

Seventh Report  
of the  
Examiner of Statutory Rules

during the suspension of  
the Northern Ireland Assembly  
from 15 October 2002 until its dissolution  
(while still suspended) on 28 April 2003;  
and from its election (while still suspended)  
on 26 November 2003 until its  
dissolution (while still suspended) on  
30 January 2007

23 March 2007

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## Terms of reference

1. I make this report to the Secretary of State for Northern Ireland under the authority of directions given by the Secretary of State on 13 November 2002 to continue the technical scrutiny during the suspension of the Northern Ireland Assembly under the Northern Ireland Act 2000 (which took effect from 15 October 2002) and to report to the Secretary of State from time to time. My terms of reference expressly refer to statutory rules subject to negative resolution or confirmatory procedure; statutory rules subject to affirmative resolution and statutory rules subject to approval in draft by a resolution of the Assembly are in effect translated by the provisions of the 2000 Act into statutory rules subject to annulment in pursuance of a resolution of either House of Parliament (and as such come under the scrutiny of the Joint Committee on Statutory Instruments at Westminster).
2. Technical scrutiny is a convenient shorthand expression intended to cover the matters set out in Assembly Standing Order 41(6) under which I operate when assisting the Assembly and its Committees in the scrutiny of statutory rules and draft rules laid before it. Standing Order 41(6) is in the following terms—

“(6) In scrutinising an instrument the appropriate Committee [in practice the Examiner of Statutory Rules under delegations from the Committees under Standing Order 41(4)(b) — words added by the Examiner] 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 an 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 covered by this report

3. This report covers statutory rules laid before the Assembly between May 2006 and 29 January 2007 (dissolution while the Northern Ireland Assembly remains suspended).

## The “twenty-one day rule” and related matters

4. I have adopted the same approach to the twenty-one day rule as I adopted in my Third Report during suspension. I said there:

“I do not draw attention in this report to any individual statutory rules on the ground that they have breached the so-called “ 21-day rule” (that is to say, the rule of practice applied to statutory rules subject to negative resolution whereby the rule-making authority should allow at least 21 days between the laying of a statutory rule and its coming into operation). I have taken the view that that rule is a rule of practice applied by active legislatures in their scrutiny of subordinate legislation and has little or no application during the prolonged suspension of the Assembly. Having said that, it is of course good practice for Departments to adhere to the rule as far as possible: for one thing, the 21-day rule will again assume much greater significance when the Assembly is once more fully functioning. I regard this as a temporary arrangement and will keep it under review.”

## Statutory Rules to which attention is drawn in this report

### THE FIREMAN’S PENSION SCHEME ORDER (NORTHERN IRELAND) 2006 (S.R. 2006/210)

5. **I draw attention to the Fireman’s Pension Scheme Order (Northern Ireland) 2006 (S.R. 2006/210) on the ground that it is defectively drafted in two minor respects.**
6. First, the Order was made on 8 May 2006 and expressed to come into operation on 1 April 2006 (subject to a number of exceptions whereby provisions were expressed to have an earlier effect). I take no issue about the retrospective nature of the powers because the Department of Health, Social Services and Public Safety was acting under powers which expressly allowed it to make retrospective provision. But it seems to me that the Order in fact came into operation on the day that it was made and should have been expressed *to have had effect* from the earlier dates.
7. Second, there are two provisions numbered as paragraph 1 in the Annex to the Regulations. The first simply provides that the “following Scheme shall have effect”, repeating what is in Article 2 of the Order: it seems to me that it has no purpose.

### THE SEA FISHING (RESTRICTION ON DAYS AT SEA) (MONITORING, INSPECTION AND SURVEILLANCE) ORDER (NORTHERN IRELAND) 2006 (S.R. 2006/300)

8. **I draw attention to the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order (Northern Ireland) 2006 (S.R. 2006/300) on the ground that it is defectively drafted.**
9. The Order is closely based on the corresponding Order for England and Wales (contained in S.I. 2006/1327). But there are wrong cross-references throughout much of the Order (mostly relating to offence and enforcement proceedings, so that the errors are particularly problematic). The problem arises simply because Article 3 of the Order for Northern Ireland corresponds to Article 4 of the Order for England and

Wales and this difference appears to have been overlooked when the Order was drafted.

10. I mention a further point. Article 25(1) makes provision for a justice of the peace to issue a warrant for entry to premises. The reference to a justice of the peace should in this case be a reference to a lay magistrate: see the transfer of functions of justices of the peace to lay magistrates in section 10 of and Schedule 4 to the Justice (Northern Ireland) Act 2002. I referred generally to this matter in my Fifth Report dated 14 October 2005 (and see also paragraphs 18 and 38 below).

THE EDUCATION (STUDENT LOANS) (AMENDMENT)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/307)

11. **I draw attention to the Education (Student Loans) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/307) on the ground that they are defectively drafted in several places as regards operative dates that appeared to be retrospective, acknowledged by the Department for Employment and Learning.**
12. Regulation 4(1G) of the principal Regulations (inserted by regulation 7) contains an exception for a person who would have been eligible for a loan before 30 April 2006; and regulation 7(1) of the principal regulations (substituted by regulation 9) provides for agreements for loans made on or after 30 April 2006; yet the amending regulations came into operation on 1 August 2006. I raised this with the Department. The Department subsequently amended the provisions in question in S.R. 2006/329.

THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT NO. 2)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/331)

13. **I draw attention to the Education (Student Loans) (Repayment)(Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/331) on the ground that they are defectively drafted in one minor respect.**
14. In several places in new Part 5 of the principal Regulations (which might have been better headed as “Part V” for consistency) the Department [for Employment and Learning] is referred to as “he” rather than “it”, no doubt following references to the Secretary of State in the corresponding provisions drafted for England.

THE BUILDING (AMENDMENT)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/355)

15. **I draw attention to the Building (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/355) on the ground that they are defectively drafted in one respect, impliedly acknowledged by the Department of Finance and Personnel in its further amending Regulations (contained in S.R. 2006/440).**
16. I suggested to the Department that what was in regulation 3 (application of certain regulations to existing buildings), since it was a substantive amendment of the principal Regulations, should have been worked into the body of the principal Regulations as a textual amendment rather than being left as a free-standing provision in the amending Regulations alongside the transitional provisions. I am happy to

report that the Department seems to have taken the opportunity of the further amending Regulations (mentioned in the previous paragraph) to do that.

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/356)

17. **I draw attention to the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 (S.R. 2006/356) on the ground that they are defectively drafted in one respect and also that one provision could be drafted more clearly.**
18. Regulation 35 and Schedule 8 make provision for a justice of the peace to issue a warrant for entry to premises. The reference to a justice of the peace should in this case be a reference to a lay magistrate: see the transfer of functions of justices of the peace to lay magistrates in section 10 of and Schedule 4 to the Justice (Northern Ireland) Act 2002. I referred generally to this matter in my Fifth Report dated 14 October 2005 (and see also paragraph 10 above and 38 below).
19. It seems to me that the drafting of paragraph 1(3) of Schedule 8 could be clearer and that something may have gone slightly awry in terms of punctuation. When I looked at the provision I wondered whether it could have been omitted: its substance seemed to have been covered adequately by regulation 35(3), whereas the rest of Schedule 8 consisted of an elaboration on regulation 35(4).
20. I understand that the Department envisages amending Regulations in the near future and it seems to me that those Regulations would present an opportunity to address these points.

THE PENALTY CHARGES (EXEMPTIONS FROM CRIMINAL PROCEEDINGS)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/376)

21. **I draw attention to the Penalty Charges (Exemptions from Criminal Proceedings) Regulations (Northern Ireland) 2006 (S.R. 2006/376) on the ground that they are defectively drafted in one respect, acknowledged by the Department for Regional Development.**
22. The point is simply that the Regulations (regulations 2(2)(a) and 2(b)(v)) contained exceptions from the new penalty charge regime that were already outside the purview of that regime by virtue of the parent legislation (see the exceptions listed in Schedule 1 to the Traffic Management (Northern Ireland) Order 2005).

THE CURD CHEESE (RESTRICTION ON PLACING ON THE MARKET)  
REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/415)

23. **I draw attention to the Curd Cheese (Restriction on Placing on the Market) Regulations (Northern Ireland) 2006 (S.R. 2006/415) on the ground that they are defectively drafted in one minor respect as regards references to arbitration, acknowledged by the Food Standards Agency. The Agency has now dealt with the point: see S.R. 2006/493).**

24. Regulation 5(7) provides for disputes as to compensation under Regulation 4(6) to be “determined by a single arbitrator appointed, failing agreement between the parties, by the Head of the Department”. The paragraph ends by providing that “the provisions of the Arbitration Act (Northern Ireland) 1937 shall apply accordingly”. This was plainly taken from an earlier precedent (and I have recently noticed something similar in the Food Safety (Northern Ireland) Order 1991): the 1937 Act has been superseded by the Arbitration Act 1996, which makes extensive provision for the procedure to be followed in arbitrations; and the “Head of the Department” (“Department” is not defined) is a throwback to the superseded terminology of the Northern Ireland Constitution Act 1973. I commended to the Food Standards Agency the wording used in the corresponding provision of the Regulations for England (contained in S.I. 2006/2787): “determined by arbitration”.

THE AGRICULTURAL WAGES (ABOLITION OF PERMITS TO INFIRM AND INCAPACITATED PERSONS) REGULATIONS (NORTHERN IRELAND) REGULATIONS 2006 (S.R. 2006/429)

25. **I draw attention to the Agricultural Wages (Abolition of Permits to Infirm and Incapacitated Persons) Regulations (Northern Ireland) Regulations 2006 (S.R. 2006/429) in that they are defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.**
26. These Regulations are made under section 2(2) of the European Communities Act 1972. The Department has cited the wrong Designation Order made under that section: instead of citing the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819) (relating to discrimination), the Department cited Designation Orders relating to the Common Agricultural Policy. I am satisfied, however, that this drafting defect does not affect the validity of the Regulations.

