

**Ad Hoc Committee**

# Consideration of the Statutory Rule: The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015

Together with the Minutes of Proceedings and correspondence relating to the Report

Ordered by the Ad Hoc Committee to be printed 3 March 2015

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**REPORT EMBARGOED UNTIL  
COMMENCEMENT OF THE DEBATE IN PLENARY**



# Membership and Powers

## Powers

The Committee was established by resolution of the Assembly on 10 February 2015 in accordance with Standing Order 53(1). The remit of the Committee was to consider the following Statutory Rule which was laid by the Attorney General for Northern Ireland: *The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015*; and to submit a report to the Assembly by 18 March 2015.

The Committee had the power to call for persons and papers.

## Membership

The Committee had seven Members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee was as follows:

- Mr Stewart Dickson (Chairperson)
- Ms Paula Bradley (Deputy Chairperson)
- Mr Colum Eastwood
- Mr Tom Elliott
- Mr Gerry Kelly
- Mr Seán Lynch
- Mr George Robinson

It was agreed by the Committee that where Members were unable to attend meetings, they could nominate party colleagues to do so.

Mrs Dolores Kelly attended the meeting of 3 March 2015 on behalf of Mr Colum Eastwood.



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## List of Abbreviations

the Committee	Ad Hoc Committee
AGNI	Attorney General for Northern Ireland
CJ	Committee for Justice
COP	Committee on Procedures
ESR	Examiner of Statutory Rules
PSNI	Police Service of Northern Ireland
SR	Statutory Rule

# Executive Summary

The Ad Hoc Committee (the Committee) was established on 10 February 2015, under Standing Order 53(1), when the Assembly agreed a Business Committee motion laid at the request of the Committee on Procedures (COP), as part of a pilot project it wished to initiate. A reporting date of 18 March 2015 was agreed.

The remit of the Committee was to consider the findings of the scrutiny committee (Committee for Justice) and the Examiner of Statutory Rules and to report on whether the Statutory Rule in question<sup>1</sup> should be approved.

The Committee was not required to repeat the work of the scrutiny committee.

Members considered evidence from the Examiner of Statutory Rules, the Committee for Justice and the Attorney General for Northern Ireland and concluded that the Statutory Rule entitled: "*The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015*" should be approved by the Assembly.

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1 The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015 – at Appendix 2

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# Introduction and Background

## **Purpose of the Ad Hoc Committee**

1. The Ad Hoc Committee (the Committee) was established on 10 February 2015, under Standing Order 53(1), when the Assembly agreed a Business Committee motion laid at the request of the Committee on Procedures (COP), as part of a pilot project it wished to initiate. A reporting date of 18 March 2015 was set for the Committee.
2. The COP pilot was designed to test a process for the management of Statutory Rules laid by the Attorney General for Northern Ireland (AGNI) that are subject to draft affirmative resolution<sup>2</sup>, and had been devised as part of the COP ongoing inquiry into “*The extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in proceedings of the Assembly*”.
3. The terms of reference of the Committee were to consider the findings of the scrutiny committee (Committee for Justice), the Examiner of Statutory Rules (ESR) and the AGNI and to report on whether the Statutory Rule (SR) in question<sup>3</sup> should be approved. It was also required to facilitate bringing the SR to the Assembly to allow it to be approved.
4. The Committee was not required to repeat the work of the scrutiny committee.

## **Background**

5. One of the responsibilities of the AGNI is to provide guidance on human rights standards to a list of criminal justice organisations as set out in section 8 of the Justice (Northern Ireland) Act 2004.
6. While the guidance itself is issued in the form of Statutory Rules subject to negative resolution, any changes to the list of organisations to which the guidance is issued must, under section 21(2) of the same legislation<sup>4</sup>, be subject to draft affirmative resolution.
7. In June 2013 the AGNI advised the Committee for Justice (CJ) of his intention to lay such an SR, in order to add the PSNI to the list of organisations to which he issues guidance on human rights standards.
8. The CJ engaged with the AGNI over a period of months in order to fulfil its scrutiny of the proposed SR and, following its deliberations and informal agreement with the proposal contained within the SR, the SR entitled: “*The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015*” was laid by the AGNI on 16 January 2015.
9. Having been advised of the laying of the SR, the Committee on Procedures wrote to the Speaker, as Chairperson of the Business Committee, requesting that a motion to establish the Ad Hoc Committee be brought to the Assembly.

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2 Section 21(2) of the Justice (Northern Ireland) Act 2004

3 The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015 – at Appendix 2

4 The Justice (Northern Ireland) Act 2004

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**The Committee's Approach**

10. The Committee first met on 17 February 2015, when it considered evidence from two sources.
11. The first was a report from the ESR dated 30 January 2015<sup>5</sup>. This stated that in the opinion of the ESR, the SR contained no technical defects and was therefore recommended to be progressed.
12. The second was evidence provided by the CJ. This included information provided by the AGNI<sup>6</sup>, setting out that he was content for the Rule to progress and confirmation from the CJ that, it too, had no issue with the SR and that it was minded to support the proposal contained within the Rule<sup>7</sup>.

