



Northern Ireland
Assembly

Examiner of Statutory Rules

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

Session 2015/2016 Eighth Report

15 January 2016

NIA 297/11-16

Committee for Agriculture and Rural Development	S.R. 2015 No. 399
Committee for the Environment	S.R. 2015 Nos. 393, 406, 425
Committee for Health, Social Services and Public Safety	S.R. 2015 Nos. 412, 420, 421, 422
Committee for Justice	S.R. 2015 Nos. 405, 415, 419
Committee for Regional Development	S.R. 2015 Nos. 373, 374, 407
Committee for Social Development	Draft S.R.: The Charities Act 2008 (Designated Religious Charities) Order (Northern Ireland) 2016 S.R.2015 No. 411

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 Taxi Licensing Regulations (Northern Ireland) 2015 (S.R. 2015/393)

3. **I draw the attention of the Committee for the Environment and the Assembly to the Taxis Licensing Regulations (Northern Ireland) 2015 (S.R. 2015/393) on the ground that they are defectively drafted in one respect, acknowledged by the Department of the Environment, which has indicated that it will take the point on board at the next opportunity.** In two places the Regulations use “should” where the imperative “shall” is intended (in regulation 4(1) (“the applicant shall present the taxi”) and in regulation 22(1) (“This shall be provided separately from the carriage of passengers”.) The Joint Committee on Statutory Instruments at Westminster has (rightly) been critical of intended imperatives not expressed as such (“must”) (“must” or “shall” in Northern Ireland);

and it has also (rightly) recently criticised words of guidance creeping into the operative text of regulations: regulations are there to regulate, not to act as guides in the sense of commentaries or explanatory material.

The Firearms (Variation of Fees) Order (Northern Ireland) 2015 (S.R. 2015/405)

4. **I draw the attention of the Committee for Justice and the Assembly to The Firearms (Variation of Fees) Order (Northern Ireland) 2015 (S.R. 2015/405) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Justice.** The point is simply that Article 1(2) of the Order (unnecessarily) expressly attracts the Interpretation Act (Northern Ireland) 1954: this is unnecessary because the Order is made under the Firearms (Northern Ireland) Order 2004, which itself already expressly attracts the 1954 Act so that it applies to the 2004 Order as it would apply to an Act of the Assembly. (The extraneous interpretation provision does not in any way affect the working of the statutory rule, and is not of its nature something that requires amendment.)

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 rules requiring the approval of the Assembly

Draft S.R.: The Charities Act 2008 (Designated Religious Charities) Order (Northern Ireland) 2016

Statutory rules subject to negative resolution

The U125 Old Grand Jury Road, Saintfield (Abandonment) Order (Northern Ireland) 2015 (S.R. 2015/373)

The U6076 Cloghanramer Road, Newry (Abandonment) Order (Northern Ireland) 2015 (S.R. 2015/374)

The Taxi Licensing Regulations (Northern Ireland) 2015 (S.R. 2015/393)

The European Maritime and Fisheries Fund (Financial Assistance) Regulations (Northern Ireland) 2015 (S.R. 2015/399)

The Firearms (Variation of Fees) Order (Northern Ireland) 2015 (S.R. 2015/405)

The Smoke Control Areas (Exempted Fireplaces) (Amendment No.2) Regulations (Northern Ireland) 2015 (S.R. 2015/406)

The Disabled Persons (Badge for Motor Vehicles) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/407)

The Pensions (2015 Act) (Consequential, Supplementary, and Incidental Amendments) Order (Northern Ireland) 2015 (S.R. 2015/411)

The HIV Testing Kits and Services (Revocation) Regulations (Northern Ireland) 2015 (S.R. 2015/412)

The Rules of the Court of Judicature (Northern Ireland) (Amendment No. 3) 2015 (S.R. 2015/415)

The Police Service of Northern Ireland (Amendment) Regulations 2015 (S.R. 2015/419)

The Firefighters' Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/420)

The Firefighters' Pension Scheme (Amendment) (No. 3) Order (Northern Ireland) 2015 (S.R. 2015/421)

The Firefighters' Compensation Scheme (Amendment) (No. 2) and the New Firefighters' Pension Scheme (Amendment) (No. 4) (Northern Ireland) Order 2015 (S.R. 2015/422)

The Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015 (S.R. 2015/425)
(S.R. 2015/425)



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