THE PHOSPHORUS (USE IN AGRICULTURE) REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/488)

27. **I draw attention to the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006 (S.R. 2006/488) on the ground that they are defectively drafted in a number of respects, acknowledged in part by the Department of the Environment. I attach the Department’s memorandum received on 13 March 2007 as Appendix 2.**
28. First, failure to comply with Regulation 5 is made an offence: see regulation 8(1). Making failure to comply with such a provision an offence seems to be completely misconceived, since the provision is merely about having regard to departmental guidance and the Code of Good Agricultural Practice; contrary to what is in the Explanatory Memorandum accompanying the Regulations on laying, the regulation does not actually impose a duty to comply with the Regulations. As minor points, I criticise the use of “and/or” in the body of legislation: either it should be drafted as “and” or as “or” (or perhaps as “or both”) according to what is precisely intended: in the first case there is probably no need (and indeed some confusion) in referring to the owner as well as (or in the alternative to) the controller (see the definition of “controller” in regulation 2(1)); and in the second case “the Department and/or the Department of Agriculture and Rural Development” could probably have read “the

Department or the Department of Agriculture and Rural Development". On the whole, it seemed to me, initially, that the Department should have seriously considered the revocation of regulation 5 (as well as associated offence in regulation 8(1)), and I was minded to so recommend. It seemed that it created unnecessary confusion: surely the Department (or the Department of Agriculture and Rural Development or both Departments acting jointly) could issue administrative guidance from time to time without the need for such a provision in the Regulations. The Department has today (23 March 2007) provided me with an explanation for the provision, which I simply append as Appendix 3. **I recommend that the Department look carefully at the drafting of the provision:** for one thing, it seems to me that the Regulations are framed so that the duties (the primary duties at least) lie on the controller of the holding, whether that be the owner, and not on the owner as such.

29. Second, it seems to me that the Department's intention is to make the compilation or furnishing of false or misleading information (regulation 6(3)) an offence: it seems to me that there is some doubt as to whether regulation 8(2) (which also contains the imprecise expression "and/or") actually achieves that intention. The Department might do well to expressly create such an offence.
30. And, third, regulation 9 (penalties) most unconventionally refers to a person "found guilty" of an offence: plainly, that should have simply read "guilty" (omitting the word "found") so as to cover convictions after either a plea of not guilty or a guilty plea.

THE NITRATES ACTION PROGRAMME REGULATIONS  
(NORTHERN IRELAND) 2006 (S.R. 2006/489)

31. **I draw attention to the Phosphorus (Use in Agriculture) Regulations 2006 (S.R. 2006/488) and the Nitrates Action Programme Regulations (Northern Ireland) 2006 (S.R. 2006/489) on the ground that they are defectively drafted in a number of respects,** acknowledged in part by the Department of the Environment.
32. First, it seems to me that similar criticisms apply to regulation 5 of these regulations as apply to regulation 5 of the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006 (see paragraph 28 above), except that failure to comply with the provision is (fortunately) not an offence. Again, **I recommend that the Department look carefully at the drafting of the provision.**
33. Second, it seemed to me, when I first looked at the provision, that regulation 8(1) (application of dirty water) should be expressly subject to paragraphs (2) to (4) of that Regulation rather than to regulation 7(2) and (3) (since the latter provisions seemed to apply to the application of nitrogen fertiliser *other than dirty water*): see regulation 7(1). The Department has provided an explanation, but it still seems to me that regulation 8(1) should at least be drafted more clearly on its face.
34. Third, the use of the future tense "will be calculated" in regulations 9(3) and (4) and 10(4) and (5) looks odd: it would probably suffice to say "is calculated": compare regulation 9(7). The Department has noted this point for future reference.



35. Fourth, I again criticise the use of the imprecise “and/or” in regulation 12(3) (“pig and/or poultry enterprise): compare regulation 12(1) (which uses, perfectly satisfactorily, the expression “pig or poultry enterprise”). The intended meaning seems to be the same in both cases, which raises the further question: why is the language different? The Department has provided an explanation, but it still seems to me that “and/or” could and should have been avoided.
36. And, fifth, regulation 25 (penalties) again refers to a person “found guilty” of an offence rather than to a person “guilty” of an offence: the same criticism applies to this as to regulation 9 of the Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006: see paragraph 30 above.

THE EC FERTILISERS REGULATIONS (NORTHERN IRELAND) 2006  
(S.R. 2006/503)

37. **I draw attention to the EC Fertilisers Regulations (Northern Ireland) 2006 (S.R. 2006/503) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.**
38. Regulation 12(4) makes provision for a justice of the peace, on sworn information in writing, to issue a warrant for entry to premises. The reference to a justice of the peace should in this case be a reference to a lay magistrate: see the transfer of functions of justices of the peace to lay magistrates in section 10 of and Schedule 4 to the Justice (Northern Ireland) Act 2002. I referred generally to this matter in my Fifth Report dated 14 October 2005 (and see also paragraphs 10 and 18 above). The reference to “sworn information in writing” should be to “sworn complaint in writing”, the terminology used in Northern Ireland: see the Magistrates’ Courts (Northern Ireland) Order 1981. I referred to this in my Sixth Report dated 16 June 2006.

