

Examiner of Statutory Rules

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

**24 September 2010
NIA 04/10/11R**

Committee for Agriculture and Rural Development	S.R. 2010 Nos. 217, 307, 310
Committee for Employment and Learning	S.R. 2010 Nos. 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306
Committee for the Environment	S.R. 2010 No. 294
Committee for Health, Social Services and Public Safety	S.R. 2010 Nos. 286, 292
Committee for the Office of the First Minister and deputy First Minister	Draft S.R.: The Strategic Investment and Regeneration of Sites (Maze/Long Kesh Development Corporation) Order (Northern Ireland) Order 2010
Committee for Regional Development	S.R. 2010 Nos. 281, 293, 316, 317, 318, 319, 320
Committee for Social Development	S.R. 2010 Nos. 285, 287, 311

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 Biomass Processing Challenge Fund Regulations (Northern Ireland) 2010
(S.R. 2010/217)**

3. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Biomass Processing Challenge Fund Regulations (Northern Ireland) 2010 (S.R. 2010/217) on the ground that the Regulations appear to be defectively drafted, acknowledged by the Department of Agriculture and Rural Development.** Regulation 2(1) contains a definition of “Community legislation” (with subsidiary definitions of “the Commission Regulation” and “the Council Regulation”). The Schedule (purportedly vivified by regulation 2(1) — but with no reference to it anywhere in Regulation 2, so that it has no actual effect) bears the heading “Meaning of “Community Legislation”” and contains similar references the Community instruments defined in regulation 2(1) (and some more in addition to those). It seems to be that the intention was to define “Community legislation” in accordance with the Schedule: accordingly, effect should be given to the Schedule and the other definitions relating to “Community legislation” in regulation 2(1) should be removed. I mention also my view that in the wake of the Treaty of Lisbon (which came into force on 1 December 2009) it would be appropriate to refer to “EU legislation” rather than to “Community legislation”. The Department intends to make the necessary amendments. It seems to me that it would be neater to revoke and re-enact in this case.

The Plant Health (Amendment No. 3) Order (Northern Ireland) 2010 (S.R. 2010/307)

4. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Plant Health (Amendment No. 3) Order (Northern Ireland) 2010 (S.R. 2010/307) on the ground that the Order was laid in breach of the 21-day rule, explained by the Department of Agriculture and Rural Development. The Department had alerted me to the anticipated breach in advance.** The Order was made on 8 September 2010, and came into operation on the same day. Again, it was laid on 8 September 2010 (with the effect, of course, that it was laid after it came into operation). The Department has explained that it had hoped to make the Order in June prior to the recess with the benefit of sight of draft regulations prepared by the Food, Environment and Research Agency; but that these draft regulations did not arrive in time for the Department to bring the matter before the Committee. As against that there was a real risk of accelerated post-Lisbon Treaty infraction procedures being invoked, resulting in a lump sum or periodical fine. **In the circumstances, the explanation for the breach seems reasonable, subject to the observation that it would have been better if the Department had slightly adjusted the commencement date so as to allow laying to have taken place before the Order came into operation.**

The Foyle Area (Licensing of Oyster Fishing) (Amendment) Regulations 2010 (S.R. 2010/310)

5. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Foyle Area (Licensing of Oyster Fishing) (Amendment) Regulations 2010 (S.R. 2010/310) on the ground that the Regulations were laid in breach of the 21-day rule, explained by the Department of Agriculture and Rural Development on behalf of the Loughs Agency.** The Regulations were made on 9 September 2010, were laid on 10 September and came into operation on 13 September. It seems that the Regulations had to be in operation of 13 September 2010 to enable the Loughs Agency to charge the new reduced licensing fee for oyster fishing for the 2010 oyster fishing season. It was not possible it seems to make them earlier because the necessary approvals from the North South Ministerial Council were not in place. **In the circumstances the explanation appears to be reasonable.**

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)

Draft statutory rule requiring approval by resolution of the Assembly

The Strategic Investment and Regeneration of Sites (Maze/Long Kesh Development Corporation) Order (Northern Ireland) Order 2010 [approved 14 September 2010]

Statutory rules requiring approval by resolution of the Assembly (confirmatory procedure)

The Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010 (S.R. 2010/296)

The Additional Paternity Leave Regulations (Northern Ireland) 2010 (S.R. 2010/297)

The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations (Northern Ireland) 2010 (S.R. 2010/298)

The Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010 (S.R. 2010/300)

The Additional Statutory Paternity Pay (Weekly Rates) Regulations (Northern Ireland) 2010 (S.R. 2010/302)

The Employment Rights (Application of Article 112BB to Adoptions from Overseas) Regulations (Northern Ireland) 2010 (S.R. 2010/303)

Statutory rules subject to negative resolution

The Biomass Challenge Fund Regulations (Northern Ireland) 2010 (S.R. 2010/217)

The Fulton Street, Belfast (Footway) (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/281)

Registered Rents (Increase) Order (Northern Ireland) 2010 (S.R. 2010/285)

The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286)

The Occupational Pensions Schemes (Investment) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/287)

The Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/292)

The Trunk Road T8 (A31) (Magherafelt Bypass) Order (Northern Ireland) 2010 (S.R. 2010/293)

The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/294)

The Additional Statutory Paternity Pay (Birth, Adoption and Adoption from Overseas) (Administration) Regulations (Northern Ireland) 2010 (S.R. 2010/299)

The Additional Statutory Paternity Pay (Health and Social Care Employees) Regulations (Northern Ireland) 2010 (S.R. 2010/301)

The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations (Northern Ireland) 2010 (S.R. 2010/304)

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/305)

The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/306)

The Plant Health (Amendment No. 3) Order (Northern Ireland) 2010 (S.R. 2010/307)

The Foyle Area (Licensing of Oyster Fishing) (Amendment) Regulations 2010 (S.R. 2010/310)

The Social Security (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 2010 (S.R. 2010/311)

The Back Streets at Alliance Dive and Alliance Gardens, Belfast (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/316)

The Glebe Road, Annahilt (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/317)

The Northway, Lurgan (Footway) (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/318)

The Bank Parade, Newry (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/319)

The Belfast Road (A3), Dollingstown (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/320)



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