



Northern Ireland
Assembly

Examiner of Statutory Rules

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

Session 2015/2016 Twelfth Report

22 March 2016

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Committee for Agriculture and Rural Development	S.R. 2016 Nos. 54, 59, 75, 118, 120, 137
Committee for Culture, Arts and Leisure	S.R. 2016 No. 123
Committee for Education	S.R. 2016 No. 111
Committee for Employment and Learning	S.R. 2016 No. 133
Committee for Enterprise, Trade and Investment	Draft S.R.: The Renewables Obligation Closure Order (Northern Ireland) 2016 [approved 14/3/2016] S.R. 2016 Nos. 129, 146

Committee for the Environment	<p>Draft S.R.: The Local Government (Community Planning Partners) Order (Northern Ireland) 2016 [approved 14/3/2016]</p> <p>Draft S.R.: The Local Government (Standing Orders) Regulations (Northern Ireland) 2016 [not approved – question on motion negatived 14/3/2016]</p> <p>S.R. 2016 Nos. 79, 95, 96, 115, 116, 117, 119, 128,</p>
Committee for Finance and Personnel	S.R. 2016 Nos. 70,71, 87, 177
Committee for Health, Social Services and Public Safety	S.R. 2016 Nos. 97, 98, 104, 105, 170
Committee for Justice	S.R. 2016 Nos. 41, 42, 43, 58, 74, 81, 82, 90, 93, 94,
Committee for the Office of the First Minister and deputy First Minister	S.R. 2016 Nos. 76 [affirmed 15/3/2016], 143
Committee for Regional Development	S.R 2016 Nos. 73, 103, 112, 113, 114, 169, 173
Committee for Social Development	<p>Draft S.R.: The Welfare Supplementary Payments Regulations (Northern Ireland) 2016 [approved 14/3/2016]</p> <p>S.R 2016 Nos. 72, 78, 80, 88, 91, 92, 99, 100, 107, 109, 110, 141, 142, 144, 147, 158, 162, 165, 171, 172</p>

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 Public Service Pensions (Certification Officer for Northern Ireland) Regulations (Northern Ireland) 2016 (S.R. 2016/71)
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3. **I draw the attention of the Committee for Finance and Personnel and the Assembly to the Public Service Pensions (Certification Officer for Northern Ireland) Regulations (Northern Ireland) 2016 (S.R. 2016/71) on the ground that they are defectively drafted, as acknowledged by the Department of Finance and Personnel.** The regulations (in common with S.R. 2016/70 in respect of the Principal Civil Service Pension Scheme (Northern Ireland) under the Superannuation (Northern Ireland) Order 1972) made 15 June 2012 the effective date for entry into the scheme for civil servants and others established under the Public Service Pensions Act (Northern Ireland) 2014 (commonly known as the Alpha Scheme): but of course that scheme did not come into existence until 1 April 2015. The Department has now made and laid new regulations to

change the effective date to 1 April 2015, which makes sense: see S.R. 2016/177. I commend the Department for correcting this quickly.

The Police Pensions (Additional Voluntary Contributions) Regulations (Northern Ireland) 2016 (S.R. 2016/82)

4. **I draw the attention of the Committee for Justice and the Assembly to the Police Pensions (Additional Voluntary Contributions) Regulations (Northern Ireland) 2016 (S.R. 2016/82) on the grounds that they were laid in breach of the 21-day rule and that they are defectively drafted in one minor respect.**
5. The Regulations were made, laid and came into operation on 29 February 2016. Apparently there was some problem with the printing process (on which see also paragraph 8 below on S.R. 2016/104) which held things up. But the Department realises that it could have worked round this using a typescript copy. In any event, the effective date of regulation 2 and the Schedule (the substantive provisions) was 6 April 2015.
6. The minor drafting defect is a missed consequential revocation. This was picked up in relation to corresponding Scottish Regulations (in S.S.I. 2016/75) by the Scottish Parliament's Delegated Powers and Law Reform Committee in its 17th Report, 2016 (Session 4), published on 2 March 2016, and I am grateful to that Committee for identifying the point.

The Pensions (2015 Act) Pension Sharing on Divorce etc. (Transitional Provision) Order (Northern Ireland) 2016 (S.R. 2016/99)

7. **I draw the attention of the Committee for Social Development and the Assembly to the Pensions (2015 Act) Pension Sharing on Divorce etc. (Transitional Provision) Order (Northern Ireland) 2016 (S.R. 2016/99) on the ground they may be of doubtful vires.** The Department for Social Development is aware that the Joint Committee on Statutory Instruments at Westminster strongly questioned the vires of the corresponding Order for Great Britain in S.I. 2016/99 in its Nineteenth Report of Session 2015-16, published on 4 March 2016. The Joint Committee was fairly firmly of the view that the solution to the matter dealt with lay in primary rather than subordinate legislation. I am grateful to the Joint Committee for identifying that point, which is relevant to this Order. No doubt the incoming Committee for Communities will be seized of developments in relation to this.

The Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016 (S.R. 2016/104)

8. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016 (S.R. 2016/104) on the ground that they were laid in breach of the 21-day rule, explained by the Department of Health, Social Services and Public Safety.** They were made on 3 March 2016 to come into operation on 1 April 2016 but were not laid until 15 March because of unexpected delays in the printing process (on which see also paragraph 5 above on S.R. 2016/82). The Department has apologised for the

breach of the 21-day rule, indicating that it did not anticipate the printing difficulties; otherwise, it would have laid a typescript copy.

The Disabled Persons (Badges for Motor Vehicles) (Amendment No. 2) Regulations (Northern Ireland) 2016 (S.R. 2016/173)

9. **I draw the attention of the Committee for Regional Development and the Assembly to the Disabled Persons (Badges for Motor Vehicles) (Amendment No. 2) Regulations (Northern Ireland) 2016 (S.R. 2016/173) on the grounds that they were laid in breach of the 21-day rule and that they are defectively drafted.**
10. The Regulations were made on 16 March 2016, were laid on 18 March 2016 and come into operation on 31 March 2016. They are intended to allow the continued use of the present blue badge scheme beyond 1 April 2016 (until 1 April 2017): S.R. 2016/30 had amended the principal 1993 Regulations to provide for a new form of badge from 1 April 2016, but recent unforeseen difficulties had arisen with the operation of this and the date for the new badge had to be put back. The further change had to be made urgently (before 1 April 2016) hence the breach of the 21-day rule.
11. It seems to me that the Department has not done quite what it intended to do in these Regulations. It has amended the principal 1993 Regulations as they stand before the amendments brought about by S.R. 2016/30 (containing the 1 April 2016 date for the new form of badge) are in operation. It would, in my view, have been better to have revoked and re-enacted what is in S.R. 2013/30 with the new date of 1 April 2017. The Department does not intend to do anything further at this stage but I have at least set out my view.

Brief final remarks

12. This report is the final report for this Assembly mandate (from May 2011 until dissolution immediately after midnight on 29 March 2015). It is also my final report as Examiner of Statutory Rules after fifteen years in that office. I step down at the end of this month by way of retirement. I wish my successor well and every success for the future.

W G Nabney

Examiner of Statutory Rules

22 March 2016

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 Local Government (Community Planning Partners) Order (Northern Ireland) 2016 [approved by resolution 14 March 2016]

Draft S.R.: The Local Government (Standing Orders) Regulations (Northern Ireland) 2016 [not approved — question on motion negatived 14 March 2016]

Draft S.R.: The Welfare Supplementary Payments Regulations (Northern Ireland) 2016 [approved by resolution 14 March 2016]

Draft S.R.: The Renewables Obligation Closure Order (Northern Ireland) 2016 [approved by resolution 14 March 2016]

Statutory rule subject to affirmative resolution

The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76) [affirmed by resolution 15 March 2016]

Statutory rules the approval of the Assembly (confirmatory procedure)

The Pensions (2015 Act) (Consequential and Supplementary Amendments) Order (Northern Ireland) 2016 (S.R. 2016/78)

The State Pension (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/80)

The State Pension (Amendment No. 2) Regulations (Northern Ireland) 2016 (S.R. 2016/88)

The Social Security Benefits Up-rating Order (Northern Ireland) 2016 (S.R. 2016/92)

Statutory rules subject to negative resolution

The Police (Conduct) Regulations (Northern Ireland) 2016 (S.R. 2016/41)

The Police (Performance and Attendance) Regulations (Northern Ireland) 2016 (S.R. 2016/42)

The Police Appeals Tribunals Regulations (Northern Ireland) 2016 (S.R. 2016/43)

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations (Northern Ireland) 2016 (S.R. 2016/54)

The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2016 (S.R. 2016/58)

Agriculture (Student Fees) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/59)

The Superannuation (Certification Officer for Northern Ireland) Order (Northern Ireland) 2016 (S.R. 2016/70)

The Public Service Pensions (Certification Officer for Northern Ireland) Regulations (Northern Ireland) 2016 (S.R. 2016/71)

The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2016 (S.R. 2016/72)

The Train Driving Licences and Certificates (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/73)

The Damages for Bereavement (Variation of Sum) (Northern Ireland) Order 2016 (S.R. 2016/74)

The Zoonoses (Fees) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/75)

The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/79)

The Modern Slavery Act 2015 (Power of Arrest: Code of Practice) Order (Northern Ireland) 2016 (S.R. 2016/81)

The Police Pensions (Additional Voluntary Contributions) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/82)

The Whole of Government Accounts (Designation of Bodies) Order (Northern Ireland) 2016 (S.R. 2016/87)

The Taxis Act (Northern Ireland) 2008 (Retention and Disposal of Seized Motor Vehicles, Equipment and Items) Regulations (Northern Ireland) 2016 (S.R. 2016/90)

The Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/91)

The Magistrates' Courts (Amendments) Rules (Northern Ireland) 2016 (S.R. 2016/93)

The Magistrates' Courts (Violent Offences Prevention Orders) Rules (Northern Ireland) 2016 (S.R. 2016/94)

The Waste (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/95)

The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/96)

The Tobacco Retailer (Registration and Display of Notices) Regulations (Northern Ireland) 2016 (S.R. 2016/97)

The Tobacco Retailer (Fixed Penalty) (General) Regulations (Northern Ireland) 2016 (S.R. 2016/98)

The Pensions (2015 Act) Pension Sharing on Divorce etc. (Transitional Provision) Order (Northern Ireland) 2016 (S.R. 2016/99)

The State Pension (Amendment No.3) Regulations (Northern Ireland) 2016 (S.R. 2016/100)

The Trunk Road T10 (Cornamuck Realignment) Order (Northern Ireland) 2016 (S.R. 2016/103)

The Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016 (S.R. 2016/104)

The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/105)

The Occupations Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 (S.R. 2016/107)

The Social Security Benefits Up-rating Regulations (Northern Ireland) 2016 (S.R. 2016/109)

The Social Security Benefits (Adjustment of Amounts and Thresholds) Regulations (Northern Ireland) 2016 (S.R. 2016/110)

The Complaints Tribunal (Curriculum and Related Matters) Regulations (Northern Ireland) 2016 (S.R. 2016/111)

The River Lagan Foot/Cycle Bridge Order (Northern Ireland) 2016 (S.R. 2016/112)

The Trunk Roads T7, T17 and T22 (Londonderry to Dungiven) Order (Northern Ireland) 2016 (S.R. 2016/113)

The River Lagan (Diversity of Navigable Watercourse and Extinguishment of Public Rights of Navigation) Order (Northern Ireland) 2016 (S.R. 2016/114)

The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016 (S.R. 2016/115)

The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)

The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/117)

The Northern Ireland Poultry Health Assurance Scheme (Fees) (Amendment) Order (Northern Ireland) 2016 (S.R. 2016/118)

The Groundwater (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/119)

The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/120)

The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/128)

The River Lagan (Diversity of Navigable Watercourse and Extinguishment of Public Rights of Navigation) Order (Northern Ireland) 2016 (S.R. 2016/129)

The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/133)

The Scrapie (Fees) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/137)

The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/141)

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)

The Salaries (Public Services Ombudsman) Order (Northern Ireland) 2016 (S.R. 2016/143)

The Occupational and Personal Pension Schemes (Modification of Schemes and Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/144)

The Construction (Design and Management) Regulations (Northern Ireland) 2016 (S.R. 2016/146)

The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/147)

The Pension (2015 Act) (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order (Northern Ireland) 2016 (S.R. 2016/158)

The Pensions Act (2015 Act) (Contributions Equivalent Premium) (Consequential Provision) and (Savings) Order (Northern Ireland) 2016 (S.R. 2016/162)

The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/165)

The River Road, Dunmurry (Abandonment) Order (Northern Ireland) 2016 (S.R. 2016/169)

The Pharmaceutical Society of Northern Ireland (General) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/170)

The Occupational Schemes (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/171)

The Pension Sharing (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/172)

The Disabled Persons (Badges for Motor Vehicles) (Amendment No. 2) Regulations (Northern Ireland) 2016 (S.R. 2016/173)

The Public Service Pensions (Certification Officer for Northern Ireland) (No.2) Regulations (Northern Ireland) 2016 (S.R. 2016/177)

Statutory rule subject to a laying requirement but not subject to Assembly proceedings

The Court Files Privileged Access Rules (Northern Ireland) 2016 (S.R. 2016/123)



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For more information please contact:

Northern Ireland
Assembly
Parliament
Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521137
Textphone: 028 90 521209

E-mail: info@niassembly.gov.uk

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