THE ENVIRONMENTAL IMPACT ASSESSMENT (FORESTRY REGULATIONS  
(NORTHERN IRELAND) 2006 (S.R. 2006/518)

39. **I draw attention to the Environmental Impact Assessment (Forestry Regulations (Northern Ireland) 2006 (S.R. 2006/518) on the ground that they are defectively drafted in one respect, acknowledged by the Department of Agriculture and Rural Development.**
40. Regulation 18(10) provides for a summary offence to be punishable by a fine not exceeding “the statutory maximum” (the formula used where an offence may be tried summarily or on indictment). This should of course have been expressed as a fine not exceeding “level 5 on the standard scale” since the offence is summary only: that both levels of penalty are currently the same (£5,000) is irrelevant; each is a distinct statutory concept (so that it would seem open to a court faced with the provision, if indeed not incumbent on it since a strict interpretation must surely be placed on penal provisions, to hold that no proper penalty had been provided for an offence under regulation 18(10) and order accordingly). Accordingly, **the Department should consider an early amendment to correct the provision, and I so recommend.**

THE WELFARE OF ANIMALS (TRANSPORT) REGULATIONS (NORTHERN IRELAND) 2006 (S.R. 2006/538)

41. **I draw attention to the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (S.R. 2006/538) on the ground that they are defectively drafted in several respects, acknowledged by the Department of Agriculture and Rural Development.** The Department has now taken on board the points I raised in amending Regulations (contained in S.R. 2007/32).
42. The Regulations adopted two different approaches to creating offences. One approach was to make non-compliance with a particular Regulation an offence, that is to say, there was a statement in the particular provision that non-compliance was an offence. The other approach was to include a general provision (regulation 29) making non-compliance with the Regulations an offence. It seemed to me that in the scheme of the Regulations the first approach was preferable. I referred the Department to several potential problems I saw. Arguably, failure to reimburse the Department in accordance with regulation 25 was an offence as well as being subject to summary recovery as a debt (although it seems that that was not the Department's intention). On the other hand, there appeared to be gaps elsewhere in the enforcement regime: non-compliance with the requirement of an inspector under regulation 24(3), (6) or (7) did not appear to be an offence.

THE CONTROL OF ASBESTOS REGULATIONS (NORTHERN IRELAND)  
2007 (S.R. 2007/31)

43. **I draw attention to the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007/31) on the ground that that they are defectively drafted in one respect, acknowledged by the Department of Enterprise, Trade and Investment.**
44. Paragraph 5 of Schedule 3 appeared to me to have no purpose. Unlike paragraphs 3 and 4 it was not referred to earlier in the Schedule, but seemed to be hanging on its own with no significance. It seemed to me to be a hangover from an earlier draft, based on a provision of the corresponding Regulations for England and Wales that was not included in the Regulations for Northern Ireland. The Department agrees. It seems that the "discrepancy arose when it was overlooked following a consequential amendment in an earlier draft". The Department intends to revoke paragraph 5 of Schedule 3 at the earliest opportunity.

*W G Nabney*  
**Examiner of Statutory Rules**  
23 March 2007

## APPENDIX 1

*(Special attention is drawn to those statutory rules marked in bold type)*

The Social Security (Electronic Communications) (Miscellaneous Benefits) Regulations (Northern Ireland) 2005 (S.R. 2006/203)

Quarries Regulations (Northern Ireland) 2006 (S.R. 2006/205)

The Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006 (S.R. 2006/206)

The Pharmaceutical Society of Northern Ireland (General) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/207)

Countryside Management (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/208)

Environmentally Sensitive Areas (Designation) Order (Northern Ireland) 2006 (S.R. 2006/209)

### **The Firemen's Pension Scheme Order (Northern Ireland) 2006 (S.R. 2006/210)**

The Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/211)

The Employment of Children (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/212)

The Misuse of Drugs (Amendment) (No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/214)

The Ceramic Articles in Contact with Food Regulations (Northern Ireland) 2006 (S.R. 2006/217)

Planning (Application of Subordinate Legislation to the Crown) Order (Northern Ireland) 2006 (S.R. 2006/218)

Planning (General Development) (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/219)

Pesticides (Maximum Residue Levels in Crops, Foods and Feeding Stuffs) Regulations (Northern Ireland) 2006 (S.R. 2006/220)

The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/223)

Public Angling Estate (Amendment) Byelaws (Northern Ireland) 2006 (S.R. 2006/224)

The Whole of Government Accounts (Designation of Bodies) Order (Northern Ireland) 2006 (S.R. 2006/226)

The Bearnagh Glen, Belfast (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/227)

The Dunalong Road, Strabane (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/228)

The Dublin Road, Banbridge (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/229)

The Mountpottinger Road, Belfast (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/230)

The Social Security (Income Support and Jobseeker's Allowance (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/234)

The Gangmasters (Appeals) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/235)

Planning (Claims for Compensation) Regulations (Northern Ireland) 2006 (S.R. 2006/238)

The Route C161 Derrymacfall Road, Portadown (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/239)

Pharmaceutical Society of Northern Ireland (General) (Amendment No.2) Regulations (Northern Ireland) 2006 (S.R. 2006/240)

The Unauthorised Encampments (Retention and Disposal of Vehicles) Regulations (Northern Ireland) 2006(S.R. 2005/243)

The Motor Vehicles (Construction and Use) (Amendment No.2) Regulations (Northern Ireland) 2005 (S.R. 2006/246)

The Public Service Vehicles (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/247)

The Public Service Vehicles (Conditions of Fitness Equipment and Use) (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/248)

The Public Service Vehicles (Accessibility) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/249)

The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2006 (S.R. 2006/251)

The Education (Student Support) (2005 Regulations) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/252)

The Pig Carcasses (Grading) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/253)

The Lagmore Grove, Lisburn (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/254)

The Management of Health and Safety at Work (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/255)

The Contaminants in Food Regulations (Northern Ireland) 2006 (S.R. 2006/256)

The Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261)

The Industrial Tribunals (Interest on Awards in Age Discrimination Cases) Regulations (Northern Ireland) 2006 (S.R. 2006/262)

