

Examiner of Statutory Rules

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

**28 March 2014
NIA 169/11-15**

Committee for Agriculture and Rural Development	S.R. 2014 Nos. 58, 66, 86, 92,
Committee for Education	S.R. No. 70
Committee for Employment and Learning	S.R. 2014 No. 87
Committee for Enterprise, Trade and Investment	S.R. 2014 No. 74
Committee for Finance and Personnel	S.R. 2014 Nos. 67, 68, 69
Committee for Health, Social Services and Public Safety	S.R, 2014 Nos. 56, 57, 59
Committee for Justice	S.R. 2014 No. 64
Committee for the Office of the First Minister and deputy first Minister	S.R. 2014 No. 55
Committee for Regional Development	S.R. 2014 Nos. 45, 46, 82
Committee for Social Development	S.R. 2014 Nos. 49, 50, 51, 52, 61, 65, 73, 75, 78, 79, 80, 81, 89, 93

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 Domestic Energy Efficiency Grants (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/52)

3. **I draw the attention of the Committee for Social Development and the Assembly to the Domestic Energy Efficiency Grants (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/52) on the grounds that they are defectively drafted in one respect, acknowledged by the Department for Social Development, and were laid in breach of the 21-day rule, explained by the Department.**
4. The drafting defect arises in regulation 7, which amends regulation 7 of the principal Regulations made in 2009 (S.R. 2009/195). Regulation 7 is in the following terms:

“7.—(1) In regulation 7 (applications for grant):—

 - (a) in paragraph (3) for “The application shall contain” substitute “An application qualifying under regulation 4(1) or 4(2) shall contain”;
 - (b) after paragraph (3) insert:—

“(4) An application qualifying under regulation 4(2)(g) shall contain:—

 - (a) a quotation for the works;

- (b) proof of age of the existing boiler; and
- (c) a building control certificate.”.

(2) This regulation shall not have effect in relation to grants approved under regulations (4)(1)(aa) and 4(2)(h).”.

I queried the intended effect of regulation 7(2), wondering was it at the least otiose. It seemed to merely disapply in some way the minor amendments of regulation 7 as originally drafted in the principal regulations as far as applications qualifying under (new) regulation 4(1)(aa) or (2)(h) (leaving aside the amendment in new regulation 7(4), which as not relevant to those provisions). That did not seem to make sense.

5. In response to my query it seems that the Department's intention was to exclude applications approved under regulation 4(1)(aa) or (2)(h) from the whole of regulation 7(3). That intention could have been achieved by a wholly textual amendment in the regulation 7 in the following terms, leaving out what is in new regulation 7(2) (purporting to exclude the application of the amendment of regulation 7 of the principal regulations):

“7. In regulation 7 (applications for grant):—

(b) in paragraph (3) for “The application shall contain” substitute “Subject to paragraph (4), an application qualifying under regulation 4(1) or 4(2) shall contain”;

(b) after paragraph (3) insert:—

“(4) Paragraph (3) does not apply in relation to grants approved under regulation 4(1)(aa) or (2)(h).

(5) An application qualifying under regulation 4(2)(g) shall contain:—

- (a) a quotation for the works;
- (b) proof of age of the existing boiler; and
- (c) a building control certificate.”. ”.

6. I understand from the Department that these Regulations will need to be revised within the next year.

7. The Department apologises for the breach of the 21-day rule, which related to delays involving the template for printing, and is making arrangements in an effort to ensure that this does not occur in future.

<p>The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/87)</p>
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8. **I draw the attention of the Committee for Employment and Learning and the Assembly to the Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/87) on the ground that they were laid in breach of the 21-day rule, explained by the Department for Employment and Learning.** It was necessary for the Regulations (which correspond to those for England and Wales) to come into operation on 6 April 2014 at the start of the new tax year. The Department received the final English and Welsh regulations on 14 March 2014 (on which day they were laid before Parliament and the National Assembly for Wales). The Regulations were made on 18 March 2014 and were laid on 19 March 2014. In the circumstances, the Department's explanation seems to be reasonable, and the breach was marginal.

The Single Common Market Organisation (Consequential Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/92)
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9. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Single Common Market Organisation (Consequential Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/92) on the ground that they were laid in breach of the 21-day rule, explained by the Department Agriculture and Rural Development.**

The Regulations were made on 19 March 2014, were laid on 20 March 2014 and came into operation on 21 March 2014. It was necessary to bring the Regulations into operation as soon as possible so that they were aligned various enforcement powers, and so on, with new regime under the Single Common Market Organisation Regulation (Regulation (EU) 1308/2013, adopted on 16 December 2013 and in force from 1 January 2014). Similar provision was made for Great Britain in SI 2013/3235. In the circumstances the explanation given by the Department seems to be reasonable. The Department notified me in advance of the intended breach and I indicated that the Regulations should at least be laid before they came into operation, which they were.

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 requiring the approval of the Assembly (confirmatory procedure)

The Social Security Up-rating Order (Northern Ireland) Order (Northern Ireland) 2014 (S.R. 2014/78)

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/89)

Statutory rules subject to negative resolution

The Rail Vehicle Accessibility Regulations (Northern Ireland) 2014 (S.R. 2014/45)

The Rail Vehicle Accessibility (Application for Exemptions Orders) Regulations (Northern Ireland) 2014 (S.R. 2014/46)

The Domestic Energy Efficiency Grants Regulations (Northern Ireland) 2014 (S.R. 2014/52)

The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2014 (S.R. 2014/49)

The Social Security Pensions (Flat Rate Accrual Amount) Order (Northern Ireland) 2014 (S.R. 2014/50)

The Social Security Pensions (Low Earnings Threshold) Order (Northern Ireland) 2014 (S.R. 2014/51)

The Salaries (Assembly Ombudsman and Commissioner for Complaints) Order (Northern Ireland) 2014 (S.R. 2014/55)

The Firefighters' Pension Scheme (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/56)

The New Firefighters' Pension Scheme (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/57)

The Zoonoses (Fees) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/58)

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/59)

The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order (Northern Ireland) 2014 (S.R. 2014/61)

The Legal Aid (General) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/64)

The Statutory Sick Pay (Maintenance of Records) (Revocation) Regulations (Northern Ireland) 2014 (S.R. 2014/65)

The Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/66)

The Valuation (Telecommunications, Natural Gas and Water) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/67)

The Rates (Small Business Hereditament Relief) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/68)

The Rates (Unoccupied Hereditaments) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/69)

The Teachers' Superannuation (Amendment) (No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/70)

The Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/73)

The Control of Major Accident Hazards (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/74)

The Guaranteed Minimum Pensions Increase Order (Northern Ireland) 2014 (S.R. 2014/75)

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (S.R. 2014/79)

The Social Security Benefits (Up-rating) Regulations (Northern Ireland) 2014 (S.R. 2014/80)

The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2014 (S.R. 2014/81)

The Annesborough Road, Lurgan (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/82)

The Agriculture (Student Fees) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/86)

The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/87)

The Single Common Market Organisation (Consequential Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/92)

The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/93)



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