

Examiner of Statutory Rules

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

**7 March 2014
NIA 164/11-15R**

Committee for Employment and Learning	S.R. 2014 No. 48
Committee for Enterprise, Trade and Investment	S.R. 2014 No. 60
Committee for Finance and Personnel	S.R. 2014 Nos. 43, 44
Committee for Justice	Draft S.R.: The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Regulations (Northern Ireland) 2014 S.R. 2014 Nos. 27, 28, 47
Committee for Social Development	S.R. 2014 Nos. 62, 63

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 Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/43)

The Building (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/44)

3. **I draw the attention of the Committee for Finance and Personnel and the Assembly to the Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/43) and the Building (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/44) on the ground that they were laid in breach of the 21-day rule (that is to say the long-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 a statutory rule and its coming into operation.), explained by the Department of Finance and Personnel. The regulations were made and laid on 24 February 2014 and came into operation on 25 February 2014.**
4. In essence, the European Commission had issued a reasoned opinion in September 2013 to the effect that certain provisions of the relevant recast Directive (Directive 2010/31/EU of the European Parliament and of the Council) had either not been properly transposed or that the notification of their transposition had been defective. The Commission had adopted accelerated procedures under which it would apply to the European Court of Justice for the

imposition of penalties if transposition were not completed by 25 February 2014. Meanwhile the Department had been already embarked on a process of making the necessary amendments originally intended to in place by March or April 2014, and this process had to be brought forward to meet Commission's deadline. The consultations ended on the two sets of regulations ended on 29 January 2014 and 4 February 2014.

5. In the circumstances the Department's explanation seems to be reasonable.

<p>The Explosives (Hazard Information and Packaging for Supply) (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/47)</p>

6. **I draw the attention of the Committee for Justice and the Assembly to the Explosives (Hazard Information and Packaging for Supply) (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/47) on the ground that they were laid in breach of the 21-day rule, explained by the Department of Justice. The Regulations were made on 25 February 2014, were laid on 27 February 2014 and came into operation on 28 February 2014.** They needed to come into operation on 28 February 2014 to replace the earlier amending regulations (in S.R. 2014/26) revoked by these Regulations: I drew attention to the earlier regulations in the Tenth Report of Session 2013/2014 (21 February 2014) and commended the Department for its speedy action in quickly replacing the earlier regulations to take account of the points I raised. Accordingly, the breach of the 21-day rule, as explained, seems to be fully justified in the circumstances.

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 Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Order (Northern Ireland) 2014

Statutory rule subject to affirmative resolution

The Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/62)

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

The Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/64)

Statutory rules subject to negative resolution

The Rehabilitation of Offenders (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/27)

The Police Act 1997 (Criminal Records) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/28)

The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/43)

The Building (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/44)

The Explosives (Hazard Information and Packaging for Supply) (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/47)

The Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014 (S.R. 2014/48)

The Gas (Individual Standards of Performance) Regulations (Northern Ireland) 2014 (S.R. 2014/60)



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