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5 Report from Examiner of Statutory Rules – included at Appendix 3

6 Hansard of Evidence Session on 6 June 2013 – included at Appendix 3

7 Minutes of Justice Committee meeting on 4 February 2015 – included at Appendix 3

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## Conclusions and Recommendation

13. Having considered the views of all stakeholders and assured itself of the technical accuracy of the SR, the Committee agreed that no further evidence was required to inform its decision making.
14. **The Committee therefore recommended that the SR: “*The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015*” be approved by the Assembly.**
15. The Committee also agreed that as well as agreeing a motion to bring its report to the Assembly for debate, it would write to the Speaker, as Chairperson of the Business Committee, requesting that the Business Committee bring forward a Business Committee motion to be taken immediately following the debate on the Committee report, to approve the SR.



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings Relating to the Report



# Tuesday 17 February 2015

## Room 21, Parliament Buildings

**Present:** Mr Stewart Dickson MLA (Chairperson)  
Ms Paula Bradley MLA (Deputy Chairperson)  
Mr Colum Eastwood MLA  
Mr Tom Elliott MLA  
Mr Gerry Kelly MLA  
Mr Seán Lynch MLA  
Mr George Robinson MLA

**In Attendance:** Nick Mitford (Senior Assistant Clerk)  
Neil Currie (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)

**1:02pm** The meeting began in closed session – the Clerk in the Chair.

**1. Apologies**

None.

**2. Election of Chairperson**

The Clerk called for nominations for the position of Committee Chairperson.

Mr Kelly proposed that Mr Dickson be elected as Chairperson of the Committee.

Ms Bradley seconded this and the nomination was accepted.

*Agreed:* There being no further nominations, the Committee agreed that Mr Dickson, being the only candidate proposed, be elected as Chairperson of the Committee.

**1:05pm** The Chairperson took the Chair and the meeting was suspended in order for the Clerk to brief the Chairperson.

**3. Election of Deputy Chairperson**

**1:08pm** Mr Eastwood joined the meeting.

**1:08pm** The meeting resumed with all Members present.

The Chairperson called for nominations for the position of Deputy Chairperson.

Mr Kelly proposed that Ms Bradley be elected as Deputy Chairperson of the Committee.  
Mr Lynch seconded this and the nomination was accepted.

*Agreed:* There being no further nominations, the Committee agreed that Ms Bradley, being the only candidate proposed, be elected as Deputy Chairperson of the Committee.

**1:10pm** The meeting moved into public session.

**4. Declaration of Interests**

The Committee considered a briefing paper in relation to the declaration of registerable interests, including an extract from the Register of Members' Interests.

The Chairperson reminded Members of their obligation to declare any relevant financial or other interests before and during each Committee meeting.

Mr Dickson, Mr Elliott and Mr Lynch declared an interest as Members of the Committee for Justice.

Mr Kelly and Mr Robinson declared an interest as Members of the Committee on Procedures.

**5. Committee staff details**

Members noted the contact details for the Secretariat staff supporting the Committee.

**6. Committee procedures**

The Committee considered a briefing paper on the procedures of the Committee and the Chairperson reminded Members of the rules relating to privilege and sub-judice.

*Agreed:* It was agreed that all decisions shall be made by a simple majority vote by showing of hands unless a Member requests otherwise.

*Agreed:* It was agreed to permit each of the parties represented on the Committee to nominate the same number of deputies as they had Members on the Committee. A party deputy may take the place of a Committee Member from that party who is unable to attend a Committee meeting.

The Chairperson asked Members to arrange for nominations to be provided to the Clerk in advance of the next meeting.

**7. Background papers**

The Committee considered a briefing paper, submissions from stakeholders and other relevant documentation in relation to the proposed draft affirmative Statutory Rule laid by the Attorney General for Northern Ireland (AGNI).

In considering the written evidence, the Committee noted the following:

- The Examiner of Statutory Rules, in his report dated 30 January 2015, stated that he was content with the Statutory Rule following his technical scrutiny.
- The Committee for Justice, who has statutory responsibility for the scrutiny of this particular Statutory Rule, completed its consideration of the matter on 4 February 2015 when it agreed to recommend that the Statutory Rule be affirmed by the Assembly.
- The AGNI is content for the Statutory Rule to proceed.

*Agreed:* It was agreed that no further written or oral evidence was required.

*Agreed:* Having considered all of the evidence in relation to the proposed draft affirmative Statutory Rule laid by the AGNI, the Committee agreed that the Statutory Rule should proceed to plenary for consideration by the Assembly.

