



**Northern Ireland
Assembly**

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

15 January 2010

Committee for Agriculture and Rural Development	S.R. 2009 Nos. 378, 379, 381, 383, 384, 385, 386, 387, 388, 396, 423
Committee for Employment and Learning	S.R. 2009 No. 400
Committee for Enterprise, Trade and Investment	S.R. 2009 Nos. 401, 402, 412, 414
Committee for the Environment	S.R. 2009 Nos. 399, 403, 413
Committee for Health, Social Services and Public Safety	S.R. 2009 Nos. 389, 390, 395, 397, 398, 407
Committee for the Office of the First Minister and deputy First Minister	S.R. 2009 Nos. 405, 410, 425, 428
Committee for Regional Development	S.R. 2009 Nos. 406, 421
Committee for Social Development	S.R. 2009 Nos. 408, 409, 418, 422, 426

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 CEREAL SEEDS REGULATIONS
(NORTHERN IRELAND) 2009
(S.R. 2009/383)

THE BEET SEEDS REGULATIONS
(NORTHERN IRELAND) 2009
(S.R. 2009/384)

THE FODDER PLANT SEEDS REGULATIONS
(NORTHERN IRELAND) 2009
(S.R. 2009/385)

THE OIL AND FIBRE PLANT SEEDS REGULATIONS
(NORTHERN IRELAND) 2009
(S.R. 2009/386)

THE VEGETABLE SEEDS REGULATIONS
(NORTHERN IRELAND) 2009
(S.R. 2009/387)

THE SEEDS (REGISTRATION, LICENSING AND ENFORCEMENT)
REGULATIONS (NORTHERN IRELAND) 2009
(S.R. 2009/388)

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Regulations listed above on the ground that they contain minor but recurring drafting defects, acknowledged by the Department of Agriculture and Rural Development.** The Department intends to bring forward an amending set of Regulations, as I have suggested, to take account of the points. I draw attention to these points, amongst other things, because they provide useful illustrations to Departments generally.
4. The first point is that there are references throughout to what are intended to be executive (in the sense of government departmental authorities) authorities in each part of the United Kingdom: the Department, the Secretary of State, the Scottish Ministers or the National Assembly for Wales. It is the last that came to my attention: since the Government of Wales Act 2006 the National Assembly for Wales is the devolved legislature for Wales (whereas previously, under the Government of Wales Act 1998, the National Assembly exercised both legislative and executive functions). The Department has defined the National Assembly as the National Assembly for Wales established by section 45 of the Government of Wales Act 2006; but section 45 actually establishes the Welsh Assembly Government, which is the executive arm (in the sense of government departmental authorities) of devolution in Wales since the 2006 Act. The Department may wish to check with the Scottish and Welsh authorities but I observe that simple references to the Scottish Ministers and to the Welsh Ministers (without the need for further definition bringing in such expressions as the Scottish Executive” and “Welsh Assembly Government” – slightly wider governmental functions) might perhaps suffice (and might indeed have advantages) in this context; Secretary of State is of course defined generally in the Interpretation Act (Northern Ireland) Act 1954.
5. The second point is simply that there are references to the Electronic Communications Act 2000 in regulation 2 of each of the Regulations; whereas, in the context of transferred matters and Northern Ireland Departments, the references should be to the Electronic Communications Act (Northern Ireland) 2001.

THE PROVISION OF SERVICES (INSOLVENCY PRACTITIONERS)
REGULATIONS (NORTHERN IRELAND) 2009
2009 (S.R. 2009/401)

THE INSOLVENCY PRACTITIONERS AND INSOLVENCY ACCOUNT
(FEES) (AMENDMENT) (NO.2) ORDER (NORTHERN IRELAND) 2009
2009 (S.R. 2009/402)

6. **I draw the attention of the Committee for Enterprise, Trade and Investment and the Assembly to the Provision of Services (Insolvency Practitioners) Regulations**

(Northern Ireland) 2009 (S.R. 2009/401) and the Insolvency Practitioners and Insolvency Account (Fees) (Amendment) (No. 2) Order (Northern Ireland) 2009 (S.R. 2009/402) on the ground that they do not accord with conventional legislative drafting practice in one respect; and also on the ground that the Regulations seem to depart in one respect from the terminology used in the same context in the primary legislation (the Insolvency (Northern Ireland) Order 1989). I add that similar observations seem to apply to corresponding provision in S.I. 2009/3081. I add also that the points I make here seem to be illustrative of drafting practices.