Animals and Animal Products (Examination for Residues and Maximum Residue Limits (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/263)

The Route C165 Derrykeeran Road, Portadown (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/267)

The Misuse of Drugs (Amendment No. 3) Regulations (Northern Ireland) 2005 (S.R. 2006/264)

The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2005 (S.R. 2006/273)

Passenger and Goods Vehicles (Recording Equipment) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/274)

The Planning (Electronic Communications) Order (Northern Ireland) 2006 (S.R. 2006/276)

Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2006 (S.R. 2005/277)

Plant Protection Products (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/278)

The Waste Management Regulations (Northern Ireland) 2006 (S.R. 2006/280)

The Drainage Trusts (Dissolution) Order (Northern Ireland) 2006 (S.R. 2005/281)

The Pension Protection Fund (Pension Sharing) Regulations (Northern Ireland) 2006 (S.R. 2006/282)

The Contracting Out (Functions Relating to Child Support) Order (Northern Ireland) 2006 (S.R. 2005/286)

The Eggs (Marketing Standards) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/287)

Planning (Conservation Areas) (Consultation) Regulations (Northern Ireland) 2006 (S.R. 2006/290)

The Occupational Pension Schemes (Winding Up Procedure Requirement) Regulations (Northern Ireland) 2006 (S.R. 2006/297)

The Employer's Liability (Compulsory Insurance) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/298)

**The Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order (Northern Ireland) 2006 (S.R. 2005/300)**

The Social Security (Students and Income-related Benefits) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/301)

Farm Subsidies (Review of Decisions) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/303)

**The Education (Student Loans) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/307)**

The Route F1399 Centre Walk, Craigavon (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/309)

The Education (Student Support) Regulations (Northern Ireland) 2006 (S.R. 2006/312)

The Health and Personal Social Services (Primary Medical Services) (Miscellaneous Amendments) Regulations (Northern Ireland) 2006 (S.R. 2006/319)

The Social Security (Lebanon) Regulations (Northern Ireland) 2006 (S.R. 2006/320)

The Ozone Depleting Substances (Qualifications) Regulations (Northern Ireland) 2006 (S.R. 2006/321)

The Special Educational Needs and Disability (Northern Ireland) Order (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/322)

The Killaney Lane (U4173), Banbridge (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/323)

The Kernan Grove and Kernan Hill Manor, Portadown (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/324)

The Steps Road, Maheralin (Stopping-Up) Order (Northern Ireland) 2006 (S.R. 2005/325)

The Markville/Oakdene Park, Bleary (Footpath) (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/326)

The Motor Vehicles (Construction and Use) (Amendment No. 3) Regulations (Northern Ireland) 2006 (S.R. 2006/328)

The Education (Student Loans) (Amendment) (No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/329)

The Seed Potatoes (Tuber Inspection Fees) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/330)

**The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/331)**

The Travelling Expenses and Remission of Charges (Amendment No. 3) Regulations (Northern Ireland) 2006 (S.R. 2006/333)

The Misuse of Drugs (Amendment) (No. 4) Regulations (Northern Ireland) 2006 (S.R. 2006/334)

The Agriculture (Safety of Children and Young Persons) Regulations (Northern Ireland) 2006 (S.R. 2006/335)

The Removal, Storage and Disposal of Vehicles (Prescribed Charges) Regulations (Northern Ireland) 2006 (S.R. 2006/337)

The Penalty Charges (Prescribed Amounts) Regulations (Northern Ireland) 2006 (S.R. 2006/338)

The Immobilisation of Vehicles (Charges) Regulations (Northern Ireland) 2006 (S.R. 2006/337)

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006 (S.R. 2006/340)

The Regulation and Improvement Authority (Fees and Frequency of Inspections) Regulations (Northern Ireland) 2006 (S.R. 2006/341)

The Care Tribunal (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/341)

The Motor Vehicles (Approval) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/343)

The Radioactive Contaminated Land Regulations (Northern Ireland) 2006 (S.R. 2006/345)

The Animals and Animal Products Import and Export) (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/346)

The Planning (General Development) (Amendment) (No. 2) Order (Northern Ireland) 2006 (S.R. 2006/348)

The Ferngrove, Portrush (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/349)

The Food (Emergency Control) (Revocation) Regulations (Northern Ireland) 2006 (S.R. 2006/351)

The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 2006 (S.R. 2006/353)

The Partnerships and Unlimited Companies (Accounts) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/354)

**The Building (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/355)**

**The Producer Responsibility Obligation (Packaging Waste) Regulations (Northern Ireland) 2006 (S.R. 2006/356)**

The Employment Protection (Continuity of Employment) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/357)

Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358)

The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2006 (S.R. 2006/359)

The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/361)

The T10 Cookstown-Omagh -Enniskillen-Aghalane-Land Frontier Order (Northern Ireland) 2006 (S.R. 2005/364)

The Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2006 (S.R. 2006/365)

The Teachers' Superannuation (Miscellaneous Amendments) (No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/366)

The Lower Galliagh Road, Londonderry (Abandonment) Order (Northern Ireland) 2006 (S.R. 2005/367)

Collective Redundancies (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/369)

The Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370)

The Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order (Northern Ireland) 2006 (S.R. 2005/371)

The Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/372)

The Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/373)

The Statutory Paternity Pay and Statutory Adoption Pay (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/374)

