

Examiner of Statutory Rules

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

**25 March 2015
NIA 244/11-16**

Committee for Agriculture and Rural Development	S.R. 2015 No. 148
Committee for Education	S.R. 2015 No. 126
Committee for Employment and Learning	S.R. 2015 Nos. 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 146
Committee for the Environment	S.R. 2015 Nos. 45, 66, 72, 73, 74, 84, 85, 107, 108, 160, 162
Committee for Finance and Personnel	S.R. 2015 Nos. 141, 147
Committee for Justice	S.R. 2015 Nos. 143, 161
Committee for the Office of the First Minister and deputy First Minister	S.R. 2015 Nos. 136, 137, 144, 145
Committee for Regional Development	S.R. 2015 No. 134
Committee for Social Development	S.R. 2015 Nos. 124, 138, 139, 149, 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 Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84)

3. **I draw the attention of the Committee for the Environment and the Assembly to the Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84) on the ground they are drafted defectively (or at least infelicitously) in one respect, acknowledged by the Department of the Environment.** Regulation 10 (use of electronic communications) applies to tree preservation orders (Part 2); yet it is positioned in Part 3 (trees in conservation areas), although it does not relate to that Part. It seems that the previous (2003) Regulations, as amended in 2006, were drafted similarly. This infelicity does not affect the working of the Regulations but it does appear to be odd. If the Department is revising the Regulations in the future, it will address this point.

The Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/87)

The Shared Parental Leave Regulations (Northern Ireland) 2015 (S.R. 2015/93)

The Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2015 (S.R. 2015/98)

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/101)

The Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/104)

4. **I draw the attention of the Committee for Employment and Learning and the Assembly to the above-mentioned Regulations on the ground they appear to be defectively drafted in one respect, acknowledged by the Department for Employment and Learning.** They form part of the large suite of subordinate legislation to implement the Work and Families Act (Northern Ireland) 2015, and are made under various powers contained in the Employment Rights (Northern Ireland) Order 1996, including powers inserted in that Order by the 2015. They have been made subject to the confirmatory procedure: some of the powers are subject to that procedure and some subject to negative resolution. The problem is that, unlike the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (under which other parts of the implementing suite of subordinate legislation has been made) there is no provision for mixing procedures to which the subordinate legislation is subject; and the orthodox view in this and neighbouring legislatures is that it is at the very least undesirable to mix procedures (even if, theoretically, elements of the subordinate legislation could be split). For the future, the Department will consider addressing the matter in primary legislation. In the meantime, it regards this as a drafting defective in parts of the subordinate legislation, but one that does not fatally flaw the subordinate legislation in terms of vires or operation, and I would share that view.

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/88)

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/90)

The Statutory Shared Parental Pay (Administration) Regulations (Northern Ireland) 2015 (S.R. 2015/91)

The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations (Northern Ireland) 2015 (S.R. 2015/92)

The Statutory Adoption Pay (Curtailment) Regulations (Northern Ireland) 2015 (S.R. 2015/96)

The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015 (S.R. 2015/103)

The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order (Northern Ireland) 2015 (S.R. 2015/146)

5. **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.** They form part of the large suite of subordinate legislation to implement the Work and Families Act (Northern Ireland) 2015.

They provide for new rights for parents expecting a child to be born or placed for adoption after 5 April 2015, and certain notices (generally 8 weeks, so far as is possible) need to be given by parents in advance of that. In addition, the system is intended to work in tandem with the corresponding regime in Great Britain which was in place earlier (both in terms of primary and subordinate legislation). Accordingly, it seems that the Department's explanation is reasonable. These regulations were generally made on 2 March 2015, laid on 12 March 2015 and came into operation on 15 March 2015. They could perhaps have been laid slightly earlier, but the Department was clearly working under great pressures given the sheer volume of the provisions. S.R. 2015/146 was made and laid on 12 March 2015 and came into operation on 15 March 2015.

The Teachers' Pensions (Miscellaneous Amendments) Regulations (Northern Ireland) 2015 (S.R. 2015/126)

6. **I draw the attention of the Committee for Education and the Assembly to the Teachers' Pensions (Miscellaneous Amendments) Regulations (Northern Ireland) 2015 (S.R. 2015/126) on the ground they were drafted defectively in one respect, acknowledged by the Department of Education.** Regulations 13 and 25 make further provision in the Teachers' Pensions Scheme Regulations (Northern Ireland) 2014 (S.R. 2014/310) for scheme valuation and employer cost cap. Paragraph 3 of new Schedule 4 to the 2014 (inserted by regulation 25) contains a reference to margins specified by the Department of Finance and Personnel in directions under section 12(5) of the Public Service Pensions Act (Northern Ireland) 2014. But section 12(5) provides for regulations made by DFP, not directions. The Department has acknowledged this and intends to amend it at the first available opportunity, which seems satisfactory.

