



**Northern Ireland
Assembly**

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

26 September 2008

Committee for Employment and Learning	S.R. 2008 No. 374
Committee for Enterprise, Trade and Investment	S.R. 2008 No. 379
Committee for the Environment	S.R. 2008 Nos. 372, 373
Committee for Health, Social Services and Public Safety	S.R. 2008 Nos. 333, 377
Committee for Social Development	S.R. 2008 Nos. 355, 356, 364, 365, 370, 371, 375, 378

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 PUBLIC HEALTH (SHIPS) REGULATIONS (NORTHERN IRELAND) 2008
(S.R. 2008/333)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Public Health (Ships) Regulations Northern Ireland) 2008 (S.R. 2008/333) on the ground that they were laid in breach of the 21-day rule (that is to say, the well-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 the laying of the statutory rule and its coming into operation).**
4. The Department of Health, Social Services and Public Safety has apologised for the breach, which occurred in the middle of the Summer Recess, and has indicated that it will adhere to the 21-day rule in future Regulations of this nature. The Regulations bring Northern Ireland into line with the International Health Regulations (IHR) 2005 of the World Health Authority on Ship Sanitation Certificates.

PROVISION OF HEALTH SERVICES TO PERSONS NOT ORDINARILY
RESIDENT (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2008
(S.R. 2008/377)

5. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/377) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Health, Social Services and Public Safety.**
6. It seemed to me from looking at what was in the Explanatory Note and at corresponding provision for England in S.I. 2006/3306 that some words were left out of the amendment made by regulation 4: I have marked these in underlined italics thus—

Amendment of regulation 4 of the principal Regulations

4. In regulation 4 of the principal Regulations (Services exempted from charges) for paragraph (4) substitute —

“(4) No charge shall be made in respect of any services forming part of health services provided for —

(a) in the case where paragraph (h), (i), (j), (k), (r) or (s) of regulation 3 applies to a visitor, the spouse, civil partner or child of the visitor; or

(b) *in the case where any other paragraph of that regulation applies, the spouse, civil partner or child of the visitor, if the spouse, civil partner or child lives on a permanent basis with the visitor in the United Kingdom.*”

The Department has indicated that the missing words were in fact in an earlier draft and were inadvertently left out of the final version. I understand that the Department intends to correct this: I have indicated my view that this requires further amending Regulations rather than simply issuing a correction slip.

THE COMPANIES (1986 ORDER) (ANNUAL RETURN) AND COMPANIES
(PRINCIPAL BUSINESS ACTIVITIES) REGULATIONS (NORTHERN
IRELAND) 2008 (S.R. 2008/379)

7. **I draw the attention of the Committee for Enterprise, Trade and Investment and the Assembly to the Companies (1986 Order) (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/379) on the ground that they were laid in breach of the 21-day rule.**
8. The Department has explained the breach, and the explanation appears to be reasonable. The Regulations were made on 16 September 2008 and laid on 17 September 2008; they come into operation on 1 October 2008 to match the corresponding Regulations for Great Britain in S.I. 2008/1659. The Department and its legal advisers last month raised some queries with the Department for Business, Enterprise and Regulatory Reform before settling the finalised draft of the Regulations. In accordance with the established practice in the case of subordinate legislation that directly amends primary legislation, which I firmly endorse, the

Regulations were subsequently referred to the Office of the Legislative Counsel before making: that is sensible because much of what is in the Regulations is subsumed within the corpus of the primary legislation, in this case the Companies (Northern Ireland) Order 1986.

W G Nabney

Examiner of Statutory Rules

26 September 2008

APPENDIX

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

Statutory rule subject to approval by resolution of the Assembly (confirmatory procedure)

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/374)

Statutory rules subject to negative resolution

The Public Health (Ships) Regulations (Northern Ireland) 2008 (S.R. 2008/333)

The Social Security (Recovery of Benefits) (Lump Sums) Regulations (Northern Ireland) 2008 (S.R. 2008/355)

The Statutory Sick Pay (General) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/356)

The Personal and Occupational Pension Schemes (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/364)

The Pensions (2008 Act) (Actuarial Guidance (Consequential Provisions) Order (Northern Ireland) 2008 (S.R. 2008/365)

The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/370)

The Housing Benefit (Amendment) Regulations (Northern Ireland) 2008(S.R. 2008/371)

The Planning (Environmental Impact Assessment) (Amendment No. 2) Regulations (Northern Ireland) 2008 (S.R. 2008/372)

The Producer Responsibility Obligations (Packaging Waste) (Amendment No. 2) Regulations (Northern Ireland) 2008(S.R. 2008/373)

The Social Security (Incapacity) (Miscellaneous Amendments) Regulations (Northern Ireland) 2008 (S.R. 2008/375)

Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/377)

The Housing Benefit (Employment and Support Allowance Consequential Provisions) Regulations (Northern Ireland) 2008(S.R. 2008/378)

The Companies (1986 Order) (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/379)

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