

Examiner of Statutory Rules

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

**24 March 2010
Report: NIA 52/09/10R**

Committee for the Environment	S.R. 2010 Nos. 64, 84, 92
Committee for Employment and Learning	S.R. 2010 Nos. 61, 78, 79, 91
Committee for Finance and Personnel	S.R. 2010 Nos. 66, 67
Committee for Health, Social Services and Public Safety	S.R. 2009 Nos. 65, 68, 83, 98
Committee for Regional Development	S.R. 2009 No. 86
Committee for Social Development	S.R. 2010 Nos. 56, 62, 69, 73, 74, 80, 81, 82, 96, 97, 102, 103, 109, 110

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 Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010 (S.R. 2010/66)

3. **I draw the attention of the Committee for Finance and Personnel and the Assembly to the Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010 (S.R. 2010/66) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Finance and Personnel.** There is an inconsistency between the “dwelling CO2 emission rate (DER)” in regulation 2(1) and the expression “dwelling carbon dioxide emissions rate” in the Building Regulations, by reference to which the expression is defined. The intention is probably reasonably clear, but consistency of expression in legislation is a virtue. (The Department could also look at “target CO2 emissions rate (TER)” (regulation 2(1)) and dwelling carbon dioxide emissions rate in the Building Regulations (again, by reference to which the expression is defined). I commented to the Department that it might also be helpful to the reader to signpost the meaning of “TER” in the Schedule. The Department has indicated that there will be an opportunity to make amendments reflecting these points in the near future.

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/68)

4. **I draw the attention of the Committee for Health, Social Services and Public Safety to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/68) on the ground that they are defectively drafted in one respect, acknowledged by the Food standards Agency Northern Ireland.** In new Schedule 9 to the principal Regulations (inserted by regulation 8) the wrong concentration is prescribed in relation to the monitoring obligation in respect of ammonium: it is at variance with the concentration prescribed in Council Directive 98/83/EC and it seems that aluminium (concentration: 200 µg/l) and ammonium (concentration: 0,50 mg/l) may have been conflated in the transposition of the Directive. (This point also occurs in the Regulations for England (S.I. 2009/433) and for Scotland (S.S.I. 2010/89), and I am grateful for sight of papers posted on the webpage of the Scottish Parliament's Subordinate Legislation Committee (22 March 2010), in advance of its meeting on 23 March 2010, alerting me to this.) I raised it with the Food Standards Agency Northern Ireland. The Food Standards Agency has indicated to me that amending Regulations correcting the concentration for ammonium were in fact put forward for making on 18 March 2010: there will inevitably be a breach of the 21-day rule in respect of further amending regulations (as the Food Standards Agency has indicated to me), but that is plainly reasonable in the circumstances and I do not intend to draw further attention to the breach.

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)

Statutory rules requiring the approval of the Assembly (confirmatory procedure)

The Social Security (Contributions Credits for Parents and Carers) Regulations (Northern Ireland) 2010 (S.R. 2010/82)

The Pensions Regulator Tribunal (Transfer of Functions) (2010 Act) (Consequential Provisions) Order (Northern Ireland) 2010 (S.R. 2010/102)

Statutory rules subject to negative resolution

The Social Security (State Pension and National Insurance Credits) Regulations (Northern Ireland) 2010 (S.R. 2010/56)

The Social Security (Maximum Additional Pension) Regulations (Northern Ireland) 2010 (S.R. 2010/62)

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 (S.R. 2010/64)

The Health and Personal Social Services (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/65)

The Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010 (S.R. 2010/66)

The Rate Relief (Energy Efficiency Homes Scheme) Regulations (Northern Ireland) 2010 (S.R. 2010/67)

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/68)

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2010 (S.R. 2010/69)

The Occupational Pension Schemes (Levy Ceiling) Order (Northern Ireland) 2010 (S.R. 2010/73)

The Pension Protection Fund (Pension Compensation Cap) Order (Northern Ireland) 2010 (S.R. 2010/74)

The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order (Northern Ireland) 2010 (S.R. 2010/78)

The Recognition and Derecognition Ballots (Qualified Persons) Order (Northern Ireland) 2010 (S.R. 2010/79)

The Pension Protection Fund (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010/80)

The Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2010 (S.R. 2010/81)

The Food Hygiene (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/83)

The Waste Management Licensing (Fees and Charges for Carriers and Exempt Activities) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/84)

The Ballynamony Lane, Lurgan (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/86)

The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/91)

The Environment (Northern Ireland) Order 2002 (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/92)

The Social Security Pensions (Low Earnings Threshold) Order (Northern Ireland) 2010 (S.R. 2010/96)

The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2010 (S.R. 2010/97)

The Healthy Start Scheme and Day Care Food Scheme (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/98)

The Social Security (Equalisation of State Pension Age) Regulations (Northern Ireland) 2010 (S.R. 2010/103)

The Social Security (Credits) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/109)

The Social Security (Persons Abroad) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/110)

Statutory rule laid not subject to any Assembly proceedings

The Employment Rights (Revision of Limits) Order (Northern Ireland) 2010 (S.R. 2010/61)



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