



**Northern Ireland
Assembly**

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

12 June 2009

Committee for Agriculture and Rural Development	S.R. 2009 Nos. 205, 206,
Committee for Employment and Learning	S.R. 2009 No. 211
Committee for Enterprise, Trade and Investment	S.R. 2009 Nos. 192, 201, 202, 203, 204, 215
Committee for Finance and Personnel	Draft SR: the Lands Tribunal (Salaries) Order (Northern Ireland) 2009
Committee for Health, Social Services and Public Safety	S.R. 2009 Nos. 191, 225
Committee for Regional Development	S.R. 2009 No. 197, 198, 217, 218, 219
Committee for Social Development	S.R. 2009 No. 195

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 PHARMACEUTICAL SERVICES AND CHARGES FOR DRUGS AND APPLIANCES REGULATIONS (NORTHERN IRELAND 2009 (S.R. 2009/191)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Pharmaceutical Services and Charges for Drugs and Appliances (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/191) on the ground that they were laid in breach of the 21-day rule.** The Regulations were made on 13 May 2009 (to come into operation on 6 June 2009) but were not laid until 20 May 2009. The Department for Health, Social Services and Public Safety apologises for what turned out to be unforeseen printing delays and will in future strive where possible to ensure that there is a long gap between making and laying dates. Of course, had the Department laid a typescript copy on, say, 14 May 2009 it could have avoided the breach of the 21-day rule.

THE DOMESTIC ENERGY EFFICIENCY GRANTS REGULATIONS (NORTHERN IRELAND) 2009 (S.R. 2009/195)

4. **I draw the attention of the Committee Social Development and the Assembly to the Domestic Energy Efficiency Grants Regulations (Northern Ireland) 2009**

(S.R. 2009/195) on the ground that it contains a most unusual “transitional” provision in regulation 8(2) (if it is one in the first place).

5. The Regulations were made on 18 May 2009 to come into operation on 1 July 2009 (when the existing statutory regime is revoked and replaced, subject to a “transitional” provision applying the existing statutory regime (rather the new one introduced by these Regulations) to applications made before 1 April 2009. On the face of it there seems to be an awkward gap from 1 April 2009 (when the new statutory regime was not even made let alone in operation) until 30 June 2009, and I queried this. The Department has assured me that there are in fact no actual applications made on or after 1 April 2009: it seems that by some mysterious process (mysterious in that it does not actually seem to appear on the face of the Regulations themselves) there are administrative preliminaries before proceeding to application stage.
6. Were it not for the Department’s assurance that there were no applications from 1 April 2009 onwards, I would have certainly recommended that regulation 8(2) be quickly amended so that all applications made before 1 July 2009 (rather than 1 April 2009) came under the existing statutory regime rather than the new one; and I observe that that was what was done when the existing statutory regime came into operation on 1 April 2002. As I have indicated this seems very unusual and I am not convinced that it is a completely satisfactory way to legislate. It does not seem to be a true transitional provision: see *Craies on Legislation*, Ninth Edition (edited Daniel Greenberg), paragraphs 10.1.26 to 10.1.28 and *Halsbury’s Laws of England*, Fourth Edition Reissue, Volume 44(1), Statutes (edited Francis Bennion), paragraph 1494, where both learned editors cite a passage from a judgment of Lord Keith of Kinkel in *Britnell v Secretary of State for Social Security* [1991] 2 All ER 726 [HL]; Lord Keith there cited *Thornton on Legislative Drafting*, Third Edition, p. 319:

“The function of a transitional provision is to facilitate the change from one statutory regime to another, making special provision for the application of legislation to the circumstances which exist at the time when it comes into force.”.

THE ELECTRICITY AND GAS BILLING REGULATIONS (NORTHERN
IRELAND) 2009 (S.R. 2009/215)

7. **I draw the attention of the Committee for Enterprise, trade and Investment and the Assembly to the Electricity and Gas Billing Regulations (S.R. 2009/215) on the ground that they are defectively drafted in one fairly minor respect as candidly drawn to my attention by the Department of Energy, Trade and Investment.** The Department is preparing early amending Regulations: it is simply that the Regulations use the expression “domestic consumer” in several places, whereas the intention was to use the expression “domestic customer” throughout.

W G Nabney
Examiner of Statutory Rules
12 June 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

The Lands Tribunal (Salaries) Order (Northern Ireland) 2009

Statutory rules subject to affirmative resolution

The Insolvency (Fees) (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/201)

The Insolvency (Fees) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/202)

Statutory rules subject to negative resolution

Pharmaceutical Services and Charges for Drugs and Appliances (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/191)

The Health and Safety Information for Employees (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/192)

The Domestic Energy Efficiency Grants Regulations (Northern Ireland) 2009 (S.R. 2009/195)

The Ardnalvey Park, Comber (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/197)

The Ballycloughan Road (U214), Saintfield (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/198)

The Insolvency (Deposits) (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/203)

The Insolvency Practitioners and Insolvency Account (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/204)

The Control of Salmonella in Broiler Flocks Scheme Order (Northern Ireland) 2009 (S.R. 2009/205)

The Less Favoured Areas Compensatory Allowances (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/206)

The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2009 (S.R. 2009/211)

The Electricity and Gas Billing Regulations (Northern Ireland) 2009 (S.R. 2009/215)

The Glen Road, Londonderry (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/217)

The Frances Street, Newtownards (Footway) (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/218)

The Newforge Road, Magheralin (Footway) (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/219)

The Controlled Drugs (Supervision of Management and Use) Regulations (Northern Ireland) 2009 (S.R. 2009/225)

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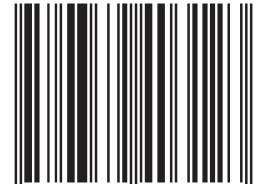
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ISBN 978-0-339-40312-3



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