ireland) 2011 (S.R. 2011/298)

**Statutory rule not subject to any Assembly procedure**

The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/225)





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