

Examiner of Statutory Rules

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

**12 March 2010
Report: NIA 49/09/10R**

Committee for Agriculture and Rural Development	S.R. 2010 Nos. 40, 41, 48, 51, 57
Committee for Enterprise, Trade and Investment	Draft S.R.: The Renewables Obligation (Amendment) Order (Northern Ireland) 2010 S.R. 2010 No. 60
Committee for Health, Social Services and Public Safety	S.R. 2010 Nos. 54, 71
Committee for Regional Development	S.R. 2010 Nos. 39, 45
Committee for Social Development	S.R. 2010 Nos. 53, 55, 58

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 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 Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2010 (S.R. 2010/41)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Less Favoured Area Compensatory Payment Allowances Regulations (Northern Ireland) 2010 (S.R. 2010/41) on the ground that they were laid in breach of the 21-rule (and were laid after they came into operation).** The Regulations were made and came into operation on 22 February 2010. They were laid on the same date. The Department has explained that the breach of the 21-day rule occurred “in order to meet our target and a ministerial aspiration of beginning the payment process in February”.

The Fish Labelling Regulations (Northern Ireland) 2010 (S.R. 2010/54)

4. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Fish Labelling Regulations (Northern Ireland) 2010 (S.R. 2010/54) on the ground that they are defectively drafted in one respect, acknowledged by the Food Standards Agency.** The preamble/recital of powers invokes paragraph 1A of Schedule 2 to the European Communities Act 1972 (as inserted by section [28] of the Legislative and Regulatory Reform Act 2006) with a view to making references in the Regulations to Council Regulation (EC) No. 104/2000 and Commission Regulation (EC) No. 2065/2001 ambulatory

— in other words, providing an indication that references to those instruments or provisions of instruments are to be construed as references to those instruments as amended from time to time: see regulation 2(3). The orthodox drafting approach to that is that there should be a statement in the preamble in accordance with paragraph 1A (1)(c) of Schedule 2 to the European Communities Act to the effect that it appears to the rule-making body that is necessary or expedient for references to the instruments or provisions in question to be construed as being references to those instruments or provisions as amended from time to time. The Food Standards Agency accepts that such a statement should have appeared in the preamble, and I report the Regulations accordingly, indicating my view that the omission of the statement does not affect the actual working of the Agency's intention to make the references ambulatory. In passing, I add that regulation 2(3) has a minor drafting defect in referring to the Community Regulations as amended or corrected from time to time. The words "or corrected" were seemingly added to take account of a corrigendum (in the nature of a correction slip) published in the Official Journal of the European Communities: but that is intended to correct a minor slip and is not of the nature of a substantive amendment; whereas paragraph 1A of Schedule 2 to the European Communities Act is plainly addressing the question of the construction of references to Community instruments as substantively amended by other Community instruments.

W G Nabney

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Appendix

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

Draft statutory rule requiring the approval of the Assembly

The Renewables Obligation (Amendment) Order (Northern Ireland) 2010

Statutory Rule subject to affirmative resolution

Horse Racing (Charges on Bookmakers) Order (Northern Ireland) 2010 (S.R. 2010/51)

The Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/53)

Statutory rules subject to negative resolution

The Footpath to rear of Ballyronan Park, Rathcoole, Newtownabbey (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/39)

The Horse Passports Regulations (Northern Ireland) 2010 (S.R. 2010/40)

The Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2010 (S.R. 2010/41)

The Disabled Persons (Badges for Motor Vehicles) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/45)

The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2010 (S.R. 2010/48)

The Fish Labelling Regulations (S.R. 2010/54)

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/55)

The Scrapie (Fees) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/57)

The Social Security (Persons Serving a Sentence Detained in Hospital) Regulations (Northern Ireland) 2010 (S.R. 2010/58)

The Health and Safety (Fees) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/60)

The Charges for Drugs and Appliances (Abolition) and Supply of Appliances Regulations (Northern Ireland) 2010 (S.R. 2010/71)



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