

Examiner of Statutory Rules

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

**24 April 2015
NIA 247/11-16**

Committee for Agriculture and Rural Development	S.R. 2015 No. 135, 191, 192
Committee for Education	S.R. 2015 No. 151,
Committee for Employment and Learning	S.R. 2015 No. 169,
Committee for Enterprise, Trade and Investment	Draft S.R.: The Energy (Amendment) Order (Northern Ireland) 2015 S.R. 2015 No. 159
Committee for the Environment	S.R. 2015 Nos. 68, 125, 174, 175, 176, 177, 182, 183, 187, 188, 189,
Committee for Finance and Personnel	S.R. 2015 Nos. 152, 181, 205, 208, 211, 213
Committee for Health, Social Services and Public Safety	S.R. 2015 Nos. 120, 121, 122, 186,
Committee for Justice	S.R. 2015 Nos. 195, 196, 198, 200, 201, 215,
Committee for Social Development	S.R. 2015 Nos. 153, 154, 155, 163, 164, 165, 184, 185, 204, 216

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 Local Government Reorganisation (Compensation for Loss of Employment) Regulations (Northern Ireland) 2015 (S.R. 2015/68)

3. **I draw the attention of the Committee for the Environment and the Assembly to the Local Government Reorganisation (Compensation for Loss of Employment) Regulations (Northern Ireland) 2015 (S.R. 2015/68) on the ground they are drafted defectively, acknowledged by the Department of the Environment.** I queried why the Regulations defined “CSCS” in terms of the Civil Service Compensation Scheme in regulation 2(1) but did not contain any further provision in relation to that in the Regulations. I further queried what was intended by regulation 5(4)(b) (reference to [other] regulations in made under Article 19 of the Superannuation (Northern Ireland) Order 1972 prior to the making of these Regulations [made under Article 19 of that Order]). The Department has now clarified its intentions.

4. The policy intention in relation to the inclusion of CSCS was to ensure that any civil servant who transferred to local government was allowed access to the same level of compensation (taking account of the CSCS) as a local government employee if made redundant as a consequence of local government reform. Accordingly, the Department intends to bring forward in amending regulations a new regulation 5 which, in the Department's view, would achieve this in the following terms:

“Calculation of compensation payment

5.—(1) A person's compensation payment is calculated by subtracting—

- (a) that person's statutory redundancy payment or payment under CSCS (whichever is the higher), and
- (b) any specified compensation,

from that person's enhanced redundancy payment.

(2) A person's enhanced redundancy payment is calculated by multiplying that person's statutory redundancy payment by 3.46.

(3) Subject to regulation 6(1)(b), the enhanced redundancy payment must not exceed the value of 104 weeks' pay (as calculated for the purposes of the 1996 Order in accordance with Chapter IV of Part 1 of that Order).

(4) For the purposes of paragraph (1), “specified compensation” is compensation paid or payable to that person under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007.”.

That would seem to accord with the Department's policy objective and set out the matter clearly.

The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (S.R. 2015/120)

The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/122)

5. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (S.R. 2015/120) and the on the ground they are drafted defectively, acknowledged by the Department of Health, Social Services and Public Safety.** The Joint Committee on Statutory Instruments in its Twenty-sixth Report for Session 2014 – 15 (19 March 2015) raised, in relation to the Regulations for England corresponding to those contained in S.R. 2015/122, a fairly minor point on a defined term (“new scheme” whereas at places there are references to “2015 scheme”). That point also applies to S.R. 2015/122. Similarly the Delegated Powers and Law Reform Committee of the Scottish Parliament in its 18th Report, 2015 (Session 4) (19 March 2015) identified a further minor definitional point in the corresponding regulations for Scotland which has a bearing on S.R. 2015/122: references to “transitional members” whereas the defined term is “transition members”. In the same report the Scottish Parliament's Committee raised a number of drafting defects on the Regulations for Scotland corresponding to those contained in S.R. 2015/120, all of which were fairly minor in themselves: some are relevant to S.R. 2015/120 (and no doubt also to the corresponding Regulations for England), as similar pensions schemes were being devised at the same time across the United Kingdom for implementation on 1 April 2015 and the reform of public service pensions generally. The Department has undertaken to make any necessary corrections (retrospectively to 1 April 2015) at the first available opportunity, taking account of similar developments in England and in Scotland. That seems to be satisfactory in

the circumstances given that the matters are relatively minor in nature (around such matters as definitions and slight inconsistencies in terminology).