*Agreed:* It was agreed that the Clerk should prepare a draft report for consideration at the next meeting.

*Agreed:* It was agreed that the Clerk should draft a letter to the Business Committee requesting that it table a Business Motion asking the Assembly to approve the Statutory Rule, for consideration at the next meeting.

**8. Draft Forward Work Programme**

*Agreed:* It was agreed that only one further meeting of the Committee was required, at which the draft report would be considered.

**9. Any Other Business**

None.

**10. Time, date and place of next meeting**

It was agreed that the next meeting of the Committee would take place on 3 March 2015 at 1.00pm in the Senate Chamber, Parliament Buildings.

**1:21pm** The Chairperson adjourned the meeting.

**Stewart Dickson**

Chairperson

Ad Hoc Committee to consider a Statutory Rule laid by the Attorney General for Northern Ireland

3 March 2015

# Tuesday 3 March 2015

## Senate Chamber, Parliament Buildings

**Present:** Mr Stewart Dickson MLA (Chairperson)  
Ms Paula Bradley MLA (Deputy Chairperson)  
Mr Tom Elliott MLA  
Mr Gerry Kelly MLA  
Mrs Dolores Kelly MLA (deputising for Mr Colum Eastwood)  
Mr Seán Lynch MLA  
Mr George Robinson MLA

**In Attendance:** Nick Mitford (Senior Assistant Clerk)  
Neil Currie (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)

**1.01pm** The meeting began in closed session.

**1. Apologies**

Mr Colum Eastwood MLA

**2. Draft Minutes of the meeting held on 17 February 2015**

*Agreed:* Members agreed the draft minutes of the meeting held on 17 February 2015.

**3. Matters Arising**

There were no matters arising.

**4. Consideration of an AGNI Statutory Rule**

The Committee read the draft report paragraph by paragraph.

**Report:**

Paragraphs 1 – 15, agreed

**1.05pm** Ms Bradley joined the meeting.

Executive Summary – read and agreed

*Agreed:* The inclusion of the following appendices was agreed:

- Appendix 1 – Minutes of Proceedings relating to the report
- Appendix 2 – Statutory Rule
- Appendix 3 – Correspondence

*Agreed:* Members ordered the report to be printed.

*Agreed:* It was agreed that the Chairperson could approve the minutes of today's meeting in order for them to be included in the report.

*Agreed:* It was agreed that the report should be embargoed until commencement of the debate of the report in plenary.

*Agreed:* The motion to accompany the report's introduction to the Assembly was agreed.

**1.06pm** Mr Elliott joined the meeting.



*Agreed:* The Committee agreed a letter to the Speaker asking the Business Committee to table a motion to approve the Statutory Rule. The draft Business Committee motion to accompany the letter was also agreed.

**5. Any other Business**

As the business of the Committee had been concluded, the Chairperson thanked Members for their contribution.

**1.07pm** The Chairperson adjourned the meeting.

**Stewart Dickson**

Chairperson

Ad Hoc Committee to consider a Statutory Rule laid by the Attorney General for Northern Ireland.

3 March 2015





Northern Ireland  
Assembly

Appendix 2

**Statutory Rule:**  
**The Justice (Northern Ireland) Act**  
**2004 (Amendment of section 8(4))**  
**Order (Northern Ireland) 2015**



# Statutory Rule: The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015



**Attorney General**  
for Northern Ireland

**N.I. ASSEMBLY**  
**16 JAN 2015**  
**BUSINESS OFFICE**

Assembly Business Office  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX

Our Ref: 18/10/14/005

Date: January 16 2015

Parent Legislation	<i>Justice (Northern Ireland) Act 2004</i>
Name of Statutory Rule	<i>The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015</i>
Date of Making	
Number	
Rule Making Authority	<i>The Attorney General for Northern Ireland</i>

Dear Sir / Madam

**The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4))  
Order (Northern Ireland) 2015**

I enclose for laying before the Assembly a copy of the above named Statutory Rule and explanatory memorandum. The Rule is in draft form in accordance with section 21(2) of the Justice (NI) Act 2004 and is subject to affirmative resolution procedure.

Also enclosed are 6 further copies of the Rule and explanatory memorandum (2 of which should be forwarded to the Committee on Procedures; 1 to the Examiner of Statutory Rules; 2 to the Assembly Library).

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU  
Telephone: 028 90725333 Fax: 028 90725334 E-mail: [contact@attorneygeneralni.gov.uk](mailto:contact@attorneygeneralni.gov.uk)  
[www.attorneygeneralni.gov.uk](http://www.attorneygeneralni.gov.uk)



I am also sending you a separate email with an electronic copy of this letter containing the following link to the Rule and explanatory memorandum on the [legislation.gov.uk](http://www.legislation.gov.uk) website.

