

**Examiner of Statutory Rules**

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

**23 November 2012  
NIA 84/11-15R**

Committee for Employment and Learning	S.R. 2012 No. 398
Committee for the Environment	Draft S.R.: The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012; S.R. 2012 No. 399
Committee for Finance and Personnel	S.R. 2012 No. 393
Committee for Justice	S.R. 2012 Nos. 391, 402
Committee for Social Development	Draft S.R.: The Licensing (Irresponsible Drinks Promotions) Regulations (Northern Ireland) 2012 Draft S.R.: The Registration of Clubs (Irresponsible Drinks Promotions) Regulations (Northern Ireland) 2012



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

**Draft S.R.: The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012**

3. **I draw the attention of the Committee for the Environment and the Assembly to the draft Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012 on the ground that they are defectively drafted in one respect, acknowledged by the Department of the Environment.**
4. The draft Regulations, in regulation 2(1), define “the Administrator” as the Department of the Environment and “the Department” as the Department of the Environment”. Regulation 5 in Part 1 is headed “Administrator” and states that the Department shall administer the provision made by these Regulations. Part 2 (on the charge) refers to the Department. Parts 3 to 7 (on the enforcement and penalty regime) refer to the Administrator. The primary legislation (the Climate Change Act 2008) refers, in relation to enforcement and penalties, to “administrator”, and in the similar legislation relating to Wales these functions are conferred on local authorities. It seems to me that it would have been better in the case of the Northern Ireland regulations to have used “the Department” (that is, the Department of the Environment) throughout, since all functions are conferred on the Department. Regulation 5 as drafted, stating that the Department is to administer the provisions, would probably have been sufficient to cover that; alternatively it could have been expanded slightly by adding at the end of Regulation 5(1) “and, accordingly, it [that is, the Department] is the Administrator for this purpose”. The Department acknowledges the point. I emphasise that the defect in the drafting of the Regulations is not such as to render them unworkable in any way; rather, it

is in the nature of an awkwardness in the drafting that could have been avoided, given that in Northern Ireland all the relevant functions are conferred on the Department.

**The Legal Aid (General) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/391)**

5. **I draw the attention of the Committee for Justice and the Assembly to the Legal Aid (General) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/391) on the ground that they require elucidation in one respect, provided by the Department of Justice.**
6. The Department's intention in the Regulations is to preserve the exemption for all periodical payments of maintenance in family proceedings from the statutory charge in civil legal aid, while removing the exemption from other financial provision orders in family proceedings (particularly lump sum orders and property adjustment orders) subject to a minimum threshold of £3,000. In doing so the Department closely followed a provision drafted in similar terms for a similar purpose for England and Wales in the Community Legal Service (Financial) Regulations 2000 (S.I. 2000/516): that provision is now revoked for unconnected reasons, but it seems that while it was in force there were no problems in achieving its intended purpose.
7. It seemed to me that both the English provision of 2000 and new regulation 17(9) and (9A) could have been drafted slightly more clearly (say, by expressly excluding orders for periodical provision of maintenance from scope of the orders referred to in new regulation 17(9)(e) and (9A)): it seemed that some of the orders under the statutory provisions there referred to were potentially wide enough to cover periodical payments as well as lump sums. But, given the legislative history of this, I am content to publish the elucidation of the regulations as provided by the Department.

**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 Licensing (Irresponsible Drinks Promotions) Regulations (Northern Ireland) 2012

Draft S.R: The Registration of Clubs (Irresponsible Drinks Promotions) Regulations (Northern Ireland) 2012

**Draft S.R: The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2012**

### Statutory rules subject to negative resolution

**The Legal Aid (General) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/391)**

The Superannuation (Commission for Victims and Survivors for Northern Ireland) Order (Northern Ireland) 2012 (S.R. 2012/393)

The Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (Amendment) (No.2) Regulations (Northern Ireland) 2012 (S.R. 2012/398)

The Smoke control Areas (Authorised Fuels) Regulations (Northern Ireland) 2012 (S.R. 2012/399)

### Statutory rule not subject to laying and not subject to Assembly proceedings

The County Court (Amendment) Rules (Northern Ireland) 2012 (S.R. 2012/402)



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