

Examiner of Statutory Rules

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

**10 September 2010
NIA 02/10/11R**

Committee for Agriculture and Rural Development	S.R. 2010 Nos. 220, 230, 231, 232, 248, 253
Committee for Culture, Arts and Leisure	S.R. 2010 No. 196
Committee for Employment and Learning	S.R. 2010 Nos. 219, 221, 233, 234
Committee for the Environment	S.R. 2010 Nos. 227, 228, 252
Committee for Finance and Personnel	S.R. 2010 No. 218
Committee for Health, Social Services and Public Safety	S.R. 2010 Nos. 246, 247, 259
Committee for Justice	S.R. 2010 No. 229
Committee for Regional Development	S.R. 2009 Nos. 241, 242, 243, 244, 245, 254, 255, 260, 269
Committee for Social Development	S.R. 2009 Nos. 249, 250

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 Misuse of Drugs (Designation) (Amendment No. 2) Order (Northern Ireland) 2010 (S.R. 2010/246)

The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2010 (S.R. 2010/247)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Misuse of Drugs (Designation) (Amendment No 2) Order (Northern Ireland) 2010 (S.R. 2010/246) and The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2010 (S.R. 2010/247) on the ground that both statutory rules were laid in breach of the 21-day rule (that is to say, the long-established rule of practice whereby a rule-making authority should, in the case of a statutory rule subject to negative resolution, allow at least 21 days between the making of the rule and its coming into operation).** The statutory rules were made on 22 July 2010, were laid on the same day and came into operation on 23 July 2010. **The breach was explained by the Department of Health, Social Services and Public Safety.** These statutory rules are made to maintain parity with the corresponding statutory instruments for Great Britain (S.I. 2010/1799 and S.I. 2010/1800 — which statutory instruments were themselves laid before Parliament in breach of the 21-day rule applying there because of the urgency perceived by the Home Office). **The explanation in respect of the statutory rules appears to be reasonable in the circumstances.**

**The Control of Salmonella in Turkey Flocks Scheme Order (Northern Ireland) 2010
(S.R. 2010/248)**

**The Zoonoses and Animal By-Products (Fees) Regulations (Northern Ireland) 2010
(S.R. 2010/253)**

4. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Control of Salmonella in Turkey Flocks Scheme Order (Northern Ireland) 2010 (S.R. 2010/248) and the Zoonoses and Animal By-Products (Fees) Regulations (Northern Ireland) 2010 (S.R. 2010/253) on the ground that both statutory rules were laid in breach of the 21-day rule.** Both statutory rules were laid without leaving 21 days between laying and commencement; yet in both cases there was an express statement in the accompanying explanatory memorandum that the regulations were laid in compliance with the 21-day rule. As I thought, there was a difficulty with the dates, in one case at least centring round summer holiday arrangements of senior officers of the Department. The breaches were not particularly serious in themselves, especially as they occurred over the summer recess. But it is of course important that Departments, as far as possible, should try to comply with long-standing conventions and **I recommend that the Department, in light of this, should review its procedures and arrangements for the making and laying of statutory rules, especially during the summer.** One simple step would be to allow more time between making and commencement. Another step would be to have alternative arrangements for the sealing and authentication of statutory rules by senior officers of the Department. The Department has apologised for these “unintentional” breaches.

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 approval by resolution of the Assembly (confirmatory procedure)

The Occupational Pension Schemes (Levies) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/249)

The Pensions Regulator (Contribution Notices) (Sums Specified following Transfer) Regulations (Northern Ireland) 2010 (S.R. 2010/250)

Statutory rules subject to negative resolution

Fisheries (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/196)

The Census Regulations (Northern Ireland) 2010 (S.R. 2010/218)

The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2010 (S.R. 2010/219)

The Common Agricultural Policy Support Schemes (Review of Decisions) Regulations (Northern Ireland) 2010 (S.R. 2010/220)

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/221)

The Motor Vehicles (Driving Instruction) Regulations (Northern Ireland) 2010 (S.R. 2010/227)

The Motor Vehicles (Driving Instruction) (Trainee Licence) Regulations (Northern Ireland) 2010 (S.R. 2010/228)

The Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/229)

Agriculture (Student Fees) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/230)

Beef and Pig Carcase Classification Regulations (Northern Ireland) 2010 (S.R. 2010/231)

The Plant Health (Amendment No. 2) Order (Northern Ireland) 2010 (S.R. 2010/232)

The Industrial Training (Construction Board) (Amendment) Order (Northern Ireland) 2010 (S.R. 2010/233)

The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2010 (S.R. 2010/234)

The Airfield Road Lower, Donnybrewer (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/241)

The Devonshire Way, Belfast (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/242)

The Seahill Road, Holywood (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/243)

The Glensharragh Park, Castlereagh (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/244)

The Access Road to the Giant's Causeway, Bushmills (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/245)

The Misuse of Drugs (Designation) (Amendment No. 2) Order (Northern Ireland) 2010 (S.R. 2010/246)

The Misuse of Drugs (Amendment No. 2) Regulations (Northern Ireland) 2010 (S.R. 2010/247)

The Control of Salmonella in Turkey Flocks Scheme Order (Northern Ireland) 2010 (S.R. 2010/248)

The Local Government (Provision of Services) Regulations (Northern Ireland) 2010 (S.R. 2010/252)

The Zoonoses and Animal By-Products (Fees) Regulations (Northern Ireland) 2010 (S.R. 2010/253)

The Depot Road, Belfast (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/254)

The Park Drive/Hamilton Road, Bangor (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/255)

The Nutrition and Health Claims (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/259)

The Moy Road (Route A29) and Drumcain Road, Armagh (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/260)

The St Julian's Road, Omagh (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/269)



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