The Local Government (Transitional, Incidental, Consequential and Supplemental Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/125)

6. **I draw the attention of the Committee for the Environment and the Assembly to Local Government (Transitional, Incidental, Consequential and Supplemental Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/125) on the ground they were laid in breach of the 21-day rule, explained by the Department of the Environment.** These Regulations were essentially about the ceremonial aspects attaching to charters of cities and boroughs. It was necessary to have the Regulations in place in time for council meetings in March in advance of the 1 April 2015 local government reorganisation date. The Regulations were finally settled on 26 February 2015, put the Committee in draft form on 2 March 2015, made on 5 March 2015, laid, as planned on 6 March 2015, and they came operation on 9 March 2015 in time for council meetings. In the circumstances the Department's explanation seems to be reasonable.

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/182)

7. **I draw the attention of the Committee for the Environment and the Assembly to the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/182) on the ground they were laid in breach of the 21-day rule, explained by the Department of the Environment.** The Regulations were made on 25 March 2015, were laid on 26 March 2015 and came into operation on 1 April 2015 to coincide with the reorganisation of planning in the implementation of the Planning Act (Northern Ireland) 2011: they generally consist of consequential re-enactment to take account of that. The Department informed me of the likely breach of the 21-day rule in advance. In the circumstances, given the nature of the Regulations, the Department's timing seems to be reasonable.

The Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2015 (S.R. 2015/183)

8. **I draw the attention of the Committee for the Environment and the Assembly to the Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2015 (S.R. 2015/183) on the ground it was laid in breach of the 21-day rule, explained by the Department of the Environment.** The Department made the Order on 25 March 2015, laid it on 26 March 2015, and it came into operation on 1 April 2015. The Order takes account of local government reorganisation and the views on the new councils on the organisation of waste management groupings. Arc 21 is reconstituted and there are transfers from SWaMP2008 to the council for the district of Armagh, Banbridge and Craigavon. The Order was finalised soon after that council (in shadow form) confirmed to the Department on 20 March 2015 that it had agreed to the transfers. Accordingly, the Department's explanation seems to be reasonable.

The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/185)

9. **I draw the attention of the Committee for Social Development and the Assembly to the Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/185) on the ground they were laid in breach of the 21-day rule, explained by the Department for Social Development.** The Regulations were made and laid on 26 March 2015, and they came into operation on 30 March 2015 in line with the Regulations for Great Britain so as to ensure operational

parity. In this case the Department for Work and Pensions only notified the Department of the making of the Regulations for Great Britain on 2 March 2015. Thereupon the Department worked to make the Regulations at the earliest opportunity. The Department and the Committee were engaged on the proposed Regulations between 19 and 26 March 2015, when the Committee indicated that it was content that the Regulations should proceed. Accordingly, it seems that the Department's explanation is reasonable.

The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/186)

10. **I draw the attention of the Committee Health, Social Services and Public Safety and the Assembly to the Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/186) on the ground they were laid in breach of the 21-day rule, explained by the Department Health, Social Services and Public Safety.** The Regulations were made on 25 March 2015, were laid on 27, and came into operation on 1 April 2015. These are a straightforward annual uplift in line with charges in Great Britain. But in this case there was some delay (for understandable reasons) in obtaining policy clearance in the Department. The policy was then cleared with the Committee (SL1 stage) on 11 March 2015. The Department then informed me on 23 March 2015 indicating that, under normal circumstances, the Regulations would have been made in the first week in March. Reflecting on the straightforward nature of the Regulations, the chronology of events and the explanation given it seems to me that in this case the Department could have perhaps minimised the breach of the 21-day rule, by making and laying them on say, 12 or 13 March 2015. No doubt the Department would accept that.

The Civil Legal Services (General) Regulations (Northern Ireland) 2015 (S.R. 2015/195)

The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. 2015/196)

The Civil Legal Services (Costs) Regulations (Northern Ireland) 2015 (S.R. 2015/198)

The Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015 (S.R. 2015/200)

The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (S.R. 2015/201)

11. **I draw the attention of the Committee for Justice and the Assembly to the above-mentioned Regulations on the ground they were laid in breach of the 21-day rule, explained by the Department of Justice.** These were variously made on 26 and 31 March 2015 and laid on 27 and 30 March 2015. They all came into operation on 1 April 2015. The Department's explanation is simply that it had to meet its very tight timeframe to have its full suite of planned subordinate legislation in place to coincide with the changeover from the Legal Services Commission to the Legal Services Agency within the Department. On that basis, the explanation seems to be reasonable.

The Social Security (Maternity Allowance) (Earnings) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/211)

12. **I draw the attention of the Committee for Social Development and the Assembly to the Social Security (Maternity Allowance) (Earnings) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/211) on the ground they were laid in breach of the 21-day rule, explained by the Department for Social Development.** The Regulations were made on 1 April 2015, were laid on 2 April 2015, and came into operation on 6 April 2015. The Department expresses regret for the delay in making the Regulations to match those for Great Britain, made on 23 February 2015, and cites an above average volume of legislation to be drafted

between February and April coupled with a reduction in staff capacity. The Committee considered the Regulations at its meeting on 26 March 2015, and was content that the Regulations be made. It seems that the Department's explanation for the timing of the Regulations is reasonable.