<http://www.legislation.gov.uk/nidsr/2015/9780337995408/contents>

There have been no changes to the policy content since the SL1 was submitted to the Justice Committee.

If you have any queries please contact Leigh Livingstone by telephone on 028 9072 5311 or by email [leigh.livingstone@attorneygeneralni.gov.uk](mailto:leigh.livingstone@attorneygeneralni.gov.uk).

Yours sincerely

John F Larkin QC  
Attorney General for Northern Ireland

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*Draft Order laid before the Assembly under section 21(2) of the Justice (Northern Ireland) Act 2004 for approval*

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DRAFT STATUTORY RULES OF NORTHERN  
IRELAND

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**2015 No.**

**JUSTICE**

**The Justice (Northern Ireland) Act 2004 (Amendment of section  
8(4)) Order (Northern Ireland) 2015**

*Made - - - -*

*Coming into operation in accordance with Article 1(2)*

The Attorney General for Northern Ireland makes the following order in exercise of the powers conferred by section 8(5) of the Justice (Northern Ireland) Act 2004(a). In accordance with section 8(5A) of that Act the Attorney General has consulted with the Advocate General for Northern Ireland(b).

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015.

(2) This Order shall come into operation on the day following the date on which this Order is approved by resolution of the Assembly.

(3) The Interpretation Act (Northern Ireland) 1954 shall apply to this Order as it applies to an Act of the Assembly(c).

**Amendment of the Justice (Northern Ireland) Act 2004**

2.—(1) Section 8(4) of the Justice (Northern Ireland) Act 2004 shall be amended as follows:

(2) After paragraph (e) insert—

“(f) the Police Service of Northern Ireland.”

Date

*John F. Larkin QC*  
Attorney General for Northern Ireland

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(a) 2004 c. 4

(b) Inserted by section 8(9) of the Justice (Northern Ireland) Act 2004 and paragraph 7A of Schedule 7 of the Justice (Northern Ireland) Act 2002.

(c) 1954 c.33 (NI)

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order adds the Police Service of Northern Ireland to the list of organisations to which guidance on human rights standards is to be given by the Attorney General for Northern Ireland under section 8 of the Justice (Northern Ireland) Act 2004.

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**EXPLANATORY MEMORANDUM TO**

**The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order  
(Northern Ireland) 2015**

**SR 2015 No.**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 8(5) of the Justice (Northern Ireland) Act 2004 and is subject to the draft affirmative resolution procedure.

**2. Purpose**

- 2.1. The Statutory Rule adds the Police Service of Northern Ireland to the list of organisations to which guidance on human rights standards is to be given by the Attorney General for Northern Ireland under section 8 of the Justice (Northern Ireland) Act 2004.

**3. Background**

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule adds the Police Service of Northern Ireland to the list of organisations to which guidance on human rights standards is to be given by the Attorney General.

**4. Consultation**

- 4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(5A) of the Justice (Northern Ireland) Act 2004.

**5. Equality Impact**

- 5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purposes of section 75 of the Northern Ireland Act 1998.

**6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not required.

**7. Financial Implications**

- 7.1. Not applicable.

**8. Section 24 of the Northern Ireland Act 1998**

- 8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

**9. EU Implications**

- 9.1. Not applicable.

**10. Parity or Replicatory Measure**

10.1. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

**11. Additional Information**

11.1. Not applicable.



Northern Ireland  
Assembly

Appendix 3

# Correspondence



# Examiner of Statutory Rules report – 30 January 2015

**Examiner of Statutory Rules**

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

30 January 2015  
NIA 228/11-16

Committee for the Environment	S.R. 2014 Nos. 307, 308, S.R. 2015 No. 14
Committee for Finance and Personnel	Draft S.R.: The Public Service (Civil Servants and Others) Pensions (Northern Ireland) Regulations 2015  S.R. 2015 No. 20
Committee for Health, Social Services and Public Safety	S.R. 2015 Nos. 7, 8, 9, 10, 11
Committee for Justice	Draft S.R.: The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015  Draft S.R.: The Judicial Pensions Regulations (Northern Ireland) 2015
Committee for Regional Development	S.R. 2015 No. 13, 22
Committee for Social Development	S.R. 2015 No. 2

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 Nitrates Action Programme Regulations (Northern Ireland) 2014 (S.R. 2014/307)**

**The Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2014 (S.R. 2014/308)**

3. **I draw the attention of the Committee for the Environment and the Assembly to the Nitrates Action Programme Regulations (S.R. 2014/307) and the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2014 (S.R. 2014/308) on the ground that the Regulations were laid in breach of the 21-day rule, explained by the Department of the Environment.** The revised derogation in respect of the Nitrates Action Programme had to be in place for 1 January 2015 (following the expiration of the previous derogation). But the Regulations could not be finalised until 11 December 2014 after the derogation decision was approved by the EU Nitrates Committee. The Phosphorus (Use in Agriculture) Regulations contain cross-references to the Nitrates Action Programme Regulations and connected. So both sets of regulations were made on 11 December 2014, were laid on 12 December 2014 and came into operation on 1 January 2015. In the circumstances the Department's explanation seems to be reasonable.
4. **I also draw attention a drafting defect in the Nitrates Action Programme Regulations, acknowledged by the Department.**