7. Paragraph 6(2)(b) of the Schedule to the Regulations (which amends regulation 11 of the Insolvency Practitioners Regulations (Northern Ireland) 2006) is drafted as follows:

“(2) In paragraph (1)—

(a)

(b) In sub-paragraph (b), at the end, omit “and” and insert—

“(c) the following details of any continuing professional development activity undertaken during the period by the holder of the authorisation—

(i) the nature of the activity,

(ii) the date that the activity was undertaken,

(iii) the duration of the activity, and

(iv) the topics covered by the activity; and

(d) the number of hours of any experience of the types in regulation 8A(2)(a)(i) to (iv).

(1A) The period is the period of 12 months ending two months before the anniversary of the grant of the authorisation or the last further authorisation.””.

What is in paragraph 6(2)(b) is dressed in the form of an amendment of regulation 11(1); yet it rather awkwardly tacks onto new sub-paragraphs (c) and (d) of regulation 11(1) a new paragraph (1A) — plainly not part of regulation 11(1) at all. What the drafter ought to have done was *either* to have substituted for paragraph (1) of regulation 11 in one amendment two new paragraphs numbered as paragraphs (1) and (1A) *or* to have split the amendments (that is to say, framed two amendments instead of one), one in respect of the amendment of regulation 11(1) and one inserting the new regulation 11(1A).

8. A similar point in Article 2(2) of the Order: it makes an amendment to Article 3(3) of the Insolvency Practitioners and Account Fees Order (Northern Ireland) 2006, but then goes on to tack on a new Article 3(3A).
9. The second point is that paragraph 4(3) (in a provision headed “Amendments to Regulation 8”) of the Schedule to the Regulations inserts a new regulation 8A in the 2006 Regulations containing education and training requirements for further authorisation to act as insolvency practitioners. Paragraph (2) of regulation 8A uses the term “individual” in relation to the person seeking the authorisation, the intention being that it is an individual practitioner who must apply for authorisation rather than, say, a firm of chartered accountants or solicitors. That is all very well so far as it

goes but it is clear from Article 349 of the Insolvency (Northern Ireland) Order 1989 that a person who is not an individual is not qualified to be an insolvency practitioner in the first place. So it seems that the drafter has introduced an unnecessary complication and inconsistency – and therefore a degree of confusion – into the terminology here by using “individual”, whereas “person” would have been perfectly clear in the context (and indeed is used elsewhere in the same context, for example, in Article 351 of the Insolvency Order and in regulation 6 of the 2006 Regulations themselves – fit and proper person to be authorised as insolvency practitioner).

10. These matters are not such as to affect the overall workability of either the Regulations or the Order (and accordingly are not such as to require amendments in themselves). But they are awkwardnesses in drafting terms, it seems to me. In the case of the first criticism the amendments have been made (albeit awkwardly) and the new provisions contained in those amendments are now part of the 2006 Regulations and the 2006 Order respectively; and of course the new regulation 8A is now part of the 2006 Regulations also. **I recommend, however, that, as and when the opportunity to amend the 2006 Regulations arises in the future, then the Department for Enterprise, Trade and Investment should consider replacing the term “individual” with the term “person” (for overall consistency in the context of persons authorised as insolvency practitioners – persons who in that context must expressly be individuals).**

THE INCOME SUPPORT (PRESCRIBED CATEGORIES OF PERSONS
REGULATIONS (NORTHERN IRELAND) 2009
2009 (S.R. 2009/418)