**The Penalty Charges (Exemption from Criminal Proceedings) Regulations (Northern Ireland) 2006 (S.R. 2006/376)**

Students Awards (Amendment) Regulations (Northern Ireland) 2006(S.R. 2006/378)

The Social Security (Persons from Abroad) (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/379)

Proposed Link Road, Newtownards (Comber Road – Blair Mayne Road South) Order (Northern Ireland) 2006 (S.R. 2005/380)

Planning (Development Plans) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/382)

The Education (Student Support) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/383)

The Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2006 (S.R. 2006/383)

The Environmental Noise Regulations (Northern Ireland) 2006 (S.R. 2006/387)

The Social Security (1988 Order) (Prescribed Benefits) Regulations (Northern Ireland) 2006 (S.R. 2006/388)

The Working Time (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/389)

Superannuation (Chief Electoral Officer for Northern Ireland) (Amendment) Order (Northern Ireland) 2006 (S.R. 2005/393)

The Northern Ireland Social Care Council (Social Care Workers) Regulations (Northern Ireland) 2006 (S.R. 2006/394)

The Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/395)

The Northern Ireland Social Care Council (Description of Social Care Workers) Order (Northern Ireland) 2006 (S.R. 2006/396)

The Social Security (Incapacity Benefit Work-focused Interviews) (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/398)

The Traffic Signs (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/399)

Local Government Pension Scheme (Management and Investment of Funds) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/400)

The Animals and Animal Products (Import and Export) Regulations (Northern Ireland) 2006 (S.R. 2006/401)

The Education (Supply of Student Support Information to Governing Bodies) Regulations (Northern Ireland) 2006 (S.R. 2006/403)

The Gas (Designation of Pipelines) Order (Northern Ireland) 2006 (S.R. 2006/404)

The Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006/405)

The Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006/406)

The Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 (S.R. 2006/407)

The Motor Vehicles (Taxi Drivers' Licences) (Fees) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/408)

The Pension Protection Fund (Levy Ceiling) Regulations (Northern Ireland) 2006 (S.R. 2006/409)

The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/410)

The Hightown Avenue, Mallusk (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/411)

The Street Works (Reinstatement) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/412)

**The Curd Cheese (Restriction on Placing on the Market) Regulations (Northern Ireland) 2006 (S.R. 2006/415)**

The Dangerous Wild Animals (Fees) Order (Northern Ireland) 2006 (S.R. 2006/417)

The Further Education (Student Support) (Cross-Border Eligibility) Regulations (Northern Ireland) 2006 (S.R. 2006/422)

The Employment Protection (Code of Practice) (Disclosure of Information) Order (Northern Ireland) 2006 (S.R. 2006/423)

The Gilford Road, Lurgan (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/426)

The Feeding Stuffs (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/427)

**The Agricultural Wages (Abolition of Permits to Infirm and Incapacitated Persons) Regulations (Northern Ireland) 2006 (S.R. 2006/429)**

The Penalty Charges (Exemption from Criminal Proceedings) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/432)

The Contracting Out (Functions relating to Child Support) (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/433)

The Plant Health (Amendment No. 2) Order (Northern Ireland) 2006 (S.R. 2006/435)

The Social Security (National Insurance Numbers) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/436)

The Companies (1986 Order) (Small Companies' Accounts and Audit) Regulations (Northern Ireland) 2006 (S.R. 2006/438)

The Building (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/440)



The Teachers' (Eligibility) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/441)

The Rice Products (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2006 (S.R. 2006/443)

The Pensions (2005 Order) (Disclosure of Restricted Information) (Amendment of Specified Persons) Order (Northern Ireland) 2006 (S.R. 2006/444)

Trunk Road T4 (Ballydown and Ballyvalley) Order (Northern Ireland) 2006 (S.R. 2006/445)

Trunk Road T4 (Quilly and Balleny) Order (Northern Ireland) 2006 (S.R. 2006/446)

Trunk Road T4 (Hillsborough and Drumatihugh) Order (Northern Ireland) 2006 (S.R. 2006/447)

Trunk Road T4 (Greenan and Drumnahare) Order (Northern Ireland) 2006 (S.R. 2006/448)

The Housing Benefit (Consequential Provisions) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/449)

The Housing Renewal Grants (Reduction of Grant) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/452)

The Employment Equality (Age) (Amendment No.2) Regulations (Northern Ireland) 2006 (S.R. 2006/453)

The Meat (Official Controls Charges) Regulations (Northern Ireland) 2006 (S.R. 2006/454)

The Student Fees (Amounts) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/455)

The Route A8 Belfast Road Larne (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/456)

Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/458)

The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/459)

Insolvency Regulations (Northern Ireland) 1996 (Electronic Communications) Order (Northern Ireland) 2006 (S.R. 2006/461)

The Housing Benefit (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/462)

The Housing Benefit (Electronic Communications) Order (Northern Ireland) 2006 (S.R. 2006/463)

The Killyliss Road, Trillick (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/465)

The Occupational Pensions (Revaluation) Order (Northern Ireland) 2006 (S.R. 2006/467)

The Feed (Specified Undesirable Substances) Regulations (Northern Ireland) 2006 (S.R. 2006/471)

The Westland Road South, Sullenboy, Cookstown (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/474)

The Westland Road South, Tullagh, Cookstown (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/475)

The Teemore Road, Derrylin (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/476)

The Welfare Foods (Amendment No.2) Regulations (Northern Ireland) 2006 (S.R. 2006/477)