5. Regulation 31 makes provision for penalties both on conviction summarily and on indictment. In doing so it largely follows Article 32(7) of the Waste and Contaminated Land (Northern Ireland) Order 1997 in the following terms:

**“Penalties**

31. Any person guilty of an offence under regulation 30 shall be liable on summary conviction, to a fine not exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, not exceeding an amount equal to one-tenth of level 5 on the standard scale; or on conviction on indictment to imprisonment for a term not exceeding 2 years.”.

Article 32(7) of the 1997 Order (to which there is similar provision, generally for England and Wales and Scotland, in section 140(10) of the Environmental Protection Act 1990), for comparison, is as follows:

“(7) No offence under the regulations shall be made punishable with imprisonment for more than 2 years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.”.

The two provisions, on their face, look reasonably similar. The problem is that regulation 31 actually prescribes the penalties for an offence punishable either summarily or on indictment: in that case, the summary penalty by way of a fine should (in the absence of a specified higher fine) be expressed in terms of the statutory maximum rather than level 5 on the standard scale: see Article 4 of the Fines and Penalties (Northern Ireland) Order 1984. There is no actual conflict between the proposition in respect of the statutory maximum and what is in Article 32(7) of the 1997 Order because the purpose of Article 32(7) is not to set out penalties but, rather, merely to restrict the Department’s power to prescribe penalties where it creates offences in regulations. (The penalty in regulation 12 of the Phosphorus (Use in Agriculture) Regulations — also made under Article 32(7) of the 1997 Order — is, by contrast, correctly stated in terms of the level 5 on the standard scale formula, since the offence in question is summary-only.)

6. I have suggested to the Department that it should replace regulation 31 with provision similar to what was in the previous Nitrates Action Programme Regulations (contained in S.R. 2010/411) in respect of penalties. I also suggested to the Department that it might perhaps give consideration to a future amendment of Article 32(7) of the 1997 Order in primary legislation to make the limits on penalties clearer. On the other hand, I reflect that there is a similar limiting provision on penalties in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972, and that seems to work reasonably well, both for offences punishable either way and summary-only offences. Particular care must of course be taken in the drafting offences and the penalties attaching to them, and that is a point worth emphasising again and again.

**The Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2015 (S.R. 2015/2)**

7. **I draw the attention of the Committee for Social Development and the Assembly to the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2015 (S.R. 2015/2) on the ground that the Regulations were laid in breach of the 21-day rule, explained by the Department for Social Development.** The Department for Work and Pensions advised DSD on 4 December 2014. Since then the Department worked closely with the Northern Ireland Housing Executive. Final checks were carried out on the Housing Executive’s proposed local housing allowance (LHA) rates for 2015 (identification of dwellings within particular broad market rental areas that would attract an LHA Targeted Affordability Fund increase on LHA rates). Agreement on this was reached on 12 January 2015, whereupon the Regulations were made and laid on 13 January 2015. Under the formula in

existing regime when the Regulations were made, the date for the determination of this was 21 January 2015, so the Regulations were made so as to come into operation on 20 January 2015. (Changes for the future, contained in these Regulations, make the determination date the last working day of January, so that may ease the timing of this in future years, taking account of holiday and recess periods around Christmas.) In the circumstances, the Department's explanation seems to be reasonable.

**The Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2015 (S.R. 2015/20)**

8. **I draw the attention of the Committee for Finance and Personnel and the Assembly to the Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2015 (S.R. 2015/20) on the ground that the Regulations were laid in breach of the 21-day rule, explained by the Department for Finance and Personnel.** The explanation (given to me in advance on 22 January 2015) seems to be reasonable in the circumstances. It is in the following terms:

"[The reorganisation of local government on 1 April 2015 from 26 district councils to 11] will take effect on the same date as the non-domestic revaluation exercise. The changes to the number of councils, and the non-domestic tax base as a result of both those changes means that conversion factors currently prescribed within the Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2006 (S.R. 2006 No.498) need to be adjusted.

Conversion factors are employed within the rating system to enable different district rates to be made and levied on the rateable net annual values of properties and on the rateable capital values of properties. A formula is applied by district councils to allow them to make one decision in striking a district rate by treating their domestic tax base and their new non-domestic tax base as a unified tax base.

The new conversion factors have been determined by DFP. In addition each of the new 11 councils have been given advance notification of their applicable conversion factor formally through the estimated penny product process undertaken by the Department, and the Department has been working closely with councils in relation to how the factors will be employed.

