

Session 2008/2009

Sixth Report



Northern Ireland  
Assembly

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

28 November 2008

Committee for Agriculture and Rural Development	S.R. 2008 Nos. 433, 435, 442
Committee for Enterprise, Trade and Investment	S.R. 2008 No. 445
Committee for Finance and Personnel	Draft S.R. Institutions of Further Education (Public Sector Audit) Order (Northern Ireland) 2008
Committee for Health, Social Services and Public Safety	S.R 2008 Nos. 434, 436
Committee for Regional Development	S.R. 2008 No. 453

NIA 66/08-09

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 PLANT HEALTH (AMENDMENT NO. 2) ORDER (NORTHERN IRELAND)  
2008 (S.R. 2008/442)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Plant Health (Amendment No. 2) Order (Northern Ireland) 2008 (S.R. 2008/442) on the ground that it was laid in breach of the 21-day rule (that is to say, the well-established rule of practice where 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 a statutory rule and its coming into operation).** The Order was made on 12 November 2008 and laid on 20 November 2008 to come into operation on 4 December 2008. The Department of Agriculture realises that it could have complied with the 21-day rule by laying earlier, and it apologises for the oversight.

THE INSOLVENCY (COMPANY ARRANGEMENT OR ADMINISTRATION  
PROVISIONS FOR AND INDUSTRIAL AND PROVIDENT SOCIETY) ORDER  
(NORTHERN IRELAND) 2008 (S.R. 2008/445)

3. **I draw the attention of the Committee for Enterprise, Trade and Investment and the Assembly to the Insolvency (Company Arrangement or Administration Provisions for and Industrial and Provident Society) Order (Northern Ireland) 2008 (S.R. 2008/445) on the ground that it was laid in breach of the 21-day rule (and was laid after it came into operation).** The Order was made on 14 November 2008 (Friday) and laid on the same date; it came into operation on that date also. The Minister made a statement to the Assembly on the following Monday (17 November 2008) setting out the background to the matter and the need for urgent action.

*W G Nabney*

**Examiner of Statutory Rules**

28 November 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**

Draft S.R.: Institutions of Further Education (Public Sector Audit) Order (Northern Ireland) 2008

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

The Pesticides (Maximum Residue Levels) Regulations (Northern Ireland) 2008 (S.R. 2008/433)

The Health and Personal Social Services (Primary Medical Services Performers Lists) (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/434)

The Organic Farming (Amendment) Regulations (Northern Ireland) 2008 (S.R. 2008/435)

The Public Health (Aircraft) Order (Northern Ireland) 2008 (S.R. 2008/436)

**The Plant Health (Amendment No. 2) Order (Northern Ireland) 2008 (S.R. 2008/442)**

**The Insolvency (Company Arrangement or Administration Provisions for and Industrial and Provident Society) Order (Northern Ireland) 2008 (S.R. 2008/445)**

The Temple Road (U1118), Londonderry (Abandonment) Order (Northern Ireland) 2008 (S.R. 2008/453)