

**Examiner of Statutory Rules**

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

**18 October 2013  
NIA 142/11-15R**

Committee for Health, Social Services and Public Safety	S.R. 2013 Nos. 225, 229
Committee for Regional Development	S.R. 2013 Nos. 233, 234, 236, 237, 240
Committee for Social Development	S.R. 2013 No. 243



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

3. I do not draw attention to any of the statutory rules listed in the Appendix.
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 Contaminants in Food Regulations (Northern Ireland) 2013 (S.R. 2013/229)**

3. **I draw attention the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Contaminants in Food Regulations (Northern Ireland) 2013 (S.R. 2013/229) on the ground that they are defectively drafted in one respect acknowledged by the Food Standards Agency.** Regulation 2(3) contains the general proposition that any reference to an EU instrument in the Regulations is a reference to the EU instrument as amended at the date of the making of the Regulations. Regulation 2(4) contains the proposition that references to particular EU instruments in the Regulations are references to those instruments as amended from time to time (otherwise known as ambulatory references). Plainly, those two propositions are inconsistent and contradictory and cannot stand side by side. The Food Standards Agency intends to remedy this by bringing forward amending regulations (and I have had sight of a draft): the general proposition in regulation 2(3) will be made expressly subject to the particular proposition in regulation 2(4). I commend the Food Standards Agency for its efforts to deal quickly and effectively with this tricky point (on which I make further observations in the next two paragraphs).

4. My attention has been drawn to section 20A of the Interpretation Act 1978, as applied by section 23 of that Act, whose effect is to apply a general rule of interpretation whereby references in English statutory instruments to EU instruments are to be construed as references to those instruments as amended, and so on, at the date of making of the statutory instrument. Similar rules of interpretation apply, by various legislative routes, in Wales and in Scotland. Northern Ireland has a similar rule of interpretation in relation to Northern Ireland primary legislation (Acts of the Assembly, Northern Ireland Orders in Council and Acts of the former Parliament of Northern Ireland) (1978 Act, section 24(3A)), but not, it seems, in relation to Northern Ireland subordinate legislation in statutory rules. This is a matter which the appropriate executive authorities in Northern Ireland (the Office of the First Minister and deputy First Minister in the first instance perhaps) should consider with a view to introducing a future amendment of the Interpretation Act (Northern Ireland) 1954 as and when a suitable legislative vehicle is identified. It might well be that the future amendment should “repatriate” to the 1954 Act the substance of what is in section 24(3A) of the 1978 Act: on the face of it, that would seem appropriate for the longer term, putting the rule of interpretation for Northern Ireland primary and subordinate legislation in the same statute (cf section 12 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
5. In passing, I note that there is an erroneous reference in the preamble/recital of powers to the ambulatory references in regulation 2(3), whereas they are plainly in regulation 2(4), the extra provision having been inserted to meet the general interpretation point mentioned in the previous paragraph. I am persuaded that this change to the correct reference can appropriately be effected by way of a correction slip, as the Food Standards Agency has now done.

**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 negative resolution

The Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 (S.R. 2013/225)

#### **The Contaminants in Food Regulations (Northern Ireland) 2013 (S.R. 2013/229)**

The Frederick Street, Belfast (Footpath) (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/233)

The C338 (unnamed road) Moneymore, Newry (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/234)

The Train Driving Licences and Certificates (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/236)

The Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/237)

The Shore Road, Belfast (Abandonment) Order (Northern Ireland) 2013 (S.R. 2013/240)

The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2013 (S.R. 2013/243)







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