



**Northern Ireland
Assembly**

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

21 October 2009

Committee for Agriculture and Rural Development	S.R. 2009 No. 340
Committee for Health, Social Services and Public Safety	S.R. 2009 No. 331
Committee for the Office of the First Minister and deputy First Minister	S.R. 2009 No. 335
Committee for Social Development	S.R. 2009 Nos. 338, 341, 342

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 rule to which attention is drawn in this report

THE PLANT HEALTH (WOOD AND BARK) (AMENDMENT) ORDER (NORTHERN IRELAND) 2009 (S.R. 2009/340)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/340) on the ground that it is defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.** The preamble/recital of powers invokes paragraph 1A of Schedule 2 to the European Communities Act 1972 and recites that the Department considers that it expedient for references in the Order to Council Directive 2000/29/EC to be construed as references to that Directive “as amended from time to time”. In Article 2 (2) there is a substituted definition of “the Directive” (Council Directive 2000/29/EC), which should have referred to the Directive “as amended from time to time”, given that the intention was to use the “ambulatory” formulation as set out in paragraph 1A of Schedule 2 to the European Communities Act. I mentioned a somewhat similar point in the First Report.

W G Nabney
Examiner of Statutory Rules
21 October 2009

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 Food Labelling (Nutritional Information) Regulations (Northern Ireland) 2009 (S.R. 2009/331)

The Salaries (Assembly Ombudsman and Commissioner for Complaints) Order (Northern Ireland) 2009 (S.R. 2009/335)

The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2009 (S.R. 2009/338)

The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/340)

The Social Security (Steps to Work) (No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009/341)

The Social Fund (Cold Weather Payments) (General) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/342)

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