



Northern Ireland
Assembly

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

10 October 2008

Committee for Agriculture and Rural Development	S.R. 2008 Nos. 380, 389, 394
Committee for Education	S.R. 2008 No. 376
Committee for the Environment	S.R. 2008 No. 387
Committee for Finance and Personnel	Draft Statutory Rule: The Lands Tribunal (Salaries) Order (Northern Ireland) 2008
Committee for Health, Social Services and Public Safety	S.R. 2008 Nos. 381, 382, 391, 395
Committee for the Office of the First Minister and deputy First Minister	S.R. 2008 No. 397
Committee for Regional Development	S.R. 2008 Nos. 384, 385, 390, 393, 400
Committee for Social Development	S.R. 2008 No. 388, 410, 411

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 EUROPEAN FISHERIES FUND (GRANTS) REGULATIONS (NORTHERN IRELAND) 2008 (S.R. 2008/394)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the European Fisheries Fund (Grants) Regulations (Northern Ireland) 2008 (S.R. 2008/394) on the grounds, first, 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 its laying and its coming into operation); and second, that it is defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.**
4. The Regulations were made on 23 September 2008 and laid on 2 October 2008 (the date when they were received in the Business Office); they come into operation on 20 October 2008. (They first appeared on the OPSI (formerly HMSO) website on 29 September 2008, I observe.) The Department has apologised for the delay in the laying of the Regulations.

5. Regulation 16 provides for penalties for offences under the Regulations. Regulation 16(1) is in the following terms:

“Penalties

16.—(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale, and
(b) on indictment, to a fine.”.

The offence is one that can be dealt with *either* summarily (in a magistrates’ court) *or* on indictment (in the Crown Court): in this case the penalty should not be expressed in terms of level 5 on the standard scale since that expression applies to offences that can only be dealt with summarily; rather, the appropriate expression in a case such as this is the statutory maximum: see the Fines and Penalties (Northern Ireland) Order 1984. (I note that the corresponding provision for England in S.I. 2007/3284 is (correctly) drafted in terms of the statutory maximum; and the Regulations for Scotland in SSI 2007/307 are (correctly) drafted in terms of level 5 on the standard scale because the offence there is summary-only.) That both level 5 on the standard scale and the statutory maximum happen to be, in current terms, the same amount (£5,000) is, of course, immaterial: they are two distinct statutory concepts, and must be interpreted accordingly. The Department acknowledges the error and intends to make the necessary amendment as soon as in further Regulations. **I report accordingly.**

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS NO. 3)
REGULATIONS (NORTHERN IRELAND) 2008 (S.R. 2008/410)

6. **I draw the attention of the Committee for Social Development and the Assembly to the Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2008 (S.R. 2008/410) on the ground that they were laid in breach of the 21-day Rule.** The Regulations were made on 3 October 2008 and laid the same day; they came into operation on 6 October 2008 to match the commencement date of the corresponding Regulations for Great Britain (S.I. 2008/2424). **The Department has explained the breach and the explanation seems to be reasonable.** The corresponding Regulations for Great Britain were not finalised and made until 10 September 2008. Additional time was then required for further policy scrutiny by the Committee for Social Development. In addition to that, the Regulations had to be approved by the First Minister and deputy First Minister in accordance with the Ministerial Code: there was an impact on another Department (namely, the Department of Finance and Personnel).

W G Nabney
Examiner of Statutory Rules
10 October 2008

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) 2008

Statutory rules subject to negative resolution

Grammar Schools (Charges) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/376)

Rural Development (Financial Assistance) Regulations (Northern Ireland) 2008 (S.R. 2008/380)

The New Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2008 (S.R. 2008/381)

The Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2008 (S.R. 2008/382)

The Kernan Grove and Centre Walk, Craigavon (Footpath) (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/384)

The Dunhugh Park, Londonderry (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/385)

The Motor Vehicles (Taxi Drivers' Licences) (Fees) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/387)

The Occupational and Personal Pension Schemes (Transfer Values) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/388)

Agriculture (Student fees) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/389)

The Trunk Road T21 (Belfast to Carrickfergus) Order (Northern Ireland) 2008 (S.R. 2008/390)

The Travelling Expenses and Remission of Charges (Amendment No. 3) Regulations (Northern Ireland) 2008 (S.R. 2008/391)

The Portmore Hill, Belfast (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/393)

The European Fisheries Fund (Grants) Regulations (Northern Ireland) 2008 (S.R. 2008/394)

General Dental Services (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/395)

The Salaries (Assembly Ombudsman and Commissioner for Complaints) Order (Northern Ireland) 2008 (S.R. 2008/397)

The Tullygawley Road, Ballymena (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/400)

The Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2008 (S.R. 2008/410)

The Social Fund (Cold Weather Payments) (General) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/411)

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