

Examiner of Statutory Rules

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

**7 September 2012
NIA 70/11/15**

Committee for Agriculture and Rural Development	S.R. 2012 Nos. 254, 299, 305
Committee for Employment and Learning	S.R. 2012 Nos. 245, 283, 301, 306
Committee for Enterprise, Trade and Investment	S.R. 2012 No. 255
Committee for the Environment	S.R. 2012 Nos. 248, 250, 257, 258, 260, 261, 279, 293, 316
Committee for Finance and Personnel	S.R. 2012 No. 285
Committee for Health, Social Services and Public Safety	S.R. 2012 Nos. 244, 246, 259, 280, 309, 310, 311, 312, 324
Committee for Justice	S.R. 2012 Nos. 268, 273, 318, 321, 325
Committee for Regional Development	S.R. 2012 Nos. 274, 275, 295, 296, 303
Committee for Social Development	Draft S.R.: The Landlord Registration Scheme Regulations (Northern Ireland) 2012 Draft S.R.: The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012 S.R. 2012 Nos. 249, 264, 270, 284, 292, 294

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 Goods Vehicles (Qualification of Operators) Regulations (Northern Ireland) 2012 (S.R. 2012/257)

The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 (S.R. 2012/258)

The Goods Vehicles (Licensing of Operators) (Fees) Regulations (Northern Ireland) 2012 (S.R. 2012/260)

The Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 (S.R. 2012/261)

3. **I draw the attention of the Committee for the Environment and the Assembly to the above-mentioned Regulations on the ground that there were laid in breach of the 21-day rule (that is to say, the well-established rule of practice whereby a department or other rule-making authority should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between the laying of the rule and its coming into operation), explained by the Department of the Environment.** The Regulations were made on 28 June 2012, were laid on 29 July 2012 and came into operation on 1 July 2012. This was a major package of Regulations (comprising also another statutory rule that was earlier approved in draft by Assembly) and it seems that the Department was committed to a 1 July commencement date, for the processing of licences from that, and transport industry was aware of that. I

am assured by the Department that every effort was made to have the package ready to meet the 21-day rule, but it seems that this was not possible. The drafts were finally settled on 27 June 2012 and were made and laid as soon as possible after that. That is as much as I am in a position to report. It may be that because of the volume and complexity of the Regulations that that is a reasonable explanation.

The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 (S.R. 2012/301)

4. **I draw the attention of the Committee for Employment and Learning and the Assembly to the above-mentioned Regulations on the ground that it is defectively drafted in one respect, although I add that the defect does not seem to affect their workability. The Department for Employment and Learning acknowledges the defect.** Paragraph 8 and Part XVI of the Scheme contained references to, and definitions of, “EC law” (see particularly, paragraphs 8 and 89(7)). These are derived from previous schemes, but it is clear that, following the coming into effect of the Treaty of Lisbon on 1 December 2009, references should now be to “EU law” since the European Community no longer exists as such; and references in the definitions to “the European Community Treaties” should be replaced by references to the “EU treaties”. I further make the observation that the references in the definitions of [EU law] to “any provision of the domestic legislation of Northern Ireland” should, more appropriately in drafting terms, be to “any statutory provision” (“statutory provision” being already defined in the “parent” primary legislation the Industrial Relations (Northern Ireland) Order 1992 — by reference to section 1(f) of the Interpretation Act (Northern Ireland) 1954): the terminology used might be suitable for a general explanatory commentary but it is not a term of art as far as legislative drafting is concerned. It seems to me, however, that these matters do not give rise to major problems for anyone interpreting the provisions: they do not affect the workability of the Scheme but they are matters that could be tidied as and when a suitable opportunity arises. The Department acknowledges the points.

The Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012 (S.R. 2012/312)

5. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012 (S.R. 2012/312) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Health, Social Services and Public Safety.** The Department acknowledges that there is an erroneous reference in regulation 7(2)(b) to regulation 32 of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012 (S.R. 2012/312). This will be corrected by the removal of the erroneous reference: the Department has today drawn my attention to the relevant right of appeal from the decision of the Registrar to the Statutory Committee, which right of appeal already covers the point (see Article 4A(13) of the Pharmacy (Northern Ireland) Order 1976 as inserted by S.R. 2012/308), so that no further reference to proceedings of the Statutory Committee is necessary.