There are a lot of complex changes occurring within the rating system in April due to local government reorganisation, reductions in DOE grants to councils and the non-domestic Revaluation. DFP wants to ensure, therefore, that it strikes the right balance in terms of the timing and accuracy of setting the conversion factors in subordinate legislation. We need to use the most up to date valuation and boundary information available to us, while also allowing the new shadow councils to trial the conversion factors for their rate striking procedures in advance of the Department codifying them.

This process has to be undertaken and finalised before the legislation can be made. However legal advice from DSO has indicated that the legislation should ideally be operative before the Councils formally strike their rates. The Department considers it necessary on this one occasion to wait until the last possible moment, before formally codifying the conversion factors. This will however entail a breach of the 21 day convention."

Against that background, the Regulations were made and laid on 27 January 2015 and came into operation on 28 January 2015.

**W G Nabney**  
 Examiner of Statutory Rules  
 30 January 2015



## 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 Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015

Draft S.R.: The Judicial Pensions Regulations (Northern Ireland) 2015

Draft S.R.: The Public Service (Civil Servants and Others) Pensions (Northern Ireland) Regulations 2015 This draft statutory rule replaces S.R. 2015/15, which is to be revoked.

### Statutory rules subject to affirmative resolution

The Donaghadee Harbour (Transfer of Harbour Undertaking) Order (Northern Ireland) 2015 (S.R. 2015/22)

### Statutory rules subject to negative resolution

**The Nitrates Action Programme Regulations (Northern Ireland) 2014 (S.R. 2014/307)**

**The Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2014 (S.R. 2014/308)**

The Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2015 (S.R. 2015/2)

The Firefighters' Compensation Scheme (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/7)

The Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/8)

The New Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/9)

The New Firefighters' Pension Scheme (Amendment No. 2) Order (Northern Ireland) 2015 (S.R. 2015/10)

The Firefighters' Compensation Scheme (Amendment No. 2) Order (Northern Ireland) 2015 (S.R. 2015/11)

The Level Crossing (Cullybackey South) Order (Northern Ireland) 2015 (S.R. 2015/13)

The Food Waste Regulations (Northern Ireland) 2015 (S.R. 2015/14)

**The Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2015 (S.R. 2015/20)**



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Hansard from Committee for Justice meeting on  
6 June 2013



Northern Ireland  
Assembly

Committee for Justice

**OFFICIAL REPORT  
(Hansard)**

**Section 8 Guidance to Criminal Justice  
Organisations — Inclusion of the PSNI:  
Attorney General Briefing**

6 June 2013

## NORTHERN IRELAND ASSEMBLY

### Committee for Justice

#### Section 8 Guidance to Criminal Justice Organisations — Inclusion of the PSNI: Attorney General Briefing

6 June 2013

**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Stewart Dickson  
Mr Alex Easton  
Mr Tom Elliott  
Mr William Humphrey  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Patsy McGlone

**Witnesses:**

Mr John Larkin	Attorney General for Northern Ireland
Ms Mairead Bunting	Office of the Attorney General for Northern Ireland
Ms Maura McCallion	Office of the Attorney General for Northern Ireland

**The Chairperson:** I formally welcome to the meeting the Attorney General for Northern Ireland, Mr John Larkin QC, and Maura McCallion, divisional head, and Mairead Bunting, senior principal legal officer, from the Office of the Attorney General. The session will be recorded by Hansard and published in due course. Members will, obviously, have some questions following your presentation. Attorney General, I will hand over to you.

**Mr John Larkin (Attorney General for Northern Ireland):** I am very grateful, Chairman. Once again, it is a pleasure to be here with the Committee to assist it in its consideration of these issues.

Members may recall that the nature of the section 8 guidance is such that I consider it to be an area where I need to have a very strong and easy relationship with this Committee. As members will be aware, the Standing Orders have not been made, as yet, to enable the Attorney General of the day to participate in any way in Assembly proceedings. When the guidance is made, it may be uncontentious and there will be no issue. However, if the guidance is made and is prayed against, there is no way in which I can, at present, speak to the issues and defend the guidance. Therefore, I depend on the Committee, in a profound sense, to essentially give me feedback — to examine and scrutinise — so that I can be reasonably confident — I hope that it is not a misplaced confidence — that if guidance, or a proposal that I make with respect to section 8 guidance, finds favour with the Committee, it will find favour with the Assembly at large. That is the approach that has been taken with respect to the right to life guidance, the Forensic Science Northern Ireland guidance and the State Pathologist's Department guidance. In fact, I note from your agenda, Chairman, that the

commencement orders relating to Forensic Science Northern Ireland and the State Pathologist's Department are before you; the guidance, as you know, has already been laid.

