



**Northern Ireland
Assembly**

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

9 December 2009

Committee for Agriculture and Rural Development	S.R. 2009 No. 376
Committee for Education	S.R. 2009 No. 370
Committee for Employment and Learning	S.R. 2009 No. 373
Committee for Finance and Personnel	S.R. 2009 No. 369
Committee for Health, Social Services and Public Safety	S.R. 2009 Nos. 377, 394
Committee for Social Development	S.R. 2009 Nos. 382, 392

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 HEALTH AND PERSONAL SOCIAL SERVICES (PRESCRIBING
AND CHARGING AMENDMENTS RELATING TO PANDEMIC INFLUENZA)
REGULATIONS (NORTHERN IRELAND)
2009 (S.R. 2009/394)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Health and Personal Social Services (Prescribing and Charging Amendments Relating to Pandemic Influenza) Regulations (Northern Ireland) 2009 (S.R. 2009/394) on the ground that they are defectively drafted in two minor respects, acknowledged by the Department of Health, Social Services and Public Safety.**
4. New regulation 7A(2)(b) of the Charges for Drugs and Appliances Regulations (Northern Ireland) 1997, as inserted by regulation 2 (modelled, it seems, on a provision for England in S.I. 2009/2230 that refers to NHS bodies), reads:

“(b) the Regional Board that is responsible [*there is only one Regional Board under the Health and Social Care (Reform) Act 2009*] for the arrangements under which the

medicine is supplied has made arrangements, with the approval of the Department[,] for supplying the medicine to patients free of charge.”.

It should read (taking account of the structures under the Health and Social Care (Reform) Act (Northern Ireland) 2009):

“(b) the Regional Board has made, with the approval of the Department, arrangements for supplying the medicine to patients free of charge.”.

5. In the paragraph (d) of the definition of “at-risk” inserted in Schedule 2 to the Health and Personal Social Services (General Medical Services Contracts) (Prescription of Drugs, etc) Regulations (Northern Ireland) 2004, “are immunocompromised” should read “is immunocompromised” (referring back to “patient” in the singular, and in agreement with the singular verbs used in all the other paragraphs of the definition).
6. The Department intends to correct these points as soon as is practicable.

W G Nabney
Examiner of Statutory Rules
9 December 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 Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/369)

The Education (General Teaching Council) (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 (S.R. 2009/370)

The Education (Student Support) (No. 2) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/373)

The Water Environment (Floods Directive) Regulations (Northern Ireland) 2009 (S.R. 2009/376)

The Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/377)

The Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 (S.R. 2009/382)

The Social Fund (Applications and Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/392)

The Health and Personal Social Services (Prescribing and Charging Amendments Relating to Pandemic Influenza) Regulations (Northern Ireland) 2009 (S.R. 2009/394)

Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

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