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 Landlord Registration Scheme Regulations (Northern Ireland) 2012

Draft S.R.: The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012

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

The Jobseeker's Allowance (Members of the Reserve Forces) Regulations (Northern Ireland) 2012 (S.R. 2012/284)

Statutory rules subject to negative resolution

The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations (Northern Ireland) 2012 (S.R. 2012/244)

The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2012 (S.R. 2012/245)

The Tobacco Advertising and Promotion (Display) Regulations (Northern Ireland) 2012 (S.R. 2012/246)

The Community Drivers' Hours Regulations (Northern Ireland) 2012 (S.R. 2012/248)

The Licensing (Requirements for Conference Centre) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/249)

The Smoke Control Areas (Exempted Fireplaces) Regulations (Northern Ireland) 2012 (S.R. 2012/250)

Agriculture (Student Fees) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/254)

The Health and Safety (Fees) Regulations (Northern Ireland) 2012 (S.R. 2012/255)

The Goods Vehicles (Qualification of Operators) Regulations (Northern Ireland) 2012 (S.R. 2012/257)

The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 (S.R. 2012/258)

Optical Charges and Payments (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/259)

The Goods Vehicles (Licensing of Operators) (Fees) Regulations (Northern Ireland) 2012 (S.R. 2012/260)

The Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 (S.R. 2012/261)

- The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/264)
- The Criminal Legal Aid (Recovery of Defences Costs Orders) Rules (Northern Ireland) 2012 (S.R. 2012/268)
- The Pension Protection Fund (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/270)
- Rules of the Court of Judicature (Northern Ireland) (Amendment No. 2) 2012 (S.R. 2012/273)
- The M3 Motorway at Titanic Quarter Railway Station, Belfast (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/274)
- The Upper Dunmurry Lane, Dunmurry (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/275)
- Local Government (Councillors' Remuneration Panel) Regulations (Northern Ireland) 2012 (S.R. 2012/279)
- The Food Hygiene (Amendment) (No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/280)
- The Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/283)
- Superannuation (Charity Commission for Northern Ireland) Order (Northern Ireland) 2012 (S.R. 2012/285)
- The Social Fund Maternity and Funeral Expenses (General) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/292)
- The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/293)
- The Pensions (Financial Reporting Council) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/294)
- The Drumlin Road, Donaghcloney (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/295)
- The A3 Northway, Portadown (Abandonment) Order (Northern Ireland) 2012 (S.R. 2012/296)
- The Marketing of Fresh Horticultural Produce (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/299)
- The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 (S.R. 2012/301)**
- The Trunk Road T3 (Western Transport Corridor) Order (Northern Ireland) 2012 (S.R. 2012/303)
- The Northern Ireland Poultry Health Assurance Scheme (Fees) Order (Northern Ireland) 2012 (S.R. 2012/305)
- The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (S.R. 2012/306)
- The Council of the Pharmaceutical Society of Northern Ireland (Appointments and Procedure) Regulations (Northern Ireland) 2012 (S.R. 2012/309)
- The Council of the Pharmaceutical Society of Northern Ireland (Statutory Committee, Scrutiny Committee and Advisers) Regulations (Northern Ireland) 2012 (S.R. 2012/310)
- The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012 (S.R. 2012/311)

The Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012 (S.R. 2012/312)

The Taxi Operators Licensing Regulations (Northern Ireland) 2012 (S.R. 2012/316)

The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012/318)

The Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations (Northern Ireland) 2012 (S.R. 2012/321)

The Safeguarding Board for Northern Ireland (Membership, Procedure, Functions and Committee) Regulations (Northern Ireland) 2012 (S.R. 2012/324)

The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations (Northern Ireland) 2012 (S.R. 2012/325)



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

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Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

£3.00

Printed in Northern Ireland by The Stationery Office Limited
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ISBN 978-0-339-40393-2