One of the things that occurred to me at the very outset of my work as Attorney General, and it has been reinforced through the aegis of the guidance on the protection of the right to life of criminal justice professionals, is that, in many ways, the Police Service of Northern Ireland (PSNI) is an omission from the section 8 framework. As we know, lamentably, police officers are often those at greatest risk among the larger criminal justice community; yet the section 8 guidance, which particularly seeks to address the obligations on organisations to look after their members, cannot extend to the police, at present. It is also odd that while the legislation, in its present form, provides for regard to be had to guidance, it cannot be addressed corporately to the PSNI, so it cannot operate directly, either strategically or tactically, in the operations of that vital criminal justice agency. At a very early stage, I explored that with the Advocate General, who, as you know, I am statutorily obliged to consult, and he was content with the addition of the PSNI.

It is important to remember that there are often two schools of thought about human rights guidance. There is a school of thought, which I do not share, that can be caricatured sometimes as that which seeks to put as many obstacles as possible in the path of criminal justice efficiency. The school to which I unrepentantly belong is that criminal justice helps a just system to operate more effectively and more demonstrably in the interests of the community and that human rights protection and criminal justice efficiency walk hand in hand. So, it strikes me that the PSNI is an appropriate addition to the list of organisations covered by section 8 guidance. I hope that the Committee will support that and, indeed, that it may wish to consult. I have found the consultations that the Committee has engaged in with respect to Forensic Science and the State Pathologist to be of enormous assistance in determining the final content of the guidance.

**The Chairperson:** Thank you very much. I will pick up on that latter point about consulting. Have you had initial conversations with any —

**Mr Larkin:** No. Again, it is because of the nature of the relationship that has built up in relation to the section 8 work and this Committee that I seek the guidance of the Committee. I envisage that the Committee would wish to take soundings on that issue of principle with PSNI. The approach that we have taken with both Forensic Science and the State Pathologist is that we bring them in at the earliest stage of guidance formulation. So, it is not the case that we produce it and then hand it over to them for consultation; they are grafted in to the process from the beginning. That is what we envisage happening if PSNI is added to the section 8 list, but that would be with respect to the substantive guidance. That is an exercise that can appropriately and logically only take place after the police have been added. So, I see that, in the first instance, as something that the Committee might wish to do.

**The Chairperson:** It appears to me to be an anomaly that the PSNI is not included. Are there aspects of the guidance that you have produced for Forensic Science and other agencies that the police need to have regard to?

**Mr Larkin:** There are aspects of the Forensic Science guidance, as you will be aware, Chairman, which plainly point to where Forensic Science interfaces with the other agencies. As you are probably aware, the Public Prosecution Service (PPS) guidance is the next substantive tranche that we intend to produce; but also PSNI. However, to use that awful new Labour phrase "joined-up government", we cannot actually make it joined-up with respect to PSNI. You may have seen recently in the wake of the Massereene retrial that the detail drew attention to issues about criminal justice agency co-operation. It strikes me that it would be appropriate to have a seamless approach to this and to include PSNI. Obviously, that does not in any way preordain what the content of the guidance is going to be for it or, for that matter, any other organisation. However, at least it opens the possibility for guidance to be made.

**The Chairperson:** What do you think was the reasoning behind why the police were not initially on the list?

**Mr Larkin:** I do not know. What I did glean from the Advocate General, and of course it was their responsibility for many years, was that they had thought very long and hard about doing it. I was not able to get a reason for it not having been done. However, it is important to emphasise that the Advocate General supports the inclusion.

**The Chairperson:** If you were to produce the guidance for the PSNI, what would the implications be for how the Policing Board, for example, would interface with the PSNI in holding it to account?

**Mr Larkin:** It provides an additional tool along the way for the Policing Board to audit aspects of PSNI performance. It is also, one would say, possibly with equal emphasis, a reassurance for the police to know that, when they are acting in accordance with the guidance, which in many ways simply reflects very high-quality professional standards, they have nothing to fear.

**Mr Elliott:** I find it slightly unusual that no evidence or information can be offered up as to why they were not included in the first place. It just seems unusual, given the rest of the list, that the police are not there. I just cannot understand it.

**Mr Larkin:** I, with respect, agree with you. I did not get an explanation from the Advocate General. What he did say that may be of reassurance, and with the benefit of hindsight perhaps, was that he supports the inclusion.

**Mr Elliott:** I assume that the Policing Board and Chief Constable have been consulted.

**Mr Larkin:** No. As I made clear to the Chairman, that is what I hope the Committee will do.

**Mr Elliott:** I appreciate your confidence in the Committee, by the way.

**Mr Larkin:** The Committee does not always agree with me, and naturally I am independent. However, I think that I can say safely that the relationship with the Committee has been invariably constructive, even when, from time to time, we do not see eye to eye.