The Healthy Start Scheme and Day Care Food Scheme Regulations (Northern Ireland) 2006 (S.R. 2006/478)

The Immobilisation and Removal of Vehicles (Prescribed Conditions) Regulations (Northern Ireland) 2006 (S.R. 2006/479)

The Children (Prescribed Orders — Isle of Man and Guernsey) Regulations (Northern Ireland) 2006 (S.R. 2006/480)

The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/481)

The Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (S.R. 2006/482)

The Water Resources (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/483)

The Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2006 (S.R. 2006/485)

**The Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006 (S.R. 2006/488)**

**The Nitrates Action Programme Regulations (Northern Ireland) 2006 (S.R. 2006/489)**

The Struell Wells Road, Downpatrick (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/491)

The Curd Cheese (Restriction on Placing on the Market) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/493)

The Motor Vehicle Testing (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/494)

The Goods Vehicles (Testing) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/495)

The Dangerous Wild Animals (Fees) (No. 2) Order (Northern Ireland) 2006 (S.R. 2006/497)

The Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2006 (S.R. 2006/498)

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/501)

**EC Fertiliser Regulations (Northern Ireland) 2006 (S.R. 2006/503)**

Fair Employment (Specification of Public Authorities) (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/504)

The C91 Vow Road, Ballymoney (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/505)

The Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2006 (S.R. 2006/509)

The Social Security (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 2006 (S.R. 2006/510)

Grammar Schools (Charges) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/511)

The Potatoes Originating in Egypt (Amendment No. 2) Regulations (Northern Ireland) 2006 (S.R. 2006/512)

Eel Fishing (Licence Duties) Regulations (Northern Ireland) 2006 (S.R. 2006/513)

The Bangor Road, Holywood (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/514)

The Rates (Automatic Telling Machines) (Designation of Rural Areas) Order (Northern Ireland) 2006 (S.R. 2006/516)

Fisheries (Amendment) Byelaws (Northern Ireland) 2006 (S.R. 2006/517)

### **Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006 (S.R. 2006/518)**

The Waste Electrical and Electronic Equipment (Waste Management Licensing) Regulations (Northern Ireland) 2006 (S.R. 2006/519)

The Social Security (Bulgaria and Romania) (Amendment) Regulations (Northern Ireland) 2006 (S.R.2006/523)

The Genetically Modified Organisms (Contained Use) (Amendment) Regulations (Northern Ireland) 2006 (S.R.2006/524)

(The Carriage of Goods and Use of Transportable Pressure Equipment (Amendment) Regulations (Northern Ireland) 2006 (S.R.2006/525)

The Pension Protection Fund (Insolvent Partnerships) (Amendment of Insolvency Events) Regulations (Northern Ireland) 2006 (S.R. 2006/529)

The Causeway Street Link Road (Stopping-Up) Order (Northern Ireland) 2006 (S.R. 2006/530)

The Route U8235 Belturbet Road Spur, Aghalane (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/531)

The Cashel Road, Greencastle (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/532)

The Ballagh Road, Clogher (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/533)

The Aghalougher Road, Castleberg (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/534)

The Lough Road (U113), Antrim (Abandonment) Order (Northern Ireland) 2006 (S.R. 2006/535)

The Recovery of Health services Charges (General) Regulations (Northern Ireland) 2006 (S.R. 2006/536)

Farm Nutrient Management Scheme (Northern Ireland) 2006 (S.R. 2006/537)

### **The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (S.R. 2006/538)**

The Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/7)

The Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/9)

The Planning (Trees) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/10)

Trunk Road T6 (A4) (Annaghilla Realignment) Order (Northern Ireland) 2007 (S.R. 2007/11)

Trunk Road T6 (A5) (Tullyvar Realignment) Order (Northern Ireland) 2007 (S.R. 2007/12)

Dungannon to Ballygawley Trunk Road Order (Northern Ireland) 2007 (S.R. 2007/13)

The Motor Vehicles (Construction and Use) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/15)

The Food Hygiene (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/16)

The Smoke Control Areas (Authorised Fuels) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/17)

The Meat (Official Controls Charges) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/18)

Foyle Area and Carlingford Area (Licensing of Fishing Engines) (Amendment) Regulations 2007 (S.R. 2007/19)

The Plant Health (Import Inspection Fees (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/21)

Employment Rights (Increase in Limits) Order (Northern Ireland) 2007 (S.R. 2007/22)

The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2007 (S.R. 2007/23)

The Recovery of Health Services Charges (Reviews and Appeals) Regulations (Northern Ireland) 2007 (S.R. 2007/24)

The Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2007 (S.R. 2007/27)

The Street Works (Inspection Fees) (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/29)

The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2007(S.R. 2007/30)

**The Control of Asbestos Regulations (Northern Ireland) 2007(S.R. 2007/31)**

The Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations (Northern Ireland) 2007 (S.R. 2007/36)

The Education (Pupil Records and Reporting) (Transitional) Regulations (Northern Ireland) 2007 (S.R. 2007/43)

The Education (Other Skills) Order (Northern Ireland) 2007 (S.R. 2007/44)

The Education (Assessment Arrangements) (Foundation to Key Stage 3) Order (Northern Ireland) 2007 (S.R. 2007/45)

The Education (Minimum Curriculum Content) Order (Northern Ireland) 2007 (S.R. 2007/46)

## APPENDIX 2

### Memorandum from the Department of the Environment (13 March 2007)

#### **The Phosphorus (Use in Agriculture) Regulations 2006 (S.R. 2006/488)**

In the first paragraph of your report a number of concerns have been raised in regard to regulation 5 and I will address these in the order they appear.

