



Northern Ireland  
Assembly

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

27 February 2009

Committee for Employment and Learning	S.R. 2009 Nos. 37, 45
Committee for Enterprise, Trade and Investment	Draft S.R.: The Renewables Obligation Order (Northern Ireland) 2009
Committee for the Environment	S.R. 2009 No. 46
Committee for Finance and Personnel	S.R. 2009 No. 58
Committee for Health, Social Services and Public Safety	S.R. 2009 Nos. 28, 42, 53, 56
Committee for Regional Development	S.R. 2009 Nos. 43, 50, 51, 55



1. In accordance with the delegations in respect of the technical scrutiny of statutory rules under Standing Order 41(4)(b) (now renumbered as Standing Order 43(4)(b)) given to the Examiner of Statutory Rules by the appropriate Committees on 11, 16, 17 and 18 May 2007, 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 ESTABLISHMENTS AND AGENCIES (FITNESS OF WORKERS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2009 (S.R. 2009/28)**

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Establishments and Agencies (Fitness of Workers) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/28) on the ground that they are defectively drafted, acknowledged by the Department of Health, Social Services and Public Safety.**
4. The Regulations are intended to revoke certain provisions put in place in August 2008 as an emergency measure by the Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008 (S.R. 2008/346): they do so by revoking the relevant provisions of S.R. 2008/346. But that does not do what the Department intended because S.R. 2008/346 textually (or directly) amended various regulations made in 2005 and 2007, so that those textual amendments became part of the 2005 and 2007 regulations in question; and the revocation of the amending provisions does not restore the *status quo ante* S.R. 2008/346 in August 2008 in respect of the amended regulations. Further revocations in respect of the text of the 2005 and 2007

regulations are necessary, as are some further textual amendments to restore (by way of substitution) certain text in those regulations (since the revocation of the amending provisions does not revive the effect of the pre-amended text of the 2005 and 2007 regulations). I have made some suggestions in this regard to the Department. On this matter generally, see *Halsbury's Laws of England*, Volume 44(1) (Fourth Edition Reissue), at paragraph 1313 (edited Francis Bennion).

5. The Department intends to bring forward as soon as possible further amending regulations to do what needs to be done by way of further revocations and amendments — as mentioned in paragraph 4. Those regulations will probably be in breach of the 21-day rule but I have indicated my view at this stage that in the circumstances a reasonable explanation could be made for that. **I report accordingly.**

*W G Nabney*

**Examiner of Statutory Rules**

27 February 2009

## APPENDIX

*(The attention of the appropriate Committees and the Assembly is drawn to those statutory rules marked in bold)*

### **Draft statutory rule requiring approval by resolution of the Assembly**

Draft S.R.: The Renewables Obligation Order (Northern Ireland) 2009

### **Statutory rules subject to negative resolution**

#### **The Establishments and Agencies (Fitness of Workers) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/28)**

The Care Tribunal (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/42)

The Education (Student Support) Regulations (Northern Ireland) 2009 (S.R. 2009/37)

The Trunk Road T10 (Cherrymount Link, Enniskillen) Order (Northern Ireland) 2009 (S.R. 2009/43)

The Landfill Allowances Scheme (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/46)

The Ballyhampton Road, Larne (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/50)

The Iveagh Road, Belfast (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/51)

The Travelling Expenses and Remission of Charges (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/53)

The Thornhill Parade, Belfast (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/55)

The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009 (S.R. 2009/56)

The Rates (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/58)

### **Statutory rule subject to laying but not subject to any Assembly proceedings**

The Employment Rights (Increase of Limits) Order (Northern Ireland) 2009 (S.R. 2009/45)





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