The Time Off to Attend Adoption Appointments (Prospective Adopters) Regulations (Northern Ireland) 2015 (S.R. 2015/213)

13. **I draw the attention of the Committee for Employment and Learning and the Assembly to the above-mentioned Regulations on the ground they were laid in breach of the 21-day rule, explained by the Department for Employment and Learning.** The Regulations were made and laid on 3 April 2015, and came into operation on 5 April 2015 in line with the large suite of subordinate legislation extending new rights to parents expecting a child to be born or placed for adoption from 5 April 2015. In the circumstances of this, against the background of the large amount of subordinate legislation necessary to put the regime in place for 5 April 2015, the explanation seems to be reasonable.

W G Nabney

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24 April 2015

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 Energy (Amendment) Regulations (Northern Ireland) 2015

Statutory rule subject to affirmative resolution

The Statistics and Registration Act 2007 (Disclosure of Patient Registration Information) Regulations (Northern Ireland) 2015 (S.R. 2015/208)

Statutory rule requiring the approval of the Assembly (confirmatory procedure)

The Social Security (Members of the Reserve Forces) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/184)

Statutory rules subject to negative resolution

The Local Government Reorganisation (Compensation for Loss of Employment) Regulations (Northern Ireland) 2015 (S.R. 2015/68)

The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (S.R. 2015/120)

The Health and Personal Social Services (Superannuation Scheme, Additional Voluntary Contributions and Injury Benefits), Health and Social Care Pension Scheme (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/121)

The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/122)

The Local Government (Transitional, Incidental, Consequential and Supplemental Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015/125)

The Agriculture (Student Fees) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/135)

The General Teaching Council for Northern Ireland (Registration of Teachers) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/151)

The Whole of Government Accounts (Designation of Bodies) Order (Northern Ireland) 2015 (S.R. 2015/152)

The Social Security (Invalid Care Allowance) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/153)

The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/154)

The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2015 (S.R. 2015/155)

The Insolvency (Northern Ireland) Order 2005 (Consequential Amendments) Order (Northern Ireland) 2015 (S.R. 2015/159)

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2015 (S.R. 2015/163)

The Occupational and Personal Pension Schemes Transfer Values) (Amendment and Revocation) Regulations (Northern Ireland) 2015 (S.R. 2015/164)

The Pensions Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015 (S.R. 2015/165)

The Certificates of Alternative Development Value Regulations (Northern Ireland) 2015 (S.R. 2015/174)

The Planning (Avian Influenza) (Special Development) Order (Northern Ireland) 2015 (S.R. 2015/175)

The Planning General (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/176)

The Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2015 (S.R. 2015/177)

The Public Service (Civil Servants and Others) Pensions (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/181)

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/182)

The Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2015 (S.R. 2015/183)

The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/185)

The Recovery of Health Services Charges (Amounts) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/186)

The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 (S.R. 2015/187)

The Planning (Simplified Planning Zones) Regulations (Northern Ireland) 2015 (S.R. 2015/188)

The Planning (Inquiry Procedure) Rules (Northern Ireland) 2015 (S.R. 2015/189)

The Common Agricultural Policy Basic Payment and Support Schemes Regulations (Northern Ireland) 2015 (S.R. 2015/191)

The Common Agricultural Policy (Control and Enforcement) Regulations (Northern Ireland) 2015 (S.R. 2015/192)

The Civil Legal Services (General) Regulations (Northern Ireland) 2015 (S.R. 2015/195)

The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. 2015/196)

The Civil Legal Services (Costs) Regulations (Northern Ireland) 2015 (S.R. 2015/198)

The Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015 (S.R. 2015/200)

The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (S.R. 2015/201)

Registered Rents (Increase) Order (Northern Ireland) 2015 (S.R. 2015/204)

The Health and Social Care (Disciplinary Procedure) (Amendment) Regulations
(Northern Ireland) 2015 (S.R. 2015/205)

**The Social Security (Maternity Allowance) (Earnings) (Amendment) Regulations
(Northern Ireland) 2015 (S.R. 2015/211)**

**The Time Off to Attend Adoption Appointments (Prospective Adopters) Regulations
(Northern Ireland) 2015 (S.R. 2015/213)**

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland)
2015 (S.R. 2015/215)

The Social Fund Winter Fuel Payment (Amendment) Regulations (Northern Ireland) 2015
(S.R. 2015/216)

Statutory rule subject to a laying requirement but no subject to
Assembly proceedings

The Employment Rights (Increase of Limits) Order (Northern Ireland) 2015 (S.R. 2015/169)



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