

Examiner of Statutory Rules

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

**16 January 2015
NIA 223/11-16**

Committee for Agriculture and Rural Development	S.R. 2014 Nos. 291, 295, 299
Committee for Education	S.R. 2014 No. 310
Committee for Employment and Learning	S.R. 2014 No. 309
Committee for Enterprise, Trade and Investment	S.R. 2015 No. 1
Committee for the Environment	Draft S.R.: The Planning (2011 Act) (Commencement No.2) Order (Northern Ireland) 2015 S.R. 2014 Nos. 292, 294, 302, 303
Committee for Finance and Personnel	S.R. 2014 No. 296, 297
Committee for Health, Social Services and Public Safety	S.R. 2014 Nos. 293, 318, 319
Committee for Justice	Draft S.R.: The Police Pensions (Consequential Provisions) Regulations (Northern Ireland) 2015 S.R. 2014 No. 320
Committee for the Office of the First Minister and deputy First Minister	Draft S.R.: The Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order(Northern Ireland) 2015
Committee for Regional Development	S.R. 2014 No. 311, 312, 314
Committee for Social Development	S.R. 2014 No. 298, 321

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 rule to which attention is drawn in this report

The Teachers’ Pensions Scheme Regulations (Northern Ireland) 2014 (S.R. 2014/310)

3. **I draw the attention of the Committee for Education and the Assembly to the Teachers’ Pensions Scheme Regulations (Northern Ireland) 2014 (S.R. 2014/310) on the ground that there are several matters that seem to require clarification in the Regulations, acknowledged by the Department of Education.**
4. The Department is the scheme manager (regulation 7(1)), and there is an associated definition in regulation 3 defining the scheme manager as the Department. But, in common with other public service pension scheme regulations, there is provision for delegating the scheme manager functions in regulation 7(3). In comparison with other public service pension scheme regulations, I suggested that the definition of scheme manager in regulation 7 should be defined as having the same meaning as in regulation 3. Related to this, many of the (scheme manager) functions in the Parts 3 to 11 of, and the Schedules to, the Regulations are expressly given to the Department (for example functions in respect of giving and receiving notices under the regulations), whereas in other public service pension scheme regulations they are given to the scheme manager (which seems appropriate, especially where the Department has delegated its scheme manager functions to another person). The Department intends to address these points in amending regulations: an amendment of regulation 7 would provide in effect that where the Department’s scheme manager functions

have been delegated to another person references to the Department are to be construed as references to that person. That seems a sensible approach by way of clarifying the position.

5. The Department has not provided for employer cost cap as envisaged in section 12 of the Public Service Pensions Act (Northern Ireland) 2014 in respect of defined benefits schemes. The Department has informed me that this was not included in these Regulations because there was insufficient information available to set the appropriate percentage when the Regulations were made. (I note in passing that this problem has occurred in relation to other public service pension schemes.) The Department has informed me that the provision under section 12 of the 2014 Act in respect of employer cost cap will be made in the amending regulations.
6. I suggested to the Department that it could use the amending regulations to address other minor points, and the Department is receptive to this. For example, regulations 10 and 13 both relate to conflicts of interest, but in respect of different bodies, and the headings to regulations 10 and 13 could be adjusted to reflect this. And I also drew the Department's attention to what seemed to be a minor drafting defect in (a wrong cross-reference) in paragraph 1 of 1(8) of Schedule 1: the reference to sub-paragraphs (3) to (6) seemed to be a reference to sub-paragraphs (3) to (5) since the sub-paragraphs in question related to the process of making an independent school an accepted school for pension purposes, whereas sub-paragraphs (6) and (7) were about ending a school's status as an accepted school on notice from the school's governing body to the Department/scheme manager.
7. The amendments are not extensive, and the Department intends to make them in amending regulations so as to have them in place for 1 April 2015.

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 rules requiring the approval of the Assembly

Draft S.R.: The Police Pensions (Consequential Provisions) Regulations (Northern Ireland) 2015

Draft S.R.: The Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015

Draft S.R.: The Planning (2011 Act) (Commencement No. 2) Order (Northern Ireland) 2015

Statutory rules subject to negative resolution

The Common Agricultural Policy Direct Payments and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2014 (S.R. 2014/291)

The Local Government (Disqualification) (Prescribed offices and Employments) Regulations (Northern Ireland) 2014 (S.R. 2014/292)

The Safeguarding Board for Northern Ireland (Membership, Procedure and Functions) (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/293)

The Smoke Control Areas (Exempted Fireplaces) (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/294)

The Seeds (Miscellaneous Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/295)

The Marriage (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/296)

The Civil Partnership (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/297)

The Occupational Pensions (Revaluation) Order (Northern Ireland) 2014 (S.R. 2014/298)

The Foyle Area (Complimentary Angling Permit) (River Finn and River Foyle) Regulations 2014 (S.R. 2014/299)

The Taxi Licensing Regulations (Northern Ireland) 2014 (S.R. 2014/302)

The Taxi Operators Licensing (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/303)

The Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/309)

The Teachers' Pension Scheme Regulations (Northern Ireland) 2014 (S.R. 2014/310)

The A29 Armagh Road, Moy (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/311)

The Broadway, Larne (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/312)

The Templemore Avenue, Belfast (Footpath) (Abandonment) Order (Northern Ireland) 2014 (S.R. 2014/314)

The Health and Social Care Bodies (Membership) (Amendment) Regulations (Northern Ireland) 2014 (S.R. 2014/318)

The General Dental Services (Amendment No. 2) Regulations (Northern Ireland) 2014 (S.R. 2014/319)

The Criminal Justice (European Protection Order) Regulations (Northern Ireland) 2014 (S.R. 2014/320)

The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations (Northern Ireland) 2014 (S.R. 2014/321)

The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1)



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