

Examiner of Statutory Rules

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

**26 October 2011
NIA 19/11/15**

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| Committee for Agriculture and Rural Development | S.R. Nos. 2011 No. 349, 351, 352 |
| Committee for Finance and Personnel | S.R. 2011 Nos. 347, 348 |
| Committee for Health, Social Services and Public Safety | S.R. 2011 No. 320 |
| Committee for Regional Development | S.R. 2011 Nos. 341, 342, 343 |
| Committee for Social Development | S.R. 2011 Nos. 338, 339, 356, 357 |

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 Healthy Start Scheme and Day Care Scheme (Amendment No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/320)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Healthy Start Scheme and Day Care Scheme (Amendment No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/320) on the ground that the drafting of part of the amendment carried by them could be improved by way of clarity and tidiness, acknowledged by the Department of Health, Social Services and Public Safety.** Regulation 5 makes a small amendment to the principal Regulations: in essence it substitutes in regulation 2(2) an amended reference to provision in section 3 of the Social Security Act 1998 (that is to say, a reference to section 3(1A) in place of section 3(2)(a)); but the modification of section 3(1A) set out in regulation 2(3) (see below) does not exactly fit the structure of the substituted section 3(1A), it seems to me, instead building on the existing modification of section 3(2)(a). I would encourage the Department to bring forward at a suitable opportunity an amending regulation along the following lines:

“Amendment of Schedule 5 to the [principal] Regulations

. In Schedule 5 to the Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006(fn), in the last entry (use of information), for column 2 (modifications) substitute—

“After paragraph (d) insert

“(e) where it relates to benefit under the Social Security Administration (Northern Ireland) Act 1992, the administration of a scheme made for the purposes of Article 13 of the Social Security (Northern Ireland) Order 1988.”.

The effect of that is to make it clear that that new paragraph (e) in the version of section 3(1A) of the Social Security Act 1998, as modified, comes after paragraphs (a) to (d) of that subsection in exactly the same paragraphing structure. That achieves what the Department intended to achieve in S.R. 2011/320, regulation 2(3), which, as I have said, attempted to build on the existing modification based on section 3(2)(a) of the 1998 Act thus:

“(3) In the last entry in column 2 (Modifications) for “or employment or training” substitute “(d) retirement planning” and after “insert” insert “(e)”.

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 subject to affirmative resolution

The Registration of Deeds (Fees) Order (Northern Ireland) 2011 (S.R. 2011/347)

The Land Registry (Fees) Order (Northern Ireland) 2011 (S.R. 2011/348)

Statutory rules subject to negative resolution

The Healthy Start Scheme and Day Care Scheme (Amendment No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/320)

The Housing Executive (Indemnities for Members and Officers) Order (Northern Ireland) 2011 (S.R. 2011/338)

The Homeless Persons Advice and Assistance Regulations (Northern Ireland) 2011 (S.R. 2011/339)

The Dogwood Walk Footpath, Route F1386, Craigavon (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/341)

The Old Mill Heights, Millbrook, Larne (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/342)

The Footpath between Ballymacash Road and Prince William Road, Lisburn (Abandonment) Order (Northern Ireland) 2011 (S.R. 2011/343)

Cattle Identification (Notification of Births, Deaths and Movements) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/349)

The Seed Potatoes (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/351)

The Plant Health (Amendment No. 3) Order (Northern Ireland) 2011 (S.R. 2011/352)

The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2011 (S.R. 2011/356)

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/357)



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