

Examiner of Statutory Rules

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

**13 June 2014
NIA 184/11-15**

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| Committee for Agriculture and Rural Development | S.R. 2014 Nos. 107, 151 |
| Committee for the Environment | S.R. 2014 No. 117, 137 |
| Committee for Health, Social Services, and Public Safety | S.R. 2014 No. 154, 158, 159 |
| Committee for Justice | Draft S.R: The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment No. 2) Order (Northern Ireland) 2014 S.R. 2014 No. 152 |
| Committee for Regional Development | S.R. 2014 Nos. 141, 145 |
| Committee for Social Development | S.R. 2014 Nos. 140, 150 |

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 Social Security (Maternity Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2014 (Northern Ireland) 2014 (S.R. 2014/140)

3. **I draw the attention of the Committee for Social Development and the Assembly to the Social Security (Maternity Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/140) on the ground that they were laid in breach of the 21-day rule, explained by the Department for Social Development.** The Regulations were made and laid on 16 May 2014 and came into operation on 18 May 2014. The Department was only notified of the making of the equivalent regulations for Great Britain on 3 April 2014 (SI 2014/884, having been made on 1 April 2014 to come into force on 18 May 2014). The Department made every effort to make the Regulations for Northern Ireland at the earliest opportunity, having submitted the policy proposal to the Committee on 29 April 2014. The Committee subsequently sought further clarification from the Department, which clarification was received, I understand, after the making of the Regulations. The Department was anxious to proceed with the Regulations to ensure parity.
4. In considering the Regulations, the Department identified a potential problem with the procedure underlying the regulations for Great Britain, and the Department for Work and Pensions sought to remedy the problem by subsequently (to the making of S.I. 2014/884) commencing certain provisions by way of a commencement order for Great Britain: whether DWP actually and effectively remedied the problem (given the powers that existed when

S.I. 2014/884 was made) is not for me; but I am clear that the corresponding action (commencement order) by the Department here (taken on 15 May 2014 to commence certain provisions in step with the commencement of corresponding provisions for Great Britain) before the making of the Regulations effectively avoided any problem for Northern Ireland. I commend the Department for identifying the point in advance.

5. In all the circumstances that occurred, it seems to me that the Department's explanation is reasonable.

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 No. 2) Order (Northern Ireland) 2014

Statutory rules subject to negative resolution

The Welfare of Animals at the Time of Killing Regulations (Northern Ireland) 2014 (S.R. 2014/107)

The Controlled Waste and Duty of Care (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/117)

The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/137)

The Social Security (Maternity Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2001 (S.R. 2014/140)

The B162 Disert Road, Draperstown (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/141)

The U232 Aghafad Road, Newtownstewart (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/145)

The Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations (Northern Ireland) 2014 (S.R. 20014/150)

The Foot and Mouth Disease (Amendment) Regulations (Northern Ireland) 2014 (S.R. 20014/151)

The Attorney General's Human Rights Guidance (Northern Ireland Prison Service – Prison Order and Discipline) Order (Northern Ireland) 2014 (S.R. 2014/152)

The Optical Charges and Payments (Amendment) Regulations (Northern Ireland) 2014 (S.R. 20014/154)

The Misuse of Drugs (Amendment No. 2) and Misuse of Drugs (Safe Custody) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 20014/158)

The Misuse of Drugs (Designation) (Amendment No. 2) Order (Northern Ireland) 2014 (S.R. 20014/159)



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