



**Northern Ireland
Assembly**

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

25 November 2009

Committee for Agriculture and Rural Development	S.R. 2009 No. 360
Committee for the Environment	S.R. 2009 Nos. 358, 359, 360, 361
Committee for Employment and Learning	S.R. 2009 No. 366
Committee for Enterprise, Trade and Investment	S.R. 2009 No. 367
Committee for Finance and Personnel	S.R. 2009 No. 364
Committee for Health, Social Services and Public Safety	S.R. 2009 No. 362
Committee for the Office of the First Minister and deputy First Minister	Draft statutory rule: The Strategic Investment and Regeneration of Sites (Maze/Long Kesh Development Corporation) Order (Northern Ireland) 2009
Committee for Social Development	S.R. 2009 Nos. 363, 365

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 PRESUMPTION OF DEATH REGULATIONS (NORTHERN IRELAND) 2009 (S.R. 2009/364)

3. **I draw the attention of the Committee for Finance and Personnel and the Assembly to the Presumption of Death Regulations (Northern Ireland) 2009 (S.R. 2009/364) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Finance and Personnel.** In particular g) of Schedule 2 (particulars to be entered in Register of Presumed Deaths) there is a reference to the date on which the declaration of presumed death was “**issued**” by the High Court: plainly there should have been a reference to the date on which the declaration of presumed death was **made** by the High Court for consistency with the terminology in the Presumption of Death Act (Northern Ireland) 2009, and indeed for consistency with the terminology used in respect of court declarations generally: courts make declarations and other orders. The Department agrees with this and will amend the Regulations as and when an opportunity arises in the future. I am satisfied that the terminology used does not affect the working of the Regulations; but of course consistency of terminology is a virtue for which one should strive.

CATEGORIES OF TOURIST ESTABLISHMENT (STATUTORY CRITERIA)
(AMENDMENT) (NORTHERN IRELAND) 2009 (S.R. 2009/367)

4. **I draw the attention of the Committee for Enterprise, Trade and Investment and the Assembly to the Categories of Tourist Establishment (Statutory Criteria) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/367) on the ground that they were laid in breach of the 21-day rule (and laid after they came into operation) and that they are defectively drafted in several places.** The Department of Enterprise, Trade and Investment has provided an explanation (in terms that seem reasonable) for the breach of the 21-day rule and acknowledges that the Regulations are defectively drafted.
5. The Regulations were made on 11 November 2009 and came into operation on the same day; they were laid on 12 November 2009. The Department has explained the breach (and alerted me to it in advance). There was a certain urgency. Generally, the Department was conscious of tourist industry feedback on the matter. More particularly, the Department was acutely aware of businesses unable to operate at full capacity until the Regulations were amended. In a sense the Regulations were catching up with changing market conditions.
6. The drafting defects are fairly small and do not seem to affect the working of the Regulations. In regulations 2(6) and (7), 4(6), 6(2) and (5) and 8(4), the paragraphing has gone slightly awry: each of those paragraphs begins immediately with a sub-paragraph (a); whereas, to produce a consistent and coherent structure for sub-paragraph (a) and the subsequent sub-paragraphs using the intended paragraphing structure, the sub-paragraph should begin with some general words common to all the sub-paragraphs, thus

“() In paragraph [] (xxxxxxx)[]
(a) in sub-paragraph () ;”.
7. In regulation 2(6) the inserted words “and shall be capable of being locked” should, it seems, read “and capable of being locked” so as to fit the existing words in brackets.

W G Nabney
Examiner of Statutory Rules
25 November 2009

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 Strategic Investment and Regeneration of Sites (Maze/Long Kesh Development Corporation) Order (Northern Ireland) 2009

Statutory rules subject to negative resolution

The Public Service Vehicles (Conditions of Fitness, Equipment and Use) (Amendment No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009/358)

Groundwater (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/359)

The Nitrates Action Programme (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/360)

The Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/361)

The Food Labelling (Declaration of Allergens) Regulations (Northern Ireland) 2009 (S.R. 2009/362)

The Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009/363)

The Presumption of Death Regulations (Northern Ireland) 2009 (S.R. 2009/364)

The Occupational and Personal Pension Schemes (Authorised Payments) Regulations (Northern Ireland) 2009 (S.R. 2009/365)

The Further Education (Student Support) (Eligibility) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/366)

Categories of Tourist Establishment (Statutory Criteria) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/367)

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