11. **I draw the attention of the Committee Social Development and the Assembly to the Income Support (Prescribed Categories of Persons) Regulations (Northern Ireland) 2009 (S.R. 2009/418) on the ground that they were laid in breach of the 21-day rule (that is to say, the long-established rule of practice whereby, in the case of a statutory rule that is subject to negative resolution, the Department or other rule-making body should allow at least 21 days between the laying of the statutory rule and its coming into operation), explained the Department for Social Development in terms that seem to be reasonable.** The Department had to match the operative date of the Regulations for Great Britain for parity purposes: those Regulations were made on 30 November 2009 to come into force on 30 December 2009. The Department had sight of the signed copy of the Regulations for Great Britain on 2 December 2009, submitted proposals for the Northern Ireland Regulations to the Committee for Social Development on 4 December 2009, cleared them with the Committee on 10 December 2009, subsequently finalised the Regulations for Northern Ireland, made them on 15 December 2009 and laid them on 16 December 2009.

W G Nabney
Examiner of Statutory Rules
15 January 2010

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 Foyle Area and Carlingford Area (Coarse Angling) Regulations 2009 (S.R. 2009/378)

The Foyle Area and Carlingford Area (Conservation of Eels) Regulations 2009 (S.R. 2009/379)

The Foyle Area and Carlingford Area (Angling) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/381)

The Cereal Seeds Regulations (Northern Ireland) 2009 (S.R. 2009/383)

The Beet Seeds Regulations (Northern Ireland) 2009 (S.R. 2009/384)

The Fodder Plant Seeds Regulations (Northern Ireland) 2009 (S.R. 2009/385)

The Oil and Fibre Plant Seeds Regulations (Northern Ireland) 2009 (S.R. 2009/386)

The Vegetable Seeds Regulations (Northern Ireland) 2009 (S.R. 2009/387)

The Seeds (Registration, Licensing and Enforcement) Regulations (Northern Ireland) 2009 (S.R. 2009/388)

The Misuse of Drugs (Designation) Order (Northern Ireland) 2009 (S.R. 2009/389)

The Misuse of Drugs (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/390)

The Local Commissioning Groups (Membership) Regulations (Northern Ireland) 2009 (S.R. 2009/395)

The Dogs (Licensing and Identification) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/396)

The Misuse of Drugs (Amendment) (No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009/397)

The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 (S.R. 2009/398)

The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2009 (S.R. 2009/399)

The Student Fees (Amounts) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/400)

The Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009 (S.R. 2009/401)

The Insolvency Practitioners and Insolvency Account (Fees) (No. 2) Order (Northern Ireland) 2009 (S.R. 2009/402)

The Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/403)

The Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 2009 (S.R. 2009/405)

The T8 Moira-Antrim-Magherafelt-Moneymore Trunk Road Order (Northern Ireland) 2009 (S.R. 2009/406)

The Food Supplements and the Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/407)

The Occupational Pensions (Revaluation) Order (Northern Ireland) 2009 (S.R. 2009/408)

The Social Security (Miscellaneous Amendments No.5) Regulations (Northern Ireland) 2009 (S.R. 2009/409)

The Race Relations Order (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/410)

The Gas (Suppliers of Last Resort) Regulations (Northern Ireland) 2009 (S.R. 2009/412)

The Private Water Supplies Regulations (Northern Ireland) 2009 (S.R. 2009/413)

The Control of Asbestos (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/414)

The Income Support (Prescribed Categories of Person) Regulations (Northern Ireland) 2009 (S.R. 2009/418)

The Charlestown Road, Portadown (Abandonment) Order (Northern Ireland) 2009 (S.R. 2009/421)

The Child Support (Management of Payments of Arrears) Regulations (Northern Ireland) 2009 (S.R. 2009/422)

The Plant Health (Import Inspection Fees) (Amendment No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009/423)

The Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/425)

The Social Security Housing Costs Special Arrangements (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/426)

The Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009 (S.R. 2009/428)

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