The Maternity Allowance (Curtailment) Regulations (Northern Ireland) 2015 (S.R. 2015/149)

The Statutory Maternity Pay (Curtailment) Regulations (Northern Ireland) 2015 (S.R. 2015/150)

7. **I draw the attention of the Committee for Social Development 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 Social Development.** They form part of the large suite of subordinate legislation to implement the Work and Families Act (Northern Ireland) 2015, already mentioned at paragraphs 4 and 5. These Regulations were not able to be made until after S.R. 2015/93 and S.R. 2015/94 were made by DEL (on 2 March 2015). The DSD Regulations were made and laid on 11 March 2015 and came into operation on 15 March 2015 to match (wisely, it seems to me) the commencement of the DEL Regulations. Accordingly, it seems to me that the Department's explanation is reasonable.

The Public Service Pensions Act (Northern Ireland) 2014 (Judicial Offices) Order (Northern Ireland) 2015 (S.R. 2015/161)

8. **I draw the attention of the Committee for Justice and the Assembly to the Public Service Pensions Act (Northern Ireland) 2014 (Judicial Offices) Order (Northern Ireland) 2015 (S.R. 2015/161) on the ground they were laid in breach of the 21-day rule, explained by the Department Justice.** They were made on 10 March 2015, were laid on 18 March 2015 and come into operation on 1 April 2015. In this case the Department, very candidly, pointed to an administrative oversight, apologised and indicated that it would learn from the experience. In the circumstances that seems 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)

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

The Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/87)

The Shared Parental Leave Regulations (Northern Ireland) 2015 (S.R. 2015/93)

The Statutory Shared Parental Pay Regulations (Northern Ireland) 2015 (S.R. 2015/94)

The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations (Northern Ireland) 2015 (S.R. 2015/95)

The Employment Rights (Northern Ireland) Act 1996 (Application of Articles 107G to 107I to Adoptions from Overseas) Regulations (Northern Ireland) 2015 (S.R. 2015/97)

The Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2015 (S.R. 2015/98)

The Statutory Shared Parental Pay (Adoptions from Overseas) Regulations (Northern Ireland) 2015 (S.R. 2015/99)

The Employment Rights (Northern Ireland) Act 1996 (Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/100)

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/101)

The Statutory Shared Parental Pay (Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/102)

The Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/104)

The Social Security (Benefits Up-rating) Order (Northern Ireland) 2015 (S.R. 2015/124)

The Jobseeker's Allowance (Extended Period of Sickness) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/138)

Statutory rules subject to negative resolution

The Water Framework Directive (Priority Substances and Classification) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/45)

The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 (S.R. 2015/66)

The Planning (General Development Procedure) Order (Northern Ireland) 2015 (S.R. 2015/72)

The Planning (Fees) Regulations (Northern Ireland) 2015 (S.R. 2015/73)

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 (S.R. 2015/74)

The Planning (Trees) Regulations (Northern Ireland) 2015 (S.R. 2015/84)

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (S.R. 2015/85)

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/88)**The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/90)****The Statutory Shared Parental Pay (Administration) Regulations (Northern Ireland) 2015 (S.R. 2015/91)****The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations (Northern Ireland) 2015 (S.R. 2015/92)****The Statutory Adoption Pay (Curtailed) Regulations (Northern Ireland) 2015 (S.R. 2015/96)****The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015 (S.R. 2015/103)**

The Flexible Working Regulations (Northern Ireland) 2015 (S.R. 2015/105)

The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015 (S.R. 2015/107)

The Planning (Listed Buildings) Regulations (Northern Ireland) 2015 (S.R. 2015/108)

The Teachers' Pensions (Miscellaneous Amendments) Regulations (Northern Ireland) 2015 (S.R. 2015/126)

The A54 Ballymacombs Road, Portglenone (Abandonment) Order (Northern Ireland) 2015 (S.R. 2015/134)

The Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015 (S.R. 2015/136)

The Planning Appeals Commission (Decisions on Appeals and Making of Reports) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/137)

The Social Security (Benefits Up-rating) Regulations (Northern Ireland) 2015 (S.R. 2015/139)

The Superannuation (District Councils) Order (Northern Ireland) 2015 (S.R. 2015/141)

The Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/143)

The Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/144)

The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/145)

The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order (Northern Ireland) 2015 (S.R. 2015/146)

The Valuation (Telecommunications and Natural Gas and Water) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/147)

The Zoonoses (Fees) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/148)

**The Maternity Allowance (Curtilment) Regulations (Northern Ireland) 2015
(S.R. 2015/149)**

**The Statutory Maternity Pay (Curtilment) Regulations (Northern Ireland) 2015
(S.R. 2015/150)**

The Local Government Reorganisation (Transferred Functions Grant) Regulations
(Northern Ireland) 2015 (S.R. 2015/160)

**The Public Service Pensions Act (Northern Ireland) 2014 (Judicial Offices) Order
(Northern Ireland) 2015 (S.R. 2015/161)**

The Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland)
2015 (S.R. 2015/162)



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

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Textphone 0870 240 3701

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£3.00

Printed in Northern Ireland by The Stationery Office Limited
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ISBN 978-0-339-40452-6

