



**Northern Ireland  
Assembly**

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

14 November 2008

Committee for Agriculture and Rural Development	S.R. 2008 Nos. 430, 431
Committee for Enterprise, Trade and Investment	S.R. 2008 Nos.422, 424
Committee for the Environment	S.R. 2008 No.418
Committee for Health, Social Services and Public Safety	S.R 2008 No.423
Committee for Regional Development	S.R. 2008 Nos. 420, 421
Committee for Social Development	S.R. 2008 Nos. 428, 429



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 OPTICAL CHARGES AND PAYMENTS (AMENDMENT NO.2) REGULATIONS (NORTHERN IRELAND) 2008 (S.R. 2008/423)**

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Optical Charges and Payments (Amendment No.2) Regulations (Northern Ireland) 2008 (S.R. 2008/423) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Health, Social Services and Public Safety; and also 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), explained by the Department.**

4. Regulation 2(4) adds a new regulation 8(4)(e) to the principal regulations and is in the following terms:

(4) In regulation 8 (4) (eligibility – supply of optical appliances), delete “and” at the end of sub-paragraph (b) and after sub-paragraph (d) add—

“(e) and in sub-paragraph (p) “family” has the meaning given to it by regulation 2 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 (.)”.

The cross-reference to sub-paragraph (p) should have been to sub-paragraph (o) (added by regulation 2(3); and the first “and” should have come after regulation 8(4)(d) instead of being included in regulation 8(4)(d) thus:

(4) In regulation 8 (4) (eligibility – supply of optical appliances), delete “and” at the end of sub-paragraph (b) and after sub-paragraph (d) add—

“and

“(e) and in sub-paragraph (o) “family” has the meaning given to it by regulation 2 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 .”.

The Department has acknowledged the error and intends to correct it in a new set of composite Regulations: these are likely to be in place next month. That is welcome in the interests of clarity; in the meantime, the error is not of a nature such as would affect the working of the regulations as it is very minor.

5. The Regulations were made on 20 October 2008, laid the next day and came into operation on 27 October 2008 (a fixed date to meet the commencement of the legislation in respect of employment and support allowance, on which they were consequential). **The Department has explained the breach in terms that appear to be reasonable.** The Department first became aware of the need to make the Regulations on 19 August 2008; the Regulations for England were made on 16 October 2008 and laid on 22 October 2008, those for Wales on were laid on 29 September 2008. The drafting of these Regulations was settled on 29 September 2008, cleared with the Minister and sent to the Committee on 3 October 2008; the proposed regulations were agreed by the Committee on 16 October 2008 and were made and laid shortly after that.

THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2008 (S.R. 2008/429)

6. I draw the attention of the Committee for Social Development and the Assembly to the **Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/429) on the ground that they were laid in breach of the 21-day rule, explained by the Department for Social Development in terms that appear to be reasonable.** The Regulations were made on 24 October 2008, were laid the next day and came into operation on 26 October 2008. The Committee considered the proposed Regulations on 23 October 2008. The corresponding Regulations for Great Britain (in S.I. 2008/ 2783) were made on

21 October 2008, were laid on 23 October 2008 and came into force on 26 October 2008.

THE PRODUCTS OF ANIMAL ORIGIN (DISEASE CONTROL) REGULATIONS  
(NORTHERN IRELAND) 2008 (S.R. 2008/431)

7. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Products of Animal Origin (Disease Control) Regulations (Northern Ireland) 2008 (S.R. 2008/431) on the ground that they are defectively drafted in several minor respects, acknowledged by the Department of Agriculture and Rural Development.**
8. The definition of “inspector” in regulation 2(1) does not include a person appointed as an inspector by a district council, yet district councils have enforcement functions under regulation 27. The Department intends to amend this to include inspectors appointed by a district council within the definition.
9. The definition of “occupier” in regulation 2(1) is so circular as to be meaningless:

““occupier” means, in relation to any premises or establishments, the occupier of those premises or establishments;”.

The Department intends to amend the definition, in line with the corresponding Regulations for England in S.I. 2008/465 thus:

““occupier” means, in relation to any premises or establishment, the person in charge of those premises or that establishment;”.
10. In regulation 5(3) there is a reference to the National Assembly for Wales which should be to the Welsh Ministers: the Government of Wales Act 2006 separated executive and legislative functions in Wales; previously under Welsh devolution there had been a *de facto* separation of sorts between legislature and executive but *de jure* executive functions were exercised by the National Assembly.
11. The Department intends to make the amendments in a further set of amending Regulations which is planned. That seems satisfactory.

*W G Nabney*  
**Examiner of Statutory Rules**  
14 November 2008

## APPENDIX

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

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

The Motor Vehicles (Driving Licences) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/418)

The Ballybollen Road (C.53), Ballymena (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/420)

The Donegal Quay, Belfast (Abandonment) Order (Northern Ireland) (S.R. 2008/421)

The Equipment and Protective Systems Intended for Use in Potentially Explosive (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/422)

### **The Optical Charges and Payments (Amendment No.2) Regulations (Northern Ireland) 2008 (S.R. 2008/423)**

The Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/424)

The Social Security (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 2008 (S.R. 2008/428)

### **The Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/429)**

Conservation of Scallops Regulations (Northern Ireland) 2008 (S.R. 2008/430)

### **The Products of Animal Origin (Disease Control) Regulations (Northern Ireland) 2008 (S.R. 2008/431)**



Published by TSO (The Stationery Office) and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone 0870 240 3701

**TSO Shops**

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

**TSO@Blackwell and other Accredited Agents**