**1a)** *"failure to comply with reg 5 is made an offence"* under regulation 8(1): As I have previously acknowledged this was not the intention and the Department will correct this at the earliest opportunity.

**1b)** On the use of "and/or" the Department would clarify as follows:

On the first use it is important to note that there are numerous permutations to identifying responsibility for land in Northern Ireland. There are situations where the controller and owner may be the same person however, there are also situations where different people have responsibility e. g. someone has a written agreement to manage the owner's land, therefore, the use of "and/or" has a purpose in that the Department would want to impose a duty on either, or both and the use of "and/or" was, therefore, deemed appropriate to avoid the need for lengthy or duplicate wording.

**1c)** In the second case, as with 1b, there is a purpose for the use of "and/or" as guidance may be issued separately by each Department but at times it may be issued jointly. Therefore, the use of "and/or" was again considered appropriate.

**1d)** While the Department understands and has provided comments on the points raised in regard to regulation 5 it is not clear as to the basis on which the recommendation to revoke regulation 5 is being made. Perhaps you could clarify the particular problem in order for the Department to provide a response on this issue.

#### **Other Issues in regard to the Phosphorus Regulations**

**2)** Doubt is expressed on whether or not regulation 8(2) achieves its purpose. It is the Department's intention to make both compliance with the conditions of a notice and provision of information an offence and the Department is content that regulation 8(2) achieves this purpose as drafted.

**3)** On the final point relating to the Phosphorus Regulations the Department accepts that the use of "found" should be changed from a drafting point of view and will do so at the earliest opportunity.

#### **The Nitrates Action Programme Regulations 2006 (S.R. 2006/489)**

**1)** Please see 1d above.

**2)** *8(1) application to dirty water.* The Department would clarify as follows:

Regulation 8 applies to the application of dirty water and whilst its application is subject to paragraphs 8(2) to 8(4) its application is also subject to the environmental conditions set out in regulations 7(2) and 7(3). In other words dirty water can be

applied throughout the year provided the environmental conditions, as set in 7(2) and 7(3), are favourable and its application is in accordance with 8(2) to 8(4).

- 3) On the use of the future tense “will be calculated” in regulations 9(3), 9(4), 10(4) and 10(5) the Department notes your comments about consistency and will take this into account in the future.
- 4) On the use of “and/or” in regulations 12(1) and (3) the following clarification would be provided:

In regulation 12(1) “or” is used because it is only related to pig or poultry enterprises requiring 26 weeks storage. However, regulation 12(3) refers to a mixed holding of either pig and poultry or both with another livestock enterprise requiring storage of 26 weeks for the pig or poultry or both and 22 weeks for the other enterprise. The use of “and/or” was again considered appropriate in the circumstances.
- 5) As in point 3, in the Phosphorus issues above, the Department accepts the drafting point and will amend at the earliest opportunity.

I trust this provides the necessary clarification for consideration before finalising your Report on these Regulations. I look forward to your response and if you require further information please contact me.

### APPENDIX 3

#### **Second Memorandum from the Department of the Environment (23 March 2007)**

#### **[The Phosphorous (Use in Agriculture) Regulations (Northern Ireland) 2006 S.R. 2006/488**

#### **The Nitrates Action Programme Regulations (Northern Ireland) 2006 S.R. 2006/489]**

You kindly sent me a redraft of the report with the following explanation regarding the recommendation to revoke regulation 5 in both sets of Regulations:

"It seems to me that it creates unnecessary confusion: surely the Department (or the Department of Agriculture and Rural Development or both Departments acting jointly) can issue administrative guidance from time to time without the need for such a provision in the Regulations."

The Department would provide the following to clarify its reasoning for the inclusion of regulation 5.

The purpose of regulation 5 is to supplement the enforcement powers and thereby provide clarity to the Court in relation to the need to have regard to Guidance and the Code of Good Agricultural Practice (CoGAP). Adherence to guidance and the CoGAP could be used by a Court to consider the degree of any breach of the other regulations. Likewise, a defendant could clearly rely upon demonstrating the consideration that they have given to Guidance/CoGAP in defence or mitigation.

It is also important to point out that the Commission considers the inclusion of certain measures in an action programme when assessing Member State's compliance of Action Programmes under the Nitrates Directive. In particular, the Commission seeks clear references for the calculation of manure storage capacity to be contained in an action programme. This legal obligation has been met by reg 16(3)(b) of the Nitrates Regulations *"16(3) The livestock manure storage capacity of a holding shall be calculated in accordance with:.....(b) any further procedures for calculating such storage capacity which will be specified in guidance relating to these Regulations."*

It is clear, therefore, that the existence of the guidance and the reference to it in the text of the Regulations was a critical factor for the Commission in deciding that NI's action programme was fully compliant with the requirements of the Directive.

Also, in discussions with the Commission it became clear that statutory reference to the fertiliser standards to be used by farmers in meeting crop requirement should be incorporated in an action programme. Both sets of Regulations refer to these standards to assist in the process of developing the application of these standards.

The inclusion of regulation 5, therefore, has a purpose and provides clarity for all concerned.

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