



Northern Ireland
Assembly

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

Second Report of Session 2016-2017

NIA 4/16-21

24 June 2016

Committee for Communities	<p>Draft S.R.: The Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016</p> <p>Draft S.R.: The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016</p> <p>Draft S.R.: The Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016</p> <p>Draft S.R.: The Discretionary Support Regulations (Northern Ireland) 2016</p> <p>Draft S.R.: The Landlord Registration Scheme (Amendment) Regulations (Northern Ireland) 2016</p>
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Committee for the Economy	S.R. 2016/242: The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 Draft S.R.: The Renewables Obligation Closure (No. 2) Order (Northern Ireland) 2016
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1. Remit of the Examiner of Statutory Rules

1.1 Standing Order 43 provides that every statutory rule or draft statutory rule which is laid before the Assembly and is subject to Assembly proceedings shall stand referred to the appropriate Committee of the Assembly for scrutiny. The Standing Orders of the Assembly are published on the Northern Ireland Assembly [website](#).

1.2 To assist Committees of the Assembly in the scrutiny of such rules under Standing Order 43, the Examiner of Statutory Rules (the Examiner) shall carry out those functions delegated to the Examiner in relation to technical scrutiny.

1.3 The terms of reference of the Examiner, under delegation from the appropriate Committee, are as set out in Standing Order 43(6) as follows:

“In scrutinising an instrument the appropriate committee shall among other things 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 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.”

2. In accordance with Standing Orders, in this report I draw the attention of the appropriate Committees and the Assembly to the following Rules.

3. **S.R. 2016/242 – Reported for breach of the 21 day rule**

The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016

- 3.1 I draw the attention of the Committee for the Economy and the Assembly to the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 (S.R. 2016/242) on the ground that it was laid in breach of the 21 day rule. The 21 day rule is the established rule of practice whereby a Department or other rule-making body should, in the case of a statutory rule that is subject to negative resolution, allow at least 21 days between its laying and its coming into operation. The Rule was made on 10 June 2016, laid on 13 June 2016, and came into operation on 18 June 2016.
- 3.2 This breach of the 21 day rule has been addressed by the Department which has apologised and expressed regret at the breach.
- 3.3 On 6 June 2016 the Department advised: *“The GB equivalent regulations were not laid until 27 April 2016. We did not wish to make NI regulations ahead of GB, as up to the last minute our colleagues in the Department for Business, Innovation and Skills were advising that they could be subject to change...It is our understanding that...we will be able to make the regulations to become operative by 18 June, the transposition target date. However, I am writing to advise you that doing so will occasion a breach of the 21 day rule.”*

4. **Draft S.R.: The Landlord Registration Scheme (Amendment) Regulations (Northern Ireland) 2016**

- 4.1 I draw the attention of the Committee for Communities and the Assembly to the draft Landlord Registration Scheme (Amendment) Regulations (Northern Ireland) 2016, not on the content of these draft Regulations, but because they replace the previously laid and withdrawn draft Regulations which contained significant defects in their drafting. I drew the attention of the Department for Communities to these drafting defects. The Department took steps to lay fresh draft Regulations. These were laid on 23 June 2016.

Angela Kelly

Examiner of Statutory Rules

24 June 2016

Appendix:

The attention of the appropriate Committees and the Assembly is drawn to those statutory rules which are set out in bold.

STATUTORY RULES SUBJECT TO NEGATIVE RESOLUTION

S.R. 2016/242: The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016

STATUTORY RULES SUBJECT TO DRAFT AFFIRMATIVE PROCEDURE

The Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016

The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016

The Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016

The Discretionary Support Regulations (Northern Ireland) 2016

The Renewables Obligation Closure (No. 2) Order (Northern Ireland) 2016

The Landlord Registration Scheme (Amendment) Regulations (Northern Ireland) 2016



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