**Mr McCartney:** Looking at the list of organisations under the 2004 Act, I assume that they were not transferred at that time. Most of the organisations listed, from the Public Prosecution Service to the Compensation Agency, were not part of devolution, whereas the Policing Board was. Could that have been the reason why the PSNI was not included?

**Mr Larkin:** No, because they are all now within devolved competence. I do not think that that would have been the reason. Again, there was no independent Attorney General at that stage, so you would have wanted to make provision, I would think, prospectively. As I said, no explanation has been forthcoming, but the proposal is currently supported.

**The Chairperson:** If, for whatever reason — although I cannot envisage under what circumstances it would happen — the Chief Constable took a view that he did not want to be subject to your guidance, would the police be entitled to have that sort of veto?

**Mr Larkin:** No. One would be very worried if one received that kind of response. It would invariably beg the second, inevitable question: why not?

**The Chairperson:** I suppose I say that just to ask the question: why should we necessarily ask them? If we are of the view that it makes sense and is rational and reasonable —

**Mr Larkin:** I understand that, Chairman, but I am conscious that I may not have the whole picture. That is the value of consultation. It brings out issues that we may not have thought of.

**Ms McCorley:** Go raibh maith agat, a Chathaoirligh. Thank you for your presentation. I was curious about why the PSNI was not there in the first place. In the same context, do you think that there could be some other organisation that should be there but has been omitted as well or are you content that every agency and organisation that needs to be there is there?

**Mr Larkin:** No, I think that other organisations could be on it. Let me give one micro-example and throw out, in the most veiled terms, other possible areas. One micro-example would be the work of the Environment and Heritage Service (EHS), in so far as it relates to pure criminal justice functions. In relation to the prosecution of environmental crime, EHS officials often have considerable powers. They are subject to the Police and Criminal Evidence Act 1984 (PACE), for example, yet they would not have the usual background in criminal justice issues or, indeed, this kind of guidance. I have not yet brought forward that proposal because, again, environmental issues are fully devolved. I have a

programme of work, and I may get round to that. That is a micro-example. Others, of course, are a matter of public note, including issues about the ability of, if I can put it in the abstract, local bodies to hold non-devolved agencies to account. Let me put the matter this way: I hazard that there is a fairly strong consensus that, for example, in relation to the activities to do with proceeds of crime enforcement, people would want the proceeds of crime to be taken away from those who have committed criminal offences. However, there are issues about accountability. It is possible to see how human rights guidance could help to bridge that gap. That is not the meat and substance of today's deliberations. However, since you put the question that way, I think that yes, the list is not closed.

**The Chairperson:** If no other members have questions for the attorney, I will say thank you very much.

**Mr Larkin:** Thank you.

# Extract from Committee for Justice minutes of 4 February 2015

## Committee for Justice Minutes of Proceedings

Wednesday 4 February 2015  
Room 21, Parliament Buildings

**Present:** Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Sammy Douglas MLA  
Mr Tom Elliott MLA  
Mr Paul Frew MLA  
Mr Chris Hazzard MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Mr Patsy McGlone MLA  
Mr Edwin Poots MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Mr Keith McBride (Senior Assistant Assembly Clerk)  
Mrs Roisin Donnelly (Assistant Assembly Clerk)  
Ms Marianne Doherty (Clerical Officer)  
Ms Anna McDaid (Assembly Bursary Student)

**Apologies:** Mr Alastair Ross MLA (Chairman)  
Mr Stewart Dickson MLA

**2.04pm** The meeting commenced in public session, the Deputy Chairman in the Chair.

**1. Apologies**

As above.

**9. Draft SR: The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015**

The Committee considered a proposal by the Attorney General for Northern Ireland to make a Statutory Rule to amend Section 8(4) of the Justice Act 2004 to include the PSNI as a named criminal justice organisation that the Attorney General for Northern Ireland will be required to issue human rights guidance to and noted that Mr Elliott MLA had previously recorded his objection to the proposal.



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*Question:* “That the Committee for Justice considered draft Statutory Rule the Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015 and recommends that it be affirmed by the Assembly.”

The Committee divided: Ayes 7; Noes 1;

**AYES**

Mr Raymond McCartney MLA  
Mr Paul Frew MLA  
Mr Chris Hazzard MLA  
Mr Alban Maginness MLA  
Mr Patsy McGlone MLA  
Mr Edwin Poots MLA

**NOES**

Mr Tom Elliott MLA

*Agreed:* The Committee for Justice considered draft Statutory Rule The Justice (Northern Ireland) Act 2004 (Amendment of section 8(4)) Order (Northern Ireland) 2015 and recommended that it be affirmed by the Assembly.

The Deputy Chairman advised Members that a motion to establish an Ad Hoc Committee to facilitate the Assembly’s disposal of this Statutory Rule was on the Order Paper for 10 February 2015.

**4.40pm** The meeting was adjourned.

**[EXTRACT]**







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