



Northern Ireland
Assembly

Examiner of Statutory Rules

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

Session 2015/2016 Ninth Report

1 February 2016

NIA 301/11-16

Committee for Agriculture and Rural Development	S.R. 2015 No. 408
Committee for Education	Draft S.R.: The Teachers' Pension Scheme (Consequential Provisions) (Amendment) Regulations (Northern Ireland) 2016
Committee for Employment and Learning	Draft S.R.: The Working Time Regulations (Northern Ireland) 2016
Committee for Enterprise, Trade and Investment	Draft S.R.: The Renewables Obligation (Amendment) Order (Northern Ireland) 2016
Committee for the Environment	S.R. 2016 Nos. 2, 8, 9, 10, 11

Committee Finance and Personnel	S.R. 2016 Nos. 16, 17, 18
Committee for Justice	<p data-bbox="807 190 1366 365">Draft S.R.: The Human Trafficking and Exploitation (Amendment of Slavery or Human Trafficking Offences and Relevant UK Orders) Order (Northern Ireland) 2016</p> <p data-bbox="807 409 1366 517">Draft S.R.: The Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order (Northern Ireland) 2016;</p> <p data-bbox="807 562 1366 669">Draft S.R.: The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order (Northern Ireland) 2016;</p> <p data-bbox="807 714 1366 844">Draft S.R.: The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order (Northern Ireland) 2016</p> <p data-bbox="807 889 1366 996">Draft S.R.: The Judicial Pensions (Amendment) Regulations (Northern Ireland) 2016</p> <p data-bbox="807 1041 1038 1066">S.R. 2016 No. 1</p>
Committee for Social Development	S.R. 2016 No. 6

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 Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015/408)
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3. I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the **Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015/408)** on the ground that they were laid in breach of the 21-day rule. I also re-iterate criticisms I made of earlier Regulations contained in S.R. 2015/318.

4. The Regulations were made on 10 December 2015 so as to come into operation on 1 January 2016. They were not laid until 18 December 2015. The Department of Agriculture and Rural Development has apologised for the oversight: it had been wrongly assumed (perhaps surprisingly, given the well-worn nature of the 21-day rule) that it was 21 days between making and coming into operation rather than between laying (after making) and coming into operation.
5. The Regulations, like those contained in S.R. 2015/318 (which I criticised in the Second Report of the Examiner of Statutory Rules of Session 2015/2016, 18 September 2015) greatly sub-delegate the review process to the Department. This is allowed by the wide enabling powers under section 2(2) of the European Communities Act 1972, but it would of course be much more satisfactory if the detail were stated on the face of the Regulations, and that is perhaps something that the new Department and the new Committee might wish to revisit in the next Assembly mandate. I also mention again the outdated references to “Community” instruments: we are now more than six years post-Lisbon on 1 December 2009 (not five, as I wrongly stated in my earlier report).

The Housing Benefit (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2016/6)

6. **I draw the attention of the Committee for Social Development and the Assembly to the Housing Benefit (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2016/6) 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 on 15 January 2016 (Friday), were laid on 18 January 2016 (Monday) and came into operation on 28 January 2016. The Department anticipated problems with the timing of these Regulations. The Regulations arise out of the Budget Statement by the Chancellor of the Exchequer on 8 July 2015. The corresponding Regulations for Great Britain were made on 7 October 2015. But events in Northern Ireland in Autumn 2015 (before, during and after the Fresh Start agreement) precluded the necessary ministerial agreement until early December 2015, when Departmental officials engaged with the Committee on the proposals. Officials briefed the Committee on 7 and 14 January 2016 (when they obtained the Committee’s agreement). The finalised draft was cleared by the Department’s legal advisers on 15 January 2016, and made on the same day. The Regulations needed to be in place by 28 January 2016 to meet the date specified in the 2008 Regulations for Housing Executive determination of local housing allowance as “the last working day in January”. In the circumstances the Department’s explanation seems to be reasonable.

W G Nabney

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29 January 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 Human Trafficking and Exploitation (Amendment of Slavery or Human Trafficking Offences and Relevant UK Orders) Order (Northern Ireland) 2016

Draft S.R.: The Renewables Obligation (Amendment) Order (Northern Ireland) 2016

Draft S.R.: The Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order (Northern Ireland) 2016;

Draft S.R.: The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order (Northern Ireland) 2016;

Draft S.R.: The Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order (Northern Ireland) 2016;

Draft S.R.: The Teachers' Pension Scheme (Consequential Provisions) Regulations (Northern Ireland) 2016

Draft S.R.: The Working Time Regulations (Northern Ireland) 2016

Draft S.R.: The Judicial Pensions (Amendment) Regulations (Northern Ireland) 2016

Statutory rules subject to affirmative resolution

The Rates (Regional Rates) Order (Northern Ireland) 2016 (S.R. 2016/16)

The Rates (Exemption for Automatic Telling Machines in Rural Areas) Order (Northern Ireland) 2016 (S.R. 2016/17)

The Rates (Temporary Rebate) (Amendment) Order (Northern Ireland) 2016 (S.R. 2016/18)

Statutory rules subject to negative resolution

The Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2016 (S.R. 2015/408)

The Human Trafficking and Exploitation (Slavery and Trafficking Prevention Orders) (Notification Requirements) Regulations (Northern Ireland) 2016 (S.R. 2016/1)

The Passenger and Goods Vehicles (Recording Equipment) (Downloading of Data) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/2)

The Housing Benefit (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/6)

Change of Council Name (Derry and Strabane City Council) Regulations (Northern Ireland) 2016 (S.R. 2006/8)

Change of District Name (Derry and Strabane) Order (Northern Ireland) 2016 (S.R. 2006/9)

Change of District Name (North Down and Ards) Order (Northern Ireland) 2016 (S.R. 2006/10)

Change of District Name (Armagh, Banbridge and Craigavon) Order (Northern Ireland) 2016 (S.R. 2006/11)



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ISBN: 978-1-78619-158-8