

Examiner of Statutory Rules

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

**12 November 2010
NIA 20/10/11R**

Committee for Agriculture and Rural Development	S.R. 2010 No. 350
Committee for Employment and Learning	S.R. 2010 No. 361
Committee for the Environment	S.R. 2010 No. 367
Committee for Finance and Personnel	Draft S.R.: General Register Office (Fees) Order (Northern Ireland) 2010
Committee for Health, Social Services and Public Safety	S.R. 2010 Nos. 289, 323, 352, 355
Committee for Justice	S.R. 2010 No. 348
Committee for the Office of the First Minister and deputy First Minister	S.R. 2010 No. 362
Committee for Regional Development	S.R. 2010 Nos. 363, 364
Committee for Social Development	S.R. 2010 Nos. 344, 351, 353, 354

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 Voluntary Adoption Agencies Regulations (Northern Ireland) 2010 (S.R. 2010/289)

3. **I draw the attention of the Committee for Health, Social Services and Public Safety and the Assembly to the Voluntary Adoption Agencies Regulations (Northern Ireland) 2010 (S.R. 2010/289) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Health, Social Services and Public Safety.** The point is simply that the preamble/recital of powers indicated that Articles 30 and 32 of the Health and Social Services (Quality, Improvement and Regulation) Order (Northern Ireland) 2003 have been exercised, when in fact neither of those provisions has been exercised. Article 30 is about annual returns to RQIA: there is no such provision in the Regulations. Article 32 is about the death of a registered person, but cannot apply in this case because an agency must be a body corporate (see regulation 3); plainly provision relating to death applies to a person who is an individual as opposed to a juridical person. The Department has acknowledged these points, maintaining (as I agree) that they do not affect the validity or working of the Regulations.

The Seed Potatoes Regulations (Northern Ireland) 2010 (S.R. 2010/350)

4. **I draw the attention of the Committee for Agriculture and Rural Development and the Assembly to the Seed Potatoes Regulations (Northern Ireland) 2010 (S.R. 2010/350) on the ground that they were laid in breach of the 21-day rule, explained by the Department of Agriculture and Rural Development.** The Regulations were made on 22 October 2010, were laid on the same day and came into operation on 1 November 2010. The Department had informed me in advance of its intention to breach the 21-day: there was a high risk of infraction proceedings if the gap in the implementation of Commission Directive 2007/33/EC on the control of potato cyst nematodes remained. It seems that there were continuing discussions with the Food and Environment Research Agency (of DEFRA) on implementation so that the Department was not in a position to bring proposals to the Committee until October. The Department appears to have acted on this without undue delay in the circumstances (at the same time largely consolidating the Regulations) and the breach appears to have been reasonable.

The Social Fund (Cold Weather Payments) (General) (Amendment No.2) Regulations (Northern Ireland) 2010 (S.R. 2010/351)

5. **I draw the attention of the Committee for Social Development and the Assembly to the Social Fund (Cold Weather Payments) (General) (Amendment No.2) Regulations (Northern Ireland) 2010 (S.R. 2010/351) on the ground that they were laid in breach of the 21-day rule, explained by the Department for Social Development.** The Regulations were made and laid on 22 October 2010 and came into operation on 1 November 2010 in line with the provision for Great Britain. This arises from the implementation of proposals made in the Spending Review statement of 20 October 2010, and it was necessary to maintain parity. In the circumstances that breach of the 21-day rule (matching a similar breach for Great Britain, it seems) seems 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 the approval of the Assembly

Draft SR: General Register Office (Fees) Order (Northern Ireland) 2010

Statutory rule subject to affirmative resolution

The Departments (Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/362)

Statutory rules subject to negative resolution

The Voluntary Adoption Agencies Regulations (Northern Ireland) 2010 (S.R. 2010/289)

The Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations (Northern Ireland) 2010 (S.R. 2010/323)

The Social Fund (Cold Weather Payments) (General) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/344)

The Police Pension (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/348)

The Seed Potatoes Regulations (Northern Ireland) 2010 (S.R. 2010/350)

The Social Fund (Cold Weather Payments) (General) (Amendment No.2) Regulations (Northern Ireland) 2010 (S.R. 2010/351)

The Travelling Expenses and Remission of Charges (Amendment No. 2) Regulations (Northern Ireland) 2010 (S.R. 2010/352)

The Introductory Tenancies (Abandonment Notice) Regulations (Northern Ireland) 2010 (S.R. 2010/353)

The Introductory Tenancies (Abandoned Property) Order (Northern Ireland) 2010 (S.R. 2010/354)

The Animal Feed Regulations (Northern Ireland) 2010 (S.R. 2010/355)

Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2010 (S.R. 2010/361)

The Cycle Racing on Roads (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/363)

The Lower Braniel Road, Castlereagh (Abandonment) Order (Northern Ireland) 2010 (S.R. 2010/364)

The Motor Vehicles (Driving Instruction) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/367)



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