

**Examiner of Statutory Rules**

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

**10 February 2012  
NIA 35/11-15**

Committee for Agriculture and Rural Development	Draft S.R.: Welfare of Farmed Animals Regulations (Northern Ireland) 2012; S.R. 2012 No. 12
Committee for the Environment	S.R. 2012 Nos. 10, 17, 18, 19, 25
Committee for Social Development	S.R. 2012 Nos. 23, 24, 26, 27



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.”.

**Erratum: Twelfth Report of the Examiner of Statutory Rules for Session 2011/2012, 27 January 2012**

3. In the Twelfth Report of the Examiner of Statutory Rules for Session 2011/2012, paragraph 7 (relating to the Specified Products from China (Restrictions on First Placing on the Market) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/3) contained a reference to the Committee for Agriculture and Rural Development: this should have been a reference to the Committee for Health, Social Services and Public Safety. I am grateful that this error on my part was drawn to my attention and I wish to correct it. Both Committees are aware of the point, I understand.

## Statutory rules to which attention is drawn in this report

<b>Draft S.R.: The Welfare of Farmed Animals Regulations (Northern Ireland) 2012</b>
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4. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the draft Welfare of Farmed Animals Regulations (Northern Ireland) 2012 on the ground that they are defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.** It seemed to me to be unnecessary and excessive in this case for the Department to withdraw and re-lay the draft of the Regulations, and I suggested to the Department that it should arrange for a correction slip instead. The point is simply that regulation 2(2) contains an otiose provision expressly attracting the Interpretation Act (Northern Ireland) 1954: that occurs automatically because the draft

Regulations, as and when they are made, will be made under Northern Ireland (primary) legislation, namely, section 11(1), (2) and (3) of the Welfare of Animals Act (Northern Ireland) 2011; whereas the Regulations to be replaced by the draft Regulations were made under section 2(2) of the European Communities Act 1972 (so that they properly contained express provision attracting the Interpretation Act). Because regulation 2(2) would have no effect whatever when made, I suggested to the Department that they might properly at this stage issue a correction slip omitting regulation 2(2) and renumbering regulation 2(3) accordingly. The Department is doing that. Accordingly, the draft Regulations should be considered by the Assembly without the otiose provision attracting the Interpretation Act, and they will be made on that basis as and when they are approved by the Assembly. That will produce a tidy result.

**The Road Traffic (Immobilisation, Removal and Disposal of Vehicles) Regulations (Northern Ireland) 2012 (S.R. 2012/19)**

5. **I draw the attention of the Committee for the Environment and the Assembly to the Road Traffic (Immobilisation, Removal and Disposal of Vehicles) Regulations (Northern Ireland) 2012 (S.R. 2012/19) on the ground that they are defectively drafted in one respect, acknowledged very promptly by the Department of the Environment.** Regulations 8(2)(a) and 19(2)(a) contain parallel provisions (false statements) for penalties on summary conviction. But the penalties in both cases are wrongly expressed in terms of a fine “not exceeding level 5 on the standard scale”. They are wrongly expressed because the offences in question may be dealt with either summarily (in a magistrates’ court) or on indictment (in the Crown Court): the correct statutory formula for that, under the framework set out in the Fines and Penalties (Northern Ireland) Order 1984, is a fine “not exceeding the statutory maximum”. As I have said many times before, it is immaterial that both level 5 on the standard scale and the statutory maximum are currently set at the same amount (£5,000): they are separate and distinct statutory concepts and it seems to me that it would not be open to a court in this case to substitute one penalty for the other, all the more so since the framers of the legislation (in this case the Department) must surely be taken to know how to express the penalty in correct terms according to the statutory framework. The result of that seems to be that there is no proper penalty set out in regulations 8(2)(a) and 19(2)(a). I am happy to report that the Department responded very promptly to this point and that it intends to start “immediately” on amending Regulations to deal with this and with another small point I mentioned to it: in regulation 20(2) “the appropriate court of summary jurisdiction” would be better expressed as “a court of summary jurisdiction” since the jurisdiction under regulation 20 is simply conferred on a court of summary jurisdiction (whereas in the corresponding provision for Great Britain the expression “appropriate court” is used and is defined for England and Wales and for Scotland to fit the different court structures there).

**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 rule requiring the approval of the Assembly**

### **Draft S.R. The Welfare of Farmed Animals Regulations (Northern Ireland) 2012**

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

The Local Government (Constituting Joint Committees as Bodies Corporate) Order (Northern Ireland) 2012 (S.R. 2012/10)

Plant Protection Products (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/12)

The Road Traffic (Financial Penalty Deposit) Order (Northern Ireland) 2012 (S.R. 2012/17)

The Road Traffic (Financial Penalty Deposit) (Appropriate Amount) Order (Northern Ireland) 2012 (S.R. 2012/18)

#### **The Road Traffic (Immobilisation, Removal and Disposal of Vehicles) Regulations (Northern Ireland) 2012 (S.R. 2012/19)**

The Licensing (Register of Licences) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/23)

The Licensing (Notice relating to Age) Regulations (Northern Ireland) 2012 (S.R. 2012/24)

The Spring Traps Approval Order (Northern Ireland) 2012 (S.R. 2012/25)

The Registration of Clubs (Certificate of Registration) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/26)

The Registration of Clubs (Notice relating to